NUS National University of Singapore | Centre for Banking & Finance Law
Faculty of Law

Carter v Boehm (1766) after 250 years:
Insured's and Insurer's Pre-Contractual Duties

30 NOVEMBER – 1 DECEMBER 2016

Lee Sheridan Conference Room, Faculty of Law, National University of Singapore

About the Colloquium

The year 2016 marks the 250th anniversary of the landmark insurance case of *Carter v Boehm* (1766) which established the pre-contractual duty of disclosure and laid the foundation for the principle of utmost good faith in insurance law. Both the duty and the principle have been entrenched ever since in common law jurisdictions. Both have also influenced, to varying degrees, the legislation of modern insurance contract law in civil law jurisdictions. In recent years, however, the content of the duty has been in a state of flux.

It is certainly opportune to look back at *Carter v Boehm* and reflect on its aftermath in 2016. (Interestingly, the dispute in *Carter v Boehm* involved a beleaguered fort in Bengkulu, Indonesia, not too far from the shores of Singapore.) With insurance law experts invited from a wide range of jurisdictions, this Colloquium will re-visit the background, facts and the law in *Carter v Boehm*. In particular, it will consider how this landmark case was partly misread for decades before the doctrine became entrenched in common law jurisdictions. It will also investigate the status quo of the law of pre-contractual duties in insurance law in different jurisdictions. More importantly, it will explore how the duty of good faith has been developing for the insured and the insurers in both legal traditions. In addition, it endeavours to see whether the evolving law in this regard is consistent with the rising shift from efficiency to fairness in contract law generally.

Convenors:

Hwee Ying Yeo
Associate Professor
Faculty of Law
University of Singapore

Yong Qiang Han
Research Fellow
Centre for Banking & Finance
Faculty of Law
National University of Singapore

Presenters:

Andrea Stäubli
Research & Teaching Assistant
Faculty of Law
University of Zurich

Feng Wang
Post-Doctoral Fellow
Centre for Maritime Law
Faculty of Law
National University of Singapore

Gregory Pynt
Barrister
Francis Burt Chambers
Honorary Fellow
The University of Western Australia

Helmut Heiss
Professor
Faculty of Law
University of Zurich

Hwee Ying Yeo
Associate Professor
Faculty of Law
University of Singapore

Manfred Wandt
Professor
Institute for Insurance Law
Goethe University Frankfurt

Martin Davies
Professor
Law School
Tulane University

Ozlem Gurses
Reader
The Dickson Poon School of Law
King's College London

Robert Merkin
Professor
School of Law
University of Exeter

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Waseda University

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BarryNilsson Lawyers

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Stephen Watterson
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Faculty of Law
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Ulrike Mönnich
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About Centre for Banking & Finance Law

The Centre for Banking & Finance Law (CBFL) at the Faculty of Law, National University of Singapore, seeks to generate scholarship and promote thinking about the vibrancy, robustness and soundness of the banking sector, capital markets and other financial services. Through the research our scholars undertake and the events we organise, we seek to create and share knowledge, to engage stakeholders in an exchange of ideas, and to enhance the appreciation of legal and regulatory issues. We aim to bring greater theoretical and analytical clarity to these issues, to examine their policy impact, and to be a catalyst for ideas on how to improve banking and financial systems at the national, regional and global levels.

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Programme

DAY 1: 30 NOVEMBER 2016

9.30am – 10.00am	Registration / Coffee & Tea
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10.15am – 10.20am	**Opening Remarks** Hwee Ying YEO (Convenor) Associate Professor Faculty of Law, National University of Singapore Yongqiang HAN (Co-convenor) Research Fellow, Centre for Banking & Finance Law Faculty of Law, National University of Singapore
Session 1 **The Rise (or Fall?) of Carter v Boehm (1766) in the UK** **Chairperson: Hwee Ying YEO**	
10.20am – 10.50am	***The History of a Landmark: Carter v Boehm (1766)*** Stephen WATTERSON Lecturer Faculty of Law, University of Cambridge
10.50am – 11.00am	***The Doctrine of Uberrima Fides in Insurance Law – A Critical Evaluation*** Silent presentation in memory of the late Professor Reuben Hasson (Professor Emeritus, Osgoode Hall Law School, York University, Canada) whose article provided groundbreaking research into pre-contractual duties in insurance law.
11.00am – 11.20am	Tea break
11.20am – 11.50am	***Pre-contractual Duty of Fair Presentation of the Risk*** *Özlem GÜRSES* *Reader* *The Dickson Poon School of Law, King's College London*
11.50am – 12.20pm	***Placement of Insurance and the Role of Brokers*** *Robert MERKIN* *Professor* *School of Law, University of Exeter*
12.20pm – 1.20pm	Lunch
Session 2 **Beyond the UK: The Insured's Pre-contractual Duty since Carter v Boehm (1766)** **Chairperson: Stephen WATTERSON**	

1.20pm – 1.50pm	***Time for some catch-up: The Insured's Pre-Contractual Duty of Disclosure in Australia*** Gregory PYNT Barrister, Francis Burt Chambers Honorary Fellow, The University of Western Australia
1.50pm – 2.20pm	***The Insured's Pre-Contractual Duty of Good Faith in Singapore*** Hwee Ying YEO Associate Professor Faculty of Law, National University of Singapore
2.20pm – 2.50pm	***Pre-Contractual Disclosure in the Principles of European Insurance Contract*** Martin DAVIES Professor Law School, Tulane University
2.50pm – 3.20pm	***The Insured's Pre-Contractual Duties to inform according to German law*** Manfred WANDT Professor Institute for Insurance Law, Goethe University of Frankfurt
3.20pm – 3.50pm	***The Insured's Pre-Contractual Informational Duty in Swiss law*** Andrea STÄUBLI Research & Teaching Assistant Faculty of Law, University of Zurich
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4.40pm – 5.10pm	***The Insured's Disclosure in the Principles of European Insurance Contract Law (PEICL)*** Helmut HEISS Professor Faculty of Law, University of Zurich
5.10pm – 5.40pm	***The Insured's Duty of Disclosure under the Chinese insurance law*** Feng WANG Post-Doctoral Fellow, Centre for Maritime Law Faculty of Law, National University of Singapore
5.40pm – 6.10pm	***The Insured's Pre-Contractual Informational Duty*** Professor Satoshi NAKAIDE School of Commerce, University of Waseda
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DAY 2: 1 DECEMBER 2016

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Session 3 Insurer's Pre-contractual Duty since Carter v Boehm (1766) Chairperson: Yongqiang HAN	
9.40am – 10.05am	***The Insurers' Duty of Good Faith*** Özlem GÜRSES Reader The Dickson Poon School of Law, King's College London
10.05am – 10.30am	***The Basis and Scope of the Disclosure Obligations of Insurers in a Digital Age*** Samantha TRAVES Member, Queensland Civil and Administrative Tribunal Consultant, BarryNilsson Lawyers
10.30am – 10.55am	***The Insurer's Pre-Contractual Duty in American Insurance Law*** Martin DAVIES Professor Law School, Tulane University
10.55am – 11.15am	Tea Break
11.15am – 11.40am	***The Insurer's Duty of Good Faith in Singapore*** Hwee Ying YEO Associate Professor Faculty of Law, National University of Singapore
11.40am – 12.05pm	***The Insurer's Duties to inform according to German law*** Manfred WANDT Professor Institute for Insurance Law, Goethe University of Frankfurt
12.05pm – 12.30pm	***The Insurer's Pre-Contractual Information Duties in Swiss law*** Andrea STÄUBLI Research & Teaching Assistant Faculty of Law, University of Zurich
12.30pm – 2.00pm	Lunch cum book launch
Session 3 – Cont'd Insurer's Pre-contractual Duty since Carter v Boehm (1766) Chairperson: Feng WANG	
2.00pm – 2.25pm	***The Insurer's Pre-Contractual Informational Duty in French law*** Sebastien LEROY PhD Candidate Faculty of Law, National University of Singapore
2.25pm – 2.50pm	***Pre-Contractual Information Duties of Insurers in EU Insurance Contract Law*** Helmut HEISS Professor Faculty of Law, University of Zurich Ulrike MÖNNICH Attorney MBH Law (Switzerland)

2.50pm – 3.15pm	***The Insurer's Pre-Contractual Duty of Explanation and Elucidation under the Chinese Insurance Act*** Yongqiang HAN Research Fellow, Centre for Banking & Finance Law Faculty of Law, National University of Singapore
3.15pm – 3.40pm	***The Insurer's Pre-contractual Informational Duty*** Satoshi NAKAIDE Professor School of Commerce, Waseda University
3.40pm – 4.10pm	**Closing Keynote** ***Common law jurisdictions:*** Robert MERKIN Professor School of Law, University of Exeter ***Civil law jurisdictions:*** Helmut HEISS Professor Faculty of Law, University of Zurich
4.10pm – 4.20pm	**Concluding Remarks** Hwee Ying YEO Associate Professor Faculty of Law, National University of Singapore Yongqiang HAN Research Fellow, Centre for Banking & Finance Law Faculty of Law, National University of Singapore
4.20pm – 4.40pm	Tea Break and Post-colloquium Discussion
4.45pm	End of Colloquium / Departure from BTC to Hotel

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About the Speakers

Andrea STÄUBLI
Research & Teaching Assistant
Faculty of Law, University of Zurich

The Insured's Pre-Contractual Informational Duty in Swiss law

The pre-contractual duty of disclosure of the policyholder was introduced to Federal law with the enactment of Insurance Contract Act (ICA) in 1908, which contains a rather detailed regulation in arts 4 – 8 and 75 ICA. Particularly noteworthy is the fact that these provisions do not require the policyholder to disclose relevant facts spontaneously, instead its sole duty is to answer specific questions of the insurer. It must be noted though, that this duty of disclosure only applies to facts material to the risks insured ("erhebliche Gefahrstatsachen"). In regard to all other facts, which might be relevant to the insurer's decision on whether it wants to conclude a contract and if so, under what conditions, the Insurance Contract Acts does not stipulate a duty of information. However, settled case law and academic literature acknowledge a situational pre-contractual duty of the parties involved in contract negotiations to disclose certain facts and clear up misconceptions of the other party, which the policyholder is subject to regarding facts other than those material to the risks.

This paper will discuss the policyholder's duty of disclosure according to arts 4 - 8 and 75 ICA. After a brief introduction into Swiss Insurance Law, an overview of the relevant provisions will be provided. Afterwards, they will be compared to English law.

The Insurer's Pre-Contractual Information Duties in Swiss law

While the pre-contractual duty of disclosure of the policyholder has been firmly established in Swiss law ever since the enactment of Federal Insurance Contract Act (ICA) in 1908, the same cannot be said for the insurer's pre-contractual information duties. In fact, only since January 1st 2007 does the Insurance Contract Act stipulate a standardised information duty of the insurer (arts 3 and 3a ICA). This revision was influenced by the law of the European Union. However, even prior to the introduction of the information duty into the Insurance Contract Act, settled case law and academic literature acknowledged a situational pre-contractual duty of the insurer to disclose certain facts and clear up misconceptions of the policyholder. This duty is based on the principle of good faith and applies to all contracts in general. Furthermore, all parties involved in contract negotiations are subject to it. In addition to the standardised information duty according to the ICA and the aforementioned situational one, duty of the insurer to advise the policyholder is being controversially discussed.

After a brief introduction into Swiss Insurance Law, this paper will discuss the insurer's pre-contractual information duties. The main focus lies on the insurer's information duty according to the recently introduced arts 3 and 3a ICA.

Feng WANG
Post-Doctoral Fellow
Centre for Maritime Law, Faculty of Law, National University of Singapore

Wang Feng joined the Centre for Maritime Law as a Post-Doctoral Fellow on 1 July 2015. Prior to this, he obtained his PhD degree from University of Exeter in Marine Insurance Law, under the supervision of Professor Robert Merkin. He obtained his LLM degree in Maritime Law (with Merit) from the University of Southampton and took his first degrees in Law and in International Shipping Company Management from Dalian Maritime University.

He is working on his first book on *'Warranty of Legality and Public Policy'*. He was the winner of the BILA (British Insurance Law Association) Article Prize in 2014 and had also won the first UK Maritime and Commercial Law Mooting Competition on behalf of University of Exeter. His publications include '*Illegal Performance of Marine Insurance Contracts*' (2014) 127 British Insurance Law Association Journal, and '*Illegality in Marine Insurance Law: a Chinese Perspective*' Journal of International Maritime Law, '*Knowledge of the assured in the context of the pre-contractual duty of disclosure*' Insurance Law Journal and he is going to publish his first book '*Illegality in Marine Insurance Law'* (Informa, 2016).

The Insured's Duty of Disclosure under the Chinese insurance law

Similar to the scenarios in English law, before the policyholders under Chinese insurance law are entitled to claim losses, they also need to prove that their duties under the insurance contract have been fulfilled. Some of their duties are quite general and theoretical. And under most cases, they govern both the assured and the insurer. For example, in Article 5 of Insurance Law of PRC, it states that "The parties to insurance activities shall follow the principle of good faith in their exercise of rights and performance of obligations". The meaning of the phrase "good faith" has not been specified in the statute. However, there are some pre-contractual duties of the policyholder can be seen as specific expressions of Article 5 and the most important one of them is the disclosure of the policyholder. Based on the new amendment Insurance Law of PRC and the new Interpretation III of the Supreme People's Court which just came into effect in 2015, this article will focus on the most updated policyholder's pre-contractual duty in Chinese insurance law which also includes the duty of disclosure.

This article will begin with the introduction of current law in China including some cases, after that the problematic of current Chinese system will be considered and finally, this article will have a glance at the special rule of marine insurance in China.

Gregory PYNT
Barrister, Francis Burt Chambers
Honorary Fellow, The University of Western Australia

Greg graduated from the University of Western Australia with a Bachelor of Laws in 1977 and moved to London in 1981 where he worked for Willis Faber & Dumas, Insurance Brokers. Between 1981 and 1983, Greg worked in the Litigation Department of Clifford-Turner (now known as Clifford Chance) in London. He then returned to Perth and in 1987 became a partner in Mallesons Stephen Jaques (now King & Wood Mallesons). Greg left Mallesons Stephen Jaques in April 1996 to set up Pynt + Partners. He left Pynt + Partners in October 2012. Greg was a Senior Claims Solicitor at Law Mutual (WA) between December 2012 and May 2013 and joined Francis Burt Chambers as a barrister in July 2013.

Greg won the Australian Insurance Law Association Insurance Prize in 2000 and is an AILA Honorary Life Member. He is a Visiting Fellow at the University of Western Australia where he has co-ordinated and lectured in insurance law in the Faculty of Law at undergraduate and postgraduate level since 1991. The 3rd edition of his book 'Australian Insurance Law: A First Reference' was published in November 2014. Greg is also the General Editor of the Insurance Law Journal, published by LexisNexis.

Time for some catch-up: The Insured's Pre-Contractual Duty of Disclosure in Australia

The Court of Kings Bench at the Guildhall, London a quarter of a millennium ago: Lord Mansfield delivers his seminal judgment in *Carter v Boehm* (1766) 3 Burr 1905; 97 ER 1162.

Amongst other things, Lord Mansfield's judgment established the following:

a) an insurance contract is based on utmost good faith;
b) utmost good faith requires pre-contractual disclosure of material facts by insured and insurer to each other;
c) an insured does not have to disclose to an insurer various matters, one of which is that which an insurer ought to know;
d) avoidance of an insurance contract is the only remedy available to an innocent party for another party's failure to discharge its pre-contractual duty of disclosure.

Thirty years ago, the Australian *Insurance Contracts Act 1984* (ICA), 'Part IV— Disclosures and misrepresentations', reformed and modernized the law relating to a policyholder's pre-contractual duty of disclosure so as to strike a fair balance between the interests of insurer and insured. A review in 2003/2004 resulted in some changes to Part IV ten year later.

In striking a fair balance, Part IV created its own complexities. For example, there are arguably three disclosure regimes for those contracts of insurance subject to the ICA:

a) insurance contracts governed by s 21 of the ICA;
b) insurance contracts governed by ss 21A and 21B of the ICA; and
c) certain life insurance contracts.

And there is a common law disclosure regime for contracts not subject to the ICA, for instance contracts of reinsurance, and contracts of marine insurance subject to the *Marine Insurance Act 1909* (Cth).

Australia now needs to take a hard look at further reform of the common law, the MIA and the ICA to bring a policyholder's pre-contractual duty of disclosure in Australia up to date with developments in the United Kingdom (eg. the *Consumer Insurance (Disclosure and Representations) Act 2012* and the *Insurance Act 2015*) and in other common law and civil jurisdictions.

This Paper addresses these issues.

Helmut HEISS
Professor
Faculty of Law, University of Zurich

Helmut Heiss is a full (or tenured) professor at the University of Zurich. He previously held professorships in Germany and Austria. He is admitted to the bar at the Munich Higher Regional Court and has practised in Zurich since 2011.

He is also active as an arbitrator, he acts as trustee to two German insurance companies and provides expert evidence. He focuses on Swiss, German, Austrian, Liechtenstein, international and European insurance law, general contract law, Liechtenstein Company, Foundation and Trust Law as well as International Private and Procedural Law. One of the primary areas of his practice is insurance law advice for domestic and international arbitration and litigation, in particular in international liability cases, such as class action lawsuits in the United States.

Helmut also chaired the Task Force on the "Principles of European Insurance Contract Law (PEICL)" and he now leads the Task Force on the "Principles of Reinsurance Contract Law (PRICL)". He was, inter alia, Member of the Commission of Experts of the European Commission on the European Insurance Contract Law and has repeatedly advised legislators in various matters

The Insured's Disclosure in the Principles of European Insurance Contract Law (PEICL)

Following a total of fifteen years of work by academics in the Project Group on a Restatement of European Insurance Contract Law, the second expanded edition of the Principles of European Insurance Contract Law (PEICL) was published in November 2015. The PEICL are an attempt to provide a model law on European insurance contract law, by providing provisions which reflect the current status of insurance law. The work is based on the conviction that the creation of a uniform European insurance contract law, implemented through the adoption by the European legislature of a European regulation, would eliminate the obstacles to the functioning of the internal insurance market created by the differences of national insurance contract laws, thereby benefitting the internal market.

The PEICL were drafted as an optional instrument. If enacted by the European legislature as a European Regulation, Article 1:102 ensures that the PEICL would only be applied in cases where the parties make a choice of law in favour thereof, thus preventing the PEICL Regulation from always having direct effect. To ensure that differences in national law are overcome by the PEICL, a choice in favour of applying the PEICL would lead to mandatory national provisions being superseded under Article 1:105 para 1 PEICL, which states that '[n]o recourse to national law … shall be permitted'. This includes national rules on pre-contractual disclosure.

Pre-contractual disclosure is regulated in Articles 2:101 – 2:106 PEICL. Moreover, Article 1:207 PEICL (Non-Discrimination) and Article 1:208 PEICL (Genetic Tests) are of significant relevance. The article will discuss the relevant provisions of the PEICL and compare them with the Consumer Insurance (Disclosure and Representations) Act 2012 and the Insurance Act 2015 as enacted in the UK.

Pre-Contractual Information Duties of Insurers in EU Insurance Contract Law

The so-called second and third generation of European directives on insurance law, which have meanwhile been replaced by the entry into force of a new Directive 2009/138/EC (hereinafter "Solvency II Directive"), have established a system of single licence and home country control. Through this system, national licences granted by EU Member States have become European "passports", allowing European insurers to provide their services or establish themselves in any other Member State without having to obtain another licence. At the same time, the third generation of insurance directives has deregulated national insurance markets by, among other things, forbidding Member States to require any ex ante scrutiny of general insurance contract terms. As a consequence, European insurance markets have become more competitive, giving policyholders a choice of a variety of insurance products. Such a choice has to be made by the applicant with care and on the basis of sufficient

information. Clearly, integration and deregulation of European insurance markets have increased the need of policyholders for information and advice.

The EU has to a certain degree responded to the needs of applicants for pre-contractual information. A duty to provide applicants with pre-contractual information has been imposed on insurers in various directives. This way the European legislator follows the so called "information model" of protecting the policyholder. The aims of this model, i.e. to enable the applicant to do an "informed choice" has, however, not been fully achieved. This is due to inter alia an inconsistent approach of the European legislator which caused an overload of information for the applicant.

The European legislator has raised the level of regulation following the financial crisis in 2008. Regulation (EU) No 1286/2014 ("PRIIPs) and Directive (EU) 2016/97 ("IDD") give a relaunch of the information model by introducing an obligation to hand out "key information document" (PRIIPs) or a "product information document" (IDD). It is, however, doubtful whether these new requirements will solve the problems of the traditional information model.

The paper will give a concise overview on the information requirements and analyse to what extent problems with the traditional information model have been overcome by PRIIPs and IDD.

Hwee Ying YEO
Associate Professor & CBFL Academic Fellow
Faculty of Law, University of Singapore

Hwee Ying YEO is an Associate Professor at NUS Faculty of Law, and an Academic Fellow of the Centre for Banking and Finance Law. She is the course coordinator of the Law of Insurance at both LLB and LLM levels.

Professor Yeo's research interest lies primarily in commercial law and has published in international journals such as '*Modern Law Review*', *'Journal of Business Law'*, *'Lloyd's Maritime & Commercial Quarterly'*, *'Legal Studies and International & Comparative Law Quarterly'*. She has delivered commercial law seminars at workshops organized by the Singapore Academy of Law, Housing & Development Board, Consumer Association of Singapore and various other professional bodies. Her overseas stints include working in the London office of Clifford Chance as well as Visiting Scholar appointments at University of California (Berkeley) and Monash University.

The Insurer's Duty of Good Faith in Singapore

The duty of good faith was originally intended to be reciprocal as spelt out by Carter v Boehm. However, its application has generally been wholly one-sided and almost entirely foisted on the insured until a few decades ago when the case of Banque Financiere de la Cite v Westgate Insurance [1991] 2 AC 249 breathed some life into it and impelled the insurer to likewise act in good faith. Unfortunately, this reciprocal duty appears not to be as well developed when applied to the insurer. This could be related to the scope of the remedy available in so far as the courts have been reluctant to award damages for the breach of this duty. However, there has been some recent local cases highlighting the possibility of a more even-handed approach in Singapore, signalling a judicial change of heart in attempting to even out the scales of this seemingly one-sided doctrine. There has been local jurisprudence suggesting there is an obligation on the part of the insurer to draw an insured's attention to any unusual terms in the policy, and even to use this duty as an interpretative aid. In that sense, it was progressive in pre-empting some aspects of the current English reform where the duty of good faith is now meant to be an interpretative principle. Nevertheless, the scope of the duty in Singapore (which should generally closely emulate the English common law) remains unclear and narrow. In light of the recent English legislative reforms which have clarified and broadened the scope of the insurer's duty of good faith, there is a pressing need for change in Singapore lest the local position becomes out of touch with international trends.

The Insured's Pre-Contractual Duty of Good Faith in Singapore

Carter v. Boehm has laid the foundation for the principle of utmost good faith in insurance law in common law jurisdictions as well as established the uberrimae fidei principle in Singapore. At its core, the uberrima fidei principle imposes a reciprocal duty on both the insurer and the insured to demonstrate good faith pre- and post-contractually. Naturally, the most classic and notorious aspect of the duty pertains to the insured's pre-contractual duty of disclosure. As an ex-British colony and a legatee nation, Singapore has received much of this jurisprudence. This paper examines how local courts in Singapore have dealt with this doctrine, developed the law and whether Singapore has similarly imported the unsatisfactory position.

The problems in the much-panned pre-contractual duty have finally been addressed in England by the pivotal statutory amendments which have dichotomized the consumer and business regime. Singapore is now at the crossroads and has to decide whether it is to remain static or be unshackled from the worst excesses of the common law pre-contractual duties. This paper submits that the recent UK legislative changes may shed some light and provide a model for Singapore to consider emulating in order to ensure a fairer regime.

Manfred WANDT
Professor
Institute for Insurance Law , Goethe University Frankfurt

Manfred Wandt studied Law at the universities of Mannheim, Paris and Strasbourg. He wrote his doctoral thesis on conflict of laws and his post-doctoral thesis on international product liability. He taught as a professor at the University of Hannover, and holds the Chair of Civil Law, Commercial and Insurance Law, Private International Law and Comparative Law at Goethe University, Frankfurt, since 1995. His academic work focuses on Contract Law, Tort Law and Insurance Law in the European and International context.

He is director of the "Institut für Versicherungsrecht" (Institute for Insurance Law) and member of the executive board of the International Center for Insurance Regulation and the Institute for Law and Finance, at which he is responsible for the insurance section of the postgraduate program (LL.M. Finance). He is also the editor-in-chief of the journal "Zeitschrift für Versicherungsrecht, Haftungs- und Schadensrecht VersR" (Journal of Insurance and Liability Law) and co-editor of the "Zeitschrift für die Gesamte Versicherungswissenschaft" (Journal of Insurance Sciences).

Manfred is a member of the PEICL and PRICL Group and other professional associations, including the Committee of the "Deutsche Verein für Versicherungswissenschaft" (German Association of Insurance Sciences), at which he serves as vice-president, and the International Association of Insurance Law/Association Internationale de Droit des Assurances (AIDA), at which he is member of the Presidential Council and chairman of the German Chapter. Since 2010, he is a member of the Insurance Advisory Board of the German Federal Financial Supervisory Authority (BaFin).

The Insured's Pre-Contractual Duties to inform according to German law

Insurers require information about the circumstances influencing the risk in order to decide whether or not to accept the application for insurance and in order to calculate the premium. Since these circumstances lie mostly in the knowledge of the applicant, full disclosure of these facts is of fundamental importance to the insurer's decisions. Under the former German Insurance Contract Act (VVG –Versicherungsvertragsgesetz) the applicant had a duty to disclose any material information on his own initiative. The applicant would bear the 'interpretative risk' concerning the materiality. These rules were considered as unduly burdensome to the applicant and therefore no longer complying with modern requirements on consumer protection. According the revised Act of 2008 the scope of the duty of disclosure depends on the range of the insurer's questionnaire. Pursuant to sec. 19 subsec. 1 VVG, the policyholder has to notify the insurer of all risk factors known to him which are relevant to the insurer's decision to conclude the insurance contract and which the insurer has requested in writing. Only in cases of obviously extraordinary and material information which particularly affect the insurer's interests German law also provides a restricted duty of spontaneous disclosure – developed from the principle of utmost good faith. The consequence of a non-disclosure is the insurer's right to avoid or to adapt the contract.

The paper will analyse this duty of disclosure. Specific focus will be given to the requirements for the insurer´s questionnaire and to the consequences of the involvement of intermediaries.

The Insurer's Duties to inform according to German law

A policyholder's clear comprehension of his insurance cover is an important principle underlying German Insurance Law from the very beginning of the twentieth century on – at least from a regulatory perspective. With the enactment of the revised German Insurance Contract Act ("Versicherungsvertragsgesetz – VVG") in 2008, the insurer's duties to inform were substantially enlarged and broadened. Further ascertainment of pre-contractual information was set out by the Regulation on Duties of Information Relating to Insurance Contracts ("VVG Informationspflichtenverordnung – VVG-InfoV"). It comprises a comprehensive catalogue of basic information relevant to all insurance contracts as well as additional requirements for life insurance and differing types of personal insurances. These duties to inform are accompanied by duties to advice with regard to the individual

demands and needs of the prospective policyholder and to record given advice (secc. 6, 7 VVG). The paper will analyse the general duties to inform and to advise governed by secc. 6, 7 VVG. In addition, the applicability of general principles of contract law, especially the principle of good faith ("Treu und Glauben") will be addressed.

Martin DAVIES
Professor
Law School, Tulane University

Martin Davies is Admiralty Law Institute Professor of Maritime Law at Tulane University Law School in New Orleans, Director of the Tulane Maritime Law Center, and Professorial Fellow at Melbourne Law School, Australia.

He holds the degrees of M.A. and B.C.L. from Oxford University, England, and an LL.M. from Harvard Law School. Before joining Tulane, he was Harrison Moore Professor of Law at The University of Melbourne in Australia and before that he taught at Monash University, The University of Western Australia and Nottingham University. He has also been a visiting professor at universities in Italy and Singapore.

Martin is author (or co-author) of books on maritime law, international trade law, conflict of laws, and the law of torts, and has also published many journal articles on these topics. He also has extensive practical experience as a consultant in maritime matters and general international litigation and arbitration, in Australia, Singapore, and the USA. He has advised on cargo claims, arrest and admiralty matters, drafting bills of lading, sea waybills and charter parties, collisions and limitation of liability, oil pollution, salvage, marine insurance, maritime arbitrations and international sale of goods.

Pre-Contractual Disclosure in the Principles of European Insurance Contract

Following a total of fifteen years of work by academics in the Project Group on a Restatement of European Insurance Contract Law, the second expanded edition of the Principles of European Insurance Contract Law (PEICL) was published in November 2015. The PEICL are an attempt to provide a model law on European insurance contract law, by providing provisions which reflect the current status of insurance law. The work is based on the conviction that the creation of a uniform European insurance contract law, implemented through the adoption by the European legislature of a European regulation, would eliminate the obstacles to the functioning of the internal insurance market created by the differences of national insurance contract laws, thereby benefitting the internal market.

The PEICL were drafted as an optional instrument. If enacted by the European legislature as a European Regulation, Article 1:102 ensures that the PEICL would only be applied in cases where the parties make a choice of law in favour thereof, thus preventing the PEICL Regulation from always having direct effect. To ensure that differences in national law are overcome by the PEICL, a choice in favour of applying the PEICL would lead to mandatory national provisions being superseded under Article 1:105 para 1 PEICL, which states that '[n]o recourse to national law … shall be permitted'. This includes national rules on pre-contractual disclosure.

Pre-contractual disclosure is regulated in Articles 2:101 – 2:106 PEICL. Moreover, Article 1:207 PEICL (Non-Discrimination) and Article 1:208 PEICL (Genetic Tests) are of significant relevance. The article will discuss the relevant provisions of the PEICL and compare them with the Consumer Insurance (Disclosure and Representations) Act 2012 and the Insurance Act 2015 as enacted in the UK.

The Insurer's Pre-Contractual Duty in American Insurance Law

American law about insurers' pre-contractual disclosure is very far from being uniform. Regulation of insurance practices is a matter of state law, with minimal federal intervention. As a result there is a wide variety of practices in the 50 states and other US jurisdictions. Some states require disclosure by specific statutes relating to insurance practices, others by general consumer protection legislation, and others not at all. Many states use a doctrine of interpretation of insurance contracts called the 'reasonable expectations doctrine', which gives rise to a strong incentive for insurers to make pre-contractual disclosure, albeit not a legal obligation. The only federal law having any potential impact on pre-contractual disclosure by insurers is the Racketeer Influences and Corrupt Organizations Act (RICO).

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Ozlem has published a number of articles and two books in reinsurance, insurance and marine insurance law. She is the author of '*Reinsuring Clauses* and '*Marine insurance Law'*, both published by Informa, and she is currently working on a book on *'Insurance of Commercial Risks*' which will be published by Sweet and Maxwell later in 2016. She also contributed to the marine insurance chapter of *'Maritime Law'* which was published by Informa.

Ozlem is a member of the Presidential Council and the Reinsurance Working Party of International Association of Insurance Law (AIDA); she regularly presents paper on reinsurance law at the conferences organised by AIDA. As well as being responsible for the marine insurance course taught at Southampton Law School, she teaches insurance and marine insurance law at different courses in Italy, Singapore, Germany and Greece.

Pre-Contractual Duty of Fair Presentation of the Risk

Before the law reform in England, the MIA 1906 sections 17-20 used to set out the pre-contractual duty of utmost good faith. The relevant sections explained the scope of the duty of disclosure and the duty not to misrepresent material facts. Sections 18 and 20 set out the test of materiality, the inducement test was implied by the House of Lords in Pan Atlantic v Pine Top [1995] 1 A.C. 501 and the only remedy for breach of the duty of good faith was avoidance of the contract. The Consumer Insurance (Disclosure and Representation) Act 2012 reformed the duty in consumer insurance and Insurance Act 2015 reformed the duty in the context of business insurance. Under the 2012 Act the duty is 'to take reasonable steps not to make misrepresentation'. The duty of disclosure was abolished by the 2012 Act in the consumer insurance context. In business insurance, the pre-contractual duty of good faith is renamed as the duty of 'fair presentation of the risk'. The Insurance Act 2015 repealed sections 18-20 of the MIA 1906 and brought new provisions regulating the duty. The new sections introduced by the Insurance Act 2015 are not dramatically different to the sections repealed. The major difference is, similar to the 2012 Act, the 2015 Act introduced a proportionate remedy for breach of the pre-contractual duty of fair presentation of the risk. Unlike the 2012 Act, the 2015 Act retained the duty of disclosure in non-consumer insurance. On the other hand, neither the 2012 Act nor the 2015 Act mentions about the insurers' duty of good faith or post-contractual duty of good faith. The only guidance is the wording of section 17 of the MIA 1906 and the common law. In my paper I will analyse the scope of the law reforms in consumer and business insurance with regard to the pre-contractual duty of fair presentation of the risk which clearly is expressed as being a duty imposed on the assured.

The Insurers' Duty of Good Faith

The Marine Insurance Act 1906 section 17 stated that a contract of marine insurance is a contract of utmost good faith. Before it was partly repealed by the Insurance Act 2015 this section also used to be worded as "if the utmost good faith be not observed by either party, the contract may be avoided by the other party." Such wording clearly indicated that the duty of good faith was a mutual duty that applied to the assured as well as the insurer. On the other hand sections 18 and 20 of the MIA 1906 set out the details of the pre-contractual duty of disclosure and also the duty not to misrepresent material facts from the assured's point of view. Therefore whilst the existence of the insurer's duty was not questioned, neither the courts nor the MIA 1906 provided a satisfactory conclusion with regard to the scope of the duty and an appropriate remedy in case it is breached. My paper published in ILJ 2012 tried to present the then position under English law.

The law has changed in England since the abovementioned article was published in 2012. First, Consumer Insurance (Disclosure and Representations) Act 2012 reformed the duty of utmost good faith in the context of consumer insurance. The 2012 Act came into force in 2013. Following the law reform in consumer insurance, in 2015 the Insurance Act 2015

received Royal Assent and came into force in August 2016. The 2015 Act reformed a number of issues including the duty of utmost good faith in business insurance. Both the 2012 and 2015 Acts clearly identify the relevant duty as pre-contractual which is imposed on the assured only. Neither of these Acts brought any express provision about the insurers' pre-contractual duty of disclosure or not to misrepresent material facts.

On the other hand one noteworthy reform is that section 17 of the MIA 1906 was partly repealed by the Insurance Act 2015 that whilst the words which state the remedy for breach of the duty of good faith was avoidance only was abolished, the first part of this section that "A contract of marine insurance is a contract based upon the utmost good faith" was left unscathed.

Thus, it is arguable that insurers' are under the duty to exercise good faith. Such duty may apply at the pre-contractual or may be more than that at the post-contractual stage.

However, no guidance is provided by these law reforms either in terms of the scope of the insurer's duty or an appropriate remedy for breach of this duty. The matter seems to have been left to the common law. In my paper I will discuss the scope of the duty f good faith under section 17 and what remedies may be imposed in case the duty is breached as these issues have been discussed by English courts.

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Rob is Honorary Professor of Law at the University of Queensland, visiting Professor at the Universities of Sydney, Hong Kong and Auckland, and Special Counsel to DLA Piper. He is past president of the British Insurance Law Association, vice-president of the International Association of Insurance Law (AIDA) and a consultant to the English and Scottish Law Commissions for their project on the reform of insurance law. In 2009 he was Distinguished Visitor for the Singapore Academy of Law, in 2010 he was awarded a prize by the Australian Insurance Law Association for his contribution to insurance law and in 2012 he was appointed to the Hotung Fellowship by the University of Canterbury, Christchurch, to deliver a series of lectures on earthquake insurance. In 2014 he was awarded a higher doctorate (LLD) by Cardiff University and acted as Special Adviser to the House of Lords Special Public Bills Committee on the Insurance Bill (now Act). In 2015 he was made a QC honoris causa by the Crown. He gives regular seminars for insurance companies, brokers, insurance regulators and law firms in the UK and internationally.

Placement of Insurance and the Role of Brokers

Much attention is given to the duties of the assured to disclose, and not to misrepresent, material facts. Legal systems vary as to the tests to be applied and as to the relevance of the assured's knowledge. However, in the commercial market – and particularly in London – much of this is irrelevant, because the overwhelming majority of risks are placed through brokers. The common law reached the conclusion that a broker owed a distinct duty of disclosure, but the scope of the duty and the consequences of its breach were uncertain. Australian legislation, the Insurance Contracts Act 1984 (Cth) is largely consumerist in its vision and pays no attention to the reality of broker placements. New Zealand legislation, the Insurance Law Reform Act 1977, has – aiming at the problem of insurance agents - unwittingly transferred the placement duties of a broker to the insurers. The UK Insurance Act 2015 has attempted an uneasy and unpredictable compromise. This paper will consider the issues arising in a broker market and how different common law systems have addressed them.

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Satoshi Nakaide is a Professor of School of Commerce, Waseda University, Tokyo. After graduating from Hitotsubashi University in 1981, Satoshi joined the Tokio Marine and Fire Insurance Company Ltd. and worked for it over 28 years. In the Tokio Marine, his primary work was the settlement of insurance claims and later he became the Head of its Legal Department and Leader of the Compliance Group, responsible for the supervision of major litigations, shareholders' meeting and the promotion of compliance in the group companies worldwide. In 2009, he retired from Tokio Marine and became the Associate Professor of Waseda University and became its Professor in 2013. He was the Assistant Dean of the School of Commerce and the Associate Dean of Centre for International Education, Waseda University.

Satoshi obtained LL.M. from London School of Economics and Political Science and Diploma in Legal Studies from Cambridge University. In 2015, a higher doctorate degree was conferred on him for his thesis on the principles of indemnity insurance contract by Waseda University.

Satoshi's main interest is insurance law including its regulatory law and he has published a number of books and articles on it. He was awarded two academic prizes in 2012 for his books on the marine insurance law, as a co-author, and on the law of maritime collision, as a co-author, respectively. He has made various presentations in Japan, Korea, Taiwan, Australia, USA, Portugal, Italy, France, UK and Germany.

Satoshi is also active in the education of practitioners and lecturing regularly for the practitioners. He acted as an external director of the Anicom Holdings Co., an insurance holding company in Japan. He is the Vice-Chairman of Marine Insurance Working Group of the International Association of Insurance Law and the Executive Director of the International Academy of Financial Consumers.

The Insured's Pre-Contractual Informational Duty

This paper shows the Japanese law on the Policyholder's pre-contractual informational duty. Japan adopts the civil law system and this paper shows, first, the general structure of the Japanese law on insurance, including the relationship between the Insurance Act 2008 and the Insurance Business Act 1995. Then, it shows the rules laid down by the Insurance Act 2008 on the policyholder's pre-contractual informational duty. Under the Act, the assured's duty is to disclose material facts on the risk which the insurer requested to disclose. Breach of this duty by wilful misconduct or gross negligence will give the insurer a right to cancel the contract. The insurer is relieved from paying for a claim which occurred even before cancelation. If the assured shows that the loss has occurred not relating to the non-disclosed fact, the insurer must pay for the claim irrespective of the assured's breach of duty. These rules of the Insurance Act are semi-mandatory and it is not allowed to alter them to the detriment of policyholder etc. of consumer insurance. This paper shows the interpretation of these rules as well as the theory behind them and their relation with the general duty of good faith under the Civil Code. Thirdly, this paper shows regulations imposed by the Insurance Business Act 1995 and the guidelines of the supervisory body relating to the policyholder's disclosure which facilitate proper transactions of effecting insurance contracts. Readers will have a wide picture on the Japanese insurance law relating to the duty of disclosure.

The Insurer's Pre-contractual Informational Duty

This paper shows the law on the insurer's pre-contractual informational duty in Japan. The provision of information on and explanation of the insurance contract are very important in preventing disputes between policyholder/assured and insurer. This process, however, is performed through intermediaries in many cases. Therefore, the paper first shows the legal position of intermediaries in Japan and then shows the law on the insurer's duty to provide information. The Insurance Act 2008 is the primary law covering various issues on insurance contracts. However, it does not contain any provision on this duty. It was examined whether to include a provision on this duty into the Act but was decided not to do so. The reason is that the duty will be dealt better

by various Acts which regulate sales of insurance products and by general contract law. Based on this legal status, this paper shows the duties of the insurer under various Acts including the Insurance Business Act 1995 and then explains the insurer's duty of good faith under the Civil Code. Against the violation of regulatory law, administrative sanctions may be ordered. Serious violation may amount to a criminal offence. Under the private law, the assured will be able to claim damages for its loss in tort. Pre-contractual provision of information is very important also for various financial products. Therefore, the law on insurance needs to develop along with those on various financial products. Readers will find how the Japanese approaches this duty by using various Acts.

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She is a former member of the committee of the National Insurance Lawyers Group of the Law Council of Australia. Currently serves on the Scientific Council of the Association International de Droit des Assurances (AIDA) and is a member of the Queensland Law Reform Commission and Queensland Civil and Administrative Tribunal.

The Basis and Scope of the Disclosure Obligations of Insurers in a Digital Age

The Insurance Contracts Act 1984 (Cth) imposes an obligation of utmost good faith on insurers which, through s 13 and related provisions applies to the performance of the contract and to the time prior to the contract of insurance. In addition s 14 of the Act directs attention to whether, in the circumstances of the particular claim, it is a breach of the obligation of utmost good faith to rely upon a term. Together these provisions cast quite onerous obligations on the insurer and, where the obligations are not complied with, can have serious consequences. This paper addresses the obligations of utmost good faith and related obligations on insurers in relation to terms of the contract and to reliance by the insurer on them. It also considers whether, given the recent application of electronic transactions legislation to insurance contracts, these obligations may be met by electronic communications.

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Sebastien research focuses on comparative contract law, and more specifically on long-term contractual relationships. He is interested in the effect of change of circumstances, and the role played by consent and good faith.

The Insured's Pre-Contractual Informational Duty under French law

Insurance is a mechanism which purpose is to mitigate the consequences of the occurrence of particular events collectively (principle of mutuality). At the time of conclusion of the insurance contract, the insurer is in the weaker position because the likelihood of the occurrence of those events mainly depends on each policyholder's personal situation. Hence, the insurer needs to rely on the reporting of risk to determine the adequate premium to safeguard the principle of mutuality. The reporting of risk is thus crucial. The French legislator has elaborated a legal regime related to this particular issue. The purpose of the paper is to provide an overview of the rules related to the policyholder's obligation to answer exactly to the insurer's questions and the pivotal role played by the policyholder's behaviour in the availability of the remedies for the insurer when the reporting appears to be inaccurate. Hence, the legislator has rejected the principle of the spontaneous statement of risks and has embraced the principle of the closed questionnaire. The insurer needs to ask the questions that he thinks relevant to the particular insured risk. The remedy available when the reporting appears to be inaccurate will depend on the good faith (the insurer can increase the premium or decrease the indemnity) or bad faith of the policyholder (the insurer can both cancel the contract and keep the paid premium). The paper will also provide a focus on the issue related to the pre-written statements signed by policyholders. The Supreme Court has recently rejected the use of the pre-written statement as a substitute to questionnaires was subject to justified critics mainly because it favours blatant policyholders' acts of bad faith. But recent cases have tempered the harshness of this solution.

The Insurer's Pre-Contractual Informational Duty in French law

The general duty of good faith plays a significant role in the monitoring of contractual behaviour in French contract law. The duty is usually associated with the duties of loyalty, cooperation and coherence during the performance of the contract. But the duty of good faith has also served as a legal basis for the introduction of a general obligation to inform and to counsel to help the profane co-contractor to make an informed choice. Hence, a professional proposing a good or a service is required both to provide the adequate information related to the contract, and to provide information adapted to the other party's knowledge. The obligation to inform is now specifically codified in the civil code while the duty to advise remains part of the now codified general duty to negotiate in good faith. Those general rules apply to all contracts, and thus they also apply to insurance contracts. Due to the distinct nature of those contracts, both legislators and judges have extensively developed those duties. The purpose of this paper is to show the pivotal role that good faith plays in the conclusion of insurance contracts. The paper provides an overview on the substance of the both obligations as developed by the courts and by the code des assurances ("code of insurances"). It also details the remedies associated with the violation of those obligations and shows that the remedy available will depend on the behaviour of either the insurer for ordinary remedies or the policyholder in the particular case of life insurance contracts.

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Stephen Watterson holds the positions of University Lecturer in Law, University of Cambridge, and John Collier Fellow in Law, Trinity Hall, Cambridge. He joined the University of Cambridge in 2012, having previously held positions at the London School of Economics (Senior Lecturer 2008-2012), the University of Bristol (Lecturer/Senior Lecturer 2002-2008), the University of Oxford (Lecturer in Law, St John's College, Oxford 2000-2001), and the Law Commission of England and Wales (Research Assistant, Common Law Team 1996-1998). He studied law at Oxford (BA 1993-1996; DPhil 1998-2002).

His teaching ranges widely across private law subjects, but his primary research interests are in the areas of Unjust Enrichment and Banking/Financial Law. He is a co-author of '*Goff & Jones: The Law of Unjust Enrichment*' (8th ed 2011, 9th ed 2016) (with Charles Mitchell and Paul Mitchell) and of '*Subrogation: Law and Practice*' (2007) (with Charles Mitchell), as well as a contributor to FD Rose, '*Marine Insurance: Law and Practice*' (1st edn 2004, 2nd edn 2012).

The History of a Landmark: Carter v Bohm (1766)

Lord Mansfield's judgment in Carter v Boehm undoubtedly ranks as a landmark in the development of the common law's rules concerning non-disclosure between parties to insurance contracts. Unfortunately, 250 years on, and as the case is relegated to the footnotes of modern texts, its real significance can be easily missed. As the leading early authority in an area of law that has come to be viewed, and criticised, as dramatically pro-insurer in orientation, it is easy to assume that Carter v Boehm shared that bias. Little could be further from the truth. Lord Mansfield began his judgment with an unprecedented statement of common law principle, one purpose of which was to explain the many circumstances in which an insurer could not avoid liability for material non-disclosure by a prospective insured. The same orientation is also evident in the robust manner in which Lord Mansfield proceeded to apply those principles to the case at hand. Every ground for resisting liability offered by Charles Boehm, the underwriter named as defendant in the 1766 litigation, was rejected.

On the 250th anniversary of Carter v Boehm, it seems timely to remind ourselves of this important historical reality. To this end, this chapter – a product of extensive archival research – proceeds in three stages. It begins by outlining so much of the historical background as is required for a proper understanding of the litigation, before looking more closely at the nature of Carter's insurance policy. It concludes by revisiting Lord Mansfield's judgment, focusing first on Lord Mansfield's seminal statement of the law of non-disclosure, and then on the court's resolution of Boehm's arguments for avoiding liability.

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Ulrike also lectures and publishes on European, Swiss, German and Liechtenstein insurance law regularly. She is head of the Head of the Section for Liechtenstein of the Swiss Society for Liability and Insurance Law (SGHVR).

Pre-contractual information duties of insurers in EU insurance contract law

The so-called second and third generation of European directives on insurance law, which have meanwhile been replaced by the entry into force of a new Directive 2009/138/EC (hereinafter "Solvency II Directive"), have established a system of single licence and home country control. Through this system, national licences granted by EU Member States have become European "passports", allowing European insurers to provide their services or establish themselves in any other Member State without having to obtain another licence. At the same time, the third generation of insurance directives has deregulated national insurance markets by, among other things, forbidding Member States to require any ex ante scrutiny of general insurance contract terms. As a consequence, European insurance markets have become more competitive, giving policyholders a choice of a variety of insurance products. Such a choice has to be made by the applicant with care and on the basis of sufficient information. Clearly, integration and deregulation of European insurance markets have increased the need of policyholders for information and advice.

The EU has to a certain degree responded to the needs of applicants for pre-contractual information. A duty to provide applicants with pre-contractual information has been imposed on insurers in various directives. This way the European legislator follows the so called "information model" of protecting the policyholder. The aims of this model, i.e. to enable the applicant to do an "informed choice" has, however, not been fully achieved. This is due to inter alia an inconsistent approach of the European legislator which caused an overload of information for the applicant.

The European legislator has raised the level of regulation following the financial crisis in 2008. Regulation (EU) No 1286/2014 ("PRIIPs) and Directive (EU) 2016/97 ("IDD") give a relaunch of the information model by introducing an obligation to hand out "key information document" (PRIIPs) or a "product information document" (IDD). It is, however, doubtful whether these new requirements will solve the problems of the traditional information model.

The paper will give a concise overview on the information requirements and analyse to what extent problems with the traditional information model have been overcome by PRIIPs and IDD.

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The Insurer's Pre-Contractual Duty of Explanation and Elucidation under the Chinese Insurance Act

The Chinese Insurance Act (as amended in 2009) expressly imposes informational duties on insurers. Basically such duties fall into two kinds: the duty to explain, and the duty to remind. Where an insurance contract is concluded on standard terms and conditions proffered by the insurer, the insurer should explain the content of the contract to the policyholder. Meanwhile, regardless of whether the contract is standard or not, for insurance contract terms which exempt (mianchu) insurer's liabilities or obligations, the insurer should firstly remind the policyholder of such terms in a manner which will sufficiently bring them to the policyholder's attention, and then clearly explain in writing or in speaking to policyholders the content of such terms. In the absence of reminding or explaining as such, the terms of exemption are invalid. However, it is not clear whether or not exemption is different from exclusion or exception, nor is there a unified test or yardstick for the degree of clarity required of explanation, these provisions have given rise to much inconsistencies in the judicial applications thereof and have been reportedly onerous to insurers. The People's Supreme Court has issued Judicial Interpretations to deal with the issues arising from them, but they are not free from inconsistencies.

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