

## **AIDA - RIO CONGRESS 2018**

### **DISCLOSURE DUTIES IN INSURANCE**

General Reporter: Peggy SHARON

**Please answer the questions and clarify whether your response is based on legislation, court judgments or directives of any regulatory/supervisory authority.**

**Finally, your remarks and comments from your point of view will be appreciated.**

#### QUESTIONNAIRE

FINLAND written by Ms., LL.M, B.Sc. (Econ. & Bus. Adm.), Doctoral Candidate Marja Luukkonen

#### **1. The Insured's Pre-Contractual Disclose Duty**

- a. Does your National Law impose a duty to answer questions put to the applicant/insured by the insurer?*

The Finnish Insurance Contracts Act (543/1994) regulates all insurance contracts other than statutory insurance in Finland. The Finnish Insurance Contracts Act imposes a duty to answer insurer's questions put to the applicant or the insured. According to the Act's Section 22 before the issuance of an insurance contract, the policyholder and the insured shall give true and complete answers to the insurer's questions which may be of importance for the assessment of the liability of the insurer. Moreover, throughout the insurance period, the policyholder and the insured shall without undue delay rectify any errors or deficiencies that they may discover in the information given to the insurer.

- b. Does your National Law impose upon the applicant/insured a duty to disclose information upon the applicant's own initiative? If so - under what circumstances?*

As a starting point, the Finnish Insurance Contracts Act does not impose upon the applicant/insured a duty to disclose information upon the applicant's own initiative. The insured or policyholder/applicant has only to answer to the questions imposed to him/her in a truthful and complete manner. The applicant's/insured's disclosure duty regards only matters that have impact on the insurer's liability. However, the

policyholder and the insured shall without undue delay rectify any errors or deficiencies that they may discover in the information given to the insurer.

## **2. Scope of the Applicant's Disclosure Duty – Subjective or Objective?**

*Is the applicant's disclosure duty limited to the applicant's actual knowledge or includes also information which he or she should have been aware of?*

As a starting point, the applicant's disclosure duty is limited to the applicant's actual knowledge, but the applicant has to know in principle answers to the imposed questions. S/he cannot be unaware of for example her/his own state of health or the building material of her/his house. If s/he does not know answers to the questions, it is her/his responsible to find out the correct answer. However, if the applicant answers vaguely or in an incomplete manner to the insurer's questions, the insurer has to ask the applicant more detailed and understandable questions in order to get complete answers.

## **3. The Insurers' Pre-Contractual Duties**

*a. Does your law impose on an insurer a pre-contractual duty to investigate the applicant's business in order to obtain the relevant information?*

The Finnish Insurance Contracts Act does not impose on the insurer a pre-contractual duty to investigate the applicant's business. The Finnish Insurance Contracts Act a wide pre-contractual disclosure duty to the applicant before the conclusion of the contract. According to Section 5 of the Act, before an insurance contract is concluded, the insurer shall provide the applicant with any information that the applicant may need to assess his insurance requirement and select the insurance, such as details on the insurer's insurance products, insurance premiums and insurance terms and conditions. When giving such information, the insurer shall point out all major exclusions in the cover provided. Moreover, regarding unit-linked insurances, attention needs to be paid to circumstances important for the selection of any investments that may be linked to the insurance, taking particular account of the applicant's previous investment experience and investment targets. No information need be given if the applicant does not want any information or if it turns out that the disclosure of such information would pose excessive inconvenience. In addition, in distance marketing of insurance policies, consumers are to be provided with prior information of the kind referred to in Part 6a of the Consumer Protection Act (38/1978). Of course, the insurer has to be aware of what kind of insurance contracts it has concluded. Therefore, especially if the insurance is taken out by businesses, the insurer may investigate the applicant's business in beforehand, but there is no duty to do so.

*b. Does your law impose on an insurer a duty to ascertain the insured's understanding of the scope of the insurance, and to draw the insured's attention to exclusions and limitations?*

The Finnish insurance regulation does not impose on the insurer a duty to ascertain the insured's understanding of the scope of the insurance, but the insurer has to provide all information to the applicant regarding the insurance and its scope in a clear and comprehensible manner.

The insurer has to give the applicant enough information so that the applicant can evaluate the insurance's risk coverage and compare different insurances.<sup>1</sup> The insurer does not fulfill its disclosure duty by only giving standard policy conditions to the applicant.<sup>2</sup> The applicant has to be given, for example, information on the risk coverage and compensation policies. When giving information, attention must be paid to the essential restrictions or exclusions of insurance coverage. By essential restrictions it is not only referred to restrictions which are clearly defined in the terms and conditions of insurance, but also other terms and provisions which in practice imply limitation to the insurance coverage. The materiality of the restriction is assessed in the light of what an ordinary person can be expected to consider important in the policy. Moreover, attention should be paid to the individual characteristics of the applicant when the policy is based on discussions between the applicant and the insurer.<sup>3</sup> In general, the manner in which the information should be disclosed as well as the content of the information depends on the general circumstances related to the issuing of an insurance.<sup>4</sup>

According to Section 9 of the Finnish Insurance Contracts Act, if the insurer or its representative has failed to provide the necessary information or has given incorrect or misleading information to the policyholder when marketing the insurance, the insurance contract is considered to be in force to the effect understood by the policyholder on the basis of the information received. Correspondingly, the provision contained above also applies to situations where incomplete, incorrect or misleading information given on the insurance during its validity can be considered to have affected the policyholder's action. This does not, however, apply to information given by the insurer or its representative on compensation or benefits payable after the occurrence of an insured event.

---

<sup>1</sup> Government Bill 114/1993 p. 26.

<sup>2</sup> Government Bill 114/1993 p. 26.

<sup>3</sup> Government Bill 114/1993 p. 27.

<sup>4</sup> Government Bill 63/2009 p. 17 ja Government Bill 114/1993 p. 26.

#### 4. The Insured's Post-Contractual Disclosure Duty

- a. *Does an insured have the duty to notify the insurer of a material change in risk? If so - what is the scope of the duty?*

According to Section 26 of the Finnish Insurance Contracts Act, the terms and conditions of a *non-life insurance policy* may include a provision to the effect that the **policyholder** shall notify the insurer about any change either in the circumstances reported to the insurer by the policyholder or the insured at the time the insurance was concluded or in the circumstances recorded in the insurance policy which materially increases the risk and which the insurer cannot be considered to have taken into account when the contract was concluded. The insurer shall remind the policyholder of this obligation to notify in the annual statement referred to in Section 7<sup>5</sup> of the Finnish Insurance Contracts Act. The policyholder shall notify the insurer about any change of the kind referred to above not later than one month following receipt of the annual statement. If the policyholder wilfully or through negligence which cannot be considered slight fails to fulfil the obligation imposed on him, compensation may be reduced or refused.

It should be noted that a provision mentioned above **can only be imposed on the policyholder, not the insured, if the insured is another person than the policyholder**. If the insurer has neglected to remind the policyholder of the duty to notify the insurer, the insurer cannot appeal to the policyholder's negligence.<sup>6</sup>

When assessing the degree of policyholder's negligence, the ability of a person in the position of a policyholder to understand the change's material impact on the risk should be taken into consideration. Additionally, the form of the written insurance policy regarding the obligation to notify has an impact on the degree of negligence. If the term is written in a general and unspecified manner, the policyholder cannot be required to know what kind of changes s/he should notify the insurer of.<sup>7</sup>

According to Section 27 of the Finnish Insurance Contracts Act, regarding *personal insurance*, if any circumstance relating to the insured such as the insured's profession, interests or domicile is of any importance for the assessment of the insurer's liability, the terms and conditions of the insurance may include a provision to the effect that the

---

<sup>5</sup> According to Section 7 of the Finnish Insurance Contracts Act, The insurer shall dispatch the policyholder a statement detailing the sum insured and any such other circumstances concerning the insurance as are of manifest importance to the policyholder once a year. Provisions on other details to be included in the annual statement are set forth in Sections 26 and 27. After the occurrence of an insured event, the insurer shall give necessary information to the party entitled to claim compensation or benefits from the insurer.

<sup>6</sup> Government Bill 114/1993 p. 42.

<sup>7</sup> Government Bill 114/1993 p. 42.

policyholder shall notify the insurer of any change in such circumstance. Changes in health are not considered an increase in risk of the kind referred to, and such changes are not covered by the obligation to notify. The insurer shall remind the policyholder of this obligation to notify in the annual statement referred to in Section 7 of the Finnish Insurance Contracts Act. The policyholder shall notify the insurer about any change of the kind referred to above not later than one month following receipt of the annual statement. If the policyholder has wilfully or through negligence which cannot be considered slight failed to fulfil the obligation imposed on him, the provisions contained in Section 24 shall apply (see Section 6a of the report).

*b. What is defined in your jurisdiction as a material change?*

When assessing *a material change* in the circumstances, it should be noted that this can only regard changes which increase materially the insurer's risk which the insurer could not take into consideration when the insurance contract was concluded. When assessing the material change of the risk, it should be taken into account what is the increasing risk's impact on insurance premium and insurance issuing. A material change is at hand for example when the insurer would not issue an insurance at all or would issue an insurance for a considerably higher premium for the increased risk.<sup>8</sup> When issuing an insurance, the insurer should take into consideration all changes in the circumstances that can normally be expected, such as ageing and natural wear.<sup>9</sup>

## **5. The Insurer's Post Contractual Duty**

*Does your law impose on an insurer disclosure duties after the occurrence of an insured event (such as, the duty to provide coverage position in writing within a limited period, duty to disclose all reasons for declination etc.)?*

According to Section 70 of the Finnish Insurance Contracts Act, the insurer shall pay the compensation or benefit due under an insurance contract on account of the occurrence of an insured event or notify the claimant that no compensation or benefit is paid, without delay and not later than one month from the receipt of the documents and information referred to in Section 69, according to which the claimant shall provide the insurer with such documentation and information as is required for assessing the insurer's liability and as the claimant can be reasonably required to provide, with due consideration of the opportunities available to the insurer to obtain such information.

## **6. Remedies in Case of Breach of the Insured's Disclosure Duties**

---

<sup>8</sup> Government Bill 114/1993 p. 41.

<sup>9</sup> Government Bill 114/1993 pp. 41–42.

- a. *What is the insurers' remedy in case an insured breached his/her **pre-contractual disclosure** duty ("all or nothing" rule or partial discharge)?*

There are many different remedies for the insurer in a case where an insured has breached her/his disclosure duties.

### **Non-life insurance policy**

According to Section 23 of the Finnish Insurance Contracts Act, if the policyholder or the insured has acted *in bad faith* under a **non-life insurance policy** when fulfilling the duty imposed on him in Section 22 of the Act, the insurer is not bound by the policy and is entitled to retain all premiums paid even if the insurance expired. In such a case, the insurance contract is considered invalid. However, it is up to the insurer if s/he wants to appeal to the invalidity of the contract. The insurer must, however, appeal to the invalidity within a reasonable period of time when it became aware of the misconduct.<sup>10</sup>

Moreover, according to the same Section, if the policyholder or the insured has, *either wilfully or through negligence* which cannot be considered slight, failed to fulfil his duty of disclosure, compensation may be reduced or refused. According to the Government Bill for the Insurance Contracts Act, the questions imposed on the applicant by the insurer should be taken into consideration when assessing the degree of the negligence. If the question has been unclear or too general and the answer therefore incorrect, no negligence should be considered or the degree of negligence should be considered as minor.<sup>11</sup>

Moreover, according to Section 34 of the Finnish Insurance Contracts Act, any consideration on whether compensation is to be reduced or refused on any of the grounds contained above shall also pay attention to how a circumstance on which the policyholder or the insured has given incorrect or incomplete information, or a change in a circumstance which has increased the underlying risk, or an act or a non-act of the insured, has contributed to the occurrence of the bodily injury, property damage or loss. Other aspects that need to be considered are possible negligence and the nature of such negligence on the part of the policyholder or the insured as well as the circumstances in general. (34.1 §) In such a case, there has to be a causal connection between the misconduct of the policyholder or the insured and the insured event. This means that, for example, if the policyholder has given false or incomplete information on building's fire safety conditions, the insurer cannot reduce the insurance

---

<sup>10</sup> Government Bill 114/1993 p. 39.

<sup>11</sup> Government Bill 114/1993 p. 39.

compensation on occurred water damage on a building because of the lack of causality. Reduction or refusal of compensation is always based on overall assessment, and the assessment may be affected, for example, by the person's age, education, experience as well as state of health and mind. Moreover, when considering the reduction or refusal of compensation, the economic status and the need for compensation of the person entitled to the compensation can be sometimes taken into account. This is the case especially when the refusal of the compensation would lead to a severe financial distress for the insured.<sup>12</sup>

In addition, if the insurance premium has been agreed on the basis of incorrect or incomplete information given by the policyholder or the insured and is lower than it would have been had true and complete information been given, compensation is reduced taking account of the proportion of the agreed insurance premium to the insurance premium that would have been charged had true and complete information been given. Minor deviations in the insurance premiums do not, however, justify reduction of compensation. (34.2 §)

Moreover, according to Section 15 of the Finnish Insurance Contracts Act, the insurer is entitled to terminate **a non-life insurance policy** during an insurance period, if either the policyholder or the insured has given incorrect or incomplete information prior to the issuance of the insurance and if the insurer had not issued the insurance had it been aware of the true circumstances. After learning about a circumstance which justifies termination, the insurer shall give written notice of the termination of the insurance without undue delay. In its notice of termination, the insurer shall indicate the reason for termination. If termination is not notified as provided in here, the insurer's right to terminate the insurance policy is forfeited.

In addition, according to Section 18 of the Finnish Insurance Contracts Act, the insurer is entitled to change the premium payable on **a non-life insurance policy** and to amend any other terms or conditions of the insurance policy during an insurance period to meet the prevailing circumstances only in the event that the policyholder or the insured has failed to fulfil the duty of disclosure set forth in Section 22; or there has been a change referred to in Section 26 in the circumstances reported by the policyholder or the insured to the insurer at the time the insurance contract was concluded or in the circumstances recorded in the insurance policy. After learning about a circumstance referred to above, the insurer shall, without undue delay, dispatch a notice indicating how and at what date the premium or other terms or conditions change. The notice shall include a mention that the policyholder is entitled to terminate the insurance policy. If the insurer fails to dispatch a notice in accordance

---

<sup>12</sup> Government Bill 114/1993 pp. 48–49 and Government Bill 63/2009 p. 25.

with the provisions contained herein, its right to alter the premium or any other terms or conditions is forfeited, unless the policyholder or the insured has acted in bad faith.

### **An insurance of the person**

According to Section 24 of the Finnish Insurance Contracts Act, if the policyholder or the insured has acted in bad faith under **an insurance of the person** when fulfilling the obligation imposed on him in Section 22, the insurer is not bound by the policy and is entitled to retain all premiums paid even if the insurance expired. If the policyholder or the insured has, *either wilfully or through negligence which cannot be considered slight*, failed to fulfil the duty of disclosure, and if the insurer had not issued the insurance had true and complete answers been given, the insurer is discharged from liability. If, however, the insurer had issued the insurance in any case but only against a higher premium than agreed or otherwise on different terms, the insurer's liability is limited to an amount which corresponds to the agreed premium or to the terms and conditions on which the insurance would have been issued. If the consequences provided above turned out to be unreasonable from the standpoint of the policyholder or any party entitled to compensation or benefits under the insurance, they can be adjusted.

Additionally, according to Section 17 of the Finnish Insurance Contract Act, the insurer is entitled to terminate **an insurance of the person** if the policyholder or the insured has prior to the issuance of the insurance given the insurer incorrect or incomplete information wilfully or through negligence which cannot be considered slight and the insurer would not have granted the insurance had it been aware of the true circumstances the policyholder or the insured has acted in bad faith while fulfilling its duty of disclosure, but the insurance contract is still binding on the insurer pursuant to Section 24 Subsection 3.

Additionally, according to Section 20 of the Finnish Insurance Contracts Act, regarding **an insurance of the person**, if the policyholder or the insured wilfully or out of negligence that cannot be considered slight fails to fulfil the duty of disclosure imposed on him in Section 22 and the insurer would have issued the insurance only against a higher insurance premium or on terms and conditions other than those agreed had true and complete information been given, the insurance continues to be in force against such higher premium and on such other conditions. The same applies if the policyholder or the insured has acted in bad faith while fulfilling his duty of disclosure and the insurance contract is nevertheless binding on the insurer pursuant to Section 24 Subsection 3.

### **Additional provisions**



In addition, according to Section 35 of the Finnish Insurance Contracts Act, which applies to both non-life insurance and insurance of the person, the insurer may not invoke failure to fulfil the duty of disclosure if the insurer or a competent representative of the insurer knew or should have known at the time the insurance was issued that the information was incorrect or incomplete. This provision does not apply if the policyholder or the insured has acted in bad faith and the insurer or its representative did not know that the information was incorrect or incomplete. (35.1 §) For example, if the insurer has investigated the insured property before granting an insurance, the insurer cannot appeal to such that should have been known to him. Additionally, the insurer has to pay attention to the answers the insurance applicant/insured gives before granting an insurance when assessing the insurance risk. If an answer is uncomplete or unclear, the insurer has to ask for further information. If the insurer neglects this duty, the insurer loses its right to appeal to such information.<sup>13</sup>

Neither may the insurer invoke failure to fulfil the duty of disclosure if incorrect or incomplete information has been given on a circumstance which was of no significance for the assessment of the insurer's liability at the time the contract was concluded or if such circumstance has since lost significance. (35.2 §)

Under life insurance, the insurer may invoke failure to fulfil the duty of disclosure only if the insured dies before five years has elapsed from the commencement of cover or if the insurer has dispatched a notice referred to in the Finnish Insurance Contracts Act within the mentioned period of time. What is provided above does not apply if the policyholder or the insured has acted in bad faith. (35.3 §)

Additionally, the insurer may not invoke an increase in risk if a changed circumstance has been restored or if such increase is otherwise no longer of any importance. (35.4 §)

*b. What is the insurers' remedy in case an insured breached his/her **post-contractual disclosure duty** ("all or nothing" rule or partial discharge)?*

According to the Section 72 of the Finnish Insurance Contracts Act, if after the occurrence of an insured event the claimant has in bad faith given the insurer incorrect or incomplete information of importance for the assessment of the insurer's liability, compensation or benefit may be reduced or refused as considered reasonable in the circumstances.

---

<sup>13</sup> Government Bill 114/1993 p. 49.

The false or incomplete information has to relate to a fact or a circumstance which has relevance determining the insurance event and the insurer's liability. Acting in “bad faith” requires claimant’s knowledge and awareness of false or incomplete information and its importance to the insurer, as well as intention of obtaining benefit.

<sup>14</sup> When assessing what is considered as a “reasonable” deduction in the compensation, the insurer can take into consideration, for example, to what extent the claimant tried to obtain benefit, level of seriousness of the act, reasons for the act, as well as additional costs incurred to the insurer.<sup>15</sup>

Additionally, according to Section 15 of the Finnish Insurance Contracts Act, the insurer is entitled to terminate **a non-life insurance policy** during an insurance period, if there has been a change either in the circumstances reported to the insurer by the policyholder or the insured at the time the contract was concluded or in the circumstances recorded in the insurance policy which materially increases the risk and which the insurer cannot be considered to have taken into account when the contract was concluded; or if the insured has, after the occurrence of an insured event, in bad faith given the insurer incorrect or incomplete information of importance for the assessment of the insurer's liability. After learning about a circumstance which justifies termination, the insurer shall give written notice of the termination of the insurance without undue delay. In its notice of termination, the insurer shall indicate the reason for termination. If termination is not notified as provided in here, the insurer's right to terminate the insurance policy is forfeited, unless the policyholder has in bad faith failed to fulfil the duty of disclosure provided in Section 26 in the event referred to in above. Once terminated, the insurance policy expires in one month after the dispatch of the notice of termination.

Moreover, according to Section 17 of the Finnish Insurance Contracts Act, the insurer may also terminate **an insurance of the person** if the insured has after the occurrence of an insured event in bad faith given the insurer incorrect or incomplete information that is of importance for the assessment of the insurer’s liability.

In addition, according to Section 20 of the Finnish Insurance Contracts Act, regarding **insurance of the person**, the insurance continues to be in force on the amended terms and conditions if there has been a change in any circumstance relating to the insured that is of importance for the assessment of the insurer’s liability as referred to in Section 27 and the insurer would only have granted the insurance against a higher insurance premium or on terms and conditions other than those agreed if the circumstance relating to the insured had conformed to the change at the time the insurance was granted.

---

<sup>14</sup> Government Bill 114/1993 pp. 68–69.

<sup>15</sup> Government Bill 114/1993 p. 69.

After learning about the failure to fulfil the duty of disclosure or about a change in any circumstance relating to the insured the insurer shall, without undue delay, dispatch a notice to the policyholder indicating how and at what date the premium or other terms or conditions change. The notice shall include a mention that the policyholder is entitled to terminate the insurance policy. If the insurer fails to dispatch a notice in accordance with the provisions contained herein, its right to alter the premium or any other terms or conditions is forfeited.

**Final remarks**

It should be noted that as a member of the European Union, Finland is at the moment implementing the new Insurance Distribution Directive (2016/97/EU) to its domestic legislation. A Government Bill has not yet been given, and that is why I have not taken that into consideration when writing this report. The Government Bill on IDD will be given in November 2017, and the new provisions/laws will enter into force in February 2018. There will be some new disclosure duties based on the new regulation, especially concerning unit-linked insurances. However, the basic provisions will be the same also after the implementation of the IDD.