

PREVENTIVE MEASURES

(Measures that the insured is obliged to take, in order to avoid the occurrence of the insured event or to mitigate loss should the insured event occur)

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QUESTIONNAIRE

(1) The concept and the different sorts of measures of prevention

General concept: a provision in a law, or a clause in the insurance contract, requiring the policyholder or the insured, before the insured event occurs, to perform or not to perform certain acts to avert or prevent the occurrence of the insured event, to avoid aggravation or extension of the risk or to mitigate loss should the insured event occur.

(a) Please, give examples, thereby distinguishing:

- Between insurance branches (e-g. life and non-life / property and liability)
- According to the nature and timing of the measures that must be taken (immediately, constantly, successively)

(b) Statutory duty, common law or contractual duty. Give examples, thereby distinguishing between:

- Legislative rules or common law obligations that require an insured to take such preventive measures;
- Contractual provisions (prescribed by the insurer, or by a professional entity)

2) The ways and degrees of cooperation between insurers and insureds

How does the insurer encourage the insured to take the required measures:

- influence on the premium
- payment of the expenses (eg by sharing them between the insurer and the insured)
- other

3) The techniques that are used, or required by law, to implement the preventive measures

- Declaration of risk, insurance conditions, exclusions, “Obliegenheiten”, warranties, etc.
- The question whether there is a requirement of a causal relation between the breach of duty by the insured and the occurrence of the event

4) Sanctions

- Relief from liability of the insurer for the occurred event? Or reduction of the insurance money? Or termination or avoidance of the insurance contract? Other?
- Are such sanctions imposed (or prohibited) by law, by the contract, or controlled by the judge?

5) Burden of proof

- Does the insured have to prove that he has fulfilled his duty; or
- Does the insurer have to prove breach by the insured?