RISK ASSURANCE MANAGEMENT

THE INSURANCE ACT (2015)

The Insurance Act (2015) (IA) became law on 12 February 2015. The Act is to be implemented from 12 August 2016 and so only applies to policies commencing on or after that date.

As with existing legislation, The Marine Insurance Act (1906), the IA still requires the Insured to volunteer information that is material to the risk to be insured.

Risk Assurance Management Limited has always required the Insured to make a fair disclosure of any material information pertinent to the risk being assessed. The IA therefore has little impact on our existing working practices and processes.

We see the IA as simply formalising our approach to Insuring Group Life cover provided by employers for their employees.

The IA requires the Insured to make a "fair presentation" of the risk to be insured.

The IA brings forward Remedies where the duty to make a fair presentation has been breached.

What is Fair Presentation?

The Insured must disclose every material circumstance which they know or ought to know by a reasonable search for information,
Or,
The Insured must make disclosure which gives the Insurer sufficient information to make further enquiry for the purpose of revealing material circumstances.

Any disclosure of information should be in a manner which would be reasonably clear and accessible to a prudent Insurer.

Who is meant to Know?

The Insured

The IA states that what is known or ought to be known to the Insured means what is known to one or more individuals who are part of its senior management team or responsible for its insurance by a reasonable search for information. It is important therefore that all necessary investigations are made at the appropriate time in order to confirm any material information.

The Broker (as agent of the Insured)

The IA treats brokers in the same way as the Insured's internal staff responsible for its insurance – any knowledge they hold is to be classified as something that the Insured knows.

Remedies for Breaches of non-disclosure

Avoidance – due to deliberate or reckless breaches

The Insurer can:

- avoid the contract and refuse all claims and,
- need not return any of the premium paid.

Proportionate Remedies – due to non-deliberate or non-reckless breaches

There are three remedies available to the Insurer based upon what the Insurer would have done had it been advised of the facts at the time of assessing the risk:

1. **The Insurer would not have entered into the contract on any terms: -** The Insurer may avoid the contract and refuse all claims but must return the premium.

2. **The insurer would have entered into the contract but on different terms (not relating to premium): -** The contract is to be treated as if it had been entered into on those different terms, even if the Insured would not have accepted those terms.

3. **The Insurer would have entered into the contract but at a higher premium: -** The Insurer can proportionately reduce the claim value.

****Risk Assurance Management Limited is specifically contracting-out of the third remedy. This will enable us to pay claims in full with the requirement on the Insured to pay the additional premium once we have reassessed the risk. ****

Please note this information sheet is provided as a basic guide only to the Insurance Act (2015). It is not providing any advice and does not form any Contractual terms between Risk Assurance Management Limited and a Policyholder.

For further advice please contact your IFA.

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