AIDA-RIO CONGRESS 2018

DISCLOSURE DUTIES IN INSURANCE

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Please answer the questions and clarify whether your response is based on legislation, court judgements, 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, the Insurance Law does. It doesn't require the applicant/insured to reply every question but limited to those raised by the insurer in written only. Financial Supervisory Commission, FSC who also supervises insurance industry has those questionnaires had in uniform utilized by the insurance industry to protect the consumers.

      According to Article 64 of Insurance Law amended on December 18th, 2016:
      At the time a contract is entered into, the proposer shall make truthful representations in response to the written inquiries of the insurer.
      If the proposer has made any concealment, nondisclosure, or misrepresentation, and such concealment, nondisclosure, or misrepresentation is sufficient to alter or diminish the insurer's estimation of the risk to be undertaken, the insurer may rescind the contract; the same shall apply after the risk has occurred, provided that this provision does not apply where the proposer proves that the occurrence of the risk was not based upon any fact that it did or did not represent.
      The right to rescind as stated in the preceding paragraph shall be extinguished if not exercised within one month of the time the insurer knows of the cause for rescission. Once two years have elapsed after the contract is entered into, the contract may not be rescinded even if cause for rescission exists.

      At the same time when to ask for the applicant/insured to answer questions, the insurer must have the applicant/insured's consent in written permitting the insurer to collect, process or use his/her personal information such as medical records, medical treatment or health examination in order to comply Personal Information Protection Act, amended on December 15th, 2015.

      According to Article 177- 1 of Insurance Law,
      A person that complies with any of the subparagraphs below may collect, process or use personal information such as medical records, medical

treatment or health examination of individuals, with the written consent of the principal party:

1. Insurance enterprises, insurance agents, brokers, and surveyors that operate or practice business in accordance with the Act.
2. Juristic persons commissioned by insurance enterprises to provide assistance in confirming or performing their obligations under an insurance contract.
3. Insurance related foundations established with the permission of the competent authority to handle disputes and matters relating to compensation for victims of motor vehicle accidents.

Regulations governing the manner of written consent mentioned in the preceding paragraph, scope of business mentioned in the first subparagraph of preceding paragraph and other matters of compliance shall be set forth by the competent authority.

Insurance enterprises may be exempted from the obligation to notify as provided in Paragraph 1, Article 9 of the Personal Information Protection Act when they process and use legally collected information on the name, date of birth, ID Card number and method of contact of beneficiaries of insurance contracts for the needs of underwriting or claims operations.

Personal information on medical records, medical treatment, and health examination already collected by persons mentioned in subparagraphs of the first paragraph hereof prior to the enforcement of this article amended on 14 June 2011 may continue to be processed and used within the extent necessary to serve the specific purposes of collection.

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 Insurance Law does. The applicant/insured shall inform the insurer those risk has taken place known to the applicant/insured. Otherwise the insurer shall not be liable to such contract signed up.

According to Article 51 of Insurance Law:

If the risk associated with the subject matter insured has already occurred or ceased to exist at the time an insurance contract is entered into, the contract shall be void, provided that this rule does not apply when neither of the contracting parties is aware of the occurrence or cessation of existence.

If, at the time an insurance contract is entered into, only the proposer knows that the risk has already occurred, the insurer is not bound by the contract.

If, at the time an insurance contract is entered into, only the insurer knows that the risk has ceased to exist, the proposer is not bound by the contract.

Meanwhile, when the applicant applies policy for him/herself as the insured, he/she also has the duty to disclose to the insurer based on most faithful nature of insurance contract as required in Article 64 same as 1.a above.

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?

   The scope of the applicant's disclosure duty should be objective as shown in the court decrees. The applicant's disclosure duty is not limited to the applicant's actual knowledge but also includes information which he or she should have been aware of.

   According to a decree #Year89InsuranceAppealingNo.17, an insured sentenced being failed to disclose material information to the insurer affecting the insurer's risk evaluation. The fact is the insured informs having one appendicitis surgery but not to disclose he is waiting for his physical exam report for having engaged in ultrasonic wave physical exam over abdomen as suggested by his physician based on his compliant about his abdomen pain before applying this policy. The insured should have disclosed what he had learned about both appendicitis surgery and having engaged in ultrasonic wave physical exam to the insurer to meet the most faithful nature of the insurance contract.

3. The Insurer's 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?

      Yes, do both Financial Consumer Protection Act and Insurance Law. There is a knowing your customer, KYC format and procedure that the financial service enterprise, including insurers must apply to understand the applicant's related information.

      According to Article 9 of Financial Consumer Protection Act, amended on December 28th, 2016:
      Before a financial services enterprise enters into a contract with a financial consumer for the provision of financial products or services, it shall fully understand the information pertaining to the financial consumer in order to ascertain the suitability of those products or services to the financial consumer.
      Regulations governing -what "information pertaining to the financial consumer" must be fully understood and what matters relating to "suitability" must be taken into account, as mentioned in the preceding paragraph, and other matters requiring compliance, shall be prescribed by the competent authority.

      In addition, the insurer should learn if insurable interest exists or not in the insurance contract applied by the applicant or the insurance contract shall be void, namely:
      1. In property: An insurable interest in current interest in a property, or expected future interest deriving from current interest in a property;
      2. In liability: The transporter or custodian of goods has an insurable interest in goods that it transports or keeps in custody, within the extent

to which the transporter or custodian bears liability for the goods; and

3. In life: An insurable interest in the life or body of the insured.

According to articles of Insurance Law below:

Article 14

A proposer has an insurable interest in current interest in a property, or expected future interest deriving from current interest in a property.

Article 15

A transporter or custodian of goods has an insurable interest in goods that it transports or keeps in custody, within the extent to which the transporter or custodian bears liability for the goods.

Article 16

A proposer has an insurable interest in the life or body of any of the following persons:

1. The proposer or the proposer's family members.
2. Persons upon whom the proposer depends for living expenses or educational expenses.
3. The proposer's obligors.
4. Persons who manage the proposer's assets or interests on the proposer's behalf.

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, Financial Consumer Protection Act, Insurance Law and Regulations Governing the Supervision of Insurance Solicitors do. An insurer shall fully explain the important aspects of the financial products or services and of the contact to the insured and shall also fully disclose the associated risks.

According to Article 10 of Financial Consumer Protection Act:

Before a financial services enterprise enters into a contract with a financial consumer for the provision of financial products or services, it shall fully explain the important aspects of the financial products or services, and of the contact, to the financial consumer, and shall also fully disclose the associated risks.

An entity as referred to in the preceding paragraph that engages in the collection, processing, and use of personal information shall fully explain to the financial consumer his or her rights regarding the protection of personal information, and the possible negative consequences of any refusal to provide consent. A financial services enterprise that engages in lending business shall also carefully consider the borrower, the intended use of the funds, the source of repayment, the security for its claim, the perspective risks and benefits of the loan, and other such lending principles, and it shall not decline to provide a loan to a financial consumer solely on the grounds that the financial consumer has refused to authorize it to submit a query about his or her credit information to an enterprise that conducts inter-institutional credit information services.

The explanations and disclosures that the financial services enterprise provides to the financial consumer, as mentioned in paragraph 1, shall be in text or use another method that is fully understandable to the financial consumer; and the content thereof shall include, without limitation, aspects of material significance to the interests of the financial consumer, such as transaction costs, and possible gains and risks. Regulations governing related requirements shall be prescribed by the competent authority.
When financial products provided by a financial services enterprise are complex, high risk products as defined in Article 11-2 of the Act, the aforementioned explanations and disclosures should be recorded or filmed unless it is an automatic channel transaction or the consumer does not agree.

As a solicitor/agent representing an insurance enterprise, an insurance broker company, an insurance agent company, or a bank to solicit insurance contract, FSC imposes explaining policy protection scope to the solicitor/agent who contact the applicant/insured mainly face to face.

According to Article 8- 1 of Insurance Law:
The term "insurance solicitor" as used in this Act means a person who solicits insurance business on behalf of an insurance enterprise, an insurance broker company, an insurance agent company, or a bank concurrently engaged in operating insurance agent or insurance broker business.

In other word, the first duty of a solicitor/agent owns authorization in advance to illustrate the content of an insurance product and relevant policy provisions and other activities. In addition, each solicitor/agent must also follow “Guidelines to fill in Insurance Applying Standard Form and Reminder” #10102557951 amended on December, 28th, 2012.

According to Article 15 of “Regulations Governing the Supervision of Insurance Solicitors”, amended on April 6th, 2016 regulated by FSC:
The activity of insurance solicitation undertaken by a solicitor under authorization shall be deemed as an activity within the scope of authorization by the employing company. The employing company shall administer rigorous supervision of solicitation by its registered solicitors and will be held jointly and severally liable under law for any damage arising out of or in relation to the solicitation activity of its solicitors. Where a solicitor is concurrently registered to solicit both non-life insurance and personal insurance, the respective employing companies under which the solicitor is registered shall assume joint liability under law.
The authorization as referred to in the preceding paragraph shall be made in writing and noted on the solicitor’s registration certificate.
The term “activity of insurance solicitation” referred to in paragraph 1 hereof shall mean any of the following activities undertaken by a solicitor:

1. Explaining the content of an insurance product and relevant policy provisions.
2. Explaining points to note in filling out an application form.
3. Forwarding the application documents or insurance policy.

4. Any other solicitation activities authorized by the employing company.

When engaging in insurance solicitation activities referred to in the preceding paragraph, a solicitor shall obtain application related documents signed by the applicant and the insured in person; when the solicitation involves life insurance products, the solicitor shall meet the applicant and the insured in person, unless it is otherwise stipulated by the competent authority.

A solicitor shall personally sign name and note his or her registration number on the application form that he or she solicits, unless it is otherwise stipulated by the competent authority.

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 does. The insured being aware of the circumstances should notify the insurer not only material risk change but any increase risk. Deadlines required to notify the insurer:

1. Within 5 days on the event taken place: When an event the insurer should bear, the applicant, insured or beneficiary shall notify the insurer when aware of the event occurred.
2. Notice in advance: When the increase in risk is caused by an act of the proposer or the insured and the risk is increased to the extent that the premium should be increased or the contract terminated.
3. Within 10 days being aware of the increase in risk: When the increase in risk is not caused by an act of the proposer or the insured.

Once the risk diminished, the insured may request the insurer to adjust the premium.

Should the insured fail to serve notice within the time limit stated above, he/she shall be liable for loss sustained by the insurer as a result.

The notifying duty, however, applies to property and casualty insurance including accident insurance only, not to life and health insurance.

According to articles of Insurance Law below:

Article 58

When a proposer, insured, or beneficiary experiences an event for which the insurer bears insurance liability, such party shall notify the insurer within five days from becoming aware of the occurrence, except where otherwise provided in this Act or stipulated in the contract.

Article 59

A proposer required to serve notice of circumstances that increase risk as stated in the insurance contract shall notify the insurer upon becoming aware of the circumstances.

If the increase in risk is caused by an act of the proposer or the insured, and the risk is increased to the extent that the premium should be increased or the contract terminated, the proposer or the insured shall serve prior notice

to the insurer.
If the increase in risk is not caused by an act of the proposer or the insured, the proposer or the insured shall notify the insurer within 10 days of becoming aware of the increase in risk.
When risk is diminished, the insured may request the insurer to adjust the premium.

Article 63
A proposer or an insured who fails to serve notice within the time limit stated in Article 58 or Article 59, paragraph 3 shall be liable for loss sustained by the insurer as a result.

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

The material change is associated the degree if sufficient to influence the insurer evaluating the risk.
According to the decree #Year88TWAppealingNo.2212, if the insured insists that the insurer shall not terminate the insurance contract, then he should illustrate the insurance incident is not associated to what he missed to presented or to present false which not impacting on if the insurance incident may occur or not without deteriorating "consideration equity". In other words, he should be able to prove inevitability that no connection exists between the insurance incident and what he missed to present or presented false.

According to the decree #Year95TWAppealingNo.624, the physician's medical exam accuracy relies on the insured true complaint. The insurer's faithful disclose duties shall not exempt from the physician appointed by the insurer or the insured agrees to the insurer to look into his medical record.

According to decree #Year78TWAppealingNo.198, the insurer may terminate the contract when the applicant conceals, misses to disclose, or misrepresents that sufficient to alter or diminish the insurer's estimation of the risk to be undertaken.

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.)?

The regulations focus disclosuew duties to the insurer mainly on pre-contract as required by Financial Consumer Protection Act to act with the principles of fairness, reasonableness, equality, reciprocity, and good faith. Based on such principles, the insurer should have carried out in the consistent attitude to the insured/beneficiary on demands although there is no explicit disclosure duties.

According to Article 7 of Financial Consumer Protection Act:
When a financial services enterprise enters into a contract with a financial consumer for the provision of financial products or services, it shall act in conformance with the principles of fairness, reasonableness, equality, reciprocity, and good faith.
Contractual provisions entered into by a financial services enterprise and a financial consumer that are clearly unfair shall be invalid. If there is a disagreement over the meaning of any contractual provision, the provision shall be interpreted in favor of the financial consumer.
A financial services enterprise, in providing financial products or services, shall exercise the due care of a good administrator; for any financial product or service it provides that has the nature of a trust or mandate arrangement, the financial services enterprise shall also bear such fiduciary duty as may be required by applicable legal provisions or contractual stipulations.

6. Remedies in Case of Breach of the Insured's Disclosure Duties
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a. What is the insurers' remedy in case an insured breach his/her pre-contractual disclosure duty ("all or nothing" rule or partial discharge)?

The insurer may terminate the contract when the insured made any concealment, nondisclosure, or misrepresentation and such concealment, nondisclosure, or misrepresentation is sufficient to alter or diminish the insurer's estimation of the risk within one month the insurer learns of the cause for rescission or within two years on the contract effective date. This is an all or nothing rule but subject to the insurer.

According to Article 64 of Insurance Law:
At the time a contract is entered into, the proposer shall make truthful representations in response to the written inquiries of the insurer.
If the proposer has made any concealment, nondisclosure, or misrepresentation, and such concealment, nondisclosure, or misrepresentation is sufficient to alter or diminish the insurer's estimation of the risk to be undertaken, the insurer may rescind the contract; the same shall apply after the risk has occurred, provided that this provision does not apply where the proposer proves that the occurrence of the risk was not based upon any fact that it did or did not represent.
The rights to rescind as stated in the preceding paragraph shall be extinguished if not exercised within one month of the time the insurer knows of the cause for rescission. Once two years have elapsed after the contract is entered into, the contract may not be rescinded even if cause for rescission exists.

In addition, the insurer shall refund the premium paid to the insured whose age misrepresented and the insured's actual age exceeding the limits on insurable age set by the insurer. Such contract shall be void.
The insurer shall refund the overpayment when misrepresentation of the

insured's age results in premium payments that are higher than what it should be.
The another situation is the insured misrepresented his/her age causing lower premium paid than it should be, the insured may make up the premium short proportionally. But the insurer shall reject the insured to make up underpayment portion on the insurable incident taken place and the misrepresentation of the insured's age not attributed to the insurer. This is not all or nothing rule.

According to Article 122 of Insurance Law:
If the age of the insured has been misrepresented and the insured's actual age surpasses the limits on insurable age set by the insurer, the contract shall be void, and the insurer shall refund the insurance premium already paid by the insured.
If misrepresentation of the insured's age results in premium payments that are lower than what they should be, the insured may make up the underpayment or the insured amount shall be reduced pro rata on the basis of the premium paid and the actual age of the insured, provided that upon occurrence of the insured incident and where the misrepresentation of the insured's age shall not be attributed to the insurer, the proposer shall not claim the underpayment.
The insurer shall refund the overpayment, if misrepresentation of the insured's age results in premium payments that are higher than what they should be.

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

An endorsement/special agreement includes all matters, whether past, present, or future, that relate to an insurance contract. The insurer may terminate the contract when the insured breaches the special agreement even insurable risk has taken place already. This is an all or nothing rule but subject to the insurer.

According to articles of Insurance Law below:
Article 66
A special provision is a provision whereby the parties represent and warrant performance of a special obligation apart from the basic provisions of the insurance contract.
Article 67
All matters, whether past, present, or future, that relate to an insurance contract may be stipulated by a special provision.
Article 68
When a party to an insurance contract breaches a special provision, the other party may rescind the contract. The same rule also applies after the risk has occurred.
The provisions of Article 64, paragraph 3 apply mutatis mutandis to the circumstances in the preceding paragraph.

Article 69

With regard to any special provision relating to a future matter, if the related risk has already occurred before the time for performance of the provision has commenced, or performance of the provision is impossible, or the provision has not been performed because it is illegal in the place where the contract was entered into, the insurance contract does not for that reason become void.