

PRE-CONTRACTUAL DUTY OF NOTIFICATION

- a) Until the time of submission of its contractual declaration, the party seeking insurance must notify the insurer of all risk circumstances known to it about which the insurer made enquiries in text form and which are important for the insurer's decision to conclude the contract with the agreed content. The party seeking insurance also has a duty of notification to the extent to which the insurer asks questions of this type after its contractual declaration but before acceptance of the contract.
- b) Incomplete and incorrect statements about risk-relevant circumstances entitle the insurer to withdraw from the insurance contract.

In case of withdrawal, there is no insurance cover. If the insurer withdraws after the event insured against occurs, it may not refuse insurance cover if the insured party proves that the circumstance incompletely or incorrectly notified did not cause the occurrence of the event insured against or gave rise to the payment of insurance benefits or the scope of the benefits payable. In this case too, there is no insurance cover if the insured party maliciously breached the duty of notification. The insurer is entitled to the part of the premium corresponding to the contractual period up until the time at which the declaration of withdrawal took effect.

The insurer has no right of withdrawal if the insured party proves that it did not make the incorrect or incomplete statements deliberately or through gross negligence. The insurer's right of withdrawal for grossly negligent breach of the duty of notification does not exist if the party insured proves that the insurer would also have concluded the contract even in the knowledge of the circumstances not notified, albeit subject to other conditions.

- c) If the insurer's right of withdrawal is excluded because the breach of a duty of notification was not based either on wilful intent or gross negligence, the insurer can terminate the contract in writing with a period of notice of one month. The right of termination is excluded if the insured party proves that the insurer would also have concluded the contract even in the knowledge of the circumstances not notified, albeit subject to other conditions.
- d) If the insurer cannot withdraw from or terminate the contract because it would also have concluded the contract even in the knowledge of the circumstances not notified, albeit subject to other conditions, the other conditions become part of the contract with retrospective effect at the insurer's request. If the party insured is not responsible for the breach of duty, the other conditions become part of the contract from the current insurance period onwards.

If the contractual adjustment means that the premium increases by more than 10% or if the insurer excludes risk cover for the circumstance not notified, the party insured can terminate the contract in writing without notice within one month of receipt of the notification by the party insured.

- e) The insurer must assert the rights to which it is entitled pursuant to b) to d) in writing within one month. In doing so, it must state the circumstances on which its declaration is based. The time-limit begins to run from the time at which the insurer acquires knowledge of the breach of the duty of notification giving rise to the right asserted by it.

The insurer is only entitled to the rights pursuant to b) to d) if it has pointed out the consequences of a breach of duty of notification to the party insured by means of separate written notification in text form. The insurer cannot rely on the rights specified in b) to d) if it was aware of the risk circumstance not notified or of the inaccuracy of the notification.

- f) The insurer's right to rescind the contract for fraudulent misrepresentation remains unaffected. In case of rescission, the insurer is entitled to the part of the premium corresponding to the contractual period up until the time at which the declaration of rescission took effect.