The Insurance Act 2016

What you need to know

The Marine Insurance Act 1906 has governed the law around Insurance Contracts for over 100 years. In 2015 it was updated and **the new law comes into effect on 12th August 2016** It applies to all insurance policies governed by the laws of England and Wales, Scotland and Northern Ireland that are placed (or varied) after 12th August 2016.

The new duty of **fair presentation** sets out a more structured framework than the **duty of disclosure** it will replace.

The insured's primary duty remains that they **have to disclose everything material that they know or ought to know.** Failing that, the insured must disclose enough information to put a prudent insurer on notice that it needs to ask further questions to uncover material facts.

However the Insurance Act is more specific about whose knowledge needs to be captured when preparing a presentation of risk for the market.

A sole trader will be expected to know all the relevant information about his business, whereas in a large and complex company, the knowledge may lie with more than one individual within the business. Insurers are entitled to assume that reasonable enquiries have been made of all relevant parties and about all parts of the business.
These categories are shown as the arrows on the left of the diagram below.

The Act then specifies what information the insurer should be able to find within its own organisation rather than expecting the insured to disclose it. These categories are shown on the right of the diagram below
There will also be a new requirement that the information must be presented in a way which would be reasonably clear and accessible to a prudent insurer.

A fair presentation of the risk requires clear and accessible disclosure, without material misrepresentation, of:
Every material circumstances which the insured knows / ought to know

Or, failing that,

Sufficient information to put a prudent insurer on notice that it needs to make further inquiries to reveal those material circumstances

<u>Insured's Knowledge</u>
What MUST be actively disclosed

Knowledge Of Senior management

Knowledge of the insurance team (including the broker)

Information which would be revealed by a reasonable search

<u>Insurers knowledge</u>
NOT required to be disclosed

Information held by the insurer and accessible to the underwriter

What an insurer writing this risk would reasonably be expected to know

Common knowledge

CONSEQUENCES AND REMEDIES FOR A BREACH

As before, if the breach was deliberate or reckless, the insurer can avoid the contract from inception and can keep the premium. The insurer must prove that the breach was deliberate or reckless.

However, if the breach was not deliberate or reckless, then there are a number of options available to the insurer if they wish to impose a remedy. The insurer must show how they would have acted in that way if the breach of duty had not occurred.

If the insurer would not have written the risk if it had known the information which has come to light, then it can avoid the contract but it has to repay the premium. • If the insurer would have charged a higher premium, then it can proportionately reduce any claims payments. • If the insurer would have included new terms, or imposed different terms other than with respect to premium such as conditions/warranties, exclusions, etc., the contract is to be treated as if those terms were in place.

Further reading.

We have attached Aviva's customer guide to the Insurance Act but if you have any specific queries, do get in touch and we will do our best to explain precisely how the new rules will affect you.