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NOTICE TO COMMERCIAL POLICYHOLDERS

Insurance Act 2015

Introduction

The Insurance Act 2015 comes into force from the 12th August 2016 and affects all new commercial business contracts incepted on or coming into force after that date. It also applies to all existing contracts renewed or having alterations made to them on or after that date.

This Act replaces the existing legislation under the Marine Insurance Act 1906 and has implications around individual responsibility and duties for Insurers, Insurance Intermediaries and Insured.

The new Act focuses on fairness, transparency and certainty over the rules that govern contracts between commercial policyholders and insurers. Currently you're required to tell your insurer all the 'material facts or circumstances' they need to know about you and your business. The new Act still requires you to do this but now insurers must also seek clarification on anything you've told them which may be important to them where that information is unclear. The intention is to ensure all parties work more closely together to make sure that relevant and accurate information is gathered and given to insurers, and that consequently your policy works as you would expect it to if you have a claim.

What It Means?

The introduction of the **Insurance Act 2015 will make it necessary** to ascertain information from different individuals in the business to build a whole picture of the business and its operational model. The duty of disclosure is now defined **under** Fair Presentation of Risk which contains three separate and distinct elements

a) Accurate Content

The Insured should include either all material information (as current law) or sufficient information to put a prudent Insurer on notice that the Insurer needs to make further enquiries for the purpose of revealing those material circumstances. Representations of facts must be 'substantially correct' and representations and expectations or belief must be made in good faith.

b) Accessible Format

The information should be presented in a clear and accessible way. This will include avoiding overly summarised presentations, data dumping without highlighting the key aspects of the risk and provision should be made by the broker for indexing of information of particular importance

c) Reasonable Search

The Insured should make adequate enquiries of the business (and the information held by the insurance intermediary) to ensure that any information relevant to the risk proposed is captured

d) Overall Adequacy

To judge whether the information as a whole provides a fair view, avoiding a mechanistic approach and supplementing with additional disclosures if not. The concept of making a fair presentation requires a step back from checklists or rules, requiring the Insured to ask

- Does this information create an accurate picture or could it mislead?
- Is there anything else we should add **to better represent the risk?**

The following excerpt from the Insurance Act will help frame the approach required.

An insured who is an individual knows only

- (a) What is known to the individual, and
- (b) What is known to one or more of the individuals who are responsible for the insured's insurance.

An insured who is not an individual knows only what is known to one or more of the individuals who are:

- (a) Part of the insured's senior management, or
- (b) Responsible for the insured's insurance.

It is important that you understand that any information, statements or answers made by you to your Insurer or us are your responsibility and must be correct. Your attention is particularly drawn to the importance of the declaration and signature on any Insurers' Proposal Forms as any failure to disclose facts material to the insurance or any inaccuracies in your answers may invalidate your insurance cover in part or in whole.

Facts material to the insurance are matters of information which may influence your Insurer as to the acceptability or otherwise of your Proposal or Renewal and must be disclosed at the earliest opportunity and certainly at each Renewal. You are advised to keep copies of documentation sent to or received from us for your own protection.

e) What if the duty of fair presentation is breached?

- If the breach was either deliberate or reckless, the Insurer can avoid the contract (i.e. treat the contract as if it never existed), keep the premium and refuse to pay all claims.
- If the breach was not deliberate or reckless, the remedy depends on what the underwriter would have done if a fair presentation had been made. If the Insurer:
 1. Would not have entered the contract at all...
...it can return the premium, avoid the contract and refuse all claims.
 2. Would have entered the contract on different terms...
...the contract is treated as if those different terms applied.
 3. Would have charged higher premium...
... the Insurer can proportionately reduce the amount it pays on a claim.

f) Can the Insured opt out of the Insurance Act 2015?

For non-consumer insurance, the provisions of the Act are intended to provide default rules. However, parties are free to agree contract terms which are less favourable than those in the Act, provided that the Insurer satisfies two key transparency requirements. This ability to contract out is not true of consumer insurance contracts. An Insurer will not be able to use a contractual term to put a consumer in a worse position, than that they would have been in, under the terms of the Act. The transparency requirements for contracting out are as follows:

Where Insurers do intend to opt out (and hence include a "disadvantageous term" they must take sufficient steps:

1. To draw it to the insured's attention before the contract is entered into, and
2. The disadvantageous term must be "clear and unambiguous as to its effect".

What is sufficient to meet the above two requirements will depend on the characteristics of the Insured and the circumstances of the transaction (where and how is the contract made).

What do you need to do to comply?

Making sure you get the cover you need relies on gathering all the relevant facts. You don't want to run the risk of a claim not being paid, either in part or in full.

- Factor in plenty of time to gather all the relevant information you need as you come up to the renewal date for your insurance. You will need to present the details in a clear, concise and accessible manner.

- Make sure senior management have contributed to the information gathering so that all necessary facts are captured and presented.
- Consult with anyone else in your business who has knowledge relevant to the insurance you are arranging. For example, if looking at cyber insurance you should speak to your IT manager.
- Be ready to answer any further questions from your insurer on your business and your insurance cover, if they need further clarity. You are responsible for making sure your insurer and broker know everything about your business pertinent to your insurance cover.
- Ensure you understand and agree with everything your broker has passed to your insurer so any mistakes can be rectified. In the same way that you sign off your business accounts each year to confirm they are a true and accurate account of your financial situation, you will effectively need to do the same for your insurance, by confirming your broker and insurer have a true and accurate assessment of your business insurance needs and risks

What will your broker do to comply?

We already work closely with you and will do this. We should already have a good understanding of your business, and can help advise you on how best to fulfil your obligations under the Act.

Besides working with you to assess your insurance needs we will also:

- Where applicable, work with you to understand who your senior management team is so that you can make sure you have consulted with all parties who may have information relevant to the insurance being arranged. Their knowledge, individually and collectively, is vital when providing a fair presentation
- Help you understand the type of information which may be relevant to disclose to ensure 'fair presentation' requirements are met.

Should you have any queries regarding the Insurance Act 2015, please get in contact with your local office – the address and contact telephone number will be shown on the letter enclosing your policy documents.

NB: A full transcript of the Insurance Act is available on www.legislation.gov.uk/ukpga/2015