

Reform of the Duty of Disclosure in German Insurance Contract Act 2008 and the Commentary

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Abstract

The German insurance contract act had been amended enormously in 2006 which is also known as the biggest modification in the past ten decades. The new law is in effective from Jan 1st 2008, however the new law was considered dramatically different than the original one. One of the main modifications is “policyholder’s duty of disclosure”, one of the core principles in insurance contract law.

The new law acknowledges the concept of “eye-and-ear principle” which was prevalent in practice and in theory. It also extensively diminishes the possibility for the insurer to rescind the contract by adding the right of termination and adjustment for him based on the “consumer protection principle”, thus upholds the “principle of equivalence” to make sure the policyholder will not forfeit the insurance protection due to a minor breach of duty to disclose. Meanwhile the new law inflicts the insurer with mainly two obligations: one is to reveal the consequence of breaching the duty of disclosure before the application, second is to reason the policyholder when he rescinds, terminates or adjusts the contract. On the other hand, the new law inserts several regulations to obviate the bad faith policyholder, hence strengthens the protection of the good faith policyholder.

These new developments not only have a significant research value towards the comparative law but also a model for our domestic law for future reference.

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**Eye-Ear-principle, duty to inform of insurer, fraudulence, culpa
in contrahendo, nondiscrimination, genetic information**