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Insurance & Reinsurance

## “Reasonable Care” Condition Precedent in an Insurance Policy

### Introduction

It is typical for insurance policies to specify certain requirements on the part of the insured or “conditions” which an insured has to comply with. One of the common conditions found in insurance policies is the requirement that an insured should exercise reasonable care to comply with or duly observe legislations, statute requirements and regulations imposed by public authorities.

Also, more often than not, some of these requirements are specified to be conditions precedent to the insurer’s liability under the policy, the breach of which would release the insurer from liability. However, determining whether a condition is in fact a “condition precedent” often goes beyond the mere contractual label.

In the case of *Grace Electrical Engineering Pte Ltd v EQ Insurance Co Ltd* [2016] SGHC 233, the Singapore High Court had to construe the ambit of conditions which required the insured to exercise reasonable care in complying with all statutory regulations, and to obtain the insurer’s consent before negotiating or making any admission in connection with any claim. The Court also had to look into the effect and context of these obligations in order to determine whether a breach of the same would warrant the release of the insurer from liability.

### Brief Facts

The Plaintiff insured company (“**Grace Electrical**”) was an electrical contractor in occupation of a building (the “**Unit**”), which it had used both as an office and a dormitory for foreign workers. Grace Electrical had a public liability policy (the “**Policy**”) with the Defendant insurer (“**EQ Insurance**”), which provided that:

- (i) Clause 4: Grace Electrical would not repudiate liability or make any admission, offer or promise in connection with any accident or claim without EQ Insurance’s consent.
- (ii) Clause 9: Grace Electrical would exercise reasonable care that all statutory requirements and regulations imposed by any public authority are duly observed and complied with.
- (iii) Clause 13: The due observance of the terms of the Policy insofar as they relate to anything to be done or not to be done by Grace Electrical shall be conditions precedent to any liability of EQ Insurance to make payment under the Policy.

A fire broke out at the Unit, following which the Singapore Civil Defence Force (“**SCDF**”) conducted investigations. The SCDF levelled charges against Grace Electrical under s30(1) of the Fire Safety Act (“**FSA**”) for unauthorised changes of use of space to accommodation, pantry and storage areas, and under s24(1) of the FSA for carrying out fire safety works without plan approval from SCDF. Previously, Grace Electrical had also paid composition fines for similar offences (i.e. under s24(1) and s30(1) of the FSA) at the Unit.

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Grace Electrical then received claims from the owners of adjoining properties who had suffered loss and damages as a result of the fire incident. Grace Electrical in turn looked to EQ Insurance for indemnity under the Policy. EQ Insurance informed Grace Electrical that it would not respond to any claim for fire damage to third party property since Grace Electrical had been charged by SCDF and was in breach of Clause 9 of the Policy. Grace Electrical subsequently pleaded guilty to most of the charges under the FSA.

### Holding of the High Court

The Court held that Clause 4 and Clause 9 of the Policy, read with Clause 13, were conditions precedent to EQ Insurance's liability under the Policy. The Court further found that Grace Electrical had breached Clause 9 as it had been reckless in its repeat and continual violation of the FSA.

#### *General declaration clause*

If a term is construed as a condition precedent, then the breach of that clause would prevent the insured from bringing a claim relating to the condition. However, labelling a clause as a condition precedent is not decisive of the term's legal effect.

Similarly, general declaration clauses such as Clause 13 of the Policy (which declare a group of terms to be conditions precedent) must be examined with each specified clause to determine their effect. It may be the case that a general declaration clause cannot be given effect to as certain obligations cannot be conditions precedent by any stretch of the imagination.

Apart from the workability of the contractual obligation as a condition precedent, the Court would also consider the purpose of the condition and the purpose of the policy itself.

#### *Clause 9*

The Court held that Clause 9 constituted a condition precedent. However, the Court took a balanced approach in determining the scope of the condition precedent.

It found that, despite Clause 9's catch-all wording, only the breach of a *relevant* regulatory provision (and not *any* regulatory provision) would fall within Clause 9. Compliance with the FSA was relevant to Clause 9 given the commercial objective of the Policy to cover Grace Electrical in respect of its business as electrical contractors in its premises, including Unit 141. The SCDF charges under the FSA were thus directly relevant as they concerned the fire safety of Unit 141, which was Grace Electrical's responsibility, and would clearly present a risk to nearby property.

The Court reaffirmed the principles in *Fraser v B N Furman (Productions) Ltd* [1967] 1 WLR 898 that in order to show a breach of a condition requiring an insured to exercise reasonable care, the insured must at least have been reckless i.e. there was actual recognition by the insured himself that a danger exists and not caring whether or not the danger was averted.

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In the present case, Grace Electrical had housed its workers in Unit 141 in breach of s30(1) of the FSA, and was aware of the facts which gave rise to this repeated and continual breach. Notably, Grace Electrical's representative conceded that it had no intention of complying with the law (despite the historical breaches and warnings) and had taken the risk by acting first without getting the requisite plan approval from SCDF. As such, Grace Electrical had been reckless in failing to observe the FSA, in breach of a condition precedent of the Policy.

### *Clause 4*

The Court held that Clause 4 also constituted a condition precedent. However, Grace Electrical had not, by pleading guilty to the SCDF charges without seeking EQ Insurance's consent, breached Clause 4. The Court found that Clause 4 only applied to admissions to *civil claims* on the part of Grace Electrical, and not in *criminal proceedings* (unless such admissions related back to accidents or civil claims for which EQ Insurance might have to indemnify Grace Electrical). Further, a plea of guilt itself *per se* would not amount to an admission under Clause 4.

## Concluding Words

Conditions precedent are fairly onerous provisions in an insurance policy. If breached, they may serve to deny the insured of the entirety of the insured sum. Therefore, the Courts have demonstrated a balanced and cautious approach when determining conditions precedent, focusing on substance of the obligations rather than the label.

This decision demonstrates how the Court will take into account the context of the policy and its relevance to the breach when assessing whether a term is a condition precedent, and whether the condition precedent has in fact been breached. Much of the assessment depends on the facts of the case itself, and thus requires a careful scrutiny of the policy and the surrounding circumstances.

For further queries, please feel free to contact our team below.

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### ASEAN Economic Community Portal

The launch of the ASEAN Economic Community ("AEC") in December 2015, businesses looking to tap the opportunities presented by the integrated markets of the AEC can now get help a click away. Rajah & Tann Asia, United Overseas Bank and RSM Chio Lim Stone Forest, have teamed up to launch "Business in ASEAN", a portal that provides companies with a single platform that helps businesses navigate the complexities of setting up operations in ASEAN.

By tapping into the professional knowledge and resources of the three organisations through this portal, small- and medium-sized enterprises across the 10-member economic grouping can equip themselves with the tools and know-how to navigate ASEAN's business landscape. Of particular interest to businesses is the "Ask a Question" feature of the portal which enables companies to pose questions to the three organisations which have an extensive network in the region. The portal can be accessed at <http://www.businessinasean.com>.

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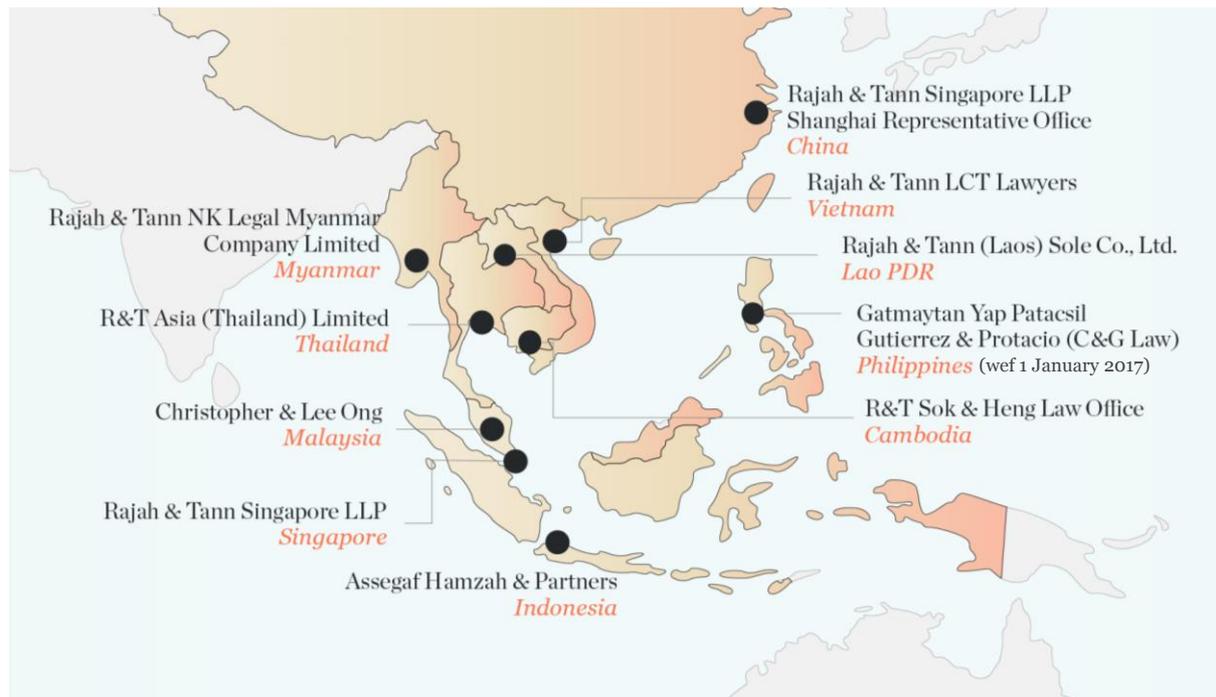
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