CCRS BROKERS LTD

The Insurance Act 2015

What does it mean for You?

September 2016

Introduction

Buyers of commercial insurance should be aware of the Insurance Act 2015 – All commercial insurance arranged or amended after 12 August 2016 will be affected

The law is being updated to make it simpler and easier for businesses to get claims paid by insurers and to assist insurers, brokers and customers to ensure that insurance contracts are fit for purpose.

In essence, businesses will get a fairer outcome in the event of a claim, but only if they demonstrate an adequate approach to disclosing information about their risk before the insurance is agreed.

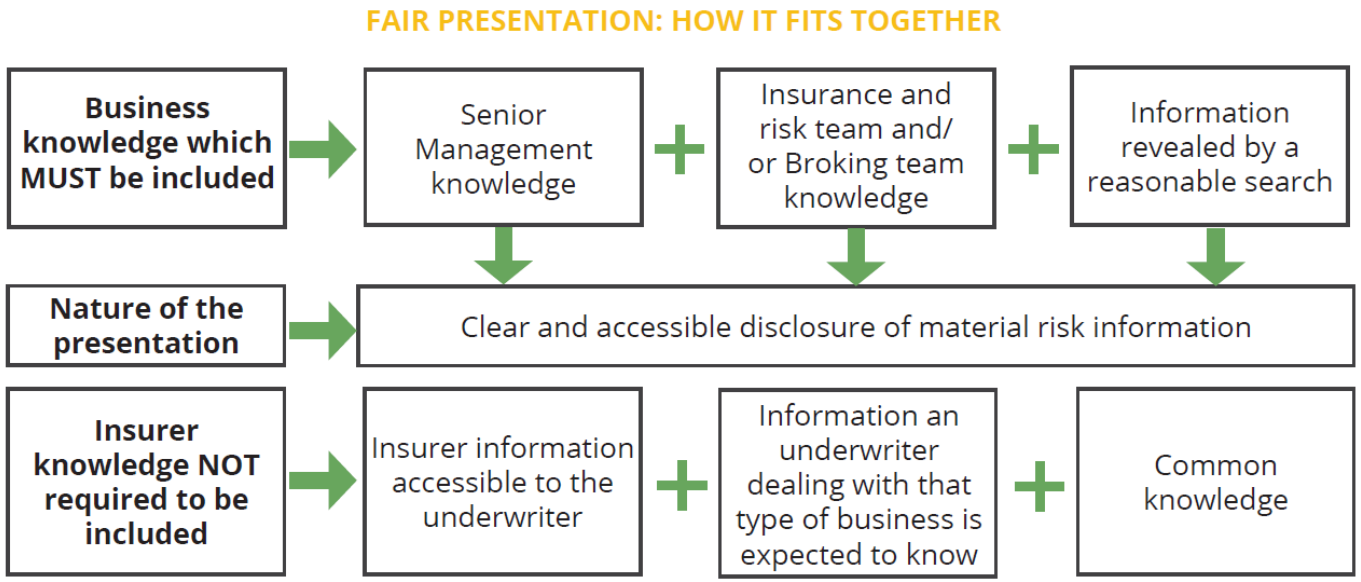
The key new requirement that businesses need to be aware of is the Duty of Fair Presentation.

FAIR PRESENTATION IN BRIEF
The central requirement of Fair Presentation is to continue to share all material facts, accurately and in good faith.

Fair Presentation Key Points

It builds on existing underwriting practices, but is more process focused than the duty of disclosure it replaces.

Successful Fair Presentation is measured in relation to specific or individual businesses, not a standardised checklist – CCRS Brokers are available to support you to map this out prior to renewal or new policy inceptions.



Fair Representation – In More Detail

- **Material accuracy and good faith –** You need to take reasonable steps to ensure information provided when seeking insurance is accurate and complete to the best of your knowledge.

- **Whose knowledge to include –** defined as the key individuals who decide how the business is run and any other person who has relevant knowledge of the business. In addition your insurance broker's relevant knowledge should also be included.

- **Reasonable Search –** Sufficient enquiries to build a picture of your risk must be conducted and material information arising from these must be included.

- **Clear and accessible presentation –** The presentation of information should include adequate signposting and important points must be flagged. Data dumping is not acceptable.

- **Insurer duties –** Information that an insurer should know does not need to be included in the presentation, but check with them before omitting any risk information.

Be Prepared – Insurers Key Expectations

Each Fair Presentation will be unique and specific to a business – what is reasonable for one business may not be reasonable for another. However insures' expectations for customers are guided by the same principles. Key areas for consideration:

- Audit trail of how risk information is put together
  - Principle requirement is for you to have an audit trail of how the information was gathered.
    - Who is consulted – internal staff and relevant external third parties
    - What information is asked for
    - How information is collated and checked
- Accurate and completed information
- Flag special or unusual facts, changes and differences eg;
    - Operational factors, Recent or planned business developments, Known issues and Changes in business operations.

Be Prepared – Insurers Key Expectations

- Well-structured information
- Ongoing process in place to monitor and flag fundamental changes
- Key information sources
  - It is critical to consider the range of people you need to consult within the business. This will naturally be specific to your business
  - For such enquiries you should record the information obtained, the list of consultees and the reasoning for their inclusion in the process.
- Build on existing processes – Current processes can be enhanced by adding more detail

Remedies

- Failing to Make a Fair Presentation of the Risk – If a business fails to make such a disclosure, insurers' remedies must be proportionate (other than where non-disclosure is fraudulent or reckless), based on what the insurer would have done if it had received a fair presentation of the risk.

- Remedy for a breach of terms designed to reduce particular types or risk – where an insured breaches a term of an insurance policy (whether it is a warranty, conditions or similar) which is intended to reduce the risk of particular types of loss, the insurer cannot refuse to pay a claim if the insured shows that the breach did not increase the risk of the loss.

- Remedy for fraud – The option of avoidance – treating the policy as it if had never existed – has been removed. This means that the insurer is still on risk for claims made before the fraudulent act occurred. The insurer has the option to terminate the policy with effect from the date of the fraudulent act.

Responsibilities of CCRS

- Making clients and insurers aware of the different remedies (refer to Remedies section above).
- Making clients aware of the requirement to represent the risk fairly to insurers.
- Disclosing any relevant information to the insurer known to the broker.