i-notes
Newsletter from India's Leading Insurance Broking House
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India Insure
The risk managers

Message from the Editor

Dear Readers,

It's that time of the year again – when all commercial activity is on fifth gear and every one is putting in that extra ounce of energy to ensure that the year ends on a prosperous note and the balance sheet is 'shining'. The Finance Minister has just delivered his second full budget in this innings and both industry and the capital markets seem to have given him the "thumbs-up". For the Life Insurance industry, the relaxation of FBT rules for Superannuation Funds was good news.

The Indian private insurance industry completes 5 full years of operations and the broking industry – 3 full years. While there are no new players in the general insurance space this year, we have Reliance Life (having taken over AMP Sanmar), Shriram and Sahara on the Life side and Star Health and Allied in the Health insurance space. On our part, we have consolidated our position in our core business and the newly formed Employee Benefits and Liability verticals have performed more than satisfactorily.

In this issue, we dedicate the lead article to the profession of "Surveyors" and their role in Insurance. India insure has always considered Surveyors a vital link in our business – in fact, in one of the first such Seminars on Claim Handling tips for Corporates, we recently arranged a forum for prominent surveyors across the country to interact with corporates and educate them on how to handle claims painlessly.

With the stock markets hotting up and our markets integrating with the global markets progressively, the need for companies to protect themselves from IPO-related litigation is being felt quite keenly. We, therefore, discuss a little-known cover – "Public Offering Securities Insurance" - in this issue.

Hope you find the issue interesting.

We received a very warm response to our Special Issue on 3 Years of Insurance Broking (January 2006) – thank you, Readers!

We wish all our readers a very prosperous and smooth financial year-end.

V Ramakrishna
Editor – ***i-notes*** & Managing Director, India Insure

The Role of a Surveyor

Introduction

The proof of the pudding, they say, is in the eating.

Likewise, the real test of an insurance policy is in the claim settlement, as we all know.

Insurance users pay their premiums, year after year, trusting their policies to protect their lives or businesses in the event of a loss. However, there are innumerable instances where a genuine insurance user with a genuine loss and a seemingly valid claim, has been denied his claim amount – in full or part. When this happens, the client is, quite naturally, disappointed and hurt and very often (*where the claim relates to property damage*), the object of his 'strong feelings' is the **Surveyor**. Surveyors have been around for decades - we have all heard of them and some of us have had occasion to use their services – but it is quite surprising how little is actually known and understood about them – their job, their duties & responsibilities, their role vis-à-vis insurers and insureds, and the insured's rights and duties vis-à-vis surveyors. We, therefore, considered it appropriate to throw some light on this very important player in the Insurance market, for the benefit of our readers.

History of Loss Adjustors

While, the roots of insurance might be traced to Babylonia, it was the Great Fire of London in 1666 which heralded the beginning of the loss adjusting profession. It is believed, with the introduction afterwards of fire insurance on buildings, independent surveyors and builders were soon relied on for their expertise in settling claims. By the late eighteenth century, the major fire offices were appointing "Assessors" to act exclusively for them and a number of today's leading loss adjusting firms can trace their roots back to these early days of the emerging profession.

The word "Adjuster" appears to have been first used in 1941 with the founding of the Association of Fire Loss Adjusters which was a grouping of prominent claims experts who found themselves actively involved at a time when the nation was suffering from enormous fire damage as a result of bombing.

Who is a Surveyor?

Surveyors are individual persons or companies whose services are utilized for assessing or adjusting "property" damages.

A Surveyor, although appointed by an Insurance company, is an independent entity. However, he has a fiduciary duty towards the insured too to assess the loss impartially and objectively. The word "Surveyor" is used almost universally to include loss adjusters, loss assessors etc. Although many adjusters, appraisers, examiners and investigators have overlapping functions and may even perform the same job, the insurance industry generally assigns specific roles to each of these claims workers.

The surveyor is the first communication or contact from the remote Insurance Company. The Insured is informed that the Surveyor has been appointed by the Insurance Company to assess the loss. The hapless and battered Insured, in most cases does not have a clue as to the role of a Surveyor and in most cases he feels that the surveyor is the final authority to decide how much claim amount he will receive from the Insurance Company, if at all he is eligible to get it.

Regulations pertaining to Surveyors in India

A surveyor is an independent professional who has been licensed to act as a surveyor and loss assessor by an Authority which was constituted by the Insurance Act, 1938 and subsequently under the IRDA Act 1999.

A person having the requisite qualification and experience can apply to the Authority for a license to work as a surveyor. On obtaining a license, the surveyor applies to various Insurance Companies for empanelment and depending upon his expertise and experience, he is allotted surveys by the Insurance Companies.

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The Authority has also categorized the surveyors as Category A, B and C, depending upon their experience and expertise. The Insurance Company is bound to allot surveys as per their category on the basis of the *estimate of loss*.

Usually Surveyors in India are also members of an Institute called "Indian Institute of Surveyors and Loss adjusters".

Duties & Responsibilities of a Surveyor

Some of the duties and responsibilities of a surveyor are:

- He should investigate, quantify, validate and deal with losses and report thereon; carry out the work with competence, objectivity and professional integrity by strictly adhering to the Code of Conduct.
- He should maintain confidentiality and neutrality without jeopardizing the liability of the Insurer and the claim of the Insured.
- He should examine, inquire, investigate, and verify the cause and circumstances of the loss including extent of loss, nature of ownership and insurable interest.
- He should estimate, measure and determine the quantum and description of the loss.
- He should comment on the admissibility of the loss and also whether conditions and warranties have been observed under the policy.
- He should assess the liability under the contract of insurance and also point out discrepancies, if any, in the policy wordings.
- He should give reasons for repudiation of a claim in case the claim is not covered under the policy terms and conditions.

Generally Prevalent myths about surveyors / surveys

In spite of Surveyors having been around for several decades and innumerable clients having benefited from their services, there are still several myths surrounding the functioning of Surveyors. Let us address a few of them here.

"The Survey Report is the ultimate document towards claims settlement."

A Surveyor's job is first to assess the quantum of loss and then comment on the admissibility of the claim i.e. whether, in his opinion, the losses are due to the *peril covered by the policy* and are payable under the terms of the policy. His report is recommendatory. He assesses the liability on the basis of physical inspection and going through the books of account and other relevant documents and explanations given by the client to substantiate the loss. His job is to strictly go by the wordings of the policy, though he may make additional comments and observations relevant to the loss. Any genuine losses the client may have suffered, which could not be substantiated at the time of the survey, can still be taken up with the Insurance Company. If the quantum of loss is in dispute and/or the Insurer is not convinced by the client or vice versa, legal recourse is available under the Arbitration Clause.

The surveyor only assesses the loss and recommends an amount. It is for the Insurer to accept it or otherwise. After all, it is the Insurance Company which ultimately picks up the tab and not the surveyor.

"Insurance company cannot ignore the survey report."

The Insurance Company cannot ignore the report **in toto** if it is based on facts and figures. However, it can always call for additional information from the surveyor or the Insured if it is not satisfied with the loss assessment or even go for second opinion or assessment. It can also obtain a specialist's opinion. In an extreme situation, where it has strong reasons to do so (*eg; mala fide on the part of the Surveyor*), it can ignore the Report and order a fresh survey to be conducted.

"Clients cannot demand to see the survey report."

While the surveyor's report definitely is privileged and confidential (except in case of Marine Losses) and the insurance company may not divulge all the details of the report; it is definitely bound to furnish to the insured the working of the claim amount i.e. how the surveyor has arrived at a particular figure of the final claim amount.

"Clients cannot demand a re-survey."

Contrary to popular belief, the insured can demand a resurvey if they feel that the surveyor has grossly erred in assessing the loss. The insured will have to convince the insurer that there was a gross mistake in assessing the loss.

Some of the large Broking houses have a panel of surveyors whose help can be taken by the Corporate in event of a claim. In the event of a loss, the surveyors can work with the Corporate in properly presenting the claim to the surveyor deployed by the Insurance Company. If the papers are presented in sync with the requirements of the surveyor, it helps him in getting more focused and the turnaround time for submission of the report and the settlement of the claim is drastically reduced.

How Does a Surveyor fix the value of a loss?

How a Surveyor finalizes an amount for a claim is one of the most hotly discussed issues. The claimant would, quite naturally expect and make a demand for at least as much as is required to replace or re-instate the damaged property. What the Surveyor recommends normally is, however, only a part of it. How does a surveyor decide on a particular value as the right figure?

The policy clearly defines the basis of indemnification in case of losses. It could be ***market-value*** or ***reinstatement-value*** or some other basis depending upon the option chosen by the insured. However, the assessments and/or adjustments are done based on documentary facts or market practices or the experience of the appointed surveyors. These methods or basis are to be adopted in a way that best suits the indemnification methodology taking depreciation, salvage, underinsurance and the policy excess into consideration.

'Loss Assessing' and beyond.......

Presently, in view of the growing competition in the Insurance Industry, surveyors are being approached by Insurers and Insurance Intermediaries to assist in (in addition to assessing insurance losses) Risk Analysis, Valuation and Investigations related to insurance claims. Surveyors who have specialized in certain industries have been carrying out Risk Audits for clients which go on to look beyond the insurance angle too. Companies often look to them for valuation of their assets

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Public-Offering-of-Securities Insurance

Introduction: The IPO (Initial Public Offering) life cycle has changed. Stock price swings of previously unimaginable magnitude have become a fact of life for IPO companies. And with the instability in the equity securities marketplace has come uncertainty in the capital markets generally. Events that previously would have been stretched over years are now compressed into months. These events and marketplace conditions have translated directly into heightened risk for IPO companies.

How can a liability arise: When a company raises capital through the publication of a prospectus and/or sale of unlisted securities, the directors and officers of that entity, the entity itself, shareholders and/or their advisors can face potential liabilities arising from the public act of issuing shares.

Also, while a privately held company has no obligation to disclose its financial information to the public, once it goes public the exposure increases, since they are obliged to disclose financial statements to the public also.

Some legislation governs the possible liabilities of those persons responsible for the prospectus to anyone who purchases those securities and suffers a loss as a result of false or misleading information within the prospectus. This liability can be significant given the considerable amounts of money that are usually involved in capital raising transactions.

On whom can the liability attach

Liability can attach to a number of parties, these include:

- The directors of the company
- The company coming up with the IPO
- Anyone who is named in the prospectus
- Anyone who has authorized the contents of any part of the prospectus

Reasons for increase in exposure:

Some of the reasons for the increase in exposure are listed below:

- Increased shareholder expectations when the company makes a public offering of its securities
- Responsibilities incumbent on the directors and officers of companies for the public offering
- Criminal and civil exposures for the accuracy of the content of a prospectus as per the Companies Act / SEBI Regulations and/or other applicable laws

How can one protect oneself?

There is an insurance cover available to protect the company from these enhanced exposures that they may face due to the Initial Public Offering of securities to the Public, normally the insurance cover also covers claims by the underwriter of the issue.

The insurance policy covers the wrongful acts of a company and its directors arising from the issue of a prospectus.

If a company or its directors provide wrong information in the offer documents, the shareholders can file legal suits. Insurance would cover the legal costs incurred in defending civil and criminal proceedings relating to prospectus liability.

The cover also includes claims made by the underwriter or sponsor of the issue, which could arise due to warranties and indemnities given by the company or the directors personally in the agreement with the sponsor.

What is covered?

Major coverages provided by the IPO insurance cover are as under:

- The policy provides cover to the directors, officers and employees of the company due to any liability arising from any securities related claims
- The cover includes protection for the claims related to the information contained in the prospectus.
- Cover includes liabilities relating to prior negotiations, discussions and decisions in connection with the offering
- Some policies may also provide cover for punitive and exemplary damages
- Some policies also provide the cover for the underwriters to the issue.

....and what is not covered?

- Pending or prior litigation
- Dishonest or fraudulent acts
- Any profit or advantage to which the insured was not legally entitled
- Pollution
- Bodily injury / property damage
- Major Shareholder exclusion

Factors affecting the premium rating

- Size of the issue / offering
- Country in which the offering is taking place
- Type of issue – private placement / IPO / GDR / ADR
- Who are the target investors -
  - Existing shareholders (rights basis) - low risk
  - QIBs (Qualified Institutional Buyers) / FIs - medium risk
  - FIIs - high risk
  - Public - high risk
- Underwriters / Bankers / Issue Manager

Claims Examples

ABC Ltd. company raised US$25Mn on a top stock exchange achieving a market value of US$125Mn shortly after the listing, after a year or so, the shares were suspended once it was discovered that revenues had been massively overstated in the prospectus, an investigation found that there was substantial over-statement of the revenues.

Soon after, the CEO, the CFO and 2 other top executives were brought under scrutiny, the re-listing the company was valued at a fraction of the peak market value, the shareholders were obviously very upset and they lodged a claim against the directors alleging misleading statements in the prospectus and accounting irregularities.

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Public-Offering-of-Securities Insurance....contd. #3

These kinds of claim scenarios are not uncommon and with the recent IPO scams and irregularities going on, the regulatory authorities are keeping an stricter eye on the hot stock market and the companies coming up with the IPOs.

Underwriting exposure liability for initial public offerings requires recognition of numerous factors. To limit liability, risk factors need to be meaningful and substantive. Stock volatility and performance matter. A single day stock drop or multiple drops based upon company specific events pose a higher level of liability to the issuer than market related stock valuation corrections.

Therefore, such a profile poses a higher risk and needs to be addressed in pricing and/or coverage terms and conditions. Particular scrutiny needs to be applied when the issuer's stock price is trading at levels below the offering price of the registration statement.

Conclusion:

The rise of firm failures and poor issuer's stock performance in initial public offering has not been for the faint hearted. The likely result is a higher incidence of securities class action suits filed against the issuer and the directors and officers. Over the long term, the market correction from the froth should yield stronger companies with more sound business plans. Other areas of evaluation include the offering size, quality of the issuer's management, business plan, professional advisors, competition, industry sector, and market trends.

In fact, some of the Indian companies coming up with an IPO had realized the exposures and have bought IPO insurance covers for securities listing in India too, from some leading Insurance companies who are offering this cover in India.

The Role of a Surveyor....contd. #2

prior to renewing cover, so that they are fully covered for Market/ Re-instatement Values. In view of their wide and varied experience, surveyors are happy to assist the industry where ever they can add value. They are being consulted in designing covers as per insured's specific requirements and advising them to critically examine the potential risks and quantify the probable losses too.

Conclusion

Historically, surveyors have learned to thrive in an environment of change - enhancing and developing new services all the time. Internally, the industry is intensely competitive and entrepreneurial. Clients recognize the "people skills" of the surveyor, who will always strive for an amicable, cost effective and fair settlement between the parties involved. Surveyors are also valued for their flexible approach. They have no geographical boundaries - and are prepared to work unsociable hours. Fires, subsidence and burglaries often occur at the least convenient times for all concerned. The Surveyor fraternity has amassed substantial knowledge and expertise on property claims and insurance clauses. Some of them command such high respect among Insurance veterans that their verdict on a claim is almost like a "judicial" pronouncement.

Due to changing circumstances and demands, surveyors are also professionalising their operations – converting from family-run businesses to corporates in some cases, investing in technology (digital cameras, scanners, e-mail etc) and capturing their findings in electronic databases for future reference. In the days to come surveyors are just as likely to provide cost effective claims and risk management services to large corporations, local authorities, health services or brokers as they are to traditional insurance and reinsurance companies.

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