

## DUTY OF DISCLOSURE WARNINGS

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Members will be aware that the disclosure obligations of insureds under the laws of the UK have changed considerably in recent years. A distinction has been drawn between consumer and business insureds since the Consumer Insurance (Disclosure and Representations) Act 2012 came into force in April 2013. From that point a separate warning has been required at all key junctures of a placement for consumer and business insureds.

The Insurance Act 2015, which came into force on 12<sup>th</sup> August 2016, then changed the business insured's duty of disclosure and so a revised warning for business insureds was required at that time. Griffin has issued a number of bulletins advising on these changes and recommending appropriate warnings for consumer and business insureds.

This bulletin concerns the approach members may wish to take when handling business which is not subject to the laws of the UK.

### OVERSEAS DUTY OF DISCLOSURE WARNING

Members will sometimes handle policies which are subject to a law other than that of the UK. In those circumstances, it may be impractical to seek advice as to the specific legal requirements of the jurisdiction concerned. Where the Member is dealing with a local broker a general warning can be given, since that local broker should be in a position to advise the (re)insured of the exact local requirements.

Where there is no local broker involved the Member has to give a warning directly to the (re)insured. That warning has traditionally been based on the English law position since this has been considered fairly onerous: the insured's duty has been to disclose all material facts, failing which the insurer has been entitled to avoid the policy. Rather than stating that this will be the position the warning has been couched in terms that it *may* be the position. The thinking has been that it is better for a client to proceed on the basis that more rather than less is required of it. If the disclosure obligations in a particular jurisdiction are in fact less demanding, or if the consequences of failing to meet those obligations do not result in avoidance of the policy, that would not present a problem.

Whilst there remains an argument for advising clients on this basis, the recent changes to the disclosure obligations under UK law mean that this is no longer an obvious starting point for the overseas warning. Consumer and business insureds are now treated differently and there is a range of possible outcomes, depending upon the circumstances of any non-disclosure.

### Local Overseas Broker

Where a Member is dealing with a local overseas broker who should be au fait with exactly what is required, a warning along the following lines can continue to be given:

*"This contract of insurance is subject to [insert the applicable law]. Please ensure that all applicable legal and regulatory requirements in relation to this contract, including requirements for disclosure of information to insurers in relation to it, are drawn to your client's attention."*

## Direct Overseas (Re)insured

If a Member is dealing directly with a (re)insured and is not aware of the disclosure requirements of a particular overseas law, a warning along the following lines may be given:

*“Please ensure you have disclosed to the (re)insurer all information concerning the subject of this insurance which they may be expected to consider important when deciding whether to write this cover and on what terms. This information should be disclosed before your cover is placed, when it is renewed and any time that it is varied. Your policy wording may also provide that information should continue to be disclosed for the duration of the policy. If you are in any doubt about whether something is likely to be considered important we recommend that it is disclosed. Failure to do so may prejudice your cover and any claims under it may not be paid.”*

## RISK MANAGEMENT MESSAGE

It is important that an appropriate disclosure warning is given to clients at all appropriate junctures of the placement process.

Where business is subject to the laws of the UK we would remind Members to ensure that their templates have been updated, so that revised warnings to reflect all of the recent changes are appearing on documentation.

Where business is being placed which is not subject to the laws of the UK, we would recommend Members to consider revising the warnings used on the basis set out in this bulletin.

This bulletin is for general information purposes only and does not provide a comprehensive or complete statement of the law relating to the issues discussed nor does it constitute legal advice. In addition, by its nature, this bulletin may be superseded by subsequent regulatory or legal developments. Professional advice should be sought where appropriate in relation to any particular circumstances.

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Issued: January 2017  
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