

# Comparison of Disclosure Regimes

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# Agenda

- United Kingdom
- Germany
- France
- Singapore
- New York
- Court Ruling OLG Hamm – Dornbracht – I 20 U 38/10
- Court Ruling Allendale Mutual Ins. Co. vs. Excess Ins. Co. 992 F. Supp. 278 (S.D. N.Y 1998)



Comparison of the Disclosure Regime in the UK Insurance Act 2015 with Prevailing Rules in Other Jurisdictions

# United Kingdom

- No distinction between insurance and reinsurance in English law
- Insurance Act 2015 (effective 12.08.2016)
- **Duty** - Duty of fair representation – three elements
- **Remedy for Breach**  
Insurer must show **inducement**  
**Deliberate or reckless** breach – avoid the contract, refuse all claims, keep the premium  
**Neither deliberate nor reckless** breach – avoidance with return of premium only, if insurer would not have entered into the contract  
**Neither deliberate nor reckless** breach – if insurer would have agreed on different terms, proportional reduction of claim



# Germany



- **Duty** – Utmost good faith is recognized in insurance and reinsurance law. Insured must inform the Insurer of all known circumstances relevant to insurer's decision to write the risk – insurer must request in writing.
- **Remedy for Breach** – Withdrawal from **insurance** contract if insured acted intentional or with gross negligence; otherwise right to terminate with one month notice. Had the insurer entered into the contract regardless of the breach, albeit on different terms – those terms apply.  
**Reinsurance** – Utmost good faith, general contractual remedies

# France

- **Duty** – Principle of good faith implemented into provisions in the French Insurance Code that apply to **insurance** contracts only
- **Remedy for Breach**  
Misrepresentation in **bad faith** and decreasing the risk assessment – **insurance** contract null and void and insurer entitled to keep premium  
Misrepresentation in **good faith** and decreasing the risk assessment – proportional remedy  
**Reinsurance** – Good faith, general contractual remedies



# Singapore

- No distinction between insurance and reinsurance in Singapore law
- **Duty** – Utmost good faith  
Pre-contractual duty:  
(1) duty to disclose all material facts; and  
(2) duty not to misrepresent material facts to the insurer to **induce** the insurer to enter into the contract of insurance
- **Remedy for Breach** – Breach of disclosure obligations entitles the insurer to avoid the contract



## New York

- **Duty** - Uberrimae fidei -  
Utmost good faith – basic obligation of a reinsured to disclose all 'material facts' regarding the original risk
- **Remedy for Breach** -  
Contract is voidable ab initio; reinsurer must show **inducement**



## Court Ruling OLG Hamm – Dornbracht – I 20 U 38/10

- The policyholder had insurance coverage for several buildings
- A fire in an adjoining factory spread to the insured buildings and caused severe damage
- The broker provided the insurer with a report in which the question about adjoining factories was answered with a “no”
- The insurer moved to rescind the contract based on non-disclosure and fraud
- Only if the insurer has asked the questions itself shall it be entitled to withdraw from the contract





# Court Ruling Allendale Mutual Ins. Co. vs. Excess Ins. Co. 992 F. Supp. 278 (S.D. N.Y. 1998)

- Allendale issued property policy to its insured
- Condition – insured required to implement fire-safety measures
- Insured failed to do so and Allendale did not advise Excess
- Insured's warehouse destroyed by fire
- Excess rejects Allendale's request for indemnification
- Court rules that Allendale's failure to advise Excess of the recommended fire-safety measures violated its duty of utmost good faith
- Excess entitled to rescind the contract



Questions?



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