



Employment Practices Liability

Financial Institutions

Important notice

“Important notes regarding the completion of this proposal form.

1. Important – New Duty to Make a Fair Presentation of the Risk/Disclose Material information

From 12 August 2016 the duty of disclosure for commercial Insurance contracts changes with the implementation of the Insurance Act 2015 (“the Act”).

For risks incepting or renewing on or after 12 August 2016 you will have a new duty to make “a fair presentation of the risk”. To meet this duty you still need to disclose all material information to insurers which is known to you (or which ought to be known to you). Information is material if it would influence the judgement of a prudent insurer in establishing the premium or determining whether to underwrite the risk and, if so, on what terms. Material information does not necessarily have to actually increase the risk of the insurance under consideration.

Under the Act you will be deemed to know information if it is known to any individuals in the categories below:

- (a) anyone within your business in a senior management or decision-making role, and
- (b) anyone responsible for arranging the insurances,

Furthermore, under the Act, you “ought to know” what should reasonably have been revealed by a reasonable search for information held internally or externally (including by any third parties to whom services are outsourced, consultants and agents). -

In order to be able to argue that you have satisfied the duty, should an insurer allege that you have not, you must now do the following:

1. Carefully consider who are the individuals who may fall into categories (a) or (b) above, record this in writing and explain your reasoning;
2. Make enquiries of those individuals as to whether they are aware of any material information (having explained to them what this means);
3. Record the results of these enquiries in writing; and
4. Consider whether any material information could be held anywhere other than with the individuals identified at (a) and (b). If so, you will need to carry out a reasonable search. This could mean making enquiries of individuals or may in some circumstances mean having to carry out an electronic and/or physical search of records.

It is important to bear in mind that if material information is held by third parties such as accountants or lawyers, or internally by branch offices, even if it is not known to the individuals you have identified at paragraphs (a) and (b), it may need to be disclosed. Please note that you must not rely on information that may be held by us in relation to other policies that we may place on your behalf. You must ensure that all relevant information is provided to us for each and every policy that we place on your behalf. We accept no liability to you in this respect.

Your enquiries must cover all relevant group companies, branch offices etc. and the relevant personnel within them. You must ensure you make a full written record of the search made and the responses provided to ensure that you have evidence in the event of any claim being made. In completing this proposal form for your (Re)insurer(s), the accuracy and completeness of all answers, statements and /or information is your responsibility and it is of paramount importance that all relevant information is provided and that it is accurate. If you become aware of any material information that you supplied before the contract of insurance is finalised is incorrect or has been omitted, you should inform us immediately. If you are unsure if information is material you should disclose it.

What are the consequences of not making a fair presentation of the risk?

Under the Act, in the event that there is a breach of duty to make a fair presentation of the risk, the remedies available to insurers will vary dependent on whether the breach is deliberate or reckless or otherwise. For deliberate or reckless breaches the insurer may avoid the contract, refuse all claims and retain the premium paid.

For other, non-fraudulent or non-reckless, breaches the remedy will depend on what the insurer would have done had a fair presentation of the risk been made. If the insurer would not have accepted the risk he can avoid the contract but must refund premiums paid. If the insurer would have accepted the risk on other terms, the contract is to be treated as if those terms applied. In the event that a higher premium would have been charged, any claims payments can be reduced proportionately. This latter provision is especially important because if insurers can show that they would have charged only a modest additional premium, the impact on a claim could be disproportionately large.

For certain policies the insurer may change the remedies available to them from those described above. In such circumstances we will inform you of the changes and what this means for you.

2. **Presentation** This proposal form must be completed in ink by an authorised individual or principal of the firm. **All** questions must be answered. If there is insufficient space to provide answers, additional information should be provided on the firm's headed paper. Please answer all questions fully and avoid answers such as "As last year", or "As already provided to...." or similar. Where available brochures, standard contract conditions, agreements and letters of appointment should be provided. Failure to present insurers with information in an appropriate manner may adversely influence the ability of insurers to offer terms and for you to evidence that a fair presentation of the risk has been made to insurers.
3. **Guidance** If in doubt as to the meaning of any question contained within this proposal form or the issues raised in (1) or (2) above, please contact a member of your servicing team."

If the Proposer or any individual wishes to contact IndemniFI Advisory regarding their online submission, then please contact info@indemnifi.co.uk

Complete Form