

## **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?

It is implicitly imposed by virtue of the duty of disclosing material facts. Under Singapore law, an insurance contract is a contract requiring utmost good faith. For marine insurance contracts, the principle of good faith is prescribed in sections 17 to 20 of the Marine Insurance Act (Cap. 387). The requirement of good faith also applies to non-marine insurance contracts and the duty of good faith is mutual. The principle of utmost good faith most frequently manifests itself in an insured's duty to make full and frank disclosure of all material facts to the insurer. The general rule is that, save for certain exceptions, an insured must disclose to the insurer all facts material to an insurer's appraisal of the risk which are known or deemed to be known by the insured but neither known nor deemed to be known by the insurer. A fact is considered material if a prudent insurer would take into account the fact in fixing the premium or in determining whether he would accept the risk (at all or on certain terms).

- 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?

In addition to the response above:

Breach of the duty of disclosure by the insured entitles the insurer to avoid the contract of insurance and to do so, the insurer must show that the non-disclosure induced the making of the contract on the relevant terms or at all. Given the potential dire consequences of material non-disclosure, it would be prudent for potential insureds to exercise due care when completing and answering questions in proposal forms.

Section 28(5) of the Insurance Act (Cap. 142) requires all Singapore insurers to prominently display, in their form of proposal, a warning that if a proposer does not fully and faithfully give the facts as he knows them or ought to know them, he may receive nothing from the policy.

For life insurance policies, insurance companies which are members of the Life Insurance Association undertake to include an "incontestability clause" in all the life policies that they issue. The effect of such incontestability clauses is that insurers cannot treat a life policy as if it had never been issued (or contest the policy) after the policy has been in force for a certain period of time (usually 1 or 2 years) except on the grounds of fraud or non-payment of premiums. Such a clause would *prima facie* apply even in cases of material non-disclosure.

*References:*

*Tat Hong Plant Leasing Pte Ltd v Asia Insurance Co Ltd* [1993] 1 SLR(R) 728  
*Pan Atlantic Insurance Co Ltd v Pine Top Insurance Co Ltd* [1995] 1 AC 501  
*Yap Chwee Khim v American Home Assurance Co and Others* [2000] SGHC 185

## **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 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?

There is no express statutory or regulatory provision or reported Singapore case law which imposes the specific duty on an insurer. But one would expect an insurer to conduct some investigations for the purpose of underwriting commercial risks.

- 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, particularly in the context of life insurance products. The primary statute regulating, inter alia, the sale of life insurance policies in Singapore is the Financial Advisers Act (Cap. 110).

#### **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?

Generally, no but some policies (e.g. fire insurance policies) contain express provisions obliging such disclosure.

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

There is presently no reported Singapore case law considering what constitutes a material change in the context of an insurance policy.

#### **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.)?

In the absence of express conditions in the policy, no. But it should be an implied term of the policy that the insurer must provide its response on coverage under the

policy within a reasonable time after it has had the opportunity to investigate the incident resulting in the claim by the insured, verify and assess the claim in accordance with the coverage afforded under the policy.

**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)?

The insurers' remedy is to avoid the contract but the insurer could exercise its rights to affirm the insurance on terms which it would have imposed (including for instance a higher premium) if the policy contract provides such rights.

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

If it is breach of the term provided in the policy contract, it will depend on, inter alia, whether the term is a condition precedent to the insurer's liability to indemnify the insured.