

Senior Management Arrangements, Systems and Controls in relation to BCP

Agenda

- ▶ The need for BCP & ICMS
- ▶ Brokers' Duty of Care
- ▶ Commercial Advantage
- ▶ Risk Transfer
- ▶ Summary of benefits

The Need for BCP & ICMS

- ▶ A Department of Trade and Industry survey suggests that 70% of small businesses would go out of business within a year if they experienced a major disaster; 40% of businesses do not reopen; and another 40% fail within eighteen months of the event
- ▶ The Home Office estimates that, on average, nearly one in five businesses suffer a major disruption every five years and a business without a Business Continuity Plan (BCP) has only a low chance of survival
- ▶ Research just completed on business resilience by BIBA shows that many small and medium-sized enterprise (SME) business owners would come unstuck if they were faced with an unexpected shutdown
- ▶ 94% of those who had invoked their plans agreed that they had reduced disruption Source: Chartered Management Institute BCM report 2008
- ▶ 98% of brokers believe that BCP should be part of insurance risk assessments Source: BIBA Conference 2009

Brokers' Duty of Care

- ▶ FSA - Senior Management Arrangements, Systems and Controls
- ▶ Companies Act 2006
- ▶ Treating Customers Fairly
- ▶ Corporate Manslaughter

Senior Management Arrangements, Systems and Controls

▶ 3A.2.4

“Operational risk can affect, amongst other things, a firm’s solvency, or lead to unfair treatment of consumers or lead to financial crime. A firm should consider all operational risk events that may affect these matters in establishing and maintaining its systems and controls”.

▶ 3.2 19G

“A firm should have in place appropriate arrangements, having regard to the nature, scale and complexity of its business, to ensure that it can continue to function and meet its regulatory obligations in the event of an unforeseen interruption. These arrangements should be regularly updated and tested to ensure their effectiveness”.

▶ 3A.9.8

“A firm should ensure that it has appropriate contingency arrangements to allow business continuity in the event of a significant loss of services from the service provider. Particular issues to consider include a significant loss of resources at, or financial failure of, the service provider, and unexpected termination of the outsourcing arrangement”.

Senior Management Arrangements, Systems and Controls

▶ 3A.7.1

“A firm should establish and maintain appropriate systems and controls for managing operational risks that can arise from inadequacies or failures in its processes and systems (and, as appropriate, the systems and processes of third party suppliers, agents and others)”.

▶ 3A.7.9

“Operating processes and systems at separate geographic locations may alter a firm’s operational risk profile (including by allowing alternative sites for the continuity of operations)”.

Treating Customers Fairly

A broker may not be treating a client fairly if they:

- ▶ do not have a BCP themselves
- ▶ fail to advise clients as to their importance, desirability, and the legal or regulatory requirement
- ▶ rely upon the client to have sufficient knowledge and understanding

Companies Act 2006

Shareholders' vs. Directors' liability – two legal personalities

- ▶ Widespread lack of understanding of where ultimate liability rests - no hiding place under the new Act
- ▶ Shareholders' liability limited to the value of their shareholding
- ▶ Directors have an unlimited personal liability unless they can demonstrate that they have taken all reasonable steps to transfer risk

Companies Act 2006

Directors' Duties:

- ▶ to act within powers, i.e. according to the constitution, exercising powers for their proper purpose;
- ▶ to promote the success of the company for the members' benefit;
- ▶ to exercise independent judgment;
- ▶ to exercise reasonable care, skill and diligence.

Companies Act 2006

Directors' Considerations:

- ▶ the likely consequences of any decision in the long-term;
- ▶ the interests of the company's employees;
- ▶ the need to foster the company's business relationships with suppliers, customers and others;
- ▶ the impact of the company's operations on the community and the environment;
- ▶ the desirability of the company maintaining a reputation for high standards of business conduct;s
- ▶ the need to act fairly as between the members of the company.

Corporate Manslaughter

- ▶ Whilst there have not yet been any prosecutions or severe sanctions specifically regarding pandemic flu (though there may well be some after the current pandemic), a reasonable extrapolation of the current legal precedents with regard to duty of care is:

“if a director/manager is aware of a hazard that is likely to affect employees or, for that matter, other individuals then they have to take all reasonable steps to minimise the risk. In the case of a pandemic this would include a pandemic plan, relevant HR policies and infection control measures such as hygiene regimes and communication procedures”.

- ▶ In other words, and in line with general Health & Safety legislation, directors should take all reasonable steps to protect their employees

Commercial Advantage

- ▶ Risk Transfer
- ▶ Buyer Appetite
- ▶ Increased GWP, Brokerage and fees
- ▶ PR and Marketing
- ▶ Visible differentiation
- ▶ Dealing with the market leader

Risk Transfer

- ▶ Clients are entitled to rely upon the advice of their professional advisers, including their insurance broker
- ▶ By helping clients to create a risk management/BCP programme, the broker assumes the professional risk which may not be covered by their existing PI
- ▶ Transferring the risk to a third-party

Risk Transfer



Law Commissions issue broker proposals

‘Proposals for a new statutory code to decide who intermediaries act for when passing pre-contractual information from the consumer to the insurer have been unveiled.

The Law Commission and Scottish Law Commission will include the free-standing code within its as-yet untitled bill on pre-contractual information in consumer insurance due for publication this autumn.’

Increased GWP, Brokerage and Fees

- ▶ Clients educated as to the perils of underinsurance
- ▶ Clients better understand the need for D&O, increased costs of working and non-material damage extensions
- ▶ Improved portfolio risk generates higher brokerage

Buyer appetite

- ▶ BCP and Risk Management is a current part of the supply chain
- ▶ Legislation and Regulation compels adoption
- ▶ Larger and publicly funded contracts require it
- ▶ Recession based risk aversion has stoked demand
- ▶ Depending on quality, 1:5 business owners will agree to a meeting, with 1:3 of those going on to purchase at first pass

PR & Marketing

- ▶ Crisis Survivor is the market leader
- ▶ Established commentator on risk
- ▶ Chosen by high profile international firms such as Regus for their DR customers
- ▶ Senior political and local authority contacts

Visible differentiation

- ▶ Adds an immediate visible difference to your offering
- ▶ Affinity Group exclusivity available
- ▶ Third party influence – ‘the stranger is the expert’

BCP & ICMS – a pragmatic response

1. Have a PLAN!
2. Make sure it has the uncontended means to deliver, at pre-agreed cost and known quality, immediate:-
 - disaster workplace recovery
 - IT availability
 - emergency money supply
 - telephony recovery
 - stakeholder notification
 - pandemic protection
 - legal triage
 - reputation management
 - critical document recovery
 - property valuation
3. Buy best of breed BI cover!

Summary of benefits to Brokers

- ▶ Ongoing differentiation and benefit to their clients, providing them with a powerful weapon in the face of price-driven competitors
- ▶ Almost no encroachment on their time - we do the selling and fulfilment, they simply act as introducers
- ▶ We help them to target new prospects and existing clients, and reinvigorate cold prospects and ex-clients
- ▶ Extra income - we pay them 10% commission income on an ongoing basis for the life of the arrangement between CS, their client and their referrals
- ▶ Increased opportunities to sell further insurance products to clients and their key suppliers and customers via our enhanced fact-finding, which also helps to improve the portfolio risk profile
- ▶ Their reputation with their clients will be enhanced
- ▶ Direct introductions to our own clients in their area who are without a broker
- ▶ Full compliance with Senior Management Arrangements, Systems and Controls

Summary of benefits to Clients

- ▶ 80% better chance of surviving major disruption or a disaster such as denial of access to business resources
- ▶ Potential reductions in insurance premiums as a result of an integrated, approved BCP system
- ▶ Ability to tender for high value & publicly funded work where BCP is a stipulated requirement
- ▶ A visible differentiator over competitors
- ▶ Present a better overall picture to investors, shareholders and banks
- ▶ Increased credit rating
- ▶ Where appropriate, improved compliance with regulatory bodies and the Companies Act 2006
- ▶ Reduced personal liability

Concentrating the mind

- ▶ The senior management arrangements, systems and controls are not voluntary
- ▶ Failure to implement objectively measurable provisions such as an invocable BCP is commercially naive and a breach of the Financial Services Act
- ▶ We recommend that you seek advice and take action