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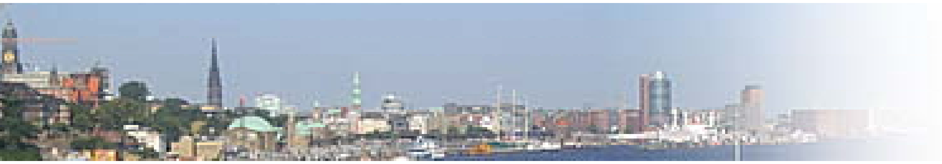
Rechtsanwälte & Solicitors Hamburg · Leer



Recent Developments in Insurance Law - German Perspective

Revised Act on Insurance Contract Law

by

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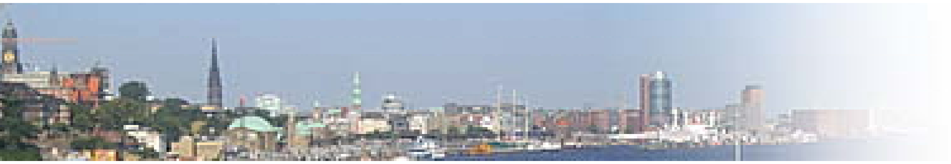
Recent Developments – German Insurance Contract Act

I. Introduction

1. Completely revised Insurance Contract Act effective 1st January 2008
2. Reasons
   - Consumer Protection according to EU-law
   - revision of legal language
   - incorporation of case law
   - necessity to reform law for life insurance contracts



Recent Developments – German Insurance Contract Act

I. Introduction

3. Applicability

3.1 New Law applicable to

- All Insurance Contracts concluded after 31.12.2007 w/e from 1st January 2008
- “Old” Insurance Contract w/e from 1st January 2009
- Option for Underwriters to submit new conditions during transition phase for “old contracts”
- insured events occurring after 31.12.2008

Recent Developments – German Insurance Contract Act

I. Introduction

3.2 Not applicable to

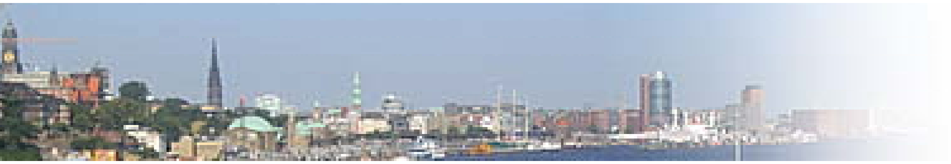
- Reinsurance contracts
- Marine Insurance Contracts
- Insured events under “old” contracts having occurred prior to 2009
- Disputes arising out of rights and obligations pertaining to the conclusion of Insurance Contracts prior to 1st January 2008

Recent Developments – German Insurance Contract Act

II. New Rules

1. Duty to inform and advise

   - complete information on all relevant facts prior to conclusion of insurance contract
   - duty to inquire
   - proper advice
   - complete documentation
   - breach by underwriter or agent
     - ⇨ right to revoke (unlimited in time)
     - ⇨ claim damages



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II. New Rules

2. Disclose obligation

- formerly: all relevant facts
- new: asked for in text form
- rescission of contract only in case of willful misconduct
- otherwise future termination of contract or amendment of contract

Recent Developments – German Insurance Contract Act

II. New Rules

3. Direct action

- only with respect to compulsory insurance, e.g.
    - car insurance
    - professional indemnity (lawyers, doctors etc.)
- assured insolvent or domicile unknown

Recent Developments – German Insurance Contract Act

II. New Rules

4. Recocation of contract
   - ➢ standardisation of time bar
5. All-or-nothing-principle
   - ➢ breach of obligations with intent
     - ⇨ no cover
   - ➢ simple negligence ⇨ full cover
   - ➢ gross negligence ⇨ evaluation of circumstances

Recent Developments – German Insurance Contract Act

II. New Rules

6. Premium
   - In the event of termination ⇨ premium pro rata
7. Time bar for cover claims
   - 6-months-period after denial cover abolished
8. Life insurance
   - participation in profits and latent reserves

Recent Developments – German Insurance Contract Act

III. Conclusion

Most relevant changes:

- pre-contractual notice obligations
- abolishment of all-or-nothing-principle
- participation in latent reserves