Insurance Act 2015: Set to reform business insurance law in the UK

The Insurance Bill has today received Royal Assent. It is likely to come into force in 18 months time and is expected to have a range of potential implications for insurers and brokers going forward.

The main changes are:

**The Duty of Disclosure**
The Duty of Disclosure is on the insured to make "a fair presentation of the risk" and to disclose "every material circumstance which the insured knows or ought to know". What an insured "ought to know" includes what should reasonably be revealed by a reasonable search of information available to the insured. This duty will also be satisfied if the insured provides the insurer with sufficient information to put the insurer on notice that it needs to ask additional questions. The aim is to allow for a more neutral balance between an insurer and insured.

**Proportionate Remedies**
In the event that the insured fails to discharge its duty of fair presentation the remedies available to the insurer have significantly changed. Before an insurer may consider a remedy it must establish whether there has been a "qualifying breach". A qualifying breach is defined as either (a) deliberate or reckless; or (b) neither deliberate or reckless. Where (a) the remedy of avoidance will remain and where (b) the onus is on the insurer to show what it would have done if a "fair presentation" of the risk had been made and a more proportionate remedy will be required to be considered.

**Warranties**
Warranties have received an overhaul in the Act. "Basis of contract" clauses, whereby representations are automatically converted into warranties are abolished. Parties cannot contract out of this. Warranties will become "suspensive" whereby if a warranty is breached and cover is no longer
available – should the breach be remedied an insured will become covered again under the policy.

**Fraudulent Claims**
The Act states what an insurer may do in the event that an insured commits fraud with regard to a claim. There are three consequences: the insurer (1) is not liable to pay the claim; (2) will recover sums from the insured already paid out on the claim and (3) the policy may be terminated by notice from the date of the act which constitutes the fraud.

**Contracting Out**
Contracting out is only permitted where insurers comply with the Act’s transparency requirements by satisfying that (a) the insurer has taken sufficient steps to draw the proposed term to the insured’s attention before the contract is entered into and (b) the proposed term must be clear and unambiguous in its effect.

Insurers and brokers therefore need to consider carefully what impact the Act is going to have on their business going forward. Beale & Company Solicitors LLP are organising a series of seminars / workshops to assist. Watch this space!

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