

Comparison of Disclosure Regimes

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Agenda

- United Kingdom
- Germany
- France
- Singapore
- New York
- Court Ruling OLG Hamm –
 Dornbracht I 20 U 38/10
- Court Ruling Allendale Mutual Ins.
 Co. vs. Excess Ins. Co. 992 F. Supp.
 278 (S.D. N.Y 1998)

Comparison of the Disclosure Regime in the UK Insurance Act 2015 with Prevailing Rules in Other Jurisdictions



United Kingdom

- No distinction between insurance and reinsurance in English law
- Insurance Act 2015 (effective 12.08.2016)
- Duty Duty of fair representation three elements
- Remedy for Breach
 Insurer must show inducement
 Deliberate or reckless breach avoid the contract, refuse all claims, keep the premium

Neither deliberate nor reckless breach – avoidance with return of premium only, if insurer would not have entered into the contract

Neither deliberate nor reckless breach— if insurer would have agreed on different terms, proportional reduction of claim







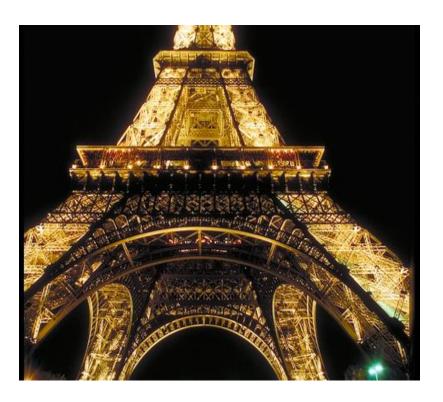
Germany

- Duty Utmost good faith is recognized in insurance and reinsurance law.
 Insured must inform the Insurer of all known circumstances relevant to insurer's decision to write the risk – insurer must request in writing.
- Remedy for Breach Withdrawal from insurance contract if insured acted intentional or with gross negligence; otherwise right to terminate with one month notice. Had the insurer entered into the contract regardless of the breach, albeit on different terms – those terms apply.

Reinsurance – Utmost good faith, general contractual remedies

France

- Duty Principle of good faith implemented into provisions in the French Insurance Code that apply to insurance contracts only
- Remedy for Breach
 Misrepresentation in bad faith and
 decreasing the risk assessment –
 insurance contract null and void
 and insurer entitled to keep
 premium
 Misrepresentation in good faith
 and decreasing the risk
 assessment proportional remedy
 Reinsurance –Good faith, general
 contractual remedies



Singapore

- No distinction between insurance and reinsurance in Singapore law
- Duty Utmost good faith
 Pre-contractual duty:
 (1) duty to disclose all material facts; and
 (2) duty not to misrepresent material facts to the insurer to induce the insurer to enter into the contract of insurance
- Remedy for Breach Breach of disclosure obligations entitles the insurer to avoid the contract







New York

- Duty Uberrimae fidei Utmost good faith basic
 obligation of a reinsured to
 disclose all 'material facts'
 regarding the original risk
- Remedy for Breach Contract is voidable ab initio;
 reinsurer must show
 inducement

Court Ruling OLG Hamm – Dornbracht – I 20 U 38/10

- The policyholder had insurance coverage for several buildings
- A fire in an adjoining factory spread to the insured buildings and caused severe damage



- The broker provided the insurer with a report in which the question about adjoining factories was answered with a "no"
- The insurer moved to rescind the contract based on nondisclosure and fraud
- Only if the insurer has asked the questions itself shall it be entitled to withdraw from the contract

Court Ruling Allendale Mutual Ins. Co. vs. Excess Ins. Co. 992 F. Supp. 278 (S.D. N.Y 1998)

- Allendale issued property policy to its insured
- Condition insured required to implement fire-safety measures
- Insured failed to do so and Allendale did not advise Excess
- Insured's warehouse destroyed by fire
- Excess rejects Allendale's request for indemnification
- Court rules that Allendale's failure to advise Excess of the recommended fire-safety measures violated its duty of utmost good faith
- Excess entitled to rescind the contract





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