

**AIDA Questionnaire**

**World Congress Rio 2018**

**DISCLOSURE DUTIES IN INSURANCE**

**Mexico**

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**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 Disclosure Duty**

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

Yes, pursuant to article 8 of the Insurance Contract Law ("LCS"), the insured must respond in writing the questionnaire provided by the insurer.

Based on such questionnaire, the insured must disclose all information that may influence the terms and conditions of the policy. The statements signed by the insured will be the basis for the contract.

If the contract is entered into by a representative of the insured, such representative must disclose all relevant facts that are or should be known by such representative.

Any omission or inaccurate declaration will entitle the insurance company to rescind the contract even if such omission or inaccuracy had no influence in the occurrence of the loss.

**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?**

Mexican law does not expressly impose upon the insurer a duty to disclose information upon the insured's own initiative. However, under Mexican law, the duty of utmost good faith is an implied principle applicable to all insurance contracts. This duty demands diligent and honest conduct from both parties, including the duty of the insured to disclose to the insurer any fact that may help the underwriter to evaluate the risks and determine the premium.

**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?**

According to article 8<sup>th</sup> of the LCS, the insured must declare in writing to the insurance company all relevant facts that the insured knows and also those that the insured should know at the time of entering into the contract.

### **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?**

Mexican law does not impose on an insurer a pre-contractual duty to investigate the applicant's business.

The insurer must, however, ask the correct questions in the questionnaire provided to the insurer to obtain the information required to make an adequate assessment of the risk. If the insurer does not ask questions, it may be deemed such information was not relevant to the insured for the assessment of the risk.

Pursuant to the principle of good faith, the insurer may rely on the answers from the insured without further investigation.

#### **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?**

Yes, the insurance company must provide to the insured an insurance policy stating the rights and obligations of each one of the parties, including, at least, the following information:

- i. The names, addresses of the contractors and signature of the insurance company;
- ii. The designation of the asset or of the insured person;
- iii. The nature of the risks guaranteed;
- iv. The moment from which the risk and duration of this guarantee is guaranteed;
- v. The amount of the guarantee;
- vi. The insurance premium or premium;

Moreover, standard wordings of insurance contracts available in the market are registered with the insurance regulator and with the National Commission for the Defense and Protection of Consumers of Financial Services (consumer's ombudsman), for purposes of protecting the consumers from unfair terms and conditions.

### **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, pursuant to article 52 of the LCS, the insured must inform the insurance company any material aggravation in the risk. The notification by the insured must be made within twenty-four hours after the insured knows about the aggravation of the risk. If the insured does not notify the insurer or causes the material aggravation of the risk, the obligations of the insurance company cease.

Insurance companies are entitled to terminate the contract if the risk changes as a result from actions of the insured.

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

Material change or essential aggravation is defined as a material fact that changes the risk subject matter of the insurance and that to the extent the insurance company would have known such fact, it would have proposed different terms and conditions to insure 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; pursuant to articles 69 and 71 of the LCS, the insurance company must accept or reject liability within thirty days after receipt of the documents and information that allows the insurer to know the basis of the claim. In order to determine the cause and consequences of a loss the insurance company is entitled to request from the insured or the beneficiary all the information and the facts related to the loss. If a claim is rejected, the insurance company has the burden of proof on the rejection of the claim.

## **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)?**

If the insured breaches a pre-contractual disclosure duty, the insurer may unilaterally terminate the contract. In such case, the insurer is entitled to request reimbursement of the expenses incurred. If the premium has been already paid in advance for future periods, the insurer will reimburse to the insured three quarters of the premium paid for the future periods.

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

In principle, if the insured breaches a post-contractual duty of disclosure, the insurer will be automatically released from any liability under the contract.