

## **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**

#### **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?

Yes

- 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?

Yes. The applicant has to be aware about the circumstances to be disclosed. In addition, the circumstances to be disclosed must be objectively material for the assessment of the risk.

#### **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?

It includes also information which he or she should have been aware of.

### 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?

No, only in case of investment based insurance products.

- 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 insurer has to draw the attention of the insured as regards the scope, limitations and exclusions as the insurer is obliged to mention the above in the first page of the policy in bold letters.

### 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?

Yes, the insured has such duty. This obligation refers to circumstances liable to entail a significant aggravation of the risk, such that had the insurer been aware it would not have concluded the insurance contract or would not have concluded it under the same terms.

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

The material changes which considerably influence the assessment and acceptance of the risk.

### 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.)?

Yes, but only within the frame of Compensation Body of the MTPL system  
(indirect obligation of the MTPL insurer).

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

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

Partial discharge, under conditions in case of negligent breach. Total discharge, under conditions in case of intentional breach.

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

For non-large risks, insurer claims only for damages.