

Insurance
Law Update
Rosling King LLP



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Finally, some of the key insurance coverage laws are changing. The existing insurance regime founded on the Marine Insurance Act 1906 is substantially altered under the Insurance Bill, which received Royal Assent last Thursday and is expected to come into force next year. The new provisions are intended to modernise insurance law and rebalance rights and remedies when things go wrong.

There is an 18 month transition period before it comes into full force, although some are already drafting clauses to allow the law to apply to insurance policies immediately.

Key changes include introduction of a “duty of fair presentation” of risk, in place of the existing duty to disclose all material facts, and proportionate remedies for unintentional breach of this requirement, so that the policy may survive with any claims settlement adjusted accordingly. This is a significant adjustment to current disclosure rules, under which insurers are entitled to avoid liability altogether in the event of failure to disclose a material fact, regardless of whether the non-disclosure was deliberate or had any bearing on the loss claimed under the policy.

Under the new rules, insurers will remain entitled to avoid the policy and retain the premium in the event of intentional or reckless non-disclosure. In relation to any other type of non-disclosure, the policy may be avoided only if the relevant information would have caused the insurer to decline the risk completely and even then the insurer does not recover the premium. If cover would have been agreed on different policy terms, the insurer will be entitled to treat the contract as if it was on such terms, and if a higher premium would have been charged, the claim amount may be reduced proportionately.

Further significant changes relate to insurance warranties. Breach of warranty by the insured will in future merely suspend - and no longer discharge - the insurer's liability under the policy, so that a subsequent claim will be valid notwithstanding a previous breach of warranty that has since been remedied by the insured. Insurers will also be prevented from relying on non-compliance with a warranty as grounds for avoiding liability for a claim for loss of an entirely different kind than that envisaged by the warranty.

“Basis of contract” clauses i.e. provisions which seek to turn all the insured's representations in relation to the risk into warranties, are abolished under the Insurance Bill. The potentially draconian consequences of such clauses have been criticised and it will not be possible to contract out of this prohibition.

The new law is to be the default position and it is contemplated that any parties who wish to opt out, may do so and negotiate their own different commercial terms. This is likely to be attractive, to commercial policyholders.

Finally, the UK is coming into line with the rest of the EU in abolishing the old draconian avoidance regime in favour of a new fairer system. It is hoped that the new legislation will reduce the number of coverage disputes for the benefit of all and bolster the competitiveness of the UK insurance market internationally.



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