

The Insurance Act 2015, updated insurance law in respect of general insurance for commercial customers will come into force on 12th August 2016, changing the current law under the Marine Insurance Act 1906, follows the principles of the Consumer Insurance (Disclosure & Representations) Act 2012.

It will apply to all policies that renew, incept or are varied on or after 12th August 2016.

The Duty of Fair Presentation

You are responsible to give a **Fair Presentation of the Risk** before an insurance contract is arranged.

- Disclosure of every material circumstance which is known by your senior management and those individuals responsible for arranging your insurance (risk managers and/or employees assisting in the collection of data or your brokers) or ought to know, or
- Disclosure of sufficient information to put the prudent insurer on enquiry.

When such disclosure is made, you should take care to ensure that details provided are complete and accurate.

When using a proposal form, your duty of disclosure may not be confined to answering the specific questions listed in the form. If you are not sure whether your insurer(s) need particular information, we would recommend that you provide it to your insurer(s).

Q: “We are not sure what is MATERIAL and what isn’t.”

A: If it would influence the judgment of insurer(s) in setting the premium, terms and accepting the risk, it is MATERIAL circumstance.

Q: “When do you need to disclose the information?”

A: Throughout the negotiations- incepting, renewing, and/or changing your policy.

Q: “What is the consequence of failing to disclose a material circumstance?”

A: Your insurer(s) remedy for no-disclosure will depend on whether your failure to disclose or misrepresentation was deliberate or reckless. Please see page 2

Changes to Warranties and Other Terms

Currently a breach of warranty allows the insurer(s) to terminate cover as at the date of breach even if the breach was not relevant to the loss occurring.

Under the Insurance Act 2015: Your insurer(s) liability for cover is suspended only from date of breach until the breach is remedied and the policy resumes once the breach is remedied.

Under the Insurance Act 2015: The Policy Clauses that turn all the disclosed information into a warranty (Basis of Contract Clauses) are strictly prohibited.

Insurers Remedies for Fraudulent Claims

if a part of claim is fraudulent, your insurer(s) may not pay the claim and have the right to recover the premium paid prior to the discovery of the fraudulent act from the insured

Your insurer(s) will be liable for losses up to the fraudulent act but can treat the policy as having been terminated at the point when the fraudulent act was committed.

This guidance note is based on sources we believe are reliable but does not constitute legal advice. If you have any questions, please do not hesitate to contact your usual JEIB contact.

Duty of Fair Presentation of Risk

<IMPORTANT>

You must disclose every material circumstance which is known by your senior management and any employee(s) who arrange your insurance policies.

Your duty of disclosure applies until your insurers have accepted the risk and your duty arises again if you make changes to the policy placed and during your policy renewal.

