FACTORS LEADING TO REGULATORY REFORM IN INSURANCE

THE CASE OF THE PRINCIPLE OF UTMOST GOOD FAITH

Andre Farrugia

A thesis submitted to the University of Malta at the Department of Insurance and Risk management of the Faculty of Economics, Management and Accountancy in fulfilment of the requirements towards a Ph.D.

March 2023

L-Università ta' Malta

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ABSTRACT

In a world of rapid change and dynamic business operations, reform has become very much part of the business environment, with insurance industries set to align their working models and associated processes, to be able to respond to modern needs and demands.

Pertinent to this scenario, is the topic of this research which explored the factors leading to regulatory reform in insurance by using the long-standing principle of utmost good faith as a case study. More specifically, this study attempted to explore and investigate the following research questions to address potential research gaps in the field: a) What are the factors that generally lead to reform and what are the consequences of ignoring the signs pointing to the need for reform? b)What are the factor variables related to the reform (by regulation) of the principle of utmost good faith and are these variables influenced by (i) demographics and (ii) jurisdiction of the respondents? c) Which factor variables are the most agreed upon when assessing the need for reform of utmost good faith? and d) Should Malta (as a case study) upkeep its current practice of the utmost good faith principle?

Henceforth, the study established the general factors that influence reform through a desk-based literature review, adopting the PRISMA systematic review protocol. These factors where consequently tested by means of questionnaire using utmost good faith as a case study. The results of the emergent factors of the questionnaire were used as a basis to structure an interview, targeting eligible stakeholders that could provide insight as to the position of Malta with respect to reform of the principle of utmost good faith.

The study was opportune as it comes at a time when the UK (on which Maltese practice in insurance is reliant) has recently reformed its century-old principle, considerably changing the application of the principle from the way it was previously practiced on the basis of the Marine Insurance Act 1906 (UK).

The researcher conducted a systematic review to identify existing literature on reform using the Preferred Reporting Items for Systematic Reviews and Meta-Analyses (PRISMA) methodology to filter the results. Answering research question (a), the systematic review revealed that the factors that influence reform in general are five propositions, namely Country Institutions and Legal Systems, Customer/Stakeholder influence, International Business, Technology and Socio-Economic trends. From these five propositions, twenty-two statements were derived and used to construct a questionnaire which served to test whether these propositions were also applicable to the principle of utmost good faith, keeping an open mind for any new or different factors.

This questionnaire was distributed via a purposive sample which targeted potential respondents holding experience, qualifications, expertise, role, repute and contribution made to the industry. Therefore, the respondents were mainly stakeholders, particularly insurance and legal experts and those working in a position to influence reform. Most respondents were reached via e-mail, LinkedIn and other social media platforms (being a period when COVID-19 was at its peak) resulting in a return of 1794 responses out of a distribution of 2300 questionnaires (a response rate of 78.0%) from which the study required a minimum sample size of 385.

The data was then subjected to Exploratory Factor Analysis (EFA) and inferential testing to answer the second research question (b). EFA supported a four-factor solution. In fact, the four factors that were revealed by the questionnaire and that have an influence on the reform of the utmost good faith principle were redefined as follows: Institutional stakeholders and the political-legal framework, The market, consumer influence and the socio-economic

environment, Socio-technological environment and Insurance practice and international business.

Moreover, in response to questions b(i) and b(ii), the study showed that respondents' age, gender, level of education, occupation and the jurisdiction from where the respondents hailed, had a negligible impact to no impact at all, on the responses, which in itself strengthened the results as these variables did not distort or bias the emergent findings.

With respect to the factor scores, 'the market, consumer influence and the socio-economic environment' ranked the highest in terms of what the respondents considered the most important factor which could potentially trigger reform, followed by the factor 'Socio-technological environment' thus addressing question (c).

Emergent from the interviews, the position of Malta and the corresponding research question (d), revealed that the principle of utmost good faith is not up for reform anytime soon and is not a priority in the legislative agenda, apart from the fact that a good number of interview practitioners defended its well-meaning application.
This is of interest to all stakeholders, especially insurers, who are constantly monitoring the external environment and responding to change, as and when this arises, typically sprouting from the ever-changing needs and demands of the modern consumer. It is also a finding which is of interest to the Maltese industry as a whole, in the context of its relations with international counterparts, as any changes in insurance practice will need to be looked into if indigenous insurance market players, operating under the Maltese legal and regulatory frameworks, wish to remain competitive and business-savvy.

The study provides valuable information for the insurance industry, regulators, stakeholders, and scholars regarding the need (or otherwise) to reform the principle of utmost good faith. The findings may help insurers respond to trends and achieve contract certainty. The research also opens up opportunities for scholars to further explore the position of utmost good faith in other jurisdictions and other insurance principles, sectorial matters, and industry positions.

Keywords: Utmost Good Faith, Equitable Insurance Contracts, Reform Factors, Contract Wording, Insurance Trends, Marine Insurance Act, Reform in Insurance, Maltese Insurance Practice.

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ABBREVIATIONS

ABI - Association of British Insurers

AI - Artificial Intelligence

ALRC - Australian Law Reform Committee

ANOVA - Analysis of Variance

ASIC - Australian Securities and Investments Commission

BILA - British Insurance Law Association

BGB - Bürgerliches Gesetzbuch German Civil Code

CCIR - Canadian Council of Insurance Regulators

CER - Comprehensive Economic Reform

CIDRA - Consumer Insurance (Disclosure and Representations) Act 2012

COVID-19 - Coronavirus disease 2019

DISP - Dispute Resolution Complaints Handbook of the FCA

DSGE - Dynamic Stochastic General Equilibrium model

EBSCO - Business Search Complete Database

EEC - European Economic Community

EQF - European Qualifications Framework

EU - European Union

FOS - Financial Ombudsman Service

G20 - International Forum of World Major Economies

GDP - Gross Domestic Product

GDPR - General Data Protection Regulation

HKFI - Hong Kong Federation of Insurers

IA - Insurance Act 2015

IBM - International Business Machines Corporation

ICA - Insurance Council of Australia

ICOB - Insurance Conduct of Business Rules

IDD - Insurance Distribution Directive

IMF - International Monetary Fund

IOB - The Insurance Ombudsman Bureau

IoT - Internet of Things

IT - Information Technology

KMO-MSA - Kaiser Meir Olkin Measure of Sampling Adequacy

LC - Law Commission

LRC - Law Reform Commission

MIA - Marine Insurance Act 1906

MiFID - Markets in Financial Instruments Directives

MIS - Management Information Systems

OECD - Organisation for Economic Co-operation and Development

SEC - Secondary Education Certificate awarding body (Malta)

SGI - Sustainable Governance Indicators publication

SGIP - Statement of General Insurance Practice

SPSS - Statistical Package for the Social Sciences

NZLC - New Zealand Law Commission

MLAANZ - Maritime Law Association of Australia and New Zealand

PRISMA – Preferred Reporting Items for Systematic Reviews and Meta-Analysis

UK - United Kingdom

US - United States of America

VVG - Versicherungsvertragsgesetz: The Insurance Contract Act in Germany

GLOSSARY

Ab Initio - From the beginning. In the context of contract law, *ab initio* means the point when the contract comes into effect and holds legal validity.

AI (artificial intelligence) - Artificial intelligence is a manner by which an electronic medium is able to execute a command based on a decision triggered by algorithms. AI is able to decide based on input data and able to form different decisions in the future, based on previous outcomes.

Asymmetric contract - An asymmetric contract is when one of the parties enjoys more privileges than the other. In insurance, this term is used to describe how a proposer has more information about the risk to be insured than the risk bearer, in which case the proposer is said to enjoy an advantage in the negotiations leading to the insurance contract.

Basis of contract clause - This clause is typically found in the recital clause of an insurance policy and has the effect of making the proposal form part of the contract, to the extent that if the statements made on the proposal form are not in utmost good faith, then the insurer will have a right to set the contract aside. For example, if an insured inaccurately records his/her health condition in a travel proposal form, the insurer may repudiate the entire contract and will not entertain any ensuing claims even if these are unrelated to the medical condition.

Boolean - This is a logic data type that is used to determine whether a logic is true or false. In the context of this research, Boolean was used when filtering articles relevant to the study.

Caveat Emptor - This is a Latin word for “let the buyer beware” and it is a maxim that warns the prospective purchasers of the onus bestowed upon them to determine whether the transaction is the one intended, since the purchaser bears the risk. After the contract is formed, the seller cannot be held responsible for the quality of the sale or service unless it is guaranteed in a warranty.

Civil Law - Defines the rights and responsibilities of individuals. It consists of a body of rules encompassing private rights and obligations and governs disputes between individuals. Typical examples that fall under this classification include contract law, family law and property law.

Claimant - The policyholder or any other party who acquires claimant rights to enforce the provisions of the policy and to make a plea for compensation.

Coinsurance - An agreement among insurers to share the risk being presented. In such an agreement, a leader will be established to carry out the underwriting process inviting other insurers to join in as followers to bear a portion of the whole risk. Claims are shared in the proportion of the amount of risk borne by the respective companies under the coinsurance agreement.

Common law - The common law system is one wherein judges look at past judicial experience for similarities to help in deciding a case. This is a system of precedent and follows earlier similar decisions, which some courts are bound to follow.

Concealment - In the context of insurance, concealment is knowingly hiding of facts to avoid terms being imposed by the insurer. Concealment refers to the non-disclosure of

material facts that are fundamental to the decision taken by an underwriter when establishing whether to accept the risk or not and / or whether to impose particular terms.

Duty of disclosure - Under a contract of insurance, a duty is incident on the proposer or the insured, to state all facts which would induce an underwriter to decide whether to insure or not, or to impose special terms. This duty, however, is mutual and applies to both the insured and the insurer who are both expected to act in utmost good faith.

EU Directives - These are legislative instruments that are enacted by the European Union (EU) and which aim to set out an objective upon all EU member states that are obliged to comply. The member countries are free to design their own laws to reach the general goals.

Harmonisation - This is when the national laws and rules of the EU member states are aligned to the set standard intended by the EU.

Insurer/Insurance company - This refers to the risk bearer. Against the payment of the premium, the insurer undertakes to pay a valid claim under the terms and conditions of the policy, subject to exclusions and limits. An insurer or insurance company, accepts the transfer of risks from the proposer/insured in consideration for the premium payment.

Insurtech - Refers to the use of tech mechanisms intended to increase the efficiency of operations through the offering of customized policies by using data from internet of things and artificial intelligence systems.

Jurisdiction – This refers to a country or state where a particular court and system of laws have authority. It is that country to which such authority applies and this authority is assigned to a legal body to apply justice.

Law Reform Committee - This is a statutory body that is responsible to ensure that the laws are kept up to date and relevant. The law reform committee reviews laws recommending reform where necessary.

Management Information Systems - The study of people, technology, organisations and the relationships among them. Such systems assist the insurance companies in taking calculated decisions in an attempt to underwrite efficiently and profitably by providing timely and appropriate information.

Material fact - An important fact regarding the subject matter of contract and/or the subject matter of insurance that has the effect on influencing the decision of an insurer to decide on whether to insure and, if so, at what price and terms.

Non-Disclosure - Withholding of material facts to avoid terms being imposed. Non-disclosure results in the deception of the true facts of the risk being presented, preventing the risk carrier from understanding the true extent of the risk and preventing the risk bearer from assessing this accurately. This affects the decision of an insurance underwriter.

Obiter dicta - This refers to statements made by the judge that are not part of the decision of a judgement *per se*, but statements which are passed as an observation and which may be utilised by other judges in the future.

Ombudsman Service - The ombudsman is an independent body that is responsible to resolve disputes and complaints in an impartial, fair and equitable manner.

Policyholder/Insured - The subject matter of the contract who is a party to an insurance contract and who holds a right to enforce the provisions of the insurance policy.

Precedent - This system is used in common law, wherein cases are decided on the merit of earlier similar cases following the judgement made by the presiding adjudicating body.

Proposer - A prospective policyholder who is proposing for insurance coverage and is making an offer to be insured, usually by submitting a proposal form.

Ratio Decidendi - This refers to the principle of law upon which the judge will decide the case. It is the reason for the judgement.

Reciprocal duty - This refers to the obligations on both parties to disclose material facts voluntarily. Reciprocal duty arises during the negotiations leading to an insurance contract between the proposer and the insurer or at renewal between the insured policyholder and the insurer.

Reform - This refers to how laws or regulations are amended, improved, or re-written to make them more relevant, clear and updated.

Reform of the principle of utmost good faith in the UK - In the UK, legislation was enacted expecting the policyholder to avoid misrepresentation to the insurer for questions asked. The policyholder is not expected to disclose beyond what is asked and the onus is now on insurers to ensure that all material information is obtained through questions. Where there has been a breach of duty by the policyholders, insurers will apply proportionate remedies.

Regtech – This refers to how, through the use of technology, regulators are able to monitor and manage processes in the attainment of compliance.

Regulations - In the context of the EU, a regulation is a binding legislative act that must be strictly applied in whole, across all EU member states.

Regulator - An authority appointed by a government to regulate an area of activity such as financial services. In Malta, the regulator is the Malta Financial Services Authority (MFSA), which is the single regulator of financial services and which regulates among others, insurance companies and insurance intermediaries.

Reinsurance - an agreement wherein an insurance company shares the risks written by the underwriter and bears the corresponding liabilities upon a valid claim. This could be arranged on a one-off basis or on a treaty basis in which latter case, part of all the risks taken by the insurance company would be supported by the reinsurance company.

Statute - A written law that is enacted by an act of parliament and passed by legislators.

Uberrima Fides (Utmost good faith) - A requirement under an insurance contract to compel the proposer/insured to disclose all material facts positively and voluntarily.

Underwriter - The person representing the insurance company who is in a senior position and is responsible to make decisions. In fact, an underwriter will be responsible for collecting information, evaluating and assessing the risk being brought forward by the proposer or insured and then deciding whether to accept the risk or not. If the underwriter decides to accept the risk, the next step would be to consider whether to take the risk in full or in part, in which latter case, coinsurance or reinsurance may be initiated. Finally, the underwriter will determine the price, terms and conditions of the insurance contract, based on the type of risk and its corresponding hazards.

Underwriting - The mechanism of deciding whether to accept a risk or not and on what terms and conditions. Underwriting is the work done by an underwriter who is representing the risk bearer.

Warranties - As used in insurance law, warranties are terms that are fundamental and must be strictly complied with as they allow the insurer to repudiate the policy if a breach is discovered. For example, the insurer might warrant that the premises should be kept securely locked by means of a shutter when not occupied.

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CHAPTER 1 - INTRODUCTION

1.1 General context of the research

Throughout the years, the business macro environment develops and evolves, and with it brings inevitable changes commensurate with new regulations and practices. Insurance, which is a relatively recent business, has lately expanded rapidly as the modern era brought with it new risks and increasing demand. This has had an impact on how insurers operate through finding better and improved ways of offering their services. Different jurisdictions respond differently to changing times and in the context of insurance, some jurisdictions felt the need to reform their practices whereas others preferred to retain their traditional methods. This, in itself, sparked the researcher to question why certain jurisdictions apply the principle of utmost good faith in the strict sense, while others adopt a different application of this principle in their operations. Most notably and the main trigger in researching the area under study, was the recent reform of the UK Marine Insurance Act 1906 which was superseded by the Consumer Insurance (Disclosure and Representations) Act 2012 and the Insurance Act 2015 and which led the researcher to make one determining observation and question: "Why have the UK abolished the principle of utmost good faith in insurance after do many years, and what led to this?" This prompt led to the title of this work and the ensuing aim and objectives.

There have been several scholarly contributions on reform and specifically reform in insurance. Witness to this is the mass of literature available, confirming its importance and relevance in the business world and beyond. Insurance is overseen by legislation, directives and regulations that frame its operations, but is also subject to company law, consumer law and contract law. Increased insurance business regulations (among others) inevitably lead to reforms, as consumer and business infrastructure develops and evolves. Studying reform, particularly reform in insurance, is timely and contemporary as this relatively new business, finds itself in a fast-paced environment of change. While this study focuses on the risk-

bearing insurance industry, it also contributes to other areas such as public policy, law and regulation.

1.2 Meaning of reform

The Latin origin of reform, *reformo,* suggests that this word was used in the past to describe the overcoming of something bad or evil, also intending to mean the finding of a new or better form of affairs (Rice, 1912).

Reforms aim to bring about a development in institutional and governmental affairs and achieve overall widespread development. Reforms and governance are in fact terms widely used to describe matters relating to the society seeking to bring re-organisation and change (Azizuddin, 2016).

The Collins Online Dictionary explains that reform

> "…consists of changes and improvements to a law, social system, or institution. A reform is an instance of such a change or improvement" (Collins Dictionary, 2021, para 2)
>
> [and]
>
> "If someone reforms something such as a law, social system, or institution, they change or improve it" (Collins Dictionary, 2021, para 5).

whereas the Cambridge Online Dictionary defines reform as

> "an improvement or set of improvements made to a system, law, organization, etc. in order to make it more modern or effective" (Cambridge Dictionary, 2021, para 4).

A definition from an online financial dictionary reveals a similar meaning and interpretation of reform, saying that reform seeks

> "To improve by alteration, correction of error, or removal of defects; put into a better form or condition…" (Farlex, 2003, para 1).

A definition by the Organization for Economic Cooperation and Development (OECD) describes reform as a process in which changes are made to the formal "rules of the game" including laws, regulations and institutions (OECD, 2007).

Additionally, John Hall (1974) defines reform as

> "…a process of identifying and clarifying standards of performance for the legal order and of finding and implementing ways of maximising achievements of those standards" (Hall, 1974, p. 429).

It is evident that all definitions mention the element of change and the term is used to define reform as being a mechanism that seeks to correct, amend, or improve matters, whether applicable to regulation or practice. In the context of these definitions, this research, through the secondary sources making up the literature review, seeks to understand and determine what has influenced the need to correct matters in different countries in the field of regulatory reform, particularly in the insurance sector. On the other hand, through the primary sources namely the questionnaires and interviews, this research investigates what influences the need to change insurance practices particularly related to the insurance principle of utmost good faith.

1.3 The need to reform

As reported by the OCED (2010), countries that have adopted reform and upgraded their regulatory policies, developed their respective economy and social wellbeing sectors effectively, through opening up of markets and providing infrastructure for innovation. Moreover, simplification of the law and reclaimed public interest are achieved and reform ensures the harmonisation of the relationship between the state, society and businesses (OECD, 2010).

Not always being proactive, reform has at times, been reactive in responding to a crisis as many countries are testament to. Austria, Belgium, Mexico and Portugal achieved simplification through a one-stop-shop approach and Australia, Germany, The Netherlands and the United Kingdom (UK) achieved the establishment of independent bodies to monitor the market as reformed solutions to government regulatory policy. The OECD (2010) further reports that, overall, due reforms and regulatory policies achieved transparency, accountability, consistency and proportionality. This largely depends on the legislature and support from the judiciary involving stakeholders in the process of reform, to ensure legal clarity and quality (OECD, 2010).

The European Commission works with the European Parliament, the Council and the Member States to strengthen the needs of the member citizens in the reform processes (OECD, 2010). The need to change and to harmonise regulations and practices is also desired for the smooth running of the countries' respective industries. For example, EU member countries seek harmonisation through EU Treaties, Regulations, Directives and Recommendations, notwithstanding that most of the EU member states adopt legislation originating from Roman law. That being said, a number of these countries end up taking different approaches to the application of insurance practices, making them different from each other. Notwithstanding such divergences, as in the case of the common law legal system in the UK and parts of the United States (US) and the civil law legal system of Germany and France, the divergent legal cultures and habitual ways of insurance practice desire a need to be reconciled to make insurance business more streamlined and compatible (Koziol, 2013).

1.4 Examining utmost good faith

Having explored what reform means and why it is needed, it is fitting to converge to the insurance principle of utmost good faith, which is the focus of this study.

The definition of good faith is taken to mean as intended in its ordinary sense and most dictionaries are able to give a precise meaning to this.

The Oxford Dictionary defines good faith as

> "Honesty or sincerity of intention" (Urdang, 1995, p. 241).

This definition highlights that material information is expected to be revealed honestly and sincerely, which is the basis of the meaning of contracting in good faith.

Black's Law Dictionary defines good faith as the

> "Honesty of intention and freedom from knowledge of circumstances which ought to put the holder upon inquiry" (Black's Law Dictionary, 2019, para 2)
>
> [and]
>
> "…honesty of purpose, freedom from intention to defraud and, generally speaking, being faithful to one's duty or obligations" (Black's Law Dictionary, 2019, para 3).

In the absence of relevant statute law, the insurance industry relies on the interpretation given by presiding magistrates/judges following court judgements. Judge Bingham LJ described good faith as a principle of fair and open dealings between contracting parties (Interfoto Picture Library v. Stiletto Visual Programme Ltd, 1989). Levin (2002) defined utmost good faith as

> "firm adherence to promises made to another including disclosure of all relevant facts and complete trust in the fidelity of the other" (Levin, 2002).

The Macquarie Dictionary presents the following distinctions between the terms 'good faith' and 'utmost good faith':

> "Utmost: (1) (adjective) of the greatest or highest degree; (2) (noun) the greatest degree or amount; (3) the highest, greatest, or best of one's

> power; (4) the extreme limit or extent" [and]
>
> "Good faith: (noun) (1) honesty of purpose or sincerity of declaration: to act in good faith; (2) expectations of such qualities in others: to take a job in good faith" (Macquarie Concise Dictionary, 2016, para 1).

These two definitions explain that whilst with good faith, honesty is expected, the word 'utmost' takes it to a higher level, requiring the highest degree of honesty. It transpires that the definition of good faith points to basic honesty and sincerity to the promise agreed by the parties, whereas the keywords for utmost good faith go beyond mere honesty and describe it to be material disclosure which is relied upon and serves to be the basis of the accepting party's decision dependent on faithfulness of the representations, demanding a greater standard than is required by good faith beyond mere fairness.

The difference between good faith and utmost good faith revolves around the requirement that under utmost good faith, a positive duty to voluntarily disclose information without being asked, is expected (Parsons, 2016).

Wright (2017) argues that utmost good faith demands a greater onus in that preference to customers' interests is given utmost priority, potentially through affirmative action. The obligation is akin to a fiduciary relationship, presenting a higher standard than fairness (Wright, 2017).

The insurance principle of utmost good faith can be traced back to Roman times, their practice later spreading to other countries and continents by virtue of its widespread relevance to the maritime world. It is no surprise that this principle soon became part of common law in countries that were British-led and integrated into civil law in others.

The application of this principle brings along a history of issues questioning the fairness of utmost good faith under an insurance contract. The contracting parties are expected to treat an insurance agreement as one in which parties are trusting each other and expecting

disclosure of the true facts by both (Schwartz, 2007). This is true for insurance contracts that differ from other commercial contracts the latter being based on the maxim of *caveat emptor* (let the buyer beware).

Caveat emptor non-insurance commercial contracts shift the onus onto the buyer to inspect thoroughly before purchase, since sellers are relieved from liability once the contract is formed, even if they withhold representing the true state of affairs. Sellers, in fact, owe no duty of disclosure under the principle of *caveat emptor,* thus the inference to "let the buyer beware". *Caveat emptor* rests on the fact that the contracting parties have an equal bargaining position at the time of negotiation and both have the opportunity to inspect the traded items prior to the formation of the contract. Moreover, the principle of *caveat emptor* establishes that owners are in no way experts in selling and could not be expected to be able to represent all the information (Weinberger, 1996).

In contrast to *caveat emptor* under non-insurance commercial contracts, insurance contracts are based on *uberrima fides* (utmost good faith), wherein a high duty is expected from the parties to a contract who are required not only to avoid fraud or misrepresentation as expected of good faith, but also to voluntarily disclose any facts which are material to the transaction even if not put on inquiry. *Uberrima fides* is a fundamental principle that requires the parties to an insurance contract to be faithful by disclosing facts in an open and honest way during the negotiations stage leading to the establishment of the insurance contract (Keenan, 1989), and thereafter during the claims stages when other statements related to a claim are made (Parsons, 2016).

In marine insurance, for example, from where the principle of utmost good faith originates, this takes the form of any material circumstance connected to the risks associated with a marine adventure (Schoenbaum, 1998). Utmost good faith requires full honesty of the contracting parties before the contract is formed (Keenan, 1989) and such honesty is preserved throughout the duration of said contract (Parsons, 2016).

The very finite and specialised business of insurance brings about several issues absent in other commercial contracts. The nature of the insurance contract is innately asymmetric, wherein one party knows more about the risk to be proposed than the other party. Therefore, the party accepting to bear the risk, *prima facie*, knows practically nothing, relying on utmost good faith to see the business transaction through (Merkin & Gurses, 2015). Most of the time it is assumed that the proposer, being the owner of the risk (rather than the insurer), knows more about the risk than the insurer (Parsons, 2016), to the extent that the seller (the insurer in the case of insurance) is reliant on the truthfulness of the knowledge of the buyer, the latter being the proposer negotiating a new insurance contract or the policyholder who is negotiating renewal terms. This effectively means that since the proposer knows more about the risk, the onus is on the proposer to disclose material information voluntarily without being asked, otherwise the insurer may avoid the contract *ab initio* (Darling, 2017). In this respect, the party in possession of all the important material facts connected to the subject matter of insurance and/or the subject matter of the contract, is expected to positively disclose (even if not expressly asked) such information truthfully and fully under this principle.

Given this asymmetry, insurance practice seeks to level this position by making the contract conditional to utmost good faith, which is an insurance principle relied upon to validate the contract at inception or renewal and/or to validate a claim. Needless to say, although this principle is well intended, grey areas and disputed circumstances have appeared before the courts on a global scale. Throughout the years, some adjustments and fine-tuning of the practice have been made in various countries, to the point that some jurisdictions re-wrote the corresponding insurance laws and/or regulations by reforming the practice of the principle of utmost good faith.

Taking the reform developments in the UK as an example, originally, the Marine Insurance Act 1906 (UK) sought to address the position of contractual asymmetry and utmost good faith. The Marine Insurance Act 1906 as *per* section 17 states that

> "…marine insurance is a contract based upon the utmost good faith and, if the utmost good faith be not observed by either party, the contract may be avoided by the effected party" (Marine Insurance Act (UK) 1906, section 17).

Utmost good faith is essentially a moral concept comprising of fairness, however judges are constrained to ignore the moral aspects and decide cases solely based upon the strict nature of the principle even if this is seemingly unfair in the eyes of the society. The requirement to act in utmost good faith is upon both parties. The difficulty in ensuring fairness and the moral challenges of this principle was highlighted in the case of Banque Keyser Ullmann SA v. Skandia (UK) Insurance Co Ltd (1990), wherein Judge Slade LJ stated:

> "…the law cannot police the fairness of every commercial contract by reference to moral principles" (Banque Keyser Ullmann SA v. Skandia (UK) Insurance Co Ltd, 1990).

In Banque Keyser Ullmann SA v. Skandia (UK) Insurance Co Ltd (1990), Judge Slade LJ emphasised the requirement to strictly adhere to the underlying principle of utmost good faith and ignored any reference to moral principles in his judgement. If a party fails to observe this principle, then that party is considered to have breached the contract at law. In view of the numerous obligations bestowed upon the proposer, the application of this principle brings doubt to whether utmost good faith is really equitable and fair. In some cases, the contract is rendered void or voidable, which sometimes manifests itself unjustly on the oblivious policyholder (Bamarouf, 2011).

In earlier years, court judges attempted to define the principle of utmost good faith and in 1766, Lord Mansfield, the presiding judge in the case of Carter v. Boehm, stated that:

> "Insurance is a contract upon speculation. The special facts, upon which the contingent chance is to be computed, lie most commonly in

> the knowledge of the proposer only: the underwriter trusts to his representation and proceeds upon confidence that he does not keep back any circumstance in his knowledge to mislead the underwriter into a belief that the circumstance does not exist and to induce him to estimate the risque, as if it did not exist" (Carter v. Boehm, 1766).

In the same case, Lord Mansfield equated a breach of utmost good faith to fraud by saying:

> "The keeping back [in] such circumstances is a fraud and therefore the policy is void. Although the suppression should happen through mistake, without any fraudulent intention; yet still the underwriter is deceived and the policy is void" (Watterson, 2008).

The facts of the case in Carter v. Boehm (1766) were that the Governor of Fort Marlborough in Sumatra insured goods against loss in case of a French invasion. The invasion actually occurred and the Governor sued the insurers, the latter refusing to pay citing a breach of utmost good faith. This case led to the creation of a number of insurance principles still practised today, among which is utmost good faith which is embedded in the Marine Insurance Act 1906 (Hertzell, 2017).

1.4.1 A historical outlook and general practice of utmost good faith

Between the UK Marine Insurance Act 1906 and, the reformed Consumer Insurance (Disclosure and Representations) Act 2012 and the Insurance Act 2015, the insurance industry was, for a time, self-regulated, as it was believed that this industry was able to operate without the need of legislative intervention. This reduced the burden of the costs of the legislature and the judiciary by the State, but on the other hand, exposed insurance practice to abuse particularly by the insurance companies who enjoyed the privilege of self-regulation (Harnett, 1950). Post-1977, self-regulation was pioneered by the Association of British Insurers which adopted a Statement of General Insurance Practice (SGIP) designed

to move away from the strict application of utmost good faith, striving to support the fair handling of claims (FOS, 2005). While it lasted, self-regulation was respected and given autonomy by the governments, especially through the convincing charters of the SGIP and the advent of the dispute resolution channels of the Insurance Ombudsman Bureau (IOB) and later the Financial Ombudsman Service (FOS) (Swaby, 2010), which all tried to fill in the gaps that threatened the fair practice of insurance. The IOB was created to support the industry by virtue of its dispute resolution facility judging personal insurance claims disputes up to £100,000. The IOB had assisted in the development of the utmost good faith principle by resolving disputes on good practice rather than on the legal principle (Merkin & Gurses, 2015). Moreover, the IOB was influential in initiating changes in insurance practice through its *obiter dicta*, recited from preceding cases, particularly through fair and reasonable dealings (Tyldesley, 2013). The IOB, founded in 1981 and later in the year 2000 becoming the FOS, was not known or seen as authoritative by the consumer where disputes were concerned and it also had a monetary restriction of adjudicating up to £100,000, which clearly did not capture all the cases.

The downside to such dispute resolution channels was that cases that would have otherwise gone to court and thus would have presented an opportunity for the further development of the principle of utmost good faith, were being adjudicated before an arbitrator with no prospect of creating precedent. All these factors pointed to the need for something more formal and concrete pushing towards the need for reform in the UK (Swaby, 2010).

Reform issues that the Law Commission faced when considering reform in the UK, arose from the fact that the proposer did not know what must be disclosed or what information is expected by the insurer. The matter is compounded when it comes to commercial policyholders who are unsure of the extent of knowledge they are expected to part (Farrugia, 2018). Another objection raised by the Law Commission was the inability to receive all material information to be able to adjudicate fairly and effectively (Yee, 2001). More reasons

to consider reform originated from the lack of will by insurers to ask questions as the standard insurance contract tends to favour the risk bearer by virtue of it requiring a positive duty of disclosure (Farrugia, 2018). Furthermore, the remedies for a breach of disclosure of material facts by the proposer/insured, was to render the contract void *ab initio*, deemed by many to be draconian (Mac Donald Eggers, 2012).

Traditionally, the insurance principle of utmost good faith depended on case law, industry guidelines and voluntary legislation for its application and interpretation. Swaby (2010) observed that insurance contracts disadvantaged the consumer and small businesses, and his findings reveal that reform was due to reflect the modern-day practices in the insurance market. Countries like Australia and the UK have opted to change their former utmost good faith practices by enacting legislation to establish more equity between the contracting parties when securing an insurance arrangement (Reeves, 2015). In UK, this change took the form of removing the utmost good faith requirement present in the former Marine Insurance Act 1906, (Merkin & Lowry, 2008) and replacing it with the Consumer Insurance (Disclosure and Representations) Act 2012 bringing a substantial change in underwriting, claims and reinsurance operations. The passing of the Consumer Insurance (Disclosure and Representations) Act 2012 meant that from the absolute obligation on the proposer to disclose all material facts related to the risk positively without being asked, the post-reform position is now only expecting truthful responses to material questions asked by the insuring party.

The reformed law abolished the positive duty of disclosure, which refers to the duty to disclose all material information whether asked or not. This differs from the position in Australia (also a country that has undertaken reform), where the test of disclosure is based on the reasonable proposer. This test refers to what is expected ordinarily of a proposer under a contract of insurance. No such positive duty exists in the civil law countries of France or Germany (Parsons, n.d.).

Generally, contracts permit the parties to freely set terms and conditions to their agreement, however regulations have attempted to avoid unfair terms being introduced by the contracting parties, especially by the drafter of the agreement. A case in point is the insurance reform in Canada which intended to prevent the dominant party under the insurance contract from being in an advantageous position (Brown, 1985).

When transacting cross border business, there could be an added hurdle faced by the contracting parties, as the respective countries present different legal systems and regulations reflected in the different contract wording and practices. Those countries that are common law-based have a tendency to adopt the original principle of utmost good faith whereas those countries that are civil law-based follow their respective legislation on which the respective business rests (Parsons, 2016).

The issues and problems that utmost good faith has presented were addressed by some countries to the point of reform as in the case of the UK which lately passed statute law to abolish the legal principle previously documented in the Marine Insurance Act 1906 (Farrugia, 2018).

Malta still embraces the UK Marine Insurance Act (1906) position when it comes to the application of the insurance principle of utmost good faith and was, up until the UK reform of 2012, basing its court cases on the precedents and case law *dicta* presented and decided by the British House of Lords and other UK courts (Farrugia & Grima, 2021b).

Like Malta, Ireland is also a country that has not undertaken reform in the principle of utmost good faith and the changes in insurance practice that occurred in the UK would inevitably affect the way utmost good faith is applied, as and when insurance business transactions between the two countries are effected. Therefore, it is debated whether Ireland, judging from the proximity to UK practice, should follow suit by introducing similar reforms (Institute of Chartered Accountants in Ireland, 2016).

In most countries, insurance practice is largely regulated by a specific competent authority and thus market practice would be primarily dictated by rules and regulations duly

supervised for good practice, among a plethora of other requirements (Darling, 2017). In this respect, while attempting to control and protect the consumer in insurance business and thus regulating where necessary, less so is the position of regulating the practice of utmost good faith. Reform, being a potential solution to questionable insurance practices *per se*, could however bring increased litigation, new areas of dispute and corresponding uncertainty notwithstanding its good intentions (Jaffe, 2013). On the other hand, reform brings along regulatory modernisation and achieves stability and sustainability, which in turn reduces regulatory asymmetries and promotes competition, innovation and investment in the business ecosystem. When contract uncertainty is removed, this would lead to more business stability and this can be achieved though regulatory modernisation (Farrugia, 2018). In relation to this research, such modernisation is related to the principle of utmost good faith.

1.5 Remedies under utmost good faith

After examining the nature of utmost good faith and narrating how this feature under an insurance contract, the ensuing remedies need to be mentioned as a result of a breach of this insurance duty.

Through the years, court cases and judgements revealed that, from a claims perspective, the insured is the disadvantaged contracting party in view of the fact that the remedies are more burdensome on the insured than the insuring party under an insurance contract (Schwartz, 2007). As insurance developed, with it came several rules, practices and remedies that intended to make this business, fair, reasonable and equitable among the contracting parties. The courts have been instrumental in reform through their judgements, particularly in the landmark case of Drake plc v. Provident Insurance plc (2003). The outcome of this case voiced the judiciary's concern on the remedies under the duty of utmost good faith and encouraged the achievement of fairer practices (Naidoo, 2005).

Prior to reform, under the Marine Insurance Act 1906 of the UK, the two remedies following a breach of utmost good faith were:

a) if the breach was fraudulent, avoidance of the contract *ab initio* resulted and the insurer is entitled to keep the premium (Reeves, 2015).

b) if the breach was innocent or negligent, the insurer still had the right to treat the contract as if it never existed and avoid the contract altogether, but the insurer has to return the premium (Reeves, 2015).

Prior to the formation of an insurance contract, both parties are obliged to disclose material facts and refrain from misrepresentation. At claims stage, however, failure to make full disclosure does not entitle the insurer to avoid the contract unless it was materially fraudulent (Galloway v. Guardian Royal Exchange (UK) ltd, 1999). Needless to say, however, such failure would jeopardise the claim. Therefore, there are no half-measures when it comes to remedies under misrepresentation or non-disclosure (breaches of utmost good faith). Common law allows the affected party to either treat the whole contract void and deny any claim, or accept the contract in its totality and in the latter case, consequently honour the corresponding valid claim/s in full, irrespective whether the breach was made innocently or fraudulently (Birds, 1982). Allowing the contract to stand following fraudulent disclosure, or the lack of it, is hypothetical, as insurers would not allow a fraudulent claim to stand since it is not only against the interest of the company itself, but also against the interest of the society at large, itself being an endorsement of a criminal activity.

The principle has also been taken to extremes. For example, in Lambert v. Cooperative Insurance Society (1975), the court found in favour of the insurer when Mrs Lambert failed to disclose that her husband had been convicted for theft, even though no specific related question had been posed by the insurer and moreover the claimant was unaware of her husband's conviction (Parsons, 2016). Such cases have led to reform in the UK, notably via the advent of the Consumer Insurance (Disclosure and Representations) Act 2012 which, in essence, removes the positive duty of disclosure in personal lines insurance. This means that

the proposer is not expected to disclose information positively (without being asked) but is solely expected to answer questions set by the insuring party and to do so in honesty and with reasonable care to questions asked. Moreover, a breach of duty requires insurers to settle affected claims on a proportional basis rather than rescind the whole contract. Commercial insurance has also been reformed through the Insurance Act 2015. Unlike the practice under personal lines insurance however, the positive duty of disclosure is retained for commercial insurance in a modified form and proportional remedies were introduced, akin to the Consumer Insurance (Disclosure and Representations) Act 2012.

Prior to this enactment, in an earlier court case of Mutual and Fed Insurance Co ltd v. Oudtshoorn (1984), Judge Joubert J had already sounded the complete abolishment of the duty of disclosure suggesting a more realistic approach by suggesting the amending of the position of utmost good faith, requiring insurers to ask material questions that are able to invalidate the insurance contract (Yee, 2001). In fact, this is a position adopted in the legal frameworks of Australia, China, Denmark, Finland, France, Germany, Israel, Ireland, Nigeria and Spain, as well as being backed in court cases like the case of Barclay Holdings (Australia), where, Judge Kirby P states that insurers should be careful to ask appropriate questions in their proposal form and that legislators could assist in defining the type of questions that should be asked (Barclay Holdings (Australia) Pty Ltd v. British National Insurance Co. ltd, 1987).

One must not forget that utmost good faith bestows a reciprocal duty and thus, if the insurer knows of circumstances that the proposer is unaware of, these need to be disclosed too. This is relevant more so today as the insurer holds more information on the risk than the proposer due to the advent of technological advancements (Yee, 2001).

Although reforms vary, they all allow avoidance if the proposer is guilty or fraudulent. In America and Canada, avoidance of the contract is allowed if fraud is involved whereas in Germany, negligence or malicious non-disclosure suffices for avoidance by the insurer (Patterson, 1957).

In Australia, Spain, Sweden, Finland and Poland, the policy can be avoided following fraud and the claim is proportionally reduced in cases of innocent breaches. Some countries introduced the proportionality principle, attempting to achieve an equitable remedy when a breach of utmost good faith is committed. The proportionality principle is one which calculates what an insurer would have charged as premium if the duty of disclosure or misrepresentation was not breached and the resultant claim is reduced in proportion of the shortfall of premium originally charged. This remedy is practised in Australia, Canada, France, Sweden, The Netherlands and Belgium (Farrugia, 2018).

Solutions to breaches of utmost good faith have long been in place in other countries, namely France and Germany, which adopted the principle of proportionality. In this case, such a remedy takes the form of paying the extra premium that would have been charged had the breach not occurred, or paying a proportionate lesser amount of the total claim reflecting the lesser premium charged. Moreover, proportionate remedies may take the form of reducing the claim amount by the premium that would have been charged. A further alternative would be to apply the terms that would have otherwise become applicable had there been no misrepresentation (Yee, 2001).

Nevertheless, under Australian law, similar to what the Insurance Act 2015 in the UK introduced, a breach of utmost good faith made innocently or negligently provided a proportionate remedy, one which reduced claim payments in proportion to the breach. It is to be recorded that if the insurer failed to ask questions material to the risk, this was considered to be a waiver exercised by the insurer (Reeves, 2015).

As previously detailed, the Marine Insurance Act 1906 refers to the remedy of avoidance of the contract. This means that most of the time, the contract worked against the proposer and having the contract set aside completely, was deemed to be a one-sided remedy. In fact, the insurer could either let the contract to stand and honour all obligations under it, or avoid the contract as a whole to the detriment of the proposer/insured. The UK Law Commission 2007 was very critical of this ‘all or nothing’ position of remedying a breach of utmost good faith

(Mac Donald Eggers, 2012).

Following the success that the proportionality principle brought in France and the numerous *obiter dicta* by the UK courts, urged a change to the original utmost good faith principle in the UK (Lin, 2017). In fact, the UK Law Commission moved in the direction of proposing changes to support the proportionality remedy (Naidoo, 2018).

Under the reformed Consumer Insurance (Disclosure and Representations) Act 2012, the position is now such, that a misrepresentation which has been made honestly and reasonably by a proposer, who has come forward for insurance cover, even though such an honest and reasonable fact is one which has induced the underwriter in accepting the risk, binds the insurer to honour any claims that arise out of the insurance contract provided these are duly covered and valid (Farrugia, 2018).

On the other hand, if a careless misrepresentation has been provided by the proposer, the resultant valid claims will be paid only partially by applying the proportionality principle. This principle has been designed to bring fairness to the contracting parties since the insurer may pay a proportion of the loss according to the shortfall of premium collected by virtue of the careless misrepresentation (Farrugia, 2018).

Moreover, a proposer who has committed a breach of utmost good faith by virtue of a deliberate or reckless misrepresentation would entitle the insurer to treat the policy as void, if such a breach was one that induced the underwriter into accepting insurance cover. In such a case of deliberate or reckless misrepresentation, the insurer also reserves the right to keep the premium received and decline all claims made by the insured (Farrugia, 2018).

In a commercial scenario, a breach is committed if it satisfies the criteria of a qualifying breach. In the case of the proposer/insured failing to make a fair representation as dictated by the Insurance Act 2015, a qualifying breach would be one which would have influenced the insurer to refrain from accepting to take on the risk being proposed, or to impose special terms and conditions. In such cases there could be two scenarios falling under this definition of qualifying breach. The breach could have been caused (i) deliberately or recklessly, or the

breach was (ii) not caused deliberately or recklessly. In the former scenario when a breach of making a fair presentation of the risk is one which is done deliberately or recklessly, the insurer is entitled to avoid the contract, refuse the ensuing valid claims and also retain the premium paid by the insured. On the other hand, if the breach of making a fair representation of the risk is one which is not deliberate or reckless but still has induced an underwriter into accepting the risk which would have otherwise been avoided, then the contract may be set aside, although in this instance, the premium must be returned to the proposer/insured. Moreover, if the breach was such that an insurer would otherwise still have accepted to insure albeit on different terms and increased premium, the proportionality principle of any ensuing valid claims would be applied (McGee, 2015). Also, if the breach committed by the commercial policyholder was a qualifying breach which was not deliberate or reckless, however the insurer would still have accepted to insure, albeit on new terms, then the contract would be based on these new terms and these terms will be deemed to be applicable (Ransom, 2016). A model built by Li, et al. (2016) to study the value of proportional remedies, revealed that such a proportionality application brought about increased equity particularly to the proposer who acts honestly albeit carelessly.

Success of reforms largely depend on the output of case law and practical experience. The issue is mainly what insurers really need to know at a time when today, they are able to avail themselves of instantaneous information through the possession of mass data. Moreover, insurers today are also equipped with sophisticated tools for information-gathering and can model expected losses efficiently (McGee, 2015).

Reflecting a century of legal activity, following the enactment of the UK Marine Insurance Act 1906, Bennet (2006) comments that the need for reform stems from years of judgement and interpretation which after several years, tends to settle, stabilise and offer an opportunity for a revamp. The need for commercial certainty also supports the need for reform. In the UK, there has been some criticism about the rule of the Marine Insurance Act 1906,

particularly the divergence between general insurance contract law and marine insurance law, old principles and practices which were previously applicable to ancient trade and customs, and the lack of compatibly with commercial practice (Bennett, 2006).

When determining a suitable and equitable model for utmost good faith, one must balance both the economic costs and the social benefits of such reform, while maintaining competitiveness of the market both internationally and domestically in the process (Lowry, 2010).

As a country which has not reformed the practice of utmost good faith, Malta presents a perfect case study to gauge its position in this respect and therefore features as a country under study in this research.

1.6 The position of Malta with respect to utmost good faith

By way of an introduction to the Maltese position, it is opportune to begin with the historical context. In the year 1798, Malta was invaded by Napoleon and hence was under French rule until September 1800, when British forces had been called in to assist. After 164 years of British rule, Malta gained total independence peacefully in 1964 (Zammit, et al., 2018) and later joined the European Union (EU) in 2004. This historical context is particularly important to justify why Malta traditionally adopted British insurance practices and why it followed the Marine Insurance Act 1906 when applying the principle of utmost good faith. Insurance judgements in Malta are based on legal precedent and are very much based on UK case law and practice. Even more so, in deciding insurance disputes, it is not uncommon to have court judges in Malta recite British case law, definitions and practices in their *ratio decidendi* (Farrugia & Grima, 2021b).

A country such as Malta, needs to ensure continued business relationships with foreign counterparts while it relies on relevant practices, contract compatibility and a sound legal framework to remain competitive in the area of insurance. Although very much influenced by UK practice, EU directives or regulations can have an overriding effect on insurance

operations in Malta. Any reform decision taken by Malta might affect similar small countries that could follow by adopting similar changes (Farrugia & Grima, 2021b).

As Maltese legislation on insurance is very sparse and, in some cases, non-existent, there is a need to consider legislation on which court decisions and judgments can rest. This is so since as things stand, insurance cases are based on principles as applied in the UK, some of which have become obsolete in light of modern developments. As an EU member state, Malta is obliged to endorse EU laws and regulations and transpose these into national law, where applicable. Such transposition of ready-made law is convenient in bringing change as it requires little reform effort on the part of the EU domicile (Farrugia & Grima, 2021b). Therefore, studying the case of Malta requires giving due regard not only to British influence and insurance practice, but also to the potential harmonisation of insurance practices introduced by the EU.

Malta has not reformed the utmost good faith principle and the situation challenges the fair application of the principle. Article 993 of the Civil Code, Chapter 16 of the Laws of Malta, states that:

> "Contracts must be carried out in good faith and shall be binding not only in regard to the matter therein expressed, but also in regard to any consequence which, by equity, custom, or law, is incidental to the obligation, according to its nature" (Article 993 of the Civil Code, Chapter 16 of the Laws of Malta).

Under the Laws of Malta, utmost good faith is referred to and mentions how this allows the contract to become void on grounds of non-disclosure or misrepresentation (Farrugia & Grima, 2021b).

Article 385 of the Commercial Code, Chapter 13 of the Laws of Malta states that:

> "(1) Any concealment, or any misrepresentation by the assured, or any discrepancy between the contract of insurance and the bill of lading,

shall render the contract of insurance void, if such concealment, misrepresentation, or discrepancy is such as to lessen the estimate of the risk or to change the subject-matter thereof. [and]

(2) The insurance shall be void even if the concealment, misrepresentation, or discrepancy shall have had no effect upon the damage or loss of the things proposer" (Article 385 of the Commercial Code, Chapter 13 of the Laws of Malta).

In addition to findings by Baldacchino, Briguglio and Moncada (2021), Malta, as a small state, has its advantages in being flexible to make decisions, as it possesses a natural talent for business and resources. However, inherent to small states and islands, Malta must rely on international markets and exploit competitive niches due to its very small domestic markets (Baldacchino, et al., 2021).

This is very relevant to this study as Malta is connected internationally through the business of insurance, especially in the area of reinsurance and thus it is equally relevant to understand the applicability of the reform signs applicable to a small country like Malta.

1.7 Aim and objectives

Through this research, the researcher aims to determine the factors that lead to regulatory reform using the principle of utmost good faith principle as a case study.

In summary, the objectives to achieve this aim are to:

- Determine the factors that lead to reform in general
- Determine the consequences of ignoring the factor determinants affecting reform
- Test the general reform determinants using utmost good faith as a case study
- Establish how these reform factor variables relate to respondent

demographics and jurisdiction

- Rank these factor variables according to the degree of agreement by the respondents
- Establish whether Malta should upkeep its current utmost good faith practices

1.8 Research problem

With changing times and practices, the insurance industry needs to be vigilant of the changes that alter the traditional ways of doing business since there are consequences to becoming complacent in the financial world. Amidst a complex climate of new trends and tendencies, market players need to read the signs of reform to retain their effective business models. Evident changes brought about by technology, together with social and economic trends and tendencies, have altered how business is transacted in today's world and exposed new communication channels used by the contracting parties. Therefore, stakeholders who are responsible for the facilitation and monitoring of change to ensure fairness and equity, have to be vigilant and keep abreast of the developments. Moreover, stakeholders must utilise available legal means to bring about changes in rules, regulations and legislation to reform policies and ascertain that procedures and practices are commensurate with changing times. Therefore, this research is intended to identify the factors that would set in motion such aforementioned reforms and the researcher will actively examine the validity of such factors through a specific test, based on the insurance industry, which will be the testing ground for reform in insurance practice.

Complacency presents its own problems and challenges, adding to the chain of research problems in this research. Therefore, the researcher, having identified potential industry problems, has set in motion a roadmap (via the methodology) to address such issues and to provide possible insight to potential solutions in this regard. The researcher intends to shed light on these problems by taking stock of the market through first-hand research and

information, raising awareness of the signs and needs of reforming the utmost good faith principle, the consequences of remaining complacent and the specific position of Malta as a country under study. The researcher further presents a model approach for determining and testing propositions which may be used to tackle other similar industry problems in the finding and ranking of reform factor variables.

1.9 Research questions

The researcher, being actively involved in insurance throughout a 30-year career, made a number of observations in the area of reform in insurance and to this end, sought to answer the following questions:

a. What are the factors that generally lead to reform and what are the consequences of ignoring the signs pointing to the need for reform?

b. What are the factor variables related to the reform (by regulation) of the principle of utmost good faith and are these variables influenced by (i) demographics and (ii) jurisdiction of the respondents?

c. Which factor variables are the most agreed upon when assessing the need for reform of utmost good faith?

d. Should Malta (as a case study) upkeep its current practice of the utmost good faith principle?

1.10 Significance and purpose of the research

As industries develop, businesses must adapt to remain relevant and profitable. Insurance was first practised by the creation of primitive forms of fund-raising methods and security mechanisms to cater for the unexpected. Initially these were in the form of funds generated by funeral clubs and bottomry bonds (Raynes, 1949).

Traditionally, insurance relies on the truthful statements made in utmost good faith and such reliance has brought on many court and litigation cases worldwide.

The researcher worked first-hand in the insurance industry, serving over 20 years in the sector dealing with insurance matters and being involved in numerous processes including but not limited to, underwriting and claims. One of the problematic areas that seemed to feature regularly and unfairly was the application of the principle of utmost good faith, wherein the insurers held the upper hand in the contract dealings as they contractually shifted the onus of disclosure onto the proposing customer, who in most cases, barely understood the obligations and consequences. At a time when customers are the focus of business activity and amidst several consumer-oriented legislation, the researcher desires to study and question the applicability of the utmost good faith principle in the modern business world. Generally, as observed by the researcher, the industry suffers negative publicity. Through public dissatisfaction in the press and other media, one could notice the problems this principle causes, not only to the companies involved being exposed to bad repute but also to the industry as a whole through lack of trust in the service and distrust of the insuring party. The researcher notices a disparity in the practice of utmost good faith, causing some countries to reform this position. Taking a concrete example, Malta, for unknown reasons, did not follow suit to reform notwithstanding that traditionally and customarily, the insurance industry followed the developments in the UK. Therefore, the researcher set forth research in the determination of what primarily causes reform in various countries. Understanding the factors that lead to the reform of regulation or practices reveal vital signs which restore repute and good industry practice as well as respond to customers' needs, wants and demands satisfactorily.

1.10.1 Value and originality of the research

Primarily, the value of this research is that it gives insight to potential reform in the insurance sector, particularly in the practice of utmost good faith. The work presented provides a

theoretical conjecture, shedding light and providing a basis for potentially changing current practices. Although there have been studies on regulatory reform and on the principle of utmost good faith, such studies were limited to specific countries or specific regulations. This research seeks to fill in a gap in literature in the field of insurance since there has been no known literature exploring what leads countries to change practices in an industry such as insurance, ranking these factors and highlighting the consequences of non-reform. This research stands out as it focuses on regulatory reform and practice, using the case of reform of the principle of utmost good faith and serves to build knowledge in the understanding of the root causes of such changes. Scholars will find the results of this work useful for the study of other reforms in other sectors and industries, building upon the findings to create reform indices or determinants, suitable to reveal the optimal time for reform, if at all.

The findings will also serve as a literature base for the possible restructuring of the insurance market practice and regulation. It fills a gap in the existing literature by presenting a model approach which can be replicated to other studies, looking at changes in regulation and operational practices of varying industries to understand how these would impact the indigenous scenario and beyond.

This research focuses on regulatory reform and seeks to prepare insurance market players to respond to modern circumstances fairly and effectively. It will produce industry specific intelligence and will make insurers aware as to whether they are responding to modern needs adequately. Thus, this research analysis is important for underwriters and policy writers in insurance since they benefit from the social, operational and legislative findings. Furthermore, it will serve as insight to regulators and stakeholders in understanding the most optimal time to respond to changing consumer behaviour, consumer rights and consumer needs and highlights the risks and consequences of complacency.

Furthermore, the results of this research may be used as supporting literature by lobby groups and stakeholders when pushing their agenda for reform before the legislators.

The research instigates change and development and is beneficial to stakeholders who may incorporate the findings into insurance policies and their respective practices. As industries change and practices develop, reformists must be able and prepared to respond by bringing equity and justice in line with changing times. In this respect, this study is useful to the insurance industry in general as it sheds light on the needs of the market, to reform the practice of utmost good faith if at all.

Lastly, but equally important is that the study specifically identifies the position of Malta and, thus, the results pertaining to the findings in this respect are useful to reform stakeholders in the Maltese market since it provides research options for the Maltese insurance industry as it operates in a changing business environment.

1.11 Methodology

1.11.1 Background of the study

To reiterate, the main aim of the study is to establish reform determinants specifically related to the reform of the insurance principle of utmost good faith. Barth (2006) stated that to understand the determinants of bank policies and effective strategies for reform, future research should use cross-country case studies and comparisons through surveys, questionnaires, case study information retrieval, industry data and company data. This serves to test differences and determine whether countries have been successful in adapting to changing practices and adjusting their respective laws and regulations. In this regard, this research builds on the suggested methods detailed by Barth by utilising questionnaires and interviews as research methods (Barth, et al., 2006).

The researcher follows the approach chosen by other authors such as Pavia, et al. (2021) and Grima, et al. (2020), who have carried out studies on specific regulations and requirements and used them as focused laboratory tests, the findings of which can later be tested and used for other requirements. The use of such an approach should produce a number of variables which might be exclusively applicable to a particular jurisdiction or industry and its

corresponding regulatory requirements (Pavia, et al., 2021; Grima, et al., 2020). The eventual scope aims to create a form of checklist that would assist in the determination of the need to reform the insurance principle of utmost good faith, if at all necessary (Farrugia, 2018).

When studying the theories of public choice versus the theory of traditional reform Rodriguez and Brown (2013) debated on the 'consolidation versus fragmentation model' of government and proposed to measure the suitability of each through the investigation of five themes that affect governance reform. The method used was that of observational studies, creating a construct (governance reform index) to be able to align theoretical assertions from public choice and traditional reform perspectives after considering themes therefrom (Rodriguez & Brown, 2013). This is another suggested method that has been followed for the purpose of this research, which is also akin to the works of Abiad and Mody (2005) wherein country case studies were used to provide insight into a variety of political and economic theories of policy change and consequent reform.

Abiad & Mody (2005) constructed an index based on 25 years of data on financial liberalisation covering 35 countries, providing an empirical study and examining factors influencing reform in financial liberalisation. The index is a result of several factors that were identified as being themes affecting financial reform namely: "directed credit/reserve requirements; interest rate controls; entry barriers and/or lack of pro-competition policies; restrictive operational regulations; the degree of privatisation and the controls on international financial transactions" (Abiad & Mody, 2005, p. 68). Scores were given to these themes and were in turn correlated denoting how repressed or liberalised the chosen countries were.

Welsh, et al. (2011) determined the various ways of theorising from case studies, creating a quadrant of methods namely: inductive theory building, natural experiment, interpretive sense-making and contextualised explanation. Theorising from case studies is a methodology proposed by (Yin, 2003; Stake, 1995), which in the context of this research,

was used to determine the reasons for reforms in the various countries. Yin devotes an account on how case studies are used to explain rather than explore (Welch, et al., 2011). In the context of this research, themes from the literature were drawn out to show what influenced the need for reform. Yin (2003) states that case studies allow the understanding of the real-life situations in the studied scenario and although it is essentially investigating what happened, it adds two sources of evidence beyond what a historian would observe. The two sources are essentially direct observation of the events being studied and the interview responses of those connected with the study. In the context of this study, such sources manifest themselves in the direct input of those involved first-hand in the related environment who reflect the real scenario through their respective responses.

The researcher drew the determinants of reform from secondary research sources namely scholarly literature, law reports and industry journals, among others. On the other hand, the researcher, for this purpose, used primary research in the form of questionnaires, to test the reform factors emergent from secondary sources and used interviews to apply the findings to the case of Malta.

The survey questionnaire that was prepared and undertaken, examines whether responses affected the respondents' demography and determined real-time responses to verify propositions that suppose the factors that have an influence on reform of utmost good faith in insurance practice and, investigate the consequences of a country ignoring the reform determinants. The testing of the propositions explored the validity and extent of influence of such factors, keeping an eye out for any other factors that also have a bearing on reform using the principle of utmost good faith as the testing medium. Such findings were identified and ranked in order of importance as these assisted stakeholders in the assessment of their respective industry needs and position.

1.11.2 Type of research sources

The research consisted of literature generation mainly emerging from qualitative and quantitative data analysis. This generation of knowledge was constructed on an open slate

and open mind basis with no preconceived influence or biased ideas (Heath & Cowley, 2004).

1.11.2.1 Primary research

Primary research was sourced from experts in different countries based on the respondents' experience, qualifications, expertise, role and positions held in their respective industries, contribution to the industry and repute. The persons targeted for the attainment of primary information were mainly stakeholders, particularly insurance and legal experts and those working in a position to influence reform. These were mainly, but not limited to, insurance practitioners, policymakers, underwriters, legislators, legal personnel, regulators and experts in the field.

A sample of the population was obtained and questionnaires were commissioned. The questionnaire consisted of 22 Likert scale questions which have been built on the basis of the secondary research literature revealing themes that influence reform.

The responses analysing the quantitative aspects were in numeral codes for easier analysis using correlation to determine studied relationships. In fact, a Likert scale was used to give a quantitative measure to the research.

Non-probability sampling was opted for, which is a technique used to sample on the basis of subjective judgement rather than on a random basis. This method was possible since the researcher is an experienced practitioner and thus was able to identify the most appropriate experts in the respective field/s. Such convenience sampling is purposive in view of the specific nature of the investigation of the research. In addition to this, snowball sampling was used and the respondents were asked to propagate the questionnaire or suggest other relevant experts for further interviews.

Interviews were commissioned particularly to obtain first-hand information and to discover other areas of investigation which were not revealed through the initial findings of the researcher (Noble & Mitchell, 2016) relevant to the investigation of the case of Malta.

1.11.2.2 Secondary research

The literature served to build up the determinants of reform through desk-based research and cross-country review of regulations.

Secondary research consists of, but not limited to, material obtained from literature, articles, regulations, soft law and judgements made in litigation cases, normative legal research, case studies, law reports and journals, judges' decisions, opinions and *obiter dicta*, industry statistics and reports, official online websites, white papers, articles and scholarly papers, industry practice and policies, field expert reports and historical desk-based study. As suggested by Abiad and Mody (2005), the data was also collected from available surveys, various bulletins, official websites, journals and related literature.

The secondary research of this study utilised a literature filter protocol by the name of PRISMA, and did so in two ways; firstly, to develop a protocol to derive relevant studies and secondly to sort and narrow down the search results. Moreover, themes were then identified and analysed using thematic analysis as suggested by Braun and Clarke (2006) as a tool in the determination of the propositions under study which suppose the factors that affect reform. This served as knowledge on which the questionnaire questions were structured by forming specific questions directly addressing the discovered supposed propositions. The methodology used to collect the data and the consequent testing of these propositions is further explained in more detail under chapter 3.

1.11.2.3 Research tools – Questionnaires and Interviews

A survey questionnaire was used to test these propositions using utmost good faith as a case study. The questionnaire consisted of 22 statements derived from the five propositions which were set in the form of a Likert scale, together with an open response for every statement to capture any clarification or further information that the respondent felt relevant and to possibly check for any other factors that could be considered and that were not included in the primary research.

Interviews were commissioned to apply the found factor variables to the case of Malta. These consisted of open questions based on the emergent four factor variables resultant from the responses of the questionnaires. Interviews also assisted the researcher in ensuring that all aspects had been addressed, capturing first hand comments or opinions of the interviewees.

1.11.3 Responding to the research questions

The responses to the first research question (a)*"What are the factors that generally lead to reform and what are the consequences of ignoring the signs pointing to the need for reform?"* were derived from literature and the questions (b) *"What are the factor variables related to the reform (by regulation) of the principle of utmost good faith and are these variables influenced by (i) demographics and (ii) jurisdiction of the respondents?"* were deduced from the primary research after the questionnaires responses were analysed. The responses following the research question (c) "*Which factors variables are the most influential in conveying a need for reform?"* were derived during the analysis stages using the Friedman test and Kendall's W, and the remaining research question (d) "*Should Malta (as a case study) upkeep its current practice of the utmost good faith principle?"* was answered through the results of the interviews.

1.12 Structure of the study

To summarise, the study leads the reader to follow a sequence of four main steps, each of which reflect the research questions under study. The four main steps are linked as shown in Figure 1.1 below.

TITLE

Factors leading to regulatory reform in insurance: The case of utmost good faith.

AIM

To establish the factors that bring about reform using the insurance principle of utmost good faith as a case study.

OBJECTIVES

To investigate the need for reform and the consequences of complacency, focussing on the insurance principle of utmost good faith as a research topic and Malta as a country under study.

RESEARCH QUESTIONS

a) What are the factors that generally lead to reform and what are the consequences of ignoring the signs pointing to the need for reform?

b) What are the factor variables related to the reform (by regulation) of the principle of utmost good faith and are these variables influenced by (i) demographics and (ii) jurisdiction of the respondents?

c) Which factor variables are the most agreed upon when assessing the need for reform of utmost good faith?

d) Should Malta (as a case study) upkeep its current practice of the utmost good faith principle?

RESEARCH FLOW

STEP 1: The first step taken towards addressing the first research question (a) above, was to determine the factors that generally lead to reform and to determine the consequences of ignoring the corresponding reform signs.

METHOD

Collected knowledge from literature using an extensive desk-based approach, determining how reform is generally brought about in different jurisdictions.

Used PRISMA as a search tool (Liberati, 2009) and then employed a thematic approach method to find common themes (Braun and Clarke, 2013) which served to build propositions (Yin and Stake, 2003) and by which the corresponding primary research questions were formulated in the form of a questionnaire.

OUTPUT

This step revealed five general reform factors and addressed research question (a) above, as determined under chapter 2 and explained in chapter 3 of this research.

STEP 2: Once the factors were determined as stated in step number 1 above, these were then tested using the principle of utmost good faith to check whether the literature reflects the real world or whether factors particular to the case study of utmost good faith are missing from the literature thus rendering the study exhaustive. Also, the influence by the demographics and jurisdiction of the respondents was investigated.

METHOD

Results of the questionnaires were analysed through Exploratory Factor Analysis.
Four variables emerged as being the factor variables that affect reform of the principle of utmost good faith.
Correlation involving demographics and jurisdiction of respondents was verified through multiple linear regression.

OUTPUT

This step laid out the four factor variables affecting reform of utmost good faith and sought to address research question (b) above and is explained under chapter 3, presented under chapter 4, and discussed under chapter 5 of this research.

STEP 3: After the four factors were revealed as stated under point number 2 above, these were ranked according to how much the respondents agreed to these factors conveying a need for reform.

METHOD

Results of the questionnaires were analysed. Via the Friedman's test and Kendall's W, the ranking of the variables was established using SPSS software.

OUTPUT

This step sought to rank the four factor variables according to the level of agreement by the respondents and sought to answer research question (c) above as presented under chapter 4 and discussed under chapter 5 of this research.

STEP 4: Once the factor variables affecting utmost good faith were established, the researcher moved on to apply these to the position of Malta as a case study, to determine whether it should upkeep the principle of utmost good faith.

METHOD

From interviews, the researcher tested the findings of this research to establish how these reflect the case of Malta.

OUTPUT

The results of this step sought to provide the position of the practice of utmost good faith in Malta and address research question (d) above as presented under chapter 4 and discussed under chapter 5 of this research.

Figure 1.1: Flow representation of research (Source: own compilation)

1.12.1 Chapter headings

This dissertation is divided into five chapters namely the introduction, literature review, research methodology, results and research analysis, discussions and conclusion.

1.12.1.1 Chapter one introduces the topic and the research problem and explains the scope and motivation of the research. This chapter also summarises the framework employed and how the findings seek to address the objectives of the thesis and answer the research questions.

1.12.1.2 Chapter two presents a review of the scholarly literature on the way reforms manifest themselves in various jurisdictions and how reformists adopted practices in their respective countries. This chapter also presents information upon which questions were built for primary research.

1.12.1.3 Chapter three describes the methodology used and why this was the most appropriate given the nature of the research. Moreover, the various methods engaged were explained, detailing the suitability of the tools used to gather information.

1.12.1.4 Chapter four analyses all the results emanating from the findings of the various methods employed after testing reform factors using utmost good faith as a case study, ranking these in order of importance as viewed by the respondents, studying the various demographics and then analysing the case of Malta. This chapter also presents meaningful data by which the research questions were answered and findings deduced.

1.12.1.5 Chapter five summarises the concluding discussions, the significance of the findings and answers the research questions. This chapter presents conclusions on reform of the insurance principle of utmost good faith and also serves as a model approach for further practices in various other sectors that also might require reform and discusses the consequences of non-reform.

1.13 Conclusion

1.13.1 Research expectations

This research moves in the direction of instigating change and development. Legislation, regulations and guidelines are parameters created by legislators and policymakers in response to industry practice at a specific moment in time. As societies develop and practices change, such professional reformists must be ready to respond to these changes and initiate reform to bring equity and justice (Mizzi, et al., 2022).

Findings are expected to determine the impact of changes (if at all) in consumer behaviour, changes in company practices like international business, new underwriting styles, a new outlook on utmost good faith, legislative reforms and modern disruptors to gauge the need for reform.

Particularly, results will shed light onto whether the advent of technology has been a driving force in the reform of utmost good faith in insurance practice and whether the legislative developments played a part in such a change.

Moreover, the results are expected to determine whether modern means of communication, new forms of transacting of business, social media, instant communication, new ways of verification and assessment of risks, change in social behaviour in terms of willingness to use information technology (IT) systems, trust and confidence, security and privacy, and contract control by the issuer play a part in the drive for utmost good faith reform. Also, the effect of international business is determined verifying whether a level playing field in terms of legislation, regulation and insurance practice is necessary for the smooth running of international operations and whether standardisation in a globalised economy is beneficial.

The effect of regulation on the practice of insurance is expected from the results of this study, particularly the impact of consumer law, codes of practice, ancillary laws and regulations, economic and political risks, such as Brexit, given that most international insurance and reinsurance business involve UK companies and hence UK practice, procedures and policies.

Technological aspects should be revealed from the research particularly the effect of artificial intelligence (AI) systems, Regtech, Insurtech and management information systems (MIS) which have had great influence on underwriting operations in insurance, changing the traditional way of obtaining information from the potential proposer.

Finally, results are expected to bring to the fore, the circumstances in a given legal framework, such as Malta, after presenting a list of factors that influence reform. In this respect, it should be determined whether reform of the principle of utmost good faith is fitting or otherwise.

1.13.2 Research limitations

While care has been taken to eliminate any influence by the researcher, the convenience sampling and snowball sampling techniques, although very effective methods of sampling the population, could have limited the study to the opinion of a select sample of experts. The researcher was selective on the chosen interviewees, as being in the insurance industry for more than 30 years facilitated the identification of the experts in the field who could effectively contribute to the research. To alleviate possible bias and limitation of such choices, the expert interviewees were chosen on pre-set criteria, specifically professional experts who dedicated a considerable number of years to insurance practice, those holding important roles within their respective insurance organisation, those holding qualifications and those who had experience with insurance practice and insurance reform.

Another limitation of this work was the fact that most responses were derived from local practitioners due to proximate availability, however, the researcher did successfully contact foreign practitioners through email contacts and social media. That being said, the fact that a good majority of responses hailed from Malta, strengthened the outcome of the findings related to the case of Malta.

CHAPTER 2 – LITERATURE REVIEW

2.1 Introduction

The literature review intends to discover the general reasons for various reforms in a broad way, by looking at changes in practice, legislation and regulation brought about in different countries and their respective global industries and sectors. Such will reveal factors that have been influential in the development of certain markets, sectors or industries, shedding light on the real and most influential factors leading to reform in its widest sense. This served to understand the general reform positions taken by the respective countries and these positions formed the basis of the primary research, used to test the reform factors affecting utmost good faith which is an insurance principle used as a case study under this research. This was achieved by structuring a survey questionnaire built upon the findings of the literature review following a systematic review approach which is detailed in chapter 3.

Moreover, the literature review served to provide information on the different insurance practices, especially the area of disclosure of information by the insurance contracting parties in the context of utmost good faith. Those countries that have developed the insurance principle of utmost good faith through the years, presented particular features that explained how the development occurred in that respective country, noting various trends and tendencies pushing towards insurance reform. Finally, this chapter concludes with the factors found to be influential in bringing reform and that served as the propositions under this study.

2.2 International analysis on general reform

As the starting point for the investigation of how reform is brought about, an international outlook has been undertaken in the achievement of this knowledge. Taking Australia as the first country to analyse general reform, the Australian Chairman of the Productivity Commission was reported to say, in his speech of the 8th December 2010, that the cost of not implementing economic reforms seriously jeopardised the productivity-enhancing of the country, exposing it to international competition and globalisation threats (Banks, 2010). In

the decade between 1980 and 1990, Australia felt the need to reform economic and political policies in the ambit of globalisation (Kelly, 2000). High inflation experienced in the 1970s slumped to low levels in the 1990s and brought economic shocks that led to inflation and monetary policy reform (International Monetary Fund, 1998).

Livanes (2012) wrote on the need to reform contract law in Australia especially since today, many contracts are electronically negotiated. Lack of reform in this area of law would mean less harmonisation and more complex agreements to deal with foreign business, as lack of reform threatens cross-border deals and business relations (Livanes, 2012).

Bhatia and Coleman (2003) argue that reform in health systems in Canada was accelerated by social and economic developments, increasing costs due to technology, an ageing population and global competition. The authors also state that what held reform back were professional and corporate interests and institutional complexity, among others. Bhatia and Coleman (2003) concluded that the success of reform rests upon the influence and agreement among policymakers, the degree of normality values that the reform is aspiring to achieve, and the social factors within the discussed environment.

Tuohy (2002) reported that the health reform in Canada in 1990 was due to high public spending and public dissatisfaction for improvement that triggered the government to act.

When studying the automobile insurance reform in Canada, Kleffner and Nielson (2004) discovered that customer dissatisfaction together with financial difficulties and political challenges called for a reform in the motor insurance business.

In analysing determinants for reform in the pharmaceutical industry in Cyprus, Wouters and Kanavos (2015) highlighted the importance of engaging all stakeholders in adequate liaison with the government. Reform in the pharma sector stemmed from public dissatisfaction coupled with the financial strain placed on the system and on private market purchasers.

When examining the current financial situation and consequently suggesting medium term reforms to the institutional setup of Cypriot financial supervision, Athanassiou (2006) discovered that reforms were necessary to respond to a fragmentation of practices, thus,

reform would achieve consistency in addressing market distortion and combatting the threat to failure in achieving the market participants' expectations.

The litigation performance scenario in Cyprus is dubbed to be a slow one as it ranks in the 73rd place in terms of the effectiveness to resolve disputes. This is primarily the result of the lack of government spending on resources (Schwab, 2019) and could point towards a need for reform in the area of potential insurance litigation.

When explaining the drivers behind non-performing loans in Cyprus, the Governor of the Central Bank of Cyprus, Georghadji (2017), placed the blame on the economic climate, the legal resolution procedures, bad practice, market conditions and poor risk management. This led to a reform in the legal framework, strengthening regulation and supervision of banks and creating a market for distressed assets. Through reform, Cyprus achieved minimisation of time and costs, and increased efficiency of the judicial system (Georghadji, 2017).

Panteli (2017) commented that the asymmetric information between patients and providers leads to economic distortions. This is akin to an insurance contract which is also asymmetric, and which likewise creates disparity between the insurance contracting parties, namely the insurer and the proposer/insured.

Moreover, Cyprus was faced with the need to initiate reform following a period of financial strain, pressure to achieve solidarity and cohesive conditions to the healthcare system, the achievement of efficiency achieving equal access, financial viability and quality in healthcare (Panteli, 2017).

When studying the healthcare socio-political dynamics in Hong Kong, Yin and Jingwei (2018) observed that healthcare reforms were mostly triggered due to the rapidly ageing population, prolonged utilisation of care and the rising challenges of financially funding it. Hong Kong, a former British colony, carried out health reforms that have encouraged the government to embark on major financing. Historically, Hong Kong was a pioneer in policy learning for other health systems. Yin and Jingwei further state that the role of politics has a bearing on the direction of reforms, with institutional frameworks having a very evident

influence on health reforms. The Hong Kong business sector is very substantial and has an authoritative role in major reform decisions. Moreover, Yin and Jingwei argue that policy reformers are aided by adequate political management to be able to accurately assess situations.

When the Rights of Third Parties Bill 2013 was issued in Hong Kong, the intention to reform the position of third-party rights was to simplify the law and protect third parties after public dissatisfaction. This stemmed from observations of other similar jurisdictions (Brock, et al., 2013).

Singapore has also gone through reform in healthcare, having had pressures of an ageing population and a high rise in government funding costs for the service. Singapore has been historically conservative with an authoritarian state, albeit a very efficient decision-maker, and thus, very flexible to embark on structural reforms. Faced with a demographic healthcare challenge, Singapore found itself in a situation where patients struggled to fund their own healthcare, prompting the government to act and to lay a plan for healthcare reforms. Although it appears that Singapore's reform was driven by political considerations, to be effective, any reform must content both the businesses and the public receiving the service (Yin & Jingwei, 2018).

When studying the reasons leading to reform in the education sector in Singapore, Tan (2009) highlights that this was mainly in response to globalisation affecting the national economic developments. The government of Singapore is on record saying that small states are very much vulnerable and dependent on international activities due to the connection of international networks in such a globalised world. In this context, Singapore is moving away from its conservative attitude towards a more proactive, performing approach to meet the globalisation and convergence trends of educational reforms (Tan, 2008).

Tax reforms in Singapore were due to economic pressures and it was mainly globalisation that convinced the government to align the economy with current trends in taxation, particularly through the introduction of a modern value-added tax (VAT) system as part of

the overall tax reform package (Jenkins & Khadka, 1998).

When deciphering the factors that led to the redesign and reform of deposit insurance in the US, Blinder (2001) discovered that this was largely influenced by economic and financial drivers and such reform stabilises the risk-pricing factors. Blinder concludes that macroeconomic and financial stability is an underlying factor that will reshape the deposit insurance system in the US and would minimise the burden on stakeholders by determining a fair deposit coverage level (Blinder, 2001). Therefore, all these factors point towards the fact that reform is largely influenced by economic factors.

When analysing healthcare reform in the US, several drivers were the reason for such overhaul. The US initially compared its health system with international counterparts and discovered some shortfalls leading to inefficiency, waste, and underinsurance to fund the system. To compound this, the demographics of the US added to the financial burden of having a record number of people due to reach pension age, which further burdened the healthcare budget of the US (Kotlikoff & Burns, 2004). The world figures reveal that the US had the highest health costs in 2009 (World Health Organization, 2009).

Pushing towards healthcare reform was also due to a decline in the purchase of insurance by employers, as insurance cost increased, making it unsustainable for some families who expressed their concern on whether the current healthcare system was, in reality, socially sensitive (Craig, 2014). The motivation behind healthcare reform was in fact to achieve social equity and promote preventative care. Public opinion polls skewed in favour of government involvement in healthcare in the US, rather than relying on the free-market capitalist industry of insurance players (Blendon & Benson, 2001).

Abraham (1988) investigated the causes of an insurance crisis that had arisen in the US market with regards to the price of commercial liability insurance, which prices escalated considerably in years 1985/1986, resulting in dissatisfaction and calling for reform in this sector. Abraham (1988) concluded that the factors causing such crisis included the increase in interest rates, exchange rates, supply of reinsurance capital and the attractiveness of

alternative investments. Other contributing factors were the collusion among insurers where insurers collectively agreed to control the rising premiums as the influence by the courts causing a surge in costs and the predictability of liability decisions, invoking instability and causing more liability reserves to be created to cater for this uncertainty. Also, the courts through their cases involving 'no fault and joint & severally liable' decisions, introduced new adjudication, making insurers liable for what they were otherwise immune to. Therefore, the courts, through judicial interpretation, had an influence on the matter. Finally, another cause discovered to have had an impact on the liability insurance crisis was the incentive to litigate and the absence of a readily available social insurance welfare safety net requiring more enforcement of awards through a court system. Therefore, this boils down to economic forces, legal developments and the social welfare policy in the US. Abraham (1988) debates whether preventing insurance crises is cheaper than the combination of reforms in this respect**.**

The reform leap in China started in 1949, and civil unrest moved the country towards more market-oriented rewards. The Comprehensive Economic Reform (CER) in China that started in 1978, represented a shift in paradigm and ideology as a result of the changing society and its culture (Hou, 2011). Wu-Beyens (1991) does not point to the government as being the driver behind the economic reforms in China, but attributes it to the pressures of certain sectors in the society and a number of economic and financial factors including employment inefficiencies (Wu-Beyens, 1991).

Reports published by the World Bank in 2006, placed France in the 44th place for ease of doing business (World Bank and the International Finance Corporation, 2006), pointing at French law as having been economically inefficient, complex and unpredictable, whilst also suggesting the need for modernisation if it aspired to be a credible option for international business. Falling behind in this respect, reform brought about a change in contract law which required comprehensive intelligible terms and balance of the interests of those concerned, bringing a fairer solution to disputes, and also alignment of French law to contract law in

other jurisdictions (Rowan, 2017).

Lopes (2007) points to high rising public-sector budget deficits as one of the main reasons for initiating reform in the health sector in France. This was aggravated with the worsening demographics, which presented a country with an ageing population set to worsen by the year 2030, having experienced an increase of those surviving the age of 65 and over (Lopes, 2007). Moreover, Nay, et al. (2016) comment that France's healthcare reforms required focus on policy and institutional transformations to achieve the desired social objectives of justice and solidarity. Moreover, reforms require public efforts, institutional mechanisms and political commitment to reduce social inequalities. In fact, the French government was influential in the health reform of 1990, keeping the values of equality and equitable distribution high on its agenda. This required a redistribution study by examining the socio-economic and epidemiological factors (Nay, et al., 2016). Thus, one can say that government intervention was a strong influence (politically) in French healthcare reforms, together with the social values and the strive for justice and equality.

The government in France also looked at reform as a measure to widen the financial base of the social security system and to ease the French national insurance system which has been operating in the red for several years, with a deficit balance of $14.77 billion in 2007 (Lopes, 2007). This, therefore, was a reform heavily motivated by the government that sought to juggle between financial, economic, and political matters.

Similar findings by Teitelbaum (1996) reveal that pension reforms in France were under pressure demographically with the ageing population increasingly outweighing the working population with government budgetary reasons compounding the matter. With measures set to burden the working class, there were socio-political factors affecting pension reforms which could not be ignored (Teitelbaum, 1996).

In France, the civil code dates back to the glorified Napoleonic years, and although standing the test of time throughout its 200-year success, the code was up for reform. The revised sections of contract law came into force on 1st October 2016 intending to make the new

provisions more accessible, applicable, internationally influential and commercially attractive. France is commercially connected to international business and thus commercial interests were high. The reform was undertaken as a result of the importance of having a country housing contract law that recognised the importance of dealing with international business. Although historically the French code served as a model for other jurisdictions, such an exemplary position aged out due to its withering relevance in modern times. Domestically, the French have been trying to smoothen the edges by having the courts try to give the code a modern interpretation in the settling of cases, which clearly is not what the French Admiral intended when the Napoleonic Code was first codified. Apart from the fact that such reinterpretation proved to be very extensive, decisions based on cases became meaningless without judicial backing. The growing disconnect between the code and its application was clearly pushing for a need to reform the law of contract, especially since this not only affected internal adjudication, but also had an influence internationally. Hence, modernising the code had the objective of making it more competitive to trade in an international globalised world and to respond to a changing society and change in technology. Spearheaded by the European Parliament that encouraged work towards a European civil code, the harmonisation of EU legislation into the French legal framework posed challenges to policy makers. French law was not as attractive to international businesses as other common law countries, and consequently was less commercially enticing (Rowan, 2017).

According to Eichhorst (2019), the reform in consumer law in Germany was part of a modernisation process addressed to bring fairness to the contract and the contracting parties, especially to protect the consumer/proposer (Eichhorst, 2019). Pettinelli (2005) explains that the general business concept is tied to "*Treu und Glauben*" which means faithfulness, loyalty, fidelity, and reliability, together with a sense of faith or reliance. Although not a legal rule, this concept has been the norm in commercial practice and the courts have protected this position and developed this notion into a duty on the parties to co-operate,

communicate information and safeguard the parties' interests (Pettinelli, 2005). When analysing the reasons for policy change in the German healthcare policy, Bhatia and Coleman (2013) concluded that consensus among core policy actors was most persuasive in achieving reform.

The challenges leading to healthcare reform in Germany came in the form of increasing costs and unsustainable funding compounded by a lack of adequate resources. The increase in demand for healthcare was exacerbated by the rise in income and other demographics, such as the increased longevity, which aggravated the problem due to rising numbers of older patients. This made the German health expenditure one of the largest worldwide vis-à-vis its gross domestic product (GDP). Moreover, technological progress added to the cost as more people resorted to improved healthcare for a longer time in life (Grin, 2014).

Rühl (2006) argues that after the unity of countries into one European Union (EU), the difficulties of cross-border business due to differences in rules in insurance contracts persisted, despite harmonisation. Rühl challenges the perception that common law and civil law are at distant poles and too different to be integrated, using consumer law as the basis of the research. This was said in the context of business between Germany and the UK that endorse civil law and common law respectively (pre-reform). The costs involved in bringing contracts together between the two countries outweigh the premium benefits and therefore, in personal lines business, this achievement is highly discouraging. Commercial contracts, the ones that are transacted on a cross-border basis, suffer from the lack of harmonised law and choice of law, which constrain companies to adjust their policies to be able to conform with that of the client's jurisdiction (Rühl, 2006).

When studying the reform of the labour market in Italy, Pinelli, et al., (2017) highlighted several reasons that led to such reform. At the time of labour reform, the system of unemployment insurance was highly underdeveloped and fragmented too. This presented an economic challenge, especially when considering that spending in this area was lower than Italy's major EU member counterparts. Moreover, the ever-changing environment in the

global economic world and the sluggish productivity in Italy was falling behind, and such triggered the need for a full-fledged reform (Pinelli, et al., 2017).

When it comes to the identification of healthcare reform reasons in Italy, one needs to look back at the historical development of the period between 1969-1970, a time of social dissatisfaction expressed through social movements and union-led strikes. There was a calling for healthcare reforms in view of the rising costs caused by the augmenting population, the ageing population, increased costs of health, and the rising use of services per person and per episode of use. The reformists thus sought to tackle these issues by addressing four main factors namely effectiveness, efficiency, equity and acceptability, drawing the attention of the government and its political agenda (McCarthy, 1991).

On the educational front, Pridham (1978) studied and analysed the associated problems of Italy in the 70's and the research findings revealed that issues with the reforming of the educative system were mainly due to political unwillingness, instability, and bureaucracy. Moreover, the government was facing other priorities which were mostly economic, in the form of inflation, unemployment, and regional disparity, all demoting the importance of the educative reform (Pridham, 1978). Italy faced challenging economic times in 2011, which prompted reforms in the country. The reasons for pushing this need were largely due to the accumulated debt, doubtful growth in the economy, and rising costs for the government. This situation prompted reform which sought to achieve fiscal confidence and stimulate growth through increased consumption (Annicchiarico, et al., 2013). In this respect, such reform was instigated by the economic conditions, which affected the society requiring political commitment to bring about the necessary changes.

Freedman (2001) debated that economic reform in Japan served to adapt to the changing international environment affecting the political, social, economic, and technological frameworks of societies. This is especially true in view of a political *status quo* experienced by Japan through the reign of the Liberal Democratic Party in the 1980s. The challenge remains on how to put Japan back on track and realign its business convergence with the

west, particularly with the Anglo–American economies (Freedman, 2001). In their research titled 'Institutions, Reforms, and Country Risk', Sussman and Yafeh (2000) comment that judicial, economic, governmental and parliamentary structure can change the way a country is perceived by foreign investors. Moreover, institutional reforms are a determinant for the economy and have an effect on growth and creditworthiness in Japan (Sussman & Yafeh, 2000).

When analysing labour market reform in Japan and South Korea, Song (2012) argues that institutional features of the employment protection system that have an influential impact on reform determine the diverging patterns of labour market reform in Japan and South Korea. Japan was pushed to reform after experiencing slow economic activity. Also, in Japan, the institutional configurations had a large influence on reform levelling the position between regular workers and non-regular workers (Song, 2012).

When discussing the determinants of reform in the educational system in Japan, Jones (2011) observed that by improving the ongoing educational systems, Japan would achieve economic benefits such as stronger competition, internationalisation and efficiency of educational spending per student. Reform brought about increasing efficiency and thus more value for money in education for stakeholders who were fundamental in the initialisation of the reform, thus responding to the demographic needs of the country. Moreover, such change was also in sync with the technological advances that spearheaded the need to modernise the educational system. In conclusion, Jones ascertains that aside from the importance of stakeholders in reform, justification for such should be based on clear principles and clarity of evidence (Jones, 2011).

South Korea is not new to reform, having undergone a major public sector reform in the 1960s. This was largely due to the demand of the society and the modernisation of the country after the colonial powers left a notable void. Moreover, not only did South Korea had to have to reform its socio-economic infrastructure, but it also had to give due regard to developing its international relations and thus had to make its institutional setup compatible.

A state reform usually triggers governments to intervene as a result of international pressure requiring the lowering of barriers to make the country more competitive internationally (Seng-Ho, 2019). South Korea initiated market labour reform after feeling the economic brunt post-1987, and Song (2012) attributes this reform to institutional features of the employment protection system. South Korea's policymakers addressed the inflexibilities in the labour market by attempting to promote labour market reform, addressing the problem between regular and non-regular workers (Song, 2012).

When studying reforms in the health sector in South Korea, Chun (2009) commented that such reforms came from the need to provide the public with better quality, sustainability, equality between the social classes, and enhanced transparency of the system. Such reforms stem from demographic determinants of an ageing population and family setup, which puts strain on the existent national health system. Continued economic performance permitted South Korea to reform, paralleled with public dissatisfaction, progress in political democratisation, and steady institutionalisation of healthcare both locally and overseas. Chun (2009) further comments that stakeholders' contributions were a determinant factor in developing healthcare (Chun, et al., 2009).

One of the major reforms experienced in the South Korean financial industry was the banking reforms following the 1997 financial crisis. This was largely due to the fact that there were a number of mergers and acquisitions, as well as the liberalisation of the South Korean market to foreign investors. This brought with it a change in banking culture, which in turn sought to achieve improvement in banks' solvency and profitability, and improved efficiency through which banks sharpened their competitive edge (Tamagna, 1952).

Tamagna (1952) investigated the proposed change in the South Korean banking system in making this an effective instrument of national economic policy and stabilisation. This was brought about by inflationary effects through government spending and substantial borrowing. Such an economic repercussion triggered reform in this sector in the hope of achieving financial and social stability. Sector reforms had the effect of strengthening

prudential regulation, and the authorities ensured that banks improved their soundness and stability to be *at par* with international desired standards (Tamagna, 1952). In this respect, international pressure coupled with financial forces and the will of the regulator had a considerable effect on reform in the banking industry in South Korea.

In conclusion, through analysis of several countries, it is evident that various factors, including political and socioeconomic factors are among others, the driving factors for reform in general. A summary of the findings of reform factors has been appended to this thesis under appendix 3. Moreover appendices 4 to 7 explain how such findings were extracted by virtue of their common themes and how these were generalised into five propositions being proposed under this study. In the light of this, these findings were tested using utmost good faith as a case study. An explanation of the utmost good faith principle, as it features internationally, is provided in the following section.

2.3 International analysis of the principle of utmost good faith

2.3.1 A global overview of the practice of utmost good faith

Insofar as insurance business is concerned, having laws and regulations supporting the insurance contract is important, since reliance on an insurance agreement could cause several legal and technical issues including complications with interpretation, which, in most cases, is to the detriment of the weaker contracting party. An insurance contract is no different from an ordinary contract, save for some distinct principles that apply. One such principle is that of utmost good faith, synonymous with the duty of disclosure which is specifically relied upon as one party is considered to be more knowledgeable than the other on the material facts related to the risk.

Before reform was introduced in the UK, the principle of utmost good faith was one that was solemnly applied, itself creating a precedent and binding similar future cases under the common law framework. Countries that follow the UK common law and practice (pre-reform) include the US (except Louisiana), Canada (except Quebec), Australia, and smaller

ones like Hong Kong, Singapore, Malta and Cyprus. This type of law, common law, is not written and it is developed by the courts following the decision of cases that come before it. To support this, some countries developed some written statutes and regulations seeking a complete remedy for insurance decisions based on a mixed system of law. Other countries opted for the enactment of statutes, having insurance law in place as a fully-fledged reformed law in a single, specific insurance Code or Act (Parsons, 2016).

The literature presented numerous scenarios of how the principle of utmost good faith is applied in different countries from which one can deduce the different positions taken by different jurisdictions in the application of this insurance practice. The countries that were most prevalent from the filtered literature sources will be discussed in the following sections.

2.3.1.1 Australia

In 2003, the Australian Federal Government at the time, undertook a review of the Insurance Contracts Act 1984. The appointed Law Reform Commission (1982) suggested that disclosure expected from the insurance proposer would be restricted only to knowledge that is known or what a reasonable person is expected to know in connection with the risk being considered. This was proposed to be the test for disclosure under utmost good faith. The proposal was later endorsed in statute law, taking into consideration the modern business environment and the proposer's knowledge, experience and culture (Australian Law Reform Commission, 1982). The Insurance Law Amendment Act 1998 in Australia obliges an insurer to ask specific questions if it wishes to revive the duty of disclosure, otherwise it is deemed to have waived its right to do so. This contrasts with the positive duty expected under the UK Marine Insurance Act 1906, the Australian Marine Insurance Act 1909 and the equivalent Act in most commonwealth countries (Tarr & Tarr, 2002). Section 12 of the Australian Insurance Contract Act 1984 makes the duty of disclosure an implied term and offers a greater degree of flexibility especially with respect to remedies, whereas section 13 states that contracts of insurance are based on utmost good faith which not only seek to

provide fairness but also bridge the expectations between the proposer and the insurer. Also, under section 13, a breach of utmost good faith renders the contract void, enabling the affected parties to claim damages (Wright, 2017). Another alternative approach was to consider material facts as those for which an insurer has expressly put on enquiry, otherwise it would be considered that the insurer has waived its right to receive the expected information (Yee, 2001). This is a position adopted in the legal frameworks of countries like Australia, where a breach of the duty of good faith is based on contract law (Havenga, 1996). Since the law incorporated utmost good faith as an implied term under a contract, this abolished the remedy of avoidance, making contractual remedies available following a breach (Thanasegaran, 2016). As previously mentioned, the majority of insurance contracts in Australia fall under statute namely the Insurance Contracts Act 1984 which implies the principle. Those contracts that do not fall under this statute are, in fact, subject to common law. This is particularly the case in reinsurance, life, health, employers' liability, compulsory third-party liability and marine contracts. Reference to this is found under section 13 which states:

> "A contract of insurance is a contract based on the utmost good faith and there is implied in such a contract a provision requiring each party to it to act towards the other party, in respect of any matter arising under or in relation to it, with the utmost good faith." (Insurance Contracts Act 1984, Section 13)

Therefore, the Insurance Contracts Act (1984) requires utmost good faith between the contracting parties until the contract is entered into, that is, during the negotiations leading to the contract. Another statutory provision introduced via the Insurance Contracts Act 1984, was the adaptation of the test of the 'reasonable proposer' placing the onus on the insurers to expressly advice of the consequences of a breach to the proposer or insured prior to the issuance of cover (Cooray, 1993). In any legal system, be it common or civil law, there exists

the requirement to disclose material information, despite the fact that this presents a variety of different interpretations among various countries. The position in Australia is, only information which needs to be disclosed is expected and the test of disclosure is based on the reasonable proposer. The laws of most civil law countries allow avoidance of liability by an insurer only if the breach is connected to the loss and is material (Australian Law Reform Committee, 2000). In Australia, section 21(1) of the Insurance Contracts Act 1984 states:

> "…every matter that is known to the insured, being a matter that:
>
> (a) the insured knows to be a matter relevant to the decision of the insurer whether to accept the risk and, if so, on what terms; or
>
> (b) a reasonable person in the circumstances could be expected to know to be a matter so relevant, having regard to factors including, but not limited to:
>
> (i) the nature and extent of the insurance cover to be provided under the relevant contract of insurance; and
>
> (ii) the class of persons who would ordinarily be expected to apply for insurance cover of that kind." (Insurance Contracts Act, 1984, Section 21(1))

This effectively means that, in Australia, it is acknowledged that the test of disclosure is one which expects the proposers to disclose what is known to them, rather than an expectation to disclose what the insurer requires. This has inevitably led to data dumping by the proposer, whereby the insurer is left to decipher material information from masses of data supplied. This effectively attempts to avoid non-disclosure and shifts the burden onto the insurer to figure out what is and is not material (Reeves, 2015). The reform committee proposed the abolishment of the *ab initio* cancellation practice except in fraudulent non-disclosure cases. In cases of non-fraudulent non-disclosure, the insurer should be allowed to adjust the claim

factoring in the shortfall of disclosure based on what the insurer would have done if all the facts were known. This effectively means that if an insurer would have accepted the risk but would have charged a higher premium, then the claim would be reduced proportionately by the percentage difference in premium. Alternatively, if the insurer would have altered the terms of the contract, the difference in liability would be factored in (Lowry, 2010). Changes to Australian marine insurance practice may have led to the weakening of the relationship of the Australian market with the UK insurance market in terms of law and practice, a relationship which is evidently strong among common law system countries.

The Australian Law Reform Committee (ALRC) concluded that there is a degree of variation in practices that the marine insurance market must bear. Australia has several insurance law regimes and reform moves towards harmonisation of such regimes. Contracts of marine insurance are governed by the Australian Marine Insurance Act (1909) and most non-marine insurance is governed by the Insurance Council of Australia. Reforms aimed at harmonising marine and non-marine insurance practice achieved greater consistency with international practices particularly with France, Scandinavian countries, the UK and many other common law jurisdictions, including New Zealand, Canada, Singapore, Hong Kong and India. The need for reform was voiced by several bodies such as the Insurance Council of Australia, which suggested reform of warranties and the duty of disclosure, and the Maritime Law Association of Australia and New Zealand (MLAANZ), which suggested reform in response to litigious areas such as duty of disclosure, remedies, the nature and operation of the principle of warranties, and the remedy for breach of warranty. Having Australian practice differ from UK practice could create uncertainty from the point of view of the policyholder. It could also result in an increase in premium, due to increased uncertainty of risks, which, in turn, could also render the market uncompetitive. Moreover, such will have an adverse effect on the facility to insure, co-insure or reinsure in overseas markets, and/or if they are successful in doing so, insurers and/or proposers would have to accept adverse terms and conditions. Reforms by the Australian Law Reform Committee were undertaken to reduce

legal uncertainty while conserving the benefits of the Marine Insurance Act 1906, and seeking to retain ties with the UK in the process. The Committee provided several suggestions amending the existing Marine Insurance Act (MIA) to make clear the position of misrepresentation and to sync the MIA with the Insurance Contracts Act (1984). The Insurance Contracts Act reform meant that when the proposer breaches the duty of disclosure or misrepresents facts by fraudulent means, then the contract may be avoided *ab initio* (Australian Law Reform Committee, 2000).

Before the enactment of the Insurance Contracts Act, a breach of utmost good faith meant there was no contract at all, and the case did not even reach the courts as a medium to challenge the principle (Nhan, 2015). This made it difficult for the courts to exercise influence on the change of this principle and it is only now through the Act, that the affected party can litigate the matter. This also means that breaches of utmost good faith by the insurers can be challenged by the Australian Securities and Investments Commission (ASIC) and their intervention could bring a suspension of the insurers' licence, defending the consumer in the process (Nhan, 2015). The discretion of the Australian Securities and Investments Commission on when to intervene has left gaps in the certainty of the insurance contract and its decisions will influence the basis of further development and possibly more reform in this regard. This is so needed as insurance contracts, namely life assurance contracts, came under fire when it was discovered that consumers, as a community, perceive systemic unfairness in financial services including creating a vacuum between what insurers are delivering and what consumers expect. Moreover, parliament, the media and regulators have raised the alarm of consumer dissatisfaction in insurance, which has a bearing on the industry at large. This concern has, in turn, prompted the Senate to refer the matter to the Economics References Committee to investigate the situation. Concerns raised and submitted to the Committee for review were based on procedural unfairness related to the performance of the contract and substantive unfairness regarding the effects of contractual performance. Such shortcomings result in the creation of a consumer-insurer expectation gap

questioning whether utmost good faith is effective in achieving outcomes in line with public expectations (Wright, 2017).

Wright (2017) further argues that contracts of insurance require more than procedural and substantive fairness and seek to narrow the expectation gap between reasonable community expectations and industry conduct. In view that utmost good faith *per se* falls short of addressing substantive unfairness in policy terms, reform is required in this regard enabling insurers to act fairly. In Australia, such substantive unfairness requires reform, and insurers must take greater responsibility for properness of their products and strive to meet their customers' needs (Wright, 2017). The famous 'Pine Top' case adjudicated in the UK, established a two-tier test; one objective and the other subjective. Lord Mustill presiding on the case, concluded that it must be established whether the non-disclosure is a material fact and whether this material fact is one which creates an impact on the insurer to the extent of inducing the underwriter to take on the risk or not (Pan Atlantic Insurance Company Ltd v. Pine Top Insurance co, 1995). Australia's Justice Michael Kirby supported the 'Pine Top' case conclusions saying that the Australian judiciary must be sensitive to the international legal principles and practice (Lamart, 2018).

The closest reform introduced in Australia which sought to improve the imperfections of its 1909 Marine Insurance Act, was the unification of this act with the Insurance Contracts Act passed in 1984 as then amended by the Insurance Contracts Amendment Act 2013 (ICA Amendments). The Insurance Contracts Act 1984 makes a distinction between innocent breaches of utmost good faith and those committed intentionally. In fact, under section 28 of this Act, an insurer is precluded from avoiding the insurance contract if the disclosure breach is innocent, however the insurer is entitled to reduce its extent of liability proportionately in relation to the extent of the breach. On the other hand, however, the discovery of an intentional breach of utmost good faith, particularly fraudulent breaches giving rise to fraudulent concealment or misrepresentation, entitles the insurer to avoid the contract, akin to UK common law practice, although the court may disregard the avoidance

in certain circumstances (Di Lorenzo, 2014). This is endorsed under section 28(2) of the Insurance Contracts Act. This position is applicable to all general insurance contracts, although in life assurance circumstances, the same practice is adopted except for innocent non-disclosure or misrepresentation, wherein a contract may be avoided by the insurers only within three years of issuance (Insurance Contracts Act, 1984). Avoidance of the contract following a pre-contractual breach will follow the common law position whereby the insurers treat the contract as if it never existed and will return the premium to restore the parties to their pre-contractual position. This follows the case of Banque Financière v. Westgate Insurance (1988). In 1982, the Australian Law Reform Committee sought to address the concerns in relation to the inequitable outcomes of the application of the duty of utmost good faith by, *inter alia*, making both parties responsible to disclose information which they knew or expected to know and effectively abolishing the right to avoid the contract and to satisfy the two-tier test of the 'Pine Top' case (Lamart, 2018). The test entails that the insurer is (i) able to avoid the policy contract if the insurer is able to prove that the fact disputed is material and (ii) that this material fact is one which, if the insured did not disclose, would have induced the insurer to accept, or decline or apply terms to the policy (Birds & Hird, 1996).

Lamart (2018) further comments that due to the comprehensiveness of the Insurance Contract Act 1984, through which several dissatisfactions tried to be addressed, there is a need for the Australian jurisdiction to decide whether to abolish the Australian Marine Insurance Act altogether and substitute it with a broader Insurance Contract Act or integrate new provisions into the existing Australian Marine Insurance Act (Lamart, 2018). In 2001, the Australian Law Reform Committee pushed recommendations which allowed the non-breaching party to seek damages, moving away from the harsh common law position of contract avoidance. Moreover, the proposals sought to require the proposer to disclose facts which they know or a reasonable person in their position would know to be material, avoiding reliance on the inducement test established under 'Pine Top' and restricting

avoidance only in cases of fraud and intentional breaches. Market associations also piled pressure for reforms in Australia and in fact, the Marine Law Association of Australia and New Zealand had also prepared a draft bill in 2006 proposing reforms induced by its members following changes in the UK. This is particularly important insofar as having a situation where the UK practice and the Australian practice on the adoption of utmost good faith are not in harmony, which is possibly putting the Australian jurisdiction at a disadvantage and rendering it obsolete in the process. Reform would be instilling uniformity and harmonisation with international standards and this seems to be supported by the Australian Parliament through the passing of the Insurance Contract Act 1984 (Lamart, 2018).

Lamart (2018) argues that since in Australia the contract of insurance still favours the insurer, the Federal Government should repeal the Australian Marine Insurance Act 1909 and amend the Insurance Contracts Act so that it applies to all contracts of insurance to achieve certainty and fairness in insurance contract dealings (Lamart, 2018).

Michael Kirby (2014), who was the inaugural chairman of the Australian Law Reform Committee, found the applicable common law of insurance in a chaotic state where much of it followed the UK's common law judicial decisions and which gave rise to anomalies and uncertainties. According to Kirby (2014), the situation was decisively more problematic with the structural components of the market and their operations presenting training challenges in an environment where the contract of insurance favoured the insurers. Kirby further comments that the situation was such that the Australian insurance industry was almost unanimous in its opposition to any change and it was not easy for the Australian Law Reform Committee to persuade them of a single statute in this regard. Apart from trying to correct the shortfalls of common law, the reason for pushing reform was also influenced by a changing market. Through the years, insurers came up with new products responding to new market demands, especially technological advances and new legal issues that have been instrumental in changing the business model. As in the UK, the Australian Insurance

Contracts Act was expediently passed, adopting the British model for non-controversial bills. This proved possible because the proposed legislation had the support of the insurance market (Kirby, 2014).

Jowett (2015) comments that following the Consumer Insurance (Disclosure and Representations) Act 2012 and the Insurance Act 2015 in the UK, Australia now trails the UK in marine insurance law reform. He also quotes the Chief Justice of Australia's Federal Court, James Allsop, in saying that:

> "[w]hilst the Act [Australian Marine Insurance Act] has served the community for a century, one wonders whether the marine insurance markets would not be better served by a more up to date and comprehensively adopted contemporary model." (Jowett, 2015, para. 12)

Dixon (2012) argues that insurers are in a better position than the proposer, the latter being vulnerable and reliant on the insurer to act fairly and honestly. This, in the wake of the draconian principle of utmost good faith which shifts the onus of disclosure on the proposer. Reeves (2015) concludes that the Australian model based on what the proposer knows, coupled with the proactive approach by the insurer to ask what is required, seems to be a desired model. Moreover, the author suggests the use of an independent market insurer to determine what they would have done if the undisclosed information was at hand prior to the formation of the contract on which then the proportionate remedy would be objectively made (Reeves, 2015). This model is also the case in Norway, Sweden, France and Germany (Li, et al., 2016).

2.3.1.2 Canada

In Canada, it is perceived that insurers have the upper hand when they are contracting with the proposer/insured and thus, in view of this bargaining power that they hold, such insurance contracts are heavily regulated to protect the customer/policyholder (Brown, 1985).

Notwithstanding this, there are regular pleas for reform in the way insurers accept risks and create scope to review the principle of utmost good faith in the acceptance of insurance risks. The Ontario reform committee stated that good faith is not one which is embedded in the Sales of Goods Act 1990 and terms used like fairness, reasonableness and decency bring about further litigation (Hasson, 1988) in view of their subjective interpretation. Hasson (1988) argues that the dissatisfaction of the principle of utmost good faith is on the increase and it has, so far, stood the test of time due to the strong political power held by insurers. In fact, in Canada, the principle has been abolished in certain classes such as those covering fire, life and disability. In life assurance, insurers are unable to use utmost good faith as a defence for misrepresentation or non-disclosure if the policy had been running for more than two years. This is known as the incontestable clause (Hasson, 1988).

Through various case law, Hasson deduces that Canada should abolish the principle of utmost good faith as it causes hardship on the proposer, notwithstanding that this principle is narrower in its application than in the UK (Hasson, 1988).

Brown (1985) proposes that comprehensive reform is required, applicable to all classes of insurance. The regulator in Canada faced the challenge of ensuring contracts of insurance are not discriminatory especially in the light of the restructuring the Insurance Act (1990) section 387 and regular calls for reform have been made to reduce disputes and litigation costs (Brown, 1985).

Lyons and Badali (2018) state that the Canadian insurance market is currently experiencing emergent trends in digitisation, expansion of Fintech activities, big data analytics and development of insurance to cover cyber risks. Such trends bring on new challenges and new forms of data collection necessitating developments in the underwriting of risks.

In July 2016, the Canadian Council of Insurance Regulators' Travel Insurance Working Group presented a consultation paper which highlighted considerations and solutions to matters involving travel health insurance, mainly focussing on aspects that affect consumer protection and the fair treatment of customers. This was in response to public dissatisfaction

voicing their discontent on the way travel health insurance was sold by the market. As of 2015, the market released issue papers for comments to understand the needs of the changing consumer. Further consultations were made in May 2017 on the design and selling of travel health insurance. The result of these consultation papers revealed a strong position with respect to the products in the Canadian market, but exposed shortcomings with respect to the fair treatment of customers (Carruthers, et al., 2018).

Canada has different regions which adopt different practices. An insurance contract is common law-based and thus, there is the requirement on both parties to trade with adherence to the duty of utmost good faith, otherwise the right of avoidance is assumed. The duty to disclose material information has been codified in various provincial and territorial insurance statutes shifting more of a burden on the insurer to provide a fair interpretation of the wording of the contract and deal with the proposers' claim fairly (Badali, et al., 2020). This was a move that sought to see fairer practices by the insurer thus tending to move away from the onerous principle of utmost good faith.

There is an evident bid to step up the notion of treating customers fairly and several proposals are up for consideration. The Canadian Council of Insurance Regulators (CCIR) observes that the insurance market seeks to serve the public interest and collaborate with various regional regulators to harmonise insurance practice. In its plan for the years 2017-2020, the CCIR, amongst others, continued to work to ensure the fair treatment of consumers through regulatory practices that makes processes clear and transparent, achieving harmonised client relationships. O'Byrne (2007) argues that utmost good faith has its upside since it is simple and clear in contract negotiation, performance and enforcement and, thus, is inherent in an insurance contract which, when backed by statute, will achieve greater certainty albeit the hardship that it brings on the litigants, especially upon the proposer (O'Byrne, 2007).

In Quebec, the finance minister reformed the motor sector to strengthen consumer protection, and in 2018, Canada's federal government also initiated reform leading to

proposed changes in the financial services industry, insurance included (Badali, et al., 2020). This was a direct reaction to the new emergent technologies bringing changes to the industry.

2.3.1.3 Cyprus

The insurance practice in Cyprus follows the common law position held in the UK (prior to reform) wherein the proposer is obliged to disclose all information about the risk to the insurer, voluntarily. Therefore, insurers in Cyprus adopt the *uberrima fides* principle requiring the proposer/insured to disclose all material facts connected with the risk. A breach is considered to be committed if the material fact is one which, if obtained, would affect the decision of an underwriter provided this would reasonably have been known by the proposer at the proposal stage (Glykis, et al., 2010).

An insurance contract may be rendered void at the option of the affected party (typically the insurer) if the other contracting party (typically the proposer) is in breach by committing fraud, is guilty of non-disclosure or misrepresentation, or following a breach of a term of the contract. This could arise if, say, a proposer (or an insured at renewal) makes a representation which is substantially false or a misrepresentation which is considered to be material to the risk, or else disclose a representation upon which an insurer rests and is induced to take up the contract.

In Cyprus, this position reflects exactly what was practiced in the UK prior to the Consumer Insurance (Disclosure and Representations) Act 2012 and the Insurance Act 2015, wherein the basis of disclosure of information followed the landmark case of Carter v. Boehm (1766). As in the UK, a material fact is one which is so important that it induces the insurer to decide whether to accept the risk or not and what terms, conditions and premiums to apply. For it to be considered as a material breach, the representation (usually made by the proposer) has to be one which is either known by the proposer/insured or one which is expected to be known under reasonable circumstances. The burden of proving this lies with the insuring party, as was decided before the Nicosia District Court in Commercial Union Insurance (Cyprus) Ltd. v. Costas Stavrides (1981). From this court case, which is considered to be a

landmark case, it was established that in the case of non-disclosure, avoidance by an insurer is allowed if such a breach is intentional, known to the discloser and also is one which is material (Glykis, 2020).

This position is relied on and is followed strictly, although the market has tended to loosen this principle through the proposal of new practices. Kyriakides (2019) reported that the Insurance Association of Cyprus had recently commissioned a working group to study the impact of the reforms in the UK, and they had authored some recommendations that align with the developments in the UK as shown in Table 2.1 below:

Table 2.1 Changes in the application of Utmost Good Faith

PROPOSER'S INTENTION	UNDERWRITER'S DECISION	RELATION TO THE CLAIM	DECISION ON THE CLAIM	LIFE POLICY'S STATUS
Fraudulent / Intentional	Not Needed	Not Needed	Claim's Rejection	Policy Cancellation
Negligent / Innocent	Policy Rejection	Not Needed	Claim's Rejection	Policy Cancellation
Negligent / Innocent	Policy Exclusion	Related Not Related	Claim's Rejection Full Payment	Policy Amendment
Negligent / Innocent	Premium Loading	Related Not Related	Pay Proportionately Full Payment	Policy Amendment

(Source: Kyriakides, 2019)

The table shows the different decision positions the Cypriot insurers could take when there is a breach of utmost good faith. As in the UK, it categorises breaches into innocent, negligent and fraudulent. In cases of fraudulent intentions, the situations remain unchanged, that is, the insurer has the right to void the contract and reject any claims associated with the policy. If the breach of utmost good faith is a negligent or innocent, then it depends whether this fact is one which, had the underwriter known, the policy would have been either rejected, an exclusion applied or an additional premium charged. In the case where the underwriter would have rejected insurance on grounds of the misrepresentation made, then the Cypriot association is suggesting that the right to avoid and the right to reject any claim still rests with the insurer. On the other hand, if the breach of disclosure is one which, if known by the

insurer underwriter, an exclusion would have applied, then that exclusion is deemed to have an effect on the claim and the ensuing claims are rejected. Moreover, if the breach is one which, if known by the insurer underwriter, would have meant an additional premium charged or a loading to the standard premium made, then any loss related to the breached disclosure will entitle the insurer to pay only a proportionate amount in relation to the shortfall in premium. Otherwise, if in such case the loss is unconnected with the breach of utmost good faith, then the claims should be honoured in full. This is a proposed development by the insurance association in Cyprus, which is moving away from the strict application of the principle of utmost good faith (Kyriakides, 2019).

2.3.1.4 Hong Kong

In Hong Kong, common law prevails since insurance practice was greatly influenced by the UK. The only statute law that is insurance-related governs companies rather than the insurance contract *per se.* Sooksripaisarnkit and Chin Kiu Cheung (2017) argue that Hong Kong should reform but not replicate the UK model. In Hong Kong, unlike the UK, insurers are not expected to ask all questions which prompt material facts and hence, consumers are not fully guided as to their obligations under the contract. Sooksripaisarnkit and Chin Kiu Cheung opined that Hong Kong insurers are unlikely to be in possession of all the details, hence, clear examples of what material facts mean should be explained rather than relying on positive duty of disclosure by the proposer. Moreover, the authors suggest that the proportionality principle (paying a claim in proportion to the shortfall of premium collected as a result of a breach of utmost good faith), as a solution, seems to be cumbersome and impractical. The authors also went on to state that the only proof that the insurer needs to establish is that the proposer deliberately concealed information. Furthermore, non-reform in Hong Kong could leave the consumer in a prejudiced situation and could impact negatively on the insurance industry as a whole (Sooksripaisarnkit & Chin Kiu Cheung, 2017).

In the case of Mak Yuen (1993), Justice Wong stated that the proposers were expected to

answer the questions on a proposal form truthfully, and if there were no other questions asked by the insurer, it was thus deemed that the insurer was waiving its right to seek further information. Wong J argued that layman cannot be expected to know what is material or not and refraining from asking questions by an insurer is considered to be a waiver (Cooray, 1993).

The practical position for a breach of contract as a result of misrepresentation allows the insurer to avoid the contract, and possibly claim damages. In cases of non-disclosure, the right to avoid the contract is conserved and in breaches of warranty, the contract is terminated, immediately relieving the insurer from any contractual obligation. Notwithstanding this practice, the Hong Kong industry is largely self-regulated and the Hong Kong Federation of Insurers (HKFI) works towards the development of insurance practice through its codes of conduct to promote good practices instilling consumer confidence in the business. Particularly on the basis of utmost good faith, the HKFI code states that the issue of non-disclosure has to be dealt with reasonably and a breach which could not reasonably have been expected to be disclosed unless deliberate, negligent or fraudulent should not invalidate the contract. This is also the case when a policyholder is not given a proposal form and so is not guided as to what should have been disclosed or otherwise. This position moves away from the prudent insurer test, that is from what one would expect a hypothetical insurer to treat as material to a test of an innocent reasonable person assured which is determining what a reasonable person would consider to be material. This is the recent industry practice reform in Hong Kong insurance law (Anon., 2009).

HKFI issued their own statement of general insurance practice together with a statement of a long-term insurance practice rulebook designed to oblige insurers to inform prospective proposers about the consequences of failure to disclose material facts and that material facts must be clear questions on the proposal form if they are seeking such facts (Cooray, 1993).

In its report, the law reform commission in Hong Kong, questions the current state of insurance law wherein the insurer may avoid liability on grounds of misrepresentation or

non-disclosure even if the breach is unconnected to the loss. The report served to identify whether a change is due and, if so, in what manner. Thomas, et al. (1986) commented that since Hong Kong followed UK practice, it is invariably evident that they share the same issues with respect to utmost good faith. Reform, while seeking to protect the individual and commercial policyholder, may negatively affect the international business. Therefore, the Hong Kong reform commission recommends that changes exclude reinsurance, marine insurance or aviation insurance and instead proposed that reform apply to the domestic market under the proper law of Hong Kong. The language barrier also provided a challenge and it appears that policyholders do not seem to understand the technical literature written in English evidenced by the poor translated version from Chinese. To remedy this, the commission suggested that all warnings of failure to disclose material facts should be in both English and Chinese and in bold print. As for the technical remedies, the commission commented that the courts should have the discretion to disregard non-disclosure of material facts subject to the materiality and prudent insurer tests. It is also suggested that reliance on non-disclosure will be allowed if this is subject to a clear proposal form question. The commission reiterates that no contract should be avoided on grounds of misrepresentation unless this is fraudulent or known. The commission finds that public ignorance of insurance practice exacerbates the matter of having unbalanced insurance contracts since the proposer/insured, in most cases, does not understand the nature and content of the insurance contract. Another issue arising, is the restriction of consumer choice when it comes to insurance which is either compulsory or necessary, such as in the case of a loan. This will present a ‘take it or leave it’ situation leaving the consumer with no choice but to accept the contract as is (Thomas, et al., 1986).

2.3.1.5 Singapore

In Singapore, sections 17-20 of the UK Marine Insurance Act 1906 are applicable for marine insurance contracts, whereas for non-marine insurance, the principle of good faith follows the common law principle. In fact, for non-marine insurance, the proposer’s duty of

disclosure is part of the proposer's duty to act in good faith. This principle applies to both parties to an insurance contract and is a continuous one, providing a right to an insurer to avoid the contract in cases where the breach is committed by the proposer (Di Lorenzo, 2014).

Under the Singaporean Misrepresentation Act (Cap. 390), the insurer may be able to recover damages for a misrepresentation if made fraudulently, negligently or otherwise. The Misrepresentation Act states that even innocent misrepresentation of a material fact would allow the insurer to rescind the contract or claim for damages unless the proposer can prove that they firmly believed the facts were true. Furthermore, if a contract contains a term which would exclude or restrict liability by reason of any misrepresentation made by the proposer, that term shall be of no effect except insofar as it satisfies the requirement of reasonableness as stated in section 11(1) of the Unfair Contract Terms Act [Cap. 396] (The Statutes of the Republic of Singapore, 1984).

In Singapore, reform within business insurance presents public policy debate as well as challenges in the form of competition in the global insurance market, meeting the needs of the market players and the effectiveness of dispute resolution channels. Chen (2017) suggests that refining the law in Singapore should be commissioned after hearing public debates on Singapore's current insurance market, insurance disputes, market developments and future implications on the industry, adding that Singapore should be distinguishing between consumers and business consumers and suggests reform for business in view of the international climate (Chen, 2017).

The Insurance Act 2015 of the UK abolished the avoidance of the contract on the basis of a breach of utmost good faith, although still maintaining the requirement of duty to make a fair representation of risk (Chen, 2017). In Singapore, the pre-contractual duty of disclosure still allows avoidance of the contract *ab initio*. This means that the practice in Singapore considers both non-disclosure and misrepresentation as being subject to the materiality test which is seemingly unfair on the consumer. To soften this position, legislation in Singapore

reflected this in the requirements of the duty of disclosure (Insurance Act Cap 142, 2002) to have warnings alerting the oblivious proposer, although such warnings fall short in explaining the true experience of material facts (Yeo, 2014).

Yeo (2014) further suggests that Singapore should consider following the UK by adopting a similar reform to Consumer Insurance (Disclosure and Representations) Act 2012, wherein the onus is reversed placing an obligation on the insurer to make material enquiries and an expectation of a passive duty from a reasonable proposer or insured (referred to a 'consumer' under Consumer Insurance (Disclosure and Representations) Act 2012) to ensure facts are not misrepresented. Yeo (2014) suggests that the reforms should address the rights of an insurer following misrepresentation, which are such that an insurer, having known the full facts, would have refused to enter into the contract, or done so on different terms. In Singapore, material non-disclosure allows the avoidance of the contract, thus representations made leading to the formation of the contract are converted into warranties known as the basis of the contract clauses. This renders the contract void *ab initio* upon the discovery of a breach.

As the law stands today, Singapore still allows the insurer to avoid the contract following a breach of disclosure. This position has been altered in the UK by virtue of the Consumer Insurance (Disclosure and Representations) Act 2012, which distinguishes between innocent, deliberate/reckless or careless misrepresentation with varying remedies. Yeo (2014) concludes by suggesting the abolishing of the basis of the contract clauses and the introduction of the proportionality principle in Singapore.

2.3.1.6 The United States

A fiduciary relationship is one of trust and confidence where the parties owe each other a duty of utmost loyalty and good faith. In insurance, this means that the proposer owes a duty to make a full disclosure of all relevant material facts known or ought to have known. Such a relationship is now also embedded under US law and utmost good faith is imposed across a number of commercial transactions including insurance (Adler & Mann, 1995).

Historically, the right to avoid a contract was considered to be pro-insurer, and to smoothen this position, a number of legislations in the US inferred that the remedy of avoidance is to be used in cases where there was deception or intent that led to cause the insurer to accept the risk (Lamart, 2018). As opposed to Australian law, a breach of the duty of good faith in the US is one founded in tort, not contract (Havenga, 1996). Generally, the principle of utmost good faith is applied to marine insurance and reinsurance contracts, wherein it is stipulated that the policyholder is duty-bound to disclose all facts material to the risk. Some states in the US extend this requirement to other non-marine insurance contracts. In the state of New York, for example, the principle of utmost good faith is a common law principle and applies in the reinsurance context requiring the insurer to disclose in good faith to the reinsurer both at the pre and post loss situations (Di Lorenzo, 2014). In the US, the issue of utmost good faith centres on whether the duty is fiduciary, or, one which is an ordinary or intermediate. Such will be determined if rights for remedies are created. Under a fiduciary duty, a breach, even if innocent or merely negligent, would give rise to remedies. Under an ordinary duty, the state of mind of the proposer would come into play and it is gross negligence or recklessness which will give rise to remedies. Between these two duties would be the intermediate duty which would be affected only if the insurer or reinsurer would have acted differently without the breach (Levin, 2002). Under the US marine insurance, the varying nature of the principle is not in harmony with the international practice (Schoenbaum, 1998), and its application differs from its international counterparts. Utmost good faith in the US is enshrined in federal maritime law with courts having made decisions which are seemingly inconsistent, most of the time applying the ‘all-or-nothing’ remedy. Following the case of Catlin v. San Juan Towing (2003), the court confirmed that utmost good faith is an established rule of maritime law and therefore, the proposer is expected to disclose all known material facts. In the case of St. Paul Fire & Marine Insurance Co. v. Abhe & Svoboda, Inc (2015), a slightly different approach was applied to the principle, wherein the insurer had to show that the breach was one that would have affected the

acceptance of the risk by the insurer. Martone (2017) argues that the US will inevitably follow UK practice and reform, in the adoption of the fair presentation position.

2.3.1.7 China

Traditionally, China was always influenced by the international market. Foreign insurance companies dominated the country until China established its state-owned insurance companies in 1949. The principle of good faith seems to have found its way into contracts progressively, especially in insurance contracts, the principle being mentioned under the Insurance Act of People's Republic of China 1995 Act. Common law countries apply the principle of utmost good faith in the strict sense, requiring a higher level of standard of good faith. The duty of utmost good faith is not inherently present in Chinese legislation, so much so that in the Maritime Code of People's Republic of China 1993, there is no specific mention of duty of disclosure or duty of representation. These inconsistencies present a trade issue in the international market, especially with those countries that are reforming the principle of utmost good faith. China has not followed the UK's reforms and still relies on Article 222 of the Maritime Code of People's Republic of China 1993. Although the legal system in China was largely formed on the basis of custom, the current system is largely socialist civil law. It was only in 1992 that China opened up its insurance market, which saw an increasing number of foreign investments (Yiqing, 2017).

Chinese practice embeds utmost good faith into statute as good faith, and should the relevant insurance maritime law be insufficient in resolving an insurance dispute, then the Chinese Insurance Law is resorted to, followed by the Chinese Contract Law, and the last resort would be the General Principles of Civil Law. Such, has a bearing on reform in legislation to achieve more clarity, especially due to the uncertainty of having the general Chinese Insurance Law dealing specifically with marine insurance disputes involving international and foreign elements. The reference to utmost good faith is found in the 1985 and 2009 Act of the China Insurance Law, and it also features in the Chinese Contract Law and the General Principles of Civil Law. In the Chinese Insurance Law, utmost good faith is required by the

contracting parties who are expected to refrain from intentionally concealing or misinforming the other contracting party on material facts. The General Principles of Civil Law also add the requirement on the parties to be honest, credible and fair. It is not uncommon to find, under Chinese judgements, cases based on the utmost good faith position of the Marine Insurance Act 1906 of the UK, as well as Article 7 of the Regulations of the People's Republic of China on Contracts of Property Insurance, giving rescinding rights to the insurer. This stems from the fact that in the marine world, China is a strong maritime power and trades significantly with the UK, in which case the Marine Insurance Act 1906 applies giving insurers the ability to call a breached contract, void. This being said, the principle of utmost good faith is not legally recognised, and thus needs to be backed up by the People's Supreme Court of the People's Republic of China, or reformed by adding a new law to clarify the position (Feng, 2013).

In China, all types of insurance contracts are governed by statute, namely by the People's Republic of China Insurance Law 2009, updated in preceding years. Specifically, Article 5 of this law requires the parties to an insurance contract to follow the principle of good faith in the execution of their rights and obligations under the contract. The wording implies that the principle bestows a continuing duty which should apply both pre-contractually and post-contractually. In subsequent articles of this Act, pursuant to the general provisions under Chapter 1, there is an obligation bestowed upon the contracting parties, namely the proposer and the insurer, to tell the truth. The proposer is duty-bound to disclose information pre-contract which will affect the insurer's decision to accept or deny the risk, and at what price. Such disclosure also has an effect post-contract in the event of change of risk or in the event of a claim (Insurance Law of the People's Republic of China, 2009).

Moreover, any standard clauses under the policy must be clearly explained to the proposer and the proposer's duty of disclosure is merely limited to the questions made by the insurer when entering into an insurance contract, whilst the duty of utmost good faith is expected throughout the duration of the insurance contract (Di Lorenzo, Assunta, 2014).

The duty of disclosure of material facts rests on both parties (although some judges say it is unilateral) and this duty is expected for knowledge which the proposer has or ought to have up to the point of the formation of the contract. As for the remedies resulting from a breach of utmost good faith, an insurer can avoid the contract or increase the premium and retain the contract on the basis of article 223(2) of the Chinese Maritime Code of the People's Republic of China 1992 (Feng, 2013).

Article 16 of the People's Republic of China Insurance Law restricts the insurer from rescinding the contract after it has been formed. However, in the event of the proposer/insured intentionally concealing the facts and/or failing to disclose honestly, to the extent of affecting the underwriters' decision to provide insurance or increase the premium, then the insurer shall have the right to rescind the insurance contract. (Insurance Law of the People's Republic of China, 2009). The rescission is subject to a lapse of 30 days from the date of discovery of the breach with a long tail of two years, barring the insurer from enforcing any rescission rights thereafter. The right of rescission extends to any claims, entitling the insurer to retain the premium paid. In the case of innocent breaches, the insurer may also rescind the contract, but in this case, the premium is returned to the proposer/insured (Di Lorenzo, 2014).

2.3.1.8 France

Under French law, although there is no specific reference to utmost good faith, the requirement to act in good faith under a contract is found under Article 1134 of the French Civil Code, requiring a duty to act loyal and to co-operate duly (Pettinelli, 2005). In this section, the provision stipulates that all contracts, whether general insurance or life (including reinsurance contracts) must be performed in good faith and in every situation, the obligations of the parties apply to both the proposer and the insurer. The principle of good faith is a continuous duty which is applicable both pre-contractually and post-contractually. The obligation extends to the facts known to the proposer/insured and those that are influential to an insurer to take a decision (Rouhette & Rouhette-Berton, 2006).

According to the rulings of the *Cour de cassation*, no remedy is available for the insurer if it does not raise material fact questions, although bad faith on the part of the proposer will render the contract null and void, entitling the insurer to retain premium in case of intentional/fraudulent statements or concealment. In the event that bad faith is unable to be established, Article 113-9 states that in these circumstances, nullity is not allowed. Moreover, if a disclosure breach is discovered prior to the loss, then the insurer has a choice to allow the contract to stand or terminate it, whereas if the disclosure breach is discovered after the loss occurred, then the insurer will be able to adopt the proportionality principle. The burden of proof of the untruthful declaration rests with the insurer (Di Lorenzo, 2014).

2.3.1.9 Germany

Originally, the principle of utmost good faith in Germany stemmed from civil law. This principle was developed through case law and has now been embedded in the German Civil Code (Bürgerliches Gesetzbuch – BGB). Section 242 of the German Civil Code establishes the requirement of good faith which applies to all insurance policies subject to customary practice (Pettinelli, 2005). Moreover, since insurance is also a contract, contract law is also applicable. The Insurance Contract Act Versicherungsvertragsgesetz (VVG) of 1908 was completely rewritten and the new code has been in force since 1 January 2008 (German Civil Code, 2013). During the pre-contractual stage, statutory law, namely section 19 of the VVG, is primarily applicable. This section talks about non-disclosure, particularly stating that the proposer is only obliged to disclose facts asked for by an insurer. The insurer cannot expect the proposer to disclose any circumstances not specifically asked for, so the position is different from the traditional utmost good faith application. If, however, the proposer is asked to disclose all circumstances which are material to the risk and the proposer violates this duty, then the insurer reserves the right to withdraw the contract. Only questions that the insurer specifically asked in text form need to be answered by the proposer. In cases where this violation is neither wilful nor grossly negligent, the insurer may cancel the contract, giving one month's notice of cancellation at pre-contract stages unless the violation was

wilful. Therefore, the right of avoidance of the contract on the grounds of fraudulent misrepresentation or non-disclosure by the assured remains in force (Murray, 2007).

This also means that, in Germany, prior to the formation of the contract, the proposer must disclose all known material risk facts relevant to the insurer's decision to conclude the contract. Although the remedies for a breach of utmost good faith are not regulated, the rights range from withdrawal of the contract, to withdrawal giving one month's notice and to the retention of the contract with increasing the premium depending on the circumstance (Di Lorenzo, 2014). In 2002, Germany looked at reforming its insurance laws and set up a commission for this purpose. Factors of practice which differ are the materiality for the risk to be insured and the knowledge of the policyholder. The issue of determining what a material fact is, what is expected to be disclosed and how much is expected of the proposer comes to the fore. In Germany, a fact is a material one if it influences the judgement of an insurer in accepting or declining cover, provided the prudent insurer requires such disclosure as is the case of a proposal form question. The practice is such that the duty of disclosure is expected if the proposer/policyholder knows about the relevant facts. Therefore, there is no right by the insurer to decline an innocent non-disclosure, however, a German insurer may increase the premium after discovering an innocent breach of utmost good faith. Such remedies are allowed if it is deemed that the breach was only connected to the loss. The right of avoidance is either termination *ab initio* or if such a right is waived, the full claim becomes payable (Rühl, 2006). In Germany, the duty to disclose material facts stops at what the proposer/policyholder knows, unlike the practice in France, wherein material disclosure is what an insurer is influenced by insofar as the assessment of the risk. If one considers marine insurance, in civil law countries, such practice is dictated by the law of contract and is generally subject to illegal or unfair contract term provisions otherwise allowing for freedom to contract. In Germany, general insurance law is only applicable in non-marine contracts, whereas France has contract legislation applicable to all classes of insurance business (Rogan, 2020). Tomic (2017) writes that following reform in contract law, the German

Insurance Contract Law (VVG) came into being on 1 January 2008 and the intention of this reform was to oblige insurers to provide more information to the consumer on the product being provided on offer, as well as to alert the prospective proposer of the duties of disclosure and the consequences therefrom. This was in response to the nature of investment-linked products that tend to be complex and difficult to understand.

2.3.1.10 Italy

Pettinelli (2005) argues that EU law has had an influence on the Italian jurisdiction to challenge the application of good faith, as evidenced by the implementation of European Directives such as the Directive on Unfair Terms in Consumer Contracts. Throughout the years, Italian judges and magistrates took into account the considerations of fairness in the delivery of their judgements, hence influencing strict statutory law on the principle of contractual good faith (Pettinelli, 2005). In Italy, the reference to utmost good faith seems to be applicable to reinsurance contracts only. For other classes, a number of civil law principles apply, especially those involving fairness, diligence and good faith principles. Article 1337 of the Italian civil code states that each party shall act in a manner to safeguard the interest of the other party, regardless of specific contractual or legal obligations, and each of the parties must behave in good faith. In insurance, this interpretation applies to the position of the proposer and the insurer at the pre-contractual stage (Monateri, 2000). In practice, therefore, the proposer is obliged to disclose all information in connection with the risk being proposed, otherwise the insurer could exercise their rights under Articles 1892 and 1893 of the Commercial code (Perotto, et al., 2020). Article 1892 of the Italian civil code provides the remedies for breaches of good faith, giving the right to the insurer to nullify the contract within 3 months of discovery and also reserves the right to retain the premium paid. Moreover, the rights of innocent interested parties will be safeguarded irrespective of a breach. Article 1893 caters for circumstances when the breach is committed innocently without fraud or gross negligence. If a claim is lodged within the 3-month duration from the date of discovery, the insurer may apply the proportionality principle and

pay the amount of a valid claim in proportion to the difference in premium shortfall (Monateri, 2000). Under the Italian code, Article 1366 provides that contracts must be interpreted in good faith and Article 1375 provides that contracts must be executed in good faith (Pettinelli, 2005). Moreover, Article 1337, which requires the parties to a contract to act in good faith during the negotiation and formation of the contract, states that a breach is said to be committed if any of the parties terminates the contract without a valid reason or fails to disclose information that leads to the invalidation of the contract. Through the years, the courts have widened the interpretation of this article and have developed their own interpretation. This has also been accelerated by EU Law, specifically via the Council Directive 89/665/EEC and Directive 92/13/EEC60 on Review Procedures. Pre-contractual liability is now also a responsibility when the contract is valid, meaning that the party acting in bad faith may be held liable for losses caused to the other party (Febbrajo, 2016).

2.3.1.11 Japan

Under Japanese law, the requirement of disclosure expected from the proposer is considered to be an exercise of receiving information from the party who has the knowledge under an asymmetric contract, rather than a representation of facts in good faith (Takahashi & Yamamoto, 2019). As with other countries, marine insurance is an area which plays a considerable part in international insurance business, with Japan being no exception to this. Marine insurance law is based on the law of contract and thus, some legal bridges had to be built to be able to deal with international maritime business. This is not without difficulty, especially since marine insurance business in some countries is based on UK practice. In fact, it has been the practice, in Japan, that the market deals with liability and claims matters by following English law, whereas any other insurance matters related to the contract of insurance follow Japanese law and practice. Judges of the Tokyo District Court treated non-disclosure as outside the context of liability since such a representation is a matter which is pre-contractual and has to do with the insurance contract *per se*. This presented itself as a challenge as Japan insurers have seen cases where the respective courts provided a different

interpretation to which jurisdiction should be applied as was debated in the case of Nima SARL v. The Deves Insurance Public Co., Ltd. (The Prestrioka), 2003. It is for this reason that insurers will have to make the applicable jurisdiction more explicit in the area of non-disclosure.

On 1 April 2010, the Japanese Insurance Act 2008 replaced the Commercial Code 1899 covering both non-life insurance (Articles 629–672) and life insurance (Articles 673–683). Under Article 2 of the Japanese Insurance Act 2008, it is stated that all insurance matters be dealt with under the exclusive jurisdiction of the Tokyo District Court of Japan, unless stated to the contrary. When contracts expressly identify English Law as the governing basis, a corresponding clause will be endorsed to the policy. Moreover, when deciding a marine dispute in Japan, the first law applicable is that related to the marine insurance contract, then the 2008 Insurance law, and lastly the general contract law contained in the Civil Code. In this respect, the disparity in the choice of law led to the revision of the Insurance Act to achieve harmonisation of laws among different jurisdictions (Nakaide, 2014).

The Insurance Act in Japan has provided for instances which will protect the disadvantaged party by making the contract void in such circumstances. On the other hand, if a contract provision proves to favour the policyholder, then it is retained. There is a statutory requirement that all important facts requested by the insurer are disclosed by the policyholder placing the onus on the insurer to ensure that the appropriate questions are asked. This is the new position under the Act, replacing the old requirement wherein the onus was placed on the policyholder for disclosure purposes. A breach of duty under the Act allows the insurer to terminate the contract if the breach is wilful or grossly negligent. Any unfavourable contractual term in this regard which is not in line with the statute, and which will disadvantage the policyholder as a result, is rendered unenforceable (Ochiai, et al., 2012).

2.3.1.12 South Korea

In South Korea, the position of the principle of utmost good faith is usually a general condition found in general insurance and reinsurance. The duty requires the disclosure of

material information and facts in good faith, and failure to do so will invalidate the contract (Lee, et al., 2019). Under insurance law in South Korea, the position of disclosure is such that should a policyholder or proposer fail to disclose, by way of concealment, any facts which are material to the risk being proposed, or else makes misrepresentations of the risk under consideration (provided such misrepresentation is intentional or done in a grossly negligent manner), then the insurer has a right to terminate the contract provided that this right is exercised within one month from the day which the insurer becomes aware of such facts or three years from the policy execution date (Ahn, et al., 2020).

The written law in South Korea largely dictates the operations of insurance. It is not surprising that the respective duties are enshrined under statute law. Under Article 651 (Termination of Contracts due to Breach of Duty of Disclosure) of the Commercial Act 2010 of the Korean civil law, there is a clause that stipulates the consequences of non-disclosure or misrepresentation. This clause applies to cases where the policyholder or proposer has failed to disclose material facts and/or misrepresented the fact intentionally knowing of the true situation which can itself be deemed as fraud, and for a breach caused by sheer negligence, known and referred to as gross negligence. The exception to this is when the insurer knew about the breach but failed to act upon it. The requirement of disclosure extends during the duration of the contract and the Act stipulates that the proposer has to bring forward any altered facts or changes since inception of the contract and disclose them to the insurer within one month. If not, the insurer will be entitled either to terminate the contract and keep the premium or request an increase in the premium. In cases where the breach is unconnected to the loss, the insurer may not enforce the return of the premium from the proposer (Korea Legislation Research Institute, 2010). In fact, the matter of disclosure also seems to be applicable to the insurer as Article 95 (Insurance Prospectuses) of the Korean Insurance Business Act 2017, states that within an insurance prospectus, in which certain details are brought to the attention of the contracting party, there should be contained information that is easily read and understood by the prospective proposer or policyholder

to inform, but also to warn, of the consequences of material facts disclosure breaches. Particularly, Article 95-2 stipulates that the insurer is under an obligation to explain the contract, the grounds for restricting the payment of insurance proceeds, and other relevant matters to an ordinary policyholder in a clear manner (Korea Legislation Research Institute, 2017). This, of course, applies to consequences of non-disclosure or misrepresentation wherein a clear warning will alert the consumer accordingly.

From this, it transpires that different countries have adopted a different approach in the application of utmost good faith with varying remedies for resolving a breach of such duty. This literature puts into context how different countries and their respective jurisdictions look at the principle of utmost good faith and thus, explains and sheds light onto any possible reform indicators. A case in point is the UK, which has been the jurisdiction that has lately reformed its century-old principle of utmost good faith and which will be studied more closely in the forthcoming section.

2.3.2 Reform of utmost good faith in the UK

2.3.2.1 The nature of utmost good faith

Insurance contracts under English law are considered to be contracts of utmost good faith since, unlike commercial contracts, there tends to be a contractual imbalance in that the proposer knows all about the risk to be proposed and the insurer knows practically nothing. Therefore, to assess the risk properly, decide whether to accept the risk in full or in part or none at all, affix the terms, conditions and the premium, the insurer relies upon the disclosure of all material facts that will impact the probability of a loss occurring and the respective consequences. The matter revolving around the issue of what is material, is one which is based on whether a prudent underwriter would have taken such material facts into account and whether the underwriter would be induced by such facts (Di Lorenzo, 2014).

Every material representation made by the proposer to the insurer during the negotiations leading to the contract must be true, otherwise the contract may be rendered void (Di

Lorenzo, 2014). The principle is emergent from common law, particularly from the case of Carter v. Boehm (1766), later being codified under the Marine Insurance Act 1906, specifically under sections 17-20. The principle (of utmost good faith) was initially intended to apply to marine contracts as had been originally stated under the Marine Insurance Act 1906:

> "a contract of marine insurance is a contract based on the utmost good faith" (Marine Insurance Act, 1906)

This was later extended to all classes of insurance, however today, as there is no longer an information imbalance between the parties, the intention of the Marine Insurance Act 1906 is rapidly losing appeal and is considered to be unduly harsh on the proposer as the full onus of disclosure is placed on the applicant. Moreover, due to fast-paced transactions, technology, and the shift in trend to the categorising of risks, this relationship is steadily wearing off especially during a time when obtaining information is being done electronically rather than personally (Van Niekerk, 2005), putting the insurer at an advantage in the gathering of information.

In the ambit of technology, Van Niekerk (2005) raised arguments for judicial activism to reconsider the proposer's duty of disclosure. The author's arguments vying for reforms were mainly based on historical obsolesce and the advent of modern underwriting techniques among other indigenous reasons pertinent to the area under study.

Tarr (2001) questions whether the principle is still relevant at a time when "mechanisms and strategies for identifying key information have evolved", rendering the duty of disclosure valueless. The author suggests a prompt re-evaluation of disclosure laws, hence proposing reform in this area.

2.3.2.2 The Marine Insurance Act 1906 - UK

The Marine Insurance Act 1906 was merely the codification of common law, rather than a statute that brought about reform in the practice of marine insurance. In this respect, the Marine Insurance Act 1906 was never intended to solve the difficult balance between the

contracting insurance parties. There was too much respect shown to commercial parties in the past, to interfere in the freedom of contract and these were entrusted to sort out any differences among themselves and with their insurers without too much legal formality. The imbalance of the contract lies in the fact that there are few pre-contractual duties expected from the insurer, unlike the onerous duties expected from a proposer via the disclosure of material facts which are more often than not, subjective. Through the years, initiatives by the Law Reform Committee and the Law Commission to introduce the reasonable assured test have been rejected by the courts since these reduced the duties of the proposer to share material facts. The previous pre-contractual duty of utmost good faith as originally found under the Marine Insurance Act 1906, has been renamed as the duty of fair presentation of risk in the reformed legislation, amending how it was defined in the first sentence of section 17. (Gurses, 2016).

Sections 18-20 of the Marine Insurance Act 1906 referred to the duty as being pre-contractual, that is, up to the point of when the contract was made.

Under section 20 of the Marine Insurance Act 1906 titled as "Representations pending negotiation of contract", a breach of a material fact is considered to be one beyond mere expectation or belief which would amount to a breach only if the fact is fraudulent. A breach of material fact is considered to be one even if such a fact is made innocently or is not immediately known to the proposer/insured (Mac Donald Eggers, 2012).

One argument under review would be whether countries are in a better position internationally by retaining the 1906 UK Marine Insurance Act, or whether they would be in a stronger business position if they reformed their laws in line with those of the now-reformed UK Insurance Acts (Chen, 2017).

As the UK Marine Insurance Act 1906 practices stand, those observing the Act, are largely dependent on UK authorities and court judgements, to set precedent to be able to decide their own cases. This might support the idea that retaining the Marine Insurance Act 1906 position could mean attracting more insurance business, particularly insurance companies and

reinsurers that adopt this insurance principle in a similar manner (Chen, 2017).

Moreover, as disputes before a consumer complaints ombudsman or dispute resolution channel are publicised there is more urgency on exposing mis-selling and the application of the pre-contractual duty of disclosure and regulation of contract terms (Chen, 2017).

2.3.2.3 History of Reform and the Law Reform Commission in the UK

Lord Mansfield pioneered the principle of utmost good faith through judgements during his time as Chief Justice between 1756-1788 by virtue of the case of Hodgson v. Richardson (1764), as well as his interpretation of warranties in insurance as in the case of Woolmer v. Muilman (1763). Lord Chalmers later codified the Marine Insurance practices and decisions into the Marine Insurance Act 1906, and after several ensuing court cases and decisions, the Law Commission prepared consultation papers in 2006 which later led to the enactment of the Consumer Insurance (Disclosure and Representations) Act 2012 and the Insurance Act 2015 (Mac Donald Eggers, 2012).

In the UK, consumer disputes challenged the long-standing Marine Insurance Act 1906 and, through litigation before the courts, the Financial Ombudsman Service and the Arbitration Office pushed for reform by exposing the public's dissatisfaction sentiment. The UK Law Reform Committee in 1957, the English Law Commission in 1980 and the National Consumer Council in 1997 all worked towards reform of insurance law. For a time, the insurance industry was allowed to self-regulate and spearheaded by the Association of British Insurers, the Insurance Ombudsman Bureau was set up to address consumer complaints albeit being restricted in the cases it could adjudicate and limited in the binding effect of its decisions (Hertzell, 2017).

Recommendations for reform were voiced as early as 1957 by the English Law Reform Committee. This Committee recommended the reasonable proposer test to soften the obligations bestowed upon the proposer (UK Law Reform Committee, 1957), and the Law Commission report of 1980 followed, reporting that although it was left up to the insurers to voluntarily regulate the insurance business and thus issue a Statement of General Insurance

Practice for the dealing of the principle, the situation remained unresolved and it continued to bring hardship to the genuine claimant, as per Part IV of the 1980 report (Law Commission, 1980).

The report considered issues such as, failure to disclosure and consequences upon a breach of disclosure, the possible introduction of the proportionality principle and the basis of the contract clause. A further recommendation by the British Insurance Law Association prompted the Law Commission to study possible reform of insurance law (Costabel, 2015). One problem for an early reform of the duty of disclosure was that this matter ranked low on the government's agenda with the reluctance of the government to interfere with a self-regulating industry of insurance. Industry codes of practice regulations and the awards by the Insurance Ombudsman Bureau and Financial Ombudsman Services triggered reform through their deviation from the strict application of the Marine Insurance Act 1906 principles (Law Commission, 1980). The reformed Consumer Insurance (Disclosure and Representations) Act 2012 amended the application of the Marine Insurance Act 1906 by abolishing the remedy of avoidance of the contract (marine and non-marine) following a breach of utmost good faith (Thanasegaran, 2016). The Law Commission in the UK was instrumental in bringing about reform. In fact, the Law Commission LC319 laid the foundation for the Consumer Insurance (Disclosure and Representations) Act 2012, whilst Law Commission LC353 brought about the 2015 Insurance Act (McGee, 2015).

Another body that had an influence in bringing reform in the UK, was the Association of British Insurers (ABI), which for a time, guided the respective market players via a number of rulebooks published for regulatory purposes. Specifically, this included the statement of general insurance practice which was binding on the members. The Insurance Ombudsman Bureau was set up in 1981 to arbitrate disputes during the time of self-regulation in the UK (Jaffe, 2013).

In 2002, a subcommittee of the British Insurance Law Association consisting of insurance stakeholders and professionals, voiced out in favour of reform. Following this, came the

review of the Law Commission in 2006, which sought feedback from market stakeholders through various consultation papers, as it believed that solutions for reforms were best derived from the insurance market at large (Hertzell, 2017).

The Law Commission in 2006 issued a report on matters that required reform and together with the relevant consultation papers, it was revealed that the evolving needs of the consumers and the advent of technology now played a new role in the insurance business (Hertzell, 2017).

The Law Commission 2012 (LC 2012) remarked that the onus was on the insurer to make enquiries for information it expects to receive. Moreover, the issue of avoidance of the entire contract was criticised heavily by the LC 2012 in circumstances when the breach would have only resulted in a small increase in premium (Law Commission, 1980).

The Law Commission made five recommendations, namely: the redefinition of the term "material fact"; the provision that avoidance is allowed in cases of fraud; the exclusion of remedies by the insurer in cases where the consumer has acted innocently; the clarification of remedies available in cases of negligent misrepresentation; and the abolishment of the need for consumers to voluntarily disclose information if not asked (Swaby, 2010).

The intention of these recommendations was to limit the obligation of disclosure only to facts that tend to increase the risk or any unusual circumstance or concerns that might lead to a greater risk or exposure in which case it would be expected, that the holder of this knowledge proposing for insurance, to disclose such relevant knowledge (Mac Donald Eggers, 2012).

The Law Commission reiterated what was already practised under common law endorsing that the insurer is already knowledgeable on certain facts which are of actual or common knowledge, like for example facts of law, other facts which the insurer ought to know in the ordinary course of business and facts which an insurer possesses, receives or checks. The new aspects suggested by the Law Commission include the replacement of the prudent insurer with the reasonably careful insurer, expecting the business policyholder to decide

which information is related to the proposal (Mac Donald Eggers, 2012).

2.3.2.4 Case Law related to utmost good faith in the UK

2.3.2.4.1 Fiduciary relationships

Licht (2016) raised arguments on whether fiduciary relationships should be dictated by contractual agreements or whether these require the intervention of the State to control the asymmetrical aspects, in which case fiduciary laws are set, bestowing obligations on the contracting parties.

In Bray v. Ford (1986), Lord Herschell reiterated that it is human nature to have persons "swaying by interest rather than duty", which means deviation from fiduciary obligations is human and motivated by the aptitude of self-interestedness, thus arising the need to enforce such obligations legally.

Another factor affecting fiduciary relationships and one which is synonymous with insurance dealings, is the issue of asymmetry, which hails from the presumption that the proposer knows more that the insurer, causing contract imbalance and threatening the viability of the insurance business. Following Carter v. Boehm (1766), Lord Mansfield stated that the principle of utmost good faith was in fact a rule of law rather than a presumption under a contract. In this respect, a call for societal levelling was desired in the form of legal intervention (Licht, 2016).

Asymmetric information could arise from the inability to check upon the material statements either because it is too costly, unobservable or unverifiable. The full disclosure rule attempts to address these issues, minimising the likelihood of having one party enjoying the upper hand under a contract by bringing the parties to a contractual equilibrium as much as possible (Licht, 2016). Licht concludes that the requirement of a strict full disclosure regime is justified to counterbalance asymmetries and states that fiduciary law is necessary to achieve equity in insurance contracts (Licht, 2016).

The contractual relationship between the insurer and the proposer/insured was always

considered to be one based on the premise of a fiduciary rapport. This originated from a time when the then part-time underwriters were ship merchants. This assumed relationship, held through for a number of years even with the advent of underwriters becoming corporate insurers.

2.3.2.4.2 Duration of Duty of disclosure

Although at common law the duty of disclosure is expected before the contract is formed and upon renewal, case law has established that the duty is a continuous one, so much so that contracts of insurance expressly require this in their wording (Di Lorenzo, 2014).

The duty of post-contract disclosure is supported by subsequent case law, notably Hussain v. Brown (1996), The Goodluck case of Bank of Nova Scotia v. Hellanic Mutual War Risks Association Bermuda (1990) and Orakpo v. Barclays Insurance Services (1995).

Moreover, in the 'Star Sea' case (Manifest Shipping Co Ltd v. Uni Polaris Insurance Co. Ltd, 1995), Lord Hobhouse stated that utmost good faith must be conserved throughout the duration of the contractual relationship.

Lord Hobhouse confirmed that:

> "utmost good faith is a principle of fair dealing which does not come to an end when the contract has been made" and "…It is not necessary to disclose facts occurring, or discovered, since the original risk was accepted material to the acceptance and rating of that risk. Logic would suggest that such new information might be valuable to the underwriter…but it need not be disclosed." (Manifest Shipping Co Ltd v. Uni Polaris Insurance Co. Ltd, 1995).

Post-contractual duty may also arise as in the case of the proposer making or attempting to make a fraudulent claim (The Star Sea, 2003) and post-contractual duty of respecting the subrogation condition (Harwood v. Land of Leather Ltd, 2010).

Whether the Marine Insurance Act 1906 was intended to impose disclosure as a contractual

requirement or a continuing one was debated in the law courts through the years. Recently, court cases took a different view of the matter. For example, in the 'Litsion Pride' case (Black King Shipping Corporation Wayang (Panama) South Africa v. Massie, 1985), the presiding Judge, Hirst J., interpreted section 17 of the Marine Insurance Act 1906 as being a continuing duty on the proposer to disclose all material facts. However, this position was later given a different interpretation by the House of Lords in the 'Pan Atlantic' case (Pan Atlantic Insurance Company Ltd v. Pine Top Insurance co, 1995), later stating that if a continuing duty was intended, then a clear specific contractual requirement must be agreed between the contracting parties (Hussain v. Brown, 1996). This was corroborated by judges Staughton LJ and Tuckey J deciding the cases of New Hampshire Insurance Co. v. MGN ltd (1996) and 'The Star Sea' case of Manifest Shipping Ltd. v. Uni-Polaris Insurance Co. Ltd. (2001) cases respectively.

The issue remains as to whether breaches of continuing duty could be classified as fraud rather than a mere breach, in view of the knowledge apparent to the proposer. The consequence of such, as interpreted by Judge Hirst in the case of Black King Shipping Corporation Wayang (Panama) South Africa v. Massie, (1985), commonly known as the 'Litsion Pride', was that an insurer, on the basis of a mere breach, is allowed to defend the claim or avoid the policy *ab initio* (Kendall, 1999).

In their concluding remarks, Merkin & George (1998) state that the case of the 'Litsion Pride', brought a degree of confusion through its judgement and recommended the abolishment of utmost good faith as a post-contractual requirement (Merkin & George, 1998).

In many European countries like France and Germany, with a variance in the UK, the duty of disclosure stops with the formation of the contract, unlike the practice in other European countries wherein the duty of disclosure is continuous (Jaffe, 2013), and in the US, where non-marine contracts are not subject to disclosure unless such failure is wilful or malicious.

2.3.2.4.3 The test for disclosure

The fact that there are questions expressly asked in a proposal form does not imply that there is no duty to disclose relevant facts known to the proposer even if these are not specifically asked for in the form. This has been stated by the presiding judges in the cases of (Glicksman v. Lancashire and Gen. Ass. Co. Ltd., 1927) and (Schoolman v. Hall, 1951). A point made in this case was that plaintiff alleged that the insurers should have known about the previous claims, which is the non-disclosure in dispute. The presiding judge commented that the case is such that the operations of the company were manual and not computerised, making it more difficult for this fact to be known and made apparent.

The matter of disclosure features in the landmark 'Pan Atlantic' case (Pan Atlantic Insurance Company Ltd v. Pine Top Insurance co, 1995), wherein the judge developed a two-tiered test incorporating both objective and subjective elements to what a prudent underwriter would expect to have as information. It was established that the non-disclosure, or the lack of it, did not necessarily have to directly lead to the outcome, but it merely needs to be shown that this non-disclosure influenced the thought process of the underwriter. Needless to say, this is very difficult to ascertain in practice, hence the dissatisfaction in expecting the proposer to disclose only those facts that are material. This brings out the point of the burden of proof of materiality, which is not always straightforward, and in which case prevents the insurer from avoiding the policy altogether (Reeves, 2015).

The Law Commission 2012 proposed that the proposers ought to make a fair presentation of the risk by disclosing every material circumstance which they ought to know. Previously, a fact was considered to be material if it were one which influenced the judgement of a prudent insurer to the extent that the insurer bases its decision to insure (or not) and affix the commensurate premium (Pan Atlantic Insurance Company Ltd v. Pine Top Insurance Co, 1995). The general rule of misrepresentation under the Marine Insurance Act 1906 requires inducement, which was also tested under the same case and which was determined through objective materiality. If the tests of influencing the insurer to insure and avoidance of the

contract in the presence of the breach, are satisfied then this allows the effected party to either avoid the contract or waive the breach and allow the contract to stand, and hence in the latter, all valid claims subsequently honoured. It further suggested the avoidance of the contract if there is dishonest conduct, or proportional remedies if conduct is not dishonest (Jaffe, 2013).

Although the reforms have attempted to bring more equity in the application of the principle of utmost good faith, particularly through expecting the proposers to disclose facts known to them and the fair representation principle, Reeves (2015) questions the type of knowledge the insurer is expected to receive and whether the 'Pan Atlantic' case would stand as precedent for the materiality test.

Yee (2001) suggested that combining the reasonable proposer and the prudent insurer test together could offer a solution. Through the years, different judges tried to interpret the Marine Insurance Act 1906, particularly with reference to the wording "influence the judgement" (Yee, 2001). In Container Transport International Inc v. Oceanus Mutual Indemnity Association Ltd (1984), "influence the judgement" was construed to mean that the facts were the ones that an insurer is expected to know prior to making a decision. This has also been opined by an Australian court (Barclay Holdings (Australia) Pty Ltd v. British National Insurance Co. ltd, 1987). In the 'Pan Atlantic' case, the judge considered whether the fact was one that tended to increase the risk, although ensuing debates left uncertainty as to what the insurer is expected to know and do. In St Paul Fire and Marine v. McConnell Dovell Constructors (1995), Evans LJ commented that material facts should be restricted to those that increase the risk.

As to the type of material facts that may not be disclosed, the Rehabilitation of Offenders Act 1974 in the UK takes care of those offences that need not be disclosed by virtue of the passage of time, rendering the offence too remote to warrant declaration. The more serious offences cannot be spent and are always subject to disclosure. Conversely, this leaves the proposer or insured exposed to disclose any unspent convictions, otherwise a breach could

be committed in this respect (Di Lorenzo, 2014).

2.3.2.4.4 Remedies for breaches of utmost good faith

According to the Marine Insurance Act 1906 (UK), the principle of utmost good faith particularly in the case of a pre-contractual breach of the duty of utmost good faith by the proposer, including non-disclosure of a material fact, allows the insurer to avoid the contract *ab initio*. This effectively means that the insurer has to positively act to have the contract rescinded, otherwise it is still considered to be a valid one. The setting aside of the contract restores the contracting parties to their pre-contract position and treats the insurance agreement as if it never existed. This position has been criticised as being disproportionate especially since it provides a restoration remedy for only one of the parties, the insurer. That being said however, avoidance can also be exercised by the proposer if the breach is forthcoming by the insurer (Di Lorenzo, 2014). This was the case in Banque Keyser Ullmann SA v. Skandia (UK) Insurance Co Ltd (1990), wherein it was held that:

> "…the duty falling upon the insurer must at least extend to disclosing all facts known to him which are material either to the nature of the risk sought to be covered or the recoverability of a claim under the policy which a prudent proposer would take into account in deciding whether or not to place the risk for which he seeks cover with that insurer." (Banque Keyser Ullmann SA v. Skandia (UK) Insurance Co Ltd, 1990).

The harshness of the principle of the duty of disclosure was voiced by judges who were influential in prompting reform. A 1975 case in the UK forced the presiding judge to pass comments influential to reform in the application of the strict principle of utmost good faith. In Lambert v. Co-operative Insurance Society (1975), Justice MacKenna was discontent to apply the principle and was forced to judge against the innocent plaintiff/claimant for a breach of utmost good faith albeit innocently failing to disclose plaintiff's husband's convictions. Justice MacKenna hinted to the insurers to consider paying Mrs Lambert,

sending a message of unfair treatment in applying the principle in this case. Prior to the case of Lambert v. Co-operative Insurance Society (1975), a number of cases tried to apply the notions of reasonable proposer and prudent insurer. Mackenna J (Judge) in Lambert v. Co-operative Insurance Society (1975) established that a breach of duty may exist even if acting with honesty and care. In contrast to this, in jurisdictions like Denmark, so long as the proposer acted honestly, the insurers cannot waive their responsibility under the contract.

Lord Mustill was strict in applying the principle of utmost good in 'Pan Atlantic', where the judge concluded that all material facts should be disclosed even if these would not have a bearing on the judgment of an underwriter to accept the risk or to charge a higher premium. Generally, breaches of utmost good faith, particularly misrepresentation and non-disclosure, both give rise to avoidance, however, statute law distinguishes between the two breaches especially the Misrepresentation Act 1967, which permits a court to refuse the remedy of avoidance, when to do so, would be disproportionate, leaving the court open to award damages instead. This remedy, however, was questioned by Judge Steyn in Highlands v. Continental (1987) when he stated:

> "Where a contract of [re]insurance has been validly avoided on the grounds of material misrepresentation, it is difficult to conceive of circumstances in which it would be equitable within the meaning of section 2(2) [of the Misrepresentation Act 1967] to grant relief from such avoidance. Avoidance is the appropriate remedy for material misrepresentation in relation to marine and non-marine contracts of insurance." (Highlands Insurance Co v. Continental Insurance Co, 1987).

Nowadays under the reformed UK law, if non-disclosure would have made no difference to the underwriter in accepting the risk and fixing the premium, no avoidance of the contract is permissible. Thus, it is only fraudulent misrepresentation or non-disclosure, that will render

the insurance contract void (Lowry & Rawlings, 2012).

The right of avoidance by the insurer opens another consideration. Is the insurer allowed to avoid the insurance contract if this, in itself, manifests a breach of utmost good faith by the same insurers? Case law on the matter has interpreted this through the cases of the 'Grecia Express' (Strive Shipping Corp v. Hellenic Mutual War Risks Association, 2002) and Brotherton v Aseguradora Colseguros, (2003). These cases involved facts known to the proposer and which were not disclosed, but later resulted in these facts being false allegations. In the 'Grecia Express' case, after establishing that there were indeed facts of dishonesty by the proposer which ought to have been disclosed, Mr Justice Colman found that insurers were not entitled to avoid the policy once the allegations had been proven untrue, on the grounds that this would be a breach of their own duty of good faith to the proposer. However, in 'Brotherton', it was held that the facts known to the proposer and withheld at the time of insuring were material, thereby allowing the insurer to avoid (Di Lorenzo, 2014).

In the UK, the proposer (and insurer) is expected to voluntarily disclose material facts and there is no need to establish a causal relationship between non-disclosure/misrepresentation and the loss, which effectively means non-disclosure/misrepresentation of a fact unconnected to the loss may give avoidance rights. Non-disclosure and/or misrepresentation may not necessarily be fraudulent, which also means that both innocent and negligent non-disclosure and/or misrepresentation may lead to avoidance (Schoenbaum, 1998).

The European Commission Draft Council Directive in 1979 was unsuccessful in pushing the notion of barring the *ab initio* remedy and replacing it with a statutory right of awarding the right to an insurer to change cover or premium following non-fraudulent pre-contract non-disclosure (Kendall, 1999). The remedy of avoidance has had a bearing on the practice of insurance in the UK to the extent that this has affected international business, especially in countries like Norway and Germany, which have a different and less severe onus placed on the proposer/insured (Lewis, 2003). In Australia and Germany, for example, the relevant

Insurance Act permits the avoidance of the policy on grounds of fraudulent breach of duty only. In France, the principle of proportionality is enshrined in the *Code des Assurances* (1930-1976), wherein cases of non-wilful non-disclosure or misrepresentation will entitle the insurer to apportion a claim or cancel giving 10 days' notice (Kendall, 1999).

Lewis (2003) suggested that the UK remedies were in need of reform especially since fraudulent breaches of utmost good faith share the same penalty as innocent breaches. In this respect, Lewis suggested damages be introduced for innocent breaches of utmost good faith wherein the proposer is asked to pay the difference in premium reflecting the increased risk following disclosure.

The issue of culpability raised by Judge Hirst was important in distinguishing between recklessness, fraud and negligence. While recklessness could be seen as turning a blind eye to the obvious, it should fit in the same category as fraud on grounds of failure to observe the duty of utmost good faith. The same holds true for gross negligence, as this is an act of wilful disregard of circumstance which would indicate the true facts of an honest and reasonable man. However, mere negligence fits in a separate category outside culpability (Kendall, 1999).There is no doubt that such reform will have an impact on the practices of insurance and this will necessitate amendments to documents to reflect these changes. For example, the duty of fair presentation of risk bestowed upon the proposer will have a bearing on how the information is collected, stored, sourced and reported. Insurers will also be subject to clarity in the way they ask for information and will invariably look closely at the type of questions they put forward to ensure that they are appropriate. This might entail the building of a knowledge base and expertise that is also expected to be disseminated across organisations, departments, service parties and company representatives. It is thus important that there is in place, sound communication among underwriters and claims personnel, where the issue of fair presentation might surface (Hertzell, 2017).

2.3.2.5 The Insurance Conduct of Business Rules - UK

The Insurance Conduct of Business Rules, commonly known as "ICOB", put an onus on the

insurer to explain to their prospective clients, the requirement to avoid making misrepresentations, the importance of disclosing all material facts and the avoidance of the contract *ab initio* consequence for failing to do so (Di Lorenzo, 2014).

Under the claims handling guidelines of the ICOB, an insurer must not unreasonably reject a claim. Situations when an insurer is considered to be unjustly refusing a claim include:

- "non-disclosure of a material fact which the policyholder could not reasonably be expected to have disclosed;
- non-negligent misrepresentation of a material fact";

(Di Lorenzo, 2014, p. 175)

and for policies entered into after 5 April 2013, an insurer must not unreasonably reject a claim for misrepresentation unless:

- "…the consumer did not take reasonable care not to make the misrepresentation; [and] the insurer shows that without the misrepresentation he would not have entered into the contract at all or would have done so only on different terms"

(Di Lorenzo, 2014, p. 175)

2.3.2.6 The Consumer Insurance (Disclosure and Representations) Act 2012

The Consumer Insurance (Disclosure and Representations) Act 2012, (CIDRA), has modified the duty of utmost good faith for consumer insurance contracts, where the duty now expects consumers to avoid making a misrepresentation during pre-contractual negotiations and at renewal expecting reasonable care by the proposer/insured.

The Consumer Insurance (Disclosure and Representations) Act 2012 was the first Act to reform the previous utmost good faith principle and clearly states in section 2 (5) that the Act will supersede the earlier application of the Marine Insurance Act 1906. This is also clarified in section 11(1) and (2) of the final provision of Consumer Insurance (Disclosure and Representations) Act 2012. The fact that this Act took priority, highlights the importance given to the interest of the consumers who were treated as an imminent need, ahead of the

needs of non-consumers whose interests were seen to three years later by virtue of the Insurance Act 2015 (Hertzell, 2017).

The Consumer Insurance (Disclosure and Representations) Act 2012 establishes what constitutes qualifying information and by expecting reasonable care to avoid misrepresentation. The effect is to reduce the strict disclosure obligation under the Marine Insurance Act 1906 to a mere duty to take care. Making the proposal form statements a condition precedent to contract has been abolished by the reformed Act (McGee, 2015).

Section 3 of the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) talks about reasonable care and stipulates that such an expectation has to be seen in the context of the type of contract, the clarity of questions asked, the explanation given by the insurer and how well these have been communicated. Therefore, in this respect, the CIDRA shifts some of the responsibility of reasonable care onto the insurer or their agent/s. In fact, under section 3(4), there is reference to whether the insurer was aware of any circumstances of the risk. From the insurer's perspective, the consumer is presumed to have the knowledge akin to that of a reasonable consumer if the

> "…insurer asks a clear question; the subject matter of the question is presumed to be relevant.
>
> misrepresentation is deliberate or reckless (essentially fraudulent), the insurer may avoid the policy and can generally keep the premium.
>
> misrepresentation is careless, the insurer's remedy depends on what it would have done had proper information been provided.
>
> insurer would have declined the risk altogether; it can avoid the policy and refuse any claim but return the premium". (Hertzell, 2017, pp. 1-2)

Dishonest misrepresentation is always considered to be in breach of one's reasonable care section 3(5). The CIDRA also applies when a policy is amended or renewed and the duty of disclosure is revived as stated under section 2(3). In fact, the CIDRA has defined that misrepresentation can manifest itself as careless or reckless/deliberate and the insurer will

have to show which type of qualification applies. The misrepresentations classified as reckless/deliberate qualifying misrepresentations are when the consumer both:

> "…knew that the statement was untrue or misleading, or did not care whether it was or not. [and] knew that the matter was relevant to the insurer or did not care whether it was or not". (Hertzell, 2017, p.1)

In fact, a very recent case of Aviva v. FOS (2017) actually tested these sections, and saw the insurance giant, Aviva, applying to quash the earlier judgement by the Financial Ombudsman (FOS), contending that the FOS failed to take into account s.2, s.3 and schedule 1 of the Consumer Insurance (Disclosure and Representations) Act 2012. The High Court, although admitting that the FOS had a right to depart from the CIDRA, if it did so, it would have had to explain why it chose to divert.

The Consumer Insurance (Disclosure and Representations) Act 2012 allows an insurer to avoid the policy on grounds of misrepresentation if it transpires that the insurer would have not conceded to take on the risk had it known of the full circumstance dictated under schedule 1 paragraphs 3 and 4 of the Act. There is a standard of care expected from the reasonable consumer to avoid misrepresentation under section 3(3), although under section 3(4) any information known to the insurer would be taken into consideration as to what is reasonable (Aviva Life & Pensions (UK) Limited v. Financial Ombudsman Service, 2017). This is subject to what is expected from a reasonable consumer and subject to these facts being clear questions asked by the insurer as in section 5(5). Section 4 specifies that an insurer has a remedy if the misrepresentation made by the consumer before an insurance contract was entered into or varied without the necessary reasonable care and was such that the insurer would not have entered into the contract, or if it had done so, it would have applied different terms and conditions. The requirement under the reformed CIDRA is simply what is expected from a reasonable proposer/insured. Schedule 1 of the Consumer Insurance (Disclosure and Representations) Act 2012 lays out the remedies of a breach of the requirements under this Act. Particularly, it distinguishes between careless and

reckless/deliberate misrepresentations and the position of a breach of any material variation. In cases of misrepresentations made deliberate or in a reckless fashion, the insurer may avoid the contract, refuse all claims and also keep the premium paid. Careless misrepresentations, on the other hand, would be treated according to what the insurer would have done if the consumer was not in breach of the duty. In fact, if the insurer would have refused to insure a qualifying misrepresentation, then that would entitle the insurer to refuse all claims and return the premium. If the insurer would have entered into the consumer insurance contract but on different terms, then the contract would be treated as if those terms were applicable and the claim would be decided on this merit. Moreover, if the insurer would have entered into a contract of insurance with the consumer but would have charged a higher premium, then the claim would be proportionally reduced according to the formula: Claim payment = Premium actually charged / Higher premium X100 (Hertzell, 2017).

2.3.2.7 The Insurance Act 2015

Although the Marine Insurance Act 1906 is one that intended to bring about contract certainty, the century-old principle has had a history of mismatch with changing times and as a result prompted the Law Commission to rewrite legalisation specifically to alter the position of disclosure and the consequent remedies. In fact, the Insurance Act 2015 under section 3(1) states that the proposer needs to make a fair presentation of the risk, disclosing all material facts that they are expected to know and answer all questions made by the insurer. On the settlement side, the insurer can apply proportionate remedies unless the breach is dishonest, in which case the insurer would be entitled to refuse the claim and keep the premium (Papaevagorou, 2018).

The Insurance Act 2015 is mainly designed for non-consumers, although some provisions apply to consumers too. For commercial consumers the Insurance Act 2015 now expects a proposer/insured to disclose of all that is known or that would lead the insurer to make further enquiries if not enough material information is supplied (McGee, 2015). The matter of having the proposer make a fair representation of the risk avoids data dumping by the

proposer ensuring that the proposer/insured does not supply bulk data and then leave it up to the insurer to distinguish what is relevant or not, amidst a maze of information (Wordley & Jackson, 2015).

Complexity arises when it is not apparent what needs to be disclosed especially when the proposer is not a person but an organisation. The Insurance Act 2015 details the type of information that needs to be disclosed and information that need not be disclosed by the management team and the respective officers in charge in relation to commercial risks. Such information, which is not required for disclosure purposes, comes in the form of information known by the risk-bearer, information which is of common knowledge and information which the insurer is to expect from the risk in question (Wordley & Jackson, 2015).

The Insurance Act 2015 is one which tries to incorporate all developments in the area of insurance practice and introduces new concepts to initiate fairer and more equitable insurance agreements. Particularly, the Insurance Act 2015 recognises the developments in information technology too and there is now a new duty that recognises the gathering of information in large organisations, which involves a lot of processes (Hertzell, 2017).

The new provision requiring a fair representation of the risk by the proposer is stated in section 3(3), wherein a fair representation of risk is defined as a material circumstance which the proposer knows or ought to know. Furthermore, the disclosure qualifies as one which puts a prudent insurer on notice or enquiry for the purpose of revealing material circumstances. Sections 3(5) states what need not be disclosed, whereas section 4 refers to the knowledge of the proposer or what the proposer ought to know. With respect to the remedies for a breach under this Act, under section 8 the insurer is given a remedy only if it can show that the duty of fair representation was such that the insurer would not have entered the contract at all or would have done so only on different terms. For the breach to be one on which the insurer can act, it must be classified as a qualifying breach that is either deliberate or reckless, or neither (Farrugia, 2018).

To be considered as deliberate or reckless, the breach must be one done without care or with

intent. The onus of proofing that a qualifying breach was deliberate or reckless rests upon the insuring party. Also, the insurer has to demonstrate that the qualifying breach was one rested upon leading to the taking of a decision on whether to insure, whether to impose terms and/or at what price (Hertzell, 2017). In cases where the insurer would have altered the terms and conditions of the policy, then these terms become applicable with respect to any claims and if the insurer would have charged a higher premium, the claim is reduced pro rata according to schedule 1 part 1 (6), in which case the proportionate formula applies (Claim payment = Premium actually charged / Higher premium X100).

With respect to fraudulent claims, part 4 of the Insurance Act 2015 dedicates a section to explaining the various circumstances that may arise. As expected, if the claimant commits a fraudulent claim, then the insurer is not liable to pay the claim and if any sums have already been paid by the insurer, these may be recovered from the policyholder. Moreover, the insurer has a right to terminate the contract, however, notice must be given, otherwise the insurance contract is still valid. Once the insurer treats the contract as terminated, any subsequent claims after the fraudulent act are subsequently invalid and the insurer reserves the right to refuse or recover any money paid out. It is pertinent to note that in cases of fraudulent claims, the insurer is entitled to retain the premium paid by the proposer under the policy (Insurance Act, 2015).

The UK Insurance Act 2015 has, on the other hand, by virtue of section 10 (2), abolished the right of an insurer to discharge liability following a breach of warranty, suspending the rights until the breach is remedied (Gurses & Merkin, 2016).

Gurses and Merkin (2016) argue that reforming legislation brings about a period of uncertainty and courts try to apply such legislation to remove ambiguity and bring intended justice through their decisions, achieving consistency and establishing principles.

The table hereunder, Table 2.2, is a summary of the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA 12) and Insurance Act 2015 (IA 15) Acts in comparison to the earlier Marine Insurance Act 1906 (MIA 06).

Table 2.2 Statute Comparative Summary

STATUTE	MIA 06	CIA 12	IA 15
CONSIDERATIONS UNDER STUDY			
DISCLOSURE	Voluntary disclosure of all material facts insured knew or ought to have known to a 'prudent underwriter'.	Removes obligation to disclose material facts but simply respond honestly and with reasonable care to questions asked.	Duty of 'fair presentation'; Insured either: - Discloses material facts; or - Discloses information to put an insurer on notice that it needs to make further enquiries.
MATERIALITY TEST – how is a 'material fact' defined?	The test relating to whether a fact is material or otherwise is an objective one: it is related to whether fact would have influenced the judgment of the objective 'prudent underwriter'.	There is no test of materiality. The test is whether the insured took reasonable care not to make a misrepresentation.	There is a test of materiality which is an objective test, namely the 'prudent underwriter' test.
WHAT DOES 'INFLUENCE THE JUDGEMENT' MEAN? – the 'inducement test'	No inducement test.	'Actual inducement' test. This test introduces a 'subjective' element. If insurer wants to avoid the policy, it is not enough to simply argue that the non-disclosed fact was material, but that the insurer in question would have declined the risk (or asked for a higher premium) if the full facts had been known to him.	'Actual inducement' test. This test introduces a 'subjective' element. If insurer wants to avoid the policy, it is not enough to simply argue that the non-disclosed fact was material, but that the insurer in question would have declined the risk (or asked for a higher premium) if the full facts had been known to him.
DURATION OF THE DUTY	At common law, duty is pre-contractual (during negotiations and at renewal). A continuing duty may arise contractually by virtue of an 'increase in risk' clause.	Duty is pre-contractual.	Duty is pre-contractual.
REMEDIES FOR BREACH OF DUTY OF "PRE-CONTRACTUAL" DISCLOSURE (Misrepresentation or Non-disclosure)	Avoid the contract if there is a breach of duty.	The insurer can only seek a remedy if breach of duty is a 'qualifying beach'. *This means that without misrepresentation (or non-disclosure), insurer would not have entered into the contract (or done so on different terms).*	The insurer can only seek a remedy if breach of duty is a 'qualifying beach'. *This means that without misrepresentation (or non-disclosure), insurer would not have entered into the contract (or done so on different terms).*

	The right to avoid a contract *ab initio* does not depend upon there being a connection ('nexus') between the non-disclosure (or misrepresentation) and the circumstances of the loss.	The right to avoid a contract *ab initio* does not depend upon there being a connection ('nexus') between the non-disclosure (or misrepresentation) and the loss. Insurer may avoid the contract only if a qualifying breach is deliberate or reckless. In such case, insurer need not return premium. If breach is careless, proportionate remedies are available if breach is qualified.	The right to avoid a contract *ab initio* does not depend upon there being a connection ('nexus') between the non-disclosure (or misrepresentation) and the loss. Insurer may avoid the contract only if a qualifying breach is deliberate or reckless. In such case, insurer need not return premium. If breach is not deliberate or reckless, proportionate remedies are available if breach is qualified.
REMEDIES FOR BREACH OF WARRANTY	The insurers do not have to prove a connection ('nexus') between the breach and any loss that has occurred. Automatic termination of the cover.	ICOBS rules only allow insurers to avoid a claim by a 'consumer' when the breach in question caused or contributed to the loss.	Section 10 only allows insurers to avoid a claim for business insurance when the breach in question caused or contributed to the loss. Cover will be suspended between the time that the warranty is breached and the breach is remedied. Once the breach is remedied, cover will be provided again by the insurer.
REMEDIES FOR FRAUDULENT CLAIMS	Forfeit the whole claim and avoid the whole contract *ab initio* by virtue of 'Fraud clauses', including previously 'honest' claims.	Insurer not liable for fraudulent claim and may cancel policy from date of fraudulent act. Termination does not affect previously 'honest' claims.	Insurer not liable for fraudulent claim and may cancel policy from date of fraudulent act. Termination does not affect previously 'honest' claims.
'BASIS OF THE CONTRACT' CLAUSES	Allowed, although insurers rarely adopted these, instead asking proposers to declare facts to their 'best knowledge and belief'.	Abolished. It is not permitted to convert statements by the insured into a warranty.	Abolished. It is not permitted to convert statements by the insured into a warranty.
CONTRACTING OUT		Insurers cannot contract out of Act's provisions with the effect of placing the insured in a worse position than they would have been under the provisions of the same Act.	It is possible for the parties to an insurance contract to agree that the provisions of the Insurance Act 2015 will not apply. However, the 2015 Act restricts the use of any contract term which puts the insured in a worse position than provided for by the Act ('the disadvantageous term'), unless the transparency rules are satisfied.

(Source: own compilation)

2.3.3 Utmost good faith – the case of Malta

Having explored the position of the UK as a recent model of reform, the case of Malta follows, especially as this is a country under this study.

In Malta, the principle of utmost good faith is based upon that of the Marine Insurance Act 1906 of the UK and the interpretation of this fundamental principle relies on the developments of case law in the UK. It is not uncommon for court cases in Malta to refer to UK case law and apply similar judicial precedent and decisions. This is emergent from the fact that the principle of utmost good faith is not written and thus is customary, based on English common law (Di Lorenzo, 2014).

The nature of an insurance contract is such that each of the contracting parties have an obligation to disclose all facts that are material to the contract and this position has been made clear in Maltese court judgements, specifically in the case of Sammut v. Middlesea Insurance (2014), wherein the presiding judge, Mr Justice Albert J. Magri, confirmed the invalidity of the contact on grounds that the proposer did not observe the requirements of *uberrima fides* and thus rendered the contract as if it never existed (Farrugia & Grima, 2021b).

Not only is the requirement of utmost good faith expected prior to the formation of the contract, but this obligation is also required after the contract is formed extending throughout the duration of the period of insurance, rendering the duty of disclosure a continuing one on both parties. This has been demonstrated in the Maltese courts specifically the case of Cassar Galea v. Cuschieri (1996). Another example of the application of avoidance of the policy was in the case of Baron v. Thos. C. Smith Insurance Services Ltd noe (2004), where the contract was invalidated for failure by the proposer to declare that previous claims were made four years earlier with another insurer involving the same property (Farrugia & Grima, 2021b).

Under Maltese law the principle of utmost good faith is applied strictly and the duty of disclosure is expected from both the proposer/insured and the insurer. The ‘all-or-nothing’

principle applies, which means that the insurer on the discovery of a breach of utmost good faith, may either treat the contract void *ab intio* or else allow the contract to stand however in the latter case, must honour any subsequent valid claims. In cases of fraudulent claims, insurers may also opt to allow the contract to stand, however, for obvious reasons, a fraudulent breach is not entertained by an insurer reserving the right to keep the premium paid too (Di Lorenzo, 2014).

Substantial cases disputed before the Maltese courts are cases of non-disclosure of previous losses or claims. The type of breaches made are usually breaches of utmost good faith emergent from the failure to disclose past losses or previous claims by the proposer or insured. Although it is evident that most of the cases penalise the insured for non-disclosure, it is interesting to note how the judges have expected the same level of utmost good faith from the insurer, and in a particular case, the judge also suggested that the position of reliance on utmost good faith should be reconsidered especially at a time when technology has made it easier for insurers to source material information on the risk being presented. Moreover, this means that insurers may be prohibited from waiting until there is a claim, to show a breach of representation of facts or non-disclosure and are expected to examine each and every risk as it is being presented (Gordon Borda v. Elmo Insurance, 2004).

In Malta, cases of breaches of utmost good faith have been predominantly of a domestic nature, related to non-disclosure of previous losses and largely motor-related, specifically relating to fire or theft of the vehicle insured, with the application of utmost good faith seen to be applied *stricto sensu*. In most cases, a breach of utmost good faith is punishable by avoidance of the contract by the Maltese courts.

The following are case law examples that seek to justify these findings:

In the case of Degiorgio v. Agius, Commercial Court (1962), the presiding judge stated that the proposer is expected to disclose all reasonable and relevant facts known, whether these are asked or not, and failing to do so in good faith gives the insurer the right to avoid the contract on the basis that the facts influenced the decision to insure.

Another point made was that if the proposal form is filled in by a person other than the proposer, the good faith in disclosing is still a requirement since it is considered to have been filled out on behalf of the proposer, especially if it had been read and signed by the proposer. Previous traffic offences were deemed to be material facts and expected to be disclosed. However, if the insurer retains the contract notwithstanding the knowledge of the breach, then the right to avoid the contract is deemed to be waived (Charles Degiorgio noe v. Austin Agius et, 1962).

In the case of Briffa v. GRE, the defendants Guardian Royal Exchange (GRE) claimed that they were not responsible to pay for the theft of the insured vehicle on the basis of a non-disclosure of facts related to previous claims. GRE sent the premium back declaring the policy was deemed to be null and void *ab initio*. (Salvu Briffa v. Walter Camilleri obo Formosa and Camilleri agents of Guardian Royal Exchange and Michael Attard on behalf of Michael Attard and Sons Limited, 2001). The precedent set by Degiorgio v. Agius (1962) was cited, restating that the proposer is dutybound to reveal relevant facts even if not asked. In the *ratio decidendi* of the case of Curmi v. Mifsud (1998), Judge Joseph Said Pullicino, flanked by Judge Carmel Agius and Judge Joseph Camilleri, quoted researcher Semin Park (1996) stating that the duty of disclosure had been a widely criticised topic and at times labelled as inflexible and outdated. They noted that, sometimes, the principle of utmost good faith is abused by insurers to avoid paying claims (Park, 1996). With that being considered, the judges still found that the non-disclosure of several thefts in the past were undoubtedly material and had to be disclosed (David Curmi noe v. Martin Vella, 1998).

The case of Bajada v. MSI (2001) demonstrated the relevance of UK case law primarily by looking at the interpretation of the word “storm” as decided in Young v Sun Alliance (Young v. Sun Alliance and London Insurance Ltd, 1976). It further confirms that the law of insurance in Malta follows that of the UK and so does the principle of utmost good faith. Based on the *contra proferentem* rule, utmost good faith extends to the insurer who is expected to execute and apply the policy provisions in good faith, and such interpretation

must be taken in the light of how a local person understands their application. The *contra proferentem* rule is based on the presumption that any ambiguity should be construed against the drafter (Carmel Bajada, et al. v. Middle Sea Insurance Company Limited, 2001).

In the case of Mamo v. Grech and Gasan (2002), the judge opined that the previous claims history of the claimant was deemed to be a material fact and was expected to be disclosed. Citing case law, Mr Justice Tonio Mallia reiterated that the primary obligation was on the insured to disclose this fact, rather than the obligation of the insurer to ask the relevant questions (Arterial Caravans Ltd v. Yorkshire Insurance Co. Ltd., 1973). As a result, the court declared that the fact that previous claims were not declared, prevented the insurer from assessing the risk appropriately and thus, the contract was annulled (Joseph Mamo v. Joseph Grech and Joseph Gasan on behalf of General Accident Fire and Life Assurance, 2002).

In Rizzo v. Formosa & Camilleri Ltd obo GRE (2002), the court of first instance presided by Mr Justice Tonio Mallia also quoted UK case law, particularly Rozanes v. Bowen (1928) and Greenhill v. Federal Insurance Co, (1927) to emphasise the great importance of disclosing all material facts, saying that the principle of utmost good faith is one accepted and adopted by the Maltese courts. He quotes authors Hasson (1969) and Birds (1996), saying that it is the duty of the proposer/insured to disclose material facts which form the basis of the contract and a breach of such could invalidate the contract altogether. He further states that the authors agree that previous claims history of the proposer are indeed material facts (Joseph Rizzo v. Formosa & Camilleri Ltd obo Guardian Royal Exchange, 2002).

In the case of Mizzi, et al. v. Middlesea Insurance (2003), the judge referred to the book written by Colinvaux titled ‘The law of insurance’ (Colinvaux, 1970) where it was stated that insurance rules invoke special requirements to disclose material facts under insurance contracts. The judge also quotes a book by Hardy Ivamy (1985) citing that non-disclosure would mean that the risk in question is greater than it seems, whereas misrepresentation makes the risk appear smaller than it really is. The judge further established that the proposal

form is an integral part of the policy and any false declaration in such a form, is also considered to be as a false declaration in the policy. Moreover, the onus of proof for disclosure falls on the insured (Stebbing v. Liverpool and London and Globe Insurance co ltd, 1917). In this case, the judge went on to discuss the issue of what constitutes a material fact, citing Berger v. Pollock (1973) and Pan Atlantic (1993) in referring to the decisive influence test (Mario Mizzi on behalf of Kalaxlokk and Marin Hili & Dr Raphael Fenech Adami v. Middlesea Insurance, 2003).

In another case, namely Borg v. Fogg Ltd (2003) heard in the Court of first instance, an incomplete proposal form in which previous claims were omitted was deemed to have been a breach of a material fact, so much so that upon realising this fact, the insurers cancelled the policy and returned the premium paid. The court took exception to the fact that past claims history are material facts and indeed brought the contract to an end (Raymond Borg v. Fogg Ltd., 2003).

The case of P & D v. General Accident Fire and Life Assurance corporation (2003) involved the appeal of a case in which the appellants were contesting a first instance decision which required the insurance company to pay the cancellation costs of the plaintiffs for the cancellation of a holiday based on the grounds of health. The insurance company argued that the non-disclosure of a material fact should have been treated separately from the health warranty since it was clear that the plaintiff did not disclose their medical condition. However, the court applied the test of knowledge and belief, and deemed the non-disclosure to be subjective, and thus, found in favour of the claimant (P & D v. General Accident Fire and Life Assurance corporation, 2003).

In the case of Spiteri v. Citadel Insurance Court of Appeal (2004), Mr Justice Philip Sciberras confirmed that non-disclosure of a material fact in a proposal form has the effect of rendering the policy null and void, and has now been embedded in Maltese court judgements (Kollez vol XLVI p.II p. 656 and Kollez Vol XXXVI p.III p. 610). This is another instance where the courts decide in favour of the insurance company for a breach of disclosure by the insured

(Angelo Spiteri v. Citadel Insurance, 2004).

In the case of Sammut v. Middlesea Insurance (2004), the Court of Appeal declared that the proof of non-disclosure rests with the insurer and the presiding judge quoted the UK case law of Joel v. Law Union (1908) to support this. This case was decided in favour of the insurer, after showing that the insured was in breach of utmost good faith by failing to disclose previous losses, a fact which was discovered at claims stage (Farrugia & Grima 2021b).

In Citadel v. Carlos Falzon, it was held that utmost good faith applies during the negotiations leading to an insurance contract, must be preserved throughout the currency of the policy and that a breach of this duty renders the contract void *ab initio*, relieving the insurers from any potential claim and liability (Citadel Insurance plc v. Carlos Falzon, 2017).

The honourable Judge Giannino Caruana Demajo decided the case of Borda v. Elmo (2004), in which a non-disclosure of past claims history by the insured surfaced, and since the requirement of utmost good faith by the plaintiff was fundamental, the contract was nullified. However, in his *obiter dicta*, the judge made some comments regarding the position of the insurer, stressing that utmost good faith is expected from both parties. Judge Caruana Demajo was novel in his commentary where he questioned whether in today's world, utmost good faith would have the same application. He challenged the fact that if it were so easy for the insurers to determine whether the plaintiff had previous claims, it should have been equally as easy for the insurers to determine past history prior to insuring. The judge commented that technology today assists insurers in determining whether to accept the risk or not, rather than relying on the earlier practice, expecting and relying on the disclosures of the unassuming proposer. He further accuses the insurers of not exercising good faith in this regard and of abusing the principle, using it as a mechanism to avoid liability. Although the case was decided in favour of the insurer, the judge decided that the court fees borne by the insurer should be paid by the same insurer by virtue of what was stated in the *obiter* (Gordon Borda v. Elmo Insurance, 2004).

Another case of non-disclosure of a material fact was Bason and Bason v. Thos C Smith Insurances Services (2004) heard in the Court of First Instance. This was a case relating to non-disclosure by the proposer of previous losses, which was decided in favour of the insurer (Farrugia & Grima, 2021b).

The duty of disclosing material facts in utmost good faith rests on both parties and although it seems that the duty is most of the time upon the proposer/insured (as the risk owner), the duty is equally applicable to the insurer who is ultimately the risk bearer. The Maltese courts do recognise this contractual obligation and do apply this requirement as and when the case arises. Expectations of disclosing all material facts related to the proposer and to the risk being insured is fairly obvious but it might not be equally apparent to what facts are expected to be disclosed by the insurer. To single out a few examples of these disclosures, the insurer is expected to inform the proposer on the intention and limitations of cover and in this respect explain the cover, exclusions, limitations, conditions and other terms. This requirement is continuous and not only is an insurer expected to be faithful during the negotiations leading to the formation of the contract (by assessing the proposal form fairly for example), but also to act in good faith when there is a claim. This situation arose in a court case of Camilleri et v. Bartoli (2003), where at proposal stage the insurer was aware of the fact that material facts were disclosed incorrectly but accepted the risk since it favoured them financially. However, when the claim surfaced, the insurers used this mis-information against the insured. The merits of the case were that the insurers were aware that 40 containers were being insured even though the store could not contain such a quantity. However, when there was a claim and 40 containers were claimed, the insurer argued that no such amount could have been stored given the size of the containers in proportion to the size of the store. The judge, recognising the obligations upon the insurer, stepped in to disallow the claim defence made by the insurers and reiterated that utmost good faith applied to both parties (Farrugia & Grima, 2021b).

Under contract law the premise is such that only the parties who are expressly recognised as

the parties under the contract may sue under it and this gives them such privilege as the contracting parties as they hold rights and obligations. This is known as privity of contract and precludes third parties (unless privity is assigned) from suing or enforcing rights under the insurance policy. This also means that third parties have no obligation to disclose any facts material and connected to the insurance agreement. This is especially apparently and applicable in the case of a claims when affected parties are asked questions relating to an occurrence in which the third party or their respective property is affected. This said, one must also note that although no such third-party obligation exists, any other party who is asked to disclose information as a stakeholder is impliedly expected to do so in good faith. This could be the case when third parties are asked to provide evidence as owners, bailors, tenants or as witnesses to name a few instances. To provide a real case example of this situation one can mention the findings of the case Grech et v. Rausi Insurance (2007). In this case it was shown that the proposer had altered a receipt intentionally to validate a claim, in fact the falsification of the receipt was of a fire extinguisher to prove that the proposer had indeed observed an insurance warranty on which the validity of the claim rested. Apart from the criminal act of falsification (which is beyond the scope of the example and which is a separate issue altogether) the breach was a material one having an effect on the validity of the claim which was refused by the insurers (Farrugia & Grima, 2021b).

Under Maltese law, support is provided by virtue of various statutes that seek to ensure that contacts, in general, are fair and lawful. A case in point is the Consumer Affairs Act Chapter 378 of the Laws of Malta which expressly deems unfair contracts against public policy as illegal. Furthermore, it states that if such terms are in anyway against public policy or moreover illegal, then they may be disregarded by the affected party (Di Lorenzo, 2014).

Moreover, under Article 385 of the Maltese Commercial Code reference to a breach of good faith is mentioned reiterating the position of the Marine Insurance Act 1906, allowing an insurance contract to be declared void *ab intio* upon any breach of good faith (Farrugia & Grima, 2021b).

Judges themselves have contributed to voicing their opinion on the application of utmost good faith as it currently stands in Malta. In numerous *obiter dicta*, judges have hinted that this principle has been sometimes abused criticising the insurers for interpreting the well-intended principle of insurance in various ways according to how it suits them as already demonstrated in Grech et v. Rausi Insurance (2007). This is akin to the case earlier mentioned of Camilleri Bertu v. Bartoli Harold Et Nominee, 2003, saying that an insurer's acceptance of good faith at the underwriting stage must be reflective at the time of the claim, and if not, this went against equity and moral justice (Randall, 1999).

Notwithstanding the issues raised and which have led the courts to decide the respective outcomes, there has been no notable reforms in places like Malta and other common law jurisdictions such as Cyprus, Hong Kong and Singapore, although change was voiced from time to time (Yeo, 2014).

In addition to this, regulator institutions such as the Malta Financial Service Authority, play a part in ensuring that insurance contracts are fair and that the industry is monitored to ensure contracts are worded and interpreted fairly (Malta Insurance Association, 2014). This is an example of how stakeholders try to address issues associated with consumer agreements which could prove to be problematic in their application (Farrugia & Grima, 2021b).

2.4 Consequences of failure to reform

Following the examination of utmost good faith, including how it features internationally and domestically (in Malta), it is pertinent to explore the ensuing consequences of failure of a jurisdiction to identify and effect reform.

Taking the case of Australia, the OECD (2013) reveals that lack of reform would have burdened the country economically through lack of competitiveness impacting production, which in turn manifests itself in inflationary consequences in view of the negative balance of payments. It also emerged that non-reform in Australia could have led to diminished cross-border trade due to contract issues, especially when trading internationally. This could

be as a result of lack of wording compatibility highlighting the need to ensure that contract wording and practices are harmonised with Australia's trading partners (OECD, 2013).

Kleffner and Nielson (2004) comment that non-reform brings along customer dissatisfaction and financial hardship. In Canada, similar global competition challenges were faced which brought social and economic hardship. The changing demography in Canada brought about new demands from the consumers/citizens and political complacency and which historically led to distrust in the country's leaders, on which pressure was exerted to reform. This was especially the case when the protesting citizens voiced their financial hardship and dissatisfaction. Canada kept up with the times, and reform and growth in modern technological infrastructure meant that the country avoided becoming uncompetitive in global trade and communication (Kleffner & Nielson, 2004). Bhatia and Coleman (2003) argue that risks of non-reform could have meant that the health system in Canada would become unsustainable and the expenses to fund one's healthcare would have shifted the burden onto the consumer.

The Governor of the Central Bank of Cyprus, Chrystalla Georghadji, posits that if Cyprus did not undertake reform, it would have sacrificed minimisation of time, cost and efficiency of the judicial system (Georghadji, 2017). Panteli (2017) commented that non-reform in healthcare in Cyprus risked inefficiency in achieving equal access and, lack of financial viability and quality, would present economic and market strains especially since, as an island, Cyprus needs to communicate and trade with the rest of its trading counterparts. Without reform, a country like Cyprus would easily fall behind in terms of competitiveness and efficiency, making the country financially non-viable (Panteli, 2017).

Taking Singapore as another example, through the years, the country also realised the need for reform in certain areas, responding to global competition and an ageing demographic. Lack of reform would have thrown the country into financial and economic hardship with the unwanted consequences of customer dissatisfaction, lack of economic development and financial strain (Tan, 2008).

In view of its political development, China faced political and governmental challenges that voiced for reform to meet the social and financial issues faced by the country in recent decades. Today, thanks to reform, China avoided consumer dissatisfaction and social issues such as unemployment (Wu-Beyens, 1991).

It transpires that even for a relatively small country like Hong Kong, lack of reform would throw this country into a state of financial non-viability, resulting in customer dissatisfaction due to the shortfall of meeting customer needs effectively and ensuring the country is financially viable. Consumer dissatisfaction is a catalyst for political pressure calling out for reform (Yin & Jingwei, 2018).

Yin and Jingwei (2018) observed that healthcare reforms required political commitment and failure to act could lead to political mismanagement creating instability and financial burdens. Tan (2008) further observes that political unwillingness to reform presents international vulnerability, misalignment, and divergence (Tan, 2008). This was further corroborated by Cutajar, et al. (2013), who found that failure to reform could be the result of a lack of institutional commitment and policy dependence on short-term government agendas. Such lack, leads to disappointment of customer expectations and loss of trust in institutions.

When discussing the missed opportunities in the education sector in Malta, Cutajar, et al. (2013) blamed this on the lack of decentralisation of the hierarchical government and the absence of several college governing boards clearly blaming the governance infrastructure. This was exacerbated by a need to change culture and reform the conservative central government top-down model (Cutajar, et al., 2013).

The works of Bajada (2017) on transport reform reveal that such a consideration was aimed at increasing patronage, improving service quality, and reducing subsidies, and therefore failure to undertake this change meant socio-economic concessions. Failure to reform could be the result of a lack of institutional commitment and policy dependence on short-term government agendas, leading to shortfalls in expectation and trust. These findings reinforce

the idea that reforms are influenced by social behaviour and institutional policy (Bajada, 2017).

As part of Malta's economic development and growth, a number of decisions were in abeyance and reform of fiscal policies were looming. Complacency would mean that Malta faces deficiencies in areas such as anti-money laundering and countering the financing of terrorism, exposing the country's attractiveness to do business. Moreover, non-reform would send labour, housing, the environment and infrastructure into disarray (IMF, 2020).

In Malta, the scenario is no different from other islands that are dependent on trade with international counterparts. Non-economic and social reforms in Malta would have meant lack of international competition, higher domestic prices bringing socio-economic hardships, unemployment and poverty. Lack of reform from an institutional perspective would have left a centralised government bearing all the bureaucratic consequences and a government infrastructure which is cumbersome and inefficient. A Sustainable Governance Indictors (SGI) publication speaks about the risk of non-reform of the country's social policies and, for Malta, this means higher school drop-outs, poverty and social exclusion especially among the vulnerable such as children, disabled persons and immigrants (Schiller, et al., 2020).

From an economic perspective, non-reform also jeopardises equality and employment rates among females and contributes to rising house prices generally (Schiller, et al., 2020), which Blinder (2001) confirms by stating that lack of reform destabilises economic and financial drivers such as risk pricing factors and distorts macroeconomic and financial stability.

The need for modernisation especially in the technological sphere is rearranging the ever-changing environment in the global economic world, and Pinelli (2017) highlighted the dangers of a jurisdiction falling behind if it fails to reform. Hence, according to McCarthy (1991), it is important to address four main factors, namely effectiveness, efficiency, equity and acceptability.

Freeman (2001) debated that economic reform in Japan served to adapt to the changing

international environment affecting the political, social and economic, and technological frameworks of societies. This is especially in view of a political *status quo* experienced by Japan through the reign of the Liberal Democratic Party in the 1980s. The risk faced by Japan was the misalignment of its business convergence with the west particularly with the Anglo–American economies (Freedman, 2001) if economic reform did not keep up with the developments in the international sphere. This fact was also stated by Seng-Ho (2019) when referring to South Korea's need to reform its socio-economic infrastructure and international relations to make the country more competitive internationally (Seng-Ho, 2019).

While Japan also shared similar problems, reform enabled the country to prosper especially through a revamp in the technology sector which brought growth and economic benefits to the country. Non-reform would have left Japan trailing and in an uncompetitive position (Valentini, 2013).

The risk of becoming internationally uncompetitive, together with financial pressures and the influence of the regulator, had a considerable effect on reform in the banking industry in South Korea (Soo-Myung, et al., 2006). Tamaga (1952) found that reform in the banking system in South Korea prevented financial and social instability. South Korea could have been held back from being a competitive country had it not brought major indigenous reforms aimed at modernisation and global trade openness.

The UK had its share of reforms through the years in a variety of sectors and these specifically avoided socio-economic hardship, lack of finance viability, unattractiveness when trading with foreign counterparts and dissatisfaction among its citizens. Of particular mention is Brexit, which although not a reform *per se*, its introduction has brought several competitive and economic issues with its traditional trade and business partners. The United Kingdom Pensions Act 2010 has been enacted in an effort to address the pension bubble. Had the UK remained complacent, it could have faced consequences such as poverty especially among the elder generation as compared to its European counterparts. Such a

reform addressed inequalities among groups of pensioners and brought social and economic benefits to the generation of the time (Ebbinghaus, 2019).

Brexit brought on a host of new challenges, and taking education as an example, EU students will now be asked to pay more than treble should they wish to pursue studies in the UK. Needless to say, this will mean universities will be negatively affected and if no reform for incentivising these students will be in place, then there will be financial and resource consequences. This also means a drop of 18% in total income in the best-case scenario and up to -60% in potential income change in fees for the worst-hit universities in the UK (Britton, et al., 2020). The consequences of failing to reform the fees and the corresponding lending facilities to prospective students, risks derailing the success enjoyed by UK universities so far. Welfare reform in the UK had an impact on low-income households and although it did bring some positive aspects, due care had to be taken to avoid jeopardising those with disabled family members and families receiving discretionary support funded by the central government. Welfare reform brought about universal credit to incentivise families to work and this saved jobs and poverty mainly to those with low incomes (Policy in Practice, 2017).

Pension reforms in the UK were needed to avoid poverty in the face of an ageing population and declining fertility rates, making pension systems more financially sustainable. Like most other countries in the world, pension systems are under strain and require reform that seeks to bring more efficiency, longer working years and diversification of retirement income, easing the financial strain on the government (OECD, 2013). From an economic and financial standpoint, reforms ensure cost effectiveness of systems and aim to offload the burden from the poorer classes in a society.

As in other parts of the globe, the US also faced changing trends and demographic needs, and lack of reform could have brought about socio-economic and financial issues. Financial and socio-economic reforms brought financial viability and efficiency (Blendon & Benson, 2001).

France (Rowan, 2017), Germany (Rühl, 2006) and Italy (Annicchiarico, et al., 2013) went through reforms to avoid socio-political issues which could not only lead to political instability but also to global competition challenges and financial hardships. In such cases, reforms were enacted to respond to public dissatisfaction and to try to achieve stability, efficiency and acceptability in this respect.

2.5 Reasons for Reform

The literature revealed a number of factors that lead a jurisdiction in effecting reform changes, and these have been selected scrupulously and identified as being the core reasons using a thematic approach as detailed in appendix 5. The reasons are being discussed in the following subheadings.

2.5.1 Political reasons

The main purpose for reform is to bring an improvement to the socio-economic environment and operations of the various industries in a given jurisdiction. This is also a political need, as it forms part of any government manifesto to bring societal enhancements. Such is influenced by fiscal-economic factors but also by social pressures through public dissatisfaction alerting the attention of legislators, administrators, courts and other stakeholders to act and smoothen the hardships and possible injustices (Spencer, 1961).

In an article on what triggers reforms, Amin (2009) posits that reforms are an incentive to incumbent governments to change. Williamson (1994) found that determinants of policy reform, based on case studies and popular belief, were reactive in response to crisis, aided by external support and driven by authoritarian governments. Usually, reforms are at their best when a new visionary government is in power, especially if this reaps social benefits and is backed by economic means (Williamson, 1994).

Previous studies on reform state that the success of the regulatory regime in any country is largely dependent upon the existence of bodies capable of implementing their objectives after taking into account the political, cultural, economic, and climatic features and history

of each state (Allan, 2003).

Allan (2003) investigated a generic reform model for national water law from the developments in Scotland and South Africa. The reform that was studied intended to create a universal practice, which could be applied to any country notwithstanding the divergences in certain criteria related to the study. The study factors that led to such reform were those related to climate, regulation and economic status. The findings emerged with surprising results, specifically that the models adopted in both Scotland and South Africa did not differ significantly from each other, presenting similar procedural systems.

The findings by Allan contrast distinctly from earlier works by Caponera (2001) whose rationale had previously rejected the possibility of a universal model and who posits that reform models are not only dependent on the intrinsic historical, cultural, religious, geo-physical and regulatory factors, but also on the political climate and political readiness.

When trying to decipher the reasons for reform, one finds that there are several political reasons why legislators are motivated to amend the law. Lowry and Rawlings (2012) have established a number of factors, mainly political, connected to the issue of utmost good faith and the unfairness it brings about, particularly to the consumer.

When reviewing the development of regulatory policy in OECD countries, Malyshev (2006) concluded that there have been communities in regulatory policy among OECD countries as in the case of competition, market and labour reform policies, involving the various stakeholders such as oversight bodies, advisory committees and independent regulators in the area of risk and regulatory policy. This suggests the importance of stakeholder involvement when considering reform.

2.5.2 Reasons due to influence by Institutions

Taking the UK insurance industry as an example, the main reasons for delay in reforms can be attributed to the fact that insurers were, for a time, self-regulated and always resisted change and reforms. This was especially the case as insurance practice was always

considered to be a private business, that traditionally dealt with all related matters including how to deal with fraudulent claims. The government was always reluctant to watch over this financial activity especially since it brought in wealth to the economy and support to the society. In this respect, insurance regulation was never on the to-do list of the UK. However, after a time of public outcry and dissatisfaction, the Law Commission stepped in and challenged the practices that were following the voluntary rulebook of the insurance industry known as Statement of General Insurance Practice. This handbook revealed weaknesses and shortcomings in addressing certain utmost good faith. Reform in the UK was necessary to retain competitiveness in the global insurance environment and to align the practices of the local insurers with those of their respective international counterparts (Lowry & Rawlings, 2012).

2.5.3 Regulatory reasons

It is regulation that addresses certain shortcomings through the setting and maintaining of standards. This is especially important since the nature of the insurance contract is such that the proposer purchases security, which comes in the form of an asymmetric contract, and thus the need for periodic updates (Feinman, 2014).

Reform is a mechanism which tries to remedy a seemingly unfair situation. For example, the reform in Canada via the Insurance Act occurred to prevent circumstances which could provide a contractual advantage to the insurer. This was achieved by creating regulatory structure to monitor contractual relationships and to ensure that ascertaining the rights and obligations of the contracting parties, commonly known as statutory conditions were being safeguarded (Brown, 1985).

Regulatory reform is, in the current business scenario, very topical and timely with increased competition, new technological advances and changing patterns of consumer behaviour necessitating new laws and regulations to meet the demands of the new market and social trends and needs (Tomic, 2017). This highlights the importance of reforms in a changing

world and developments in the industries at large, to which the legal framework needs to adapt (Farrugia, 2018).

Reformed regulation is usually reactive, having incumbent governments acting to restore market failures or alleviate social wellbeing. Generally, the government intervenes to oversee business activity and monitor the behaviour of the respective market players (OECD, 1996). The OECD report states that innovation and technical change have significant impacts on regulation. Success is achieved if the regulatory reform takes into account the relationship between regulation and innovation, ensuring these respond positively to changes in the economic, social, technical and technological environments (OECD, 1996).

The Insurance Distribution Directive (IDD) (Insurance Distribution Directive 2016/97, 2016) and the Market in Financial Instruments Directives (MiFID) (Markets in Financial Instruments Directive 2014/65/EU , 2014) are two examples demonstrating the importance of modern law and regulation incorporation in domestic laws seeking to protect the contracting parties and ensuring fairness in the respective dealings. Insurers must act professionally and must not mislead the consumer, ensuring and that all contractual terminology is directed to support good faith practices (Tomic, 2017).

2.5.4 Reasons due to type of legal system and legislation

From the literature, it emerges that where countries adopt a civil law legal system, this is essentially based on Roman law and is very systematic and structured, whereas common law, on the other hand, is more detailed, founded on specific situations and is a system of judicial precedents created by the courts. Statute law tends to solidify both common and civil law through enacting laws via the parliamentary mechanism. Some countries adopt a mixed legal system and such countries are referred to as having mixed jurisdictions (Tetley, 1999). Malta, Scotland, Australia, the US, Singapore and the UK are examples of mixed jurisdictions adopting mixed legal systems.

The reform of the insurance principle of utmost good faith moves away from common law,

as has been the case in the UK in years 2012 and 2015 through the enactment of the Consumer Insurance (Disclosure and Representations) Act 2012 and Insurance Act 2015, respectively.

In view that it is still early days to investigate the success or otherwise of this recent reform in the UK industry, other countries who moved away from the strict principle present some answers, especially in the way remedies are provided. Moreover, the approach taken in major common law jurisdictions like the US, and smaller ones like Cyprus, Hong-Kong, Malta and Singapore, who base their insurance operations on the UK system, is still up to reform consideration.

Boyes, et al. (2014), in their paper on the incidence of marine directives and national legislation, stressed that any changes or additions in legislation will further burden the governance of an organisation. Amidst a plethora of legislation, insurance firms have had to invest in the monitoring and assessment requirements and the provision of data. This meant investing in resources specifically for this purpose.

It is evident that with evolving legislation came evolving organisations that had to adapt by changing their structures, policies, procedures, by investing in training, by making their systems transparent and by protecting their data. Logically, one would expect that reform would bring about lesser disputes and less litigation and, therefore, the success of reform may be measured based on whether the number of court cases diminishes. However, stakeholders voiced concern and put due pressure on reformists, policymakers and legislators to act and bring about equitable change (Boyes & Elliott, 2014).

2.5.5 Reasons due to stakeholder influence

Cousy (2017) argues that harmonisation of national insurance contract laws will overcome the barriers of cross-border provision of services, since diversity of insurance contract laws among EU member states discourages cross-border trade and limits business to the local community. This is compounded by the fact that EU member states are keen on retaining

their own national laws and regulation. A harmonisation formula will seek to bring uniformity of rules, principles and practices, harmonising the respective insurance industries (Cousy, 2017).

For example, in Malta, although no substantial reform has taken place, the transposition of EU directives and regulations has influenced the introduction of new legislation to regulate contractual relationships, which at times could be seen as imbalanced (Pawlson & O'Kane, 2002).

Pawlson, et al. (2002) in their research healthcare regulation, found that accountability is an emergent factor that will, inevitably bring about changes in the respective regulation. The element of accountability is attributable to public pressure and market forces and pressures from stakeholders. In the healthcare sector, there has been increased demand for information, aided by modern technology for effective dissemination of information and depending on the rapid adaptability of information acquisition and management (Pawlson & O'Kane, 2002). Such is also reflected in the financial services industry, including the insurance sector. This change in legislation will result in better informed insurance consumers on the quality of services offered. This is especially challenging for insurance market players who would need to be transparent and provide guidance (Gavriletea, 2015). We are nowadays looking at an environment where contracts are no longer free for all, but regulated to ensure parity and fairness. We are moving away from the common law position of the contracting parties to statute law, wherein parties know exactly where they stand and are within an equitable bargaining relationship.

The developing legislation and regulations, whether stemming from EU Directives or domestic, stress the need for fair and honest practices and consumer protection, by having contract dealings, both express and implied, be transparent, clear, not misleading and equitable. This requires companies to be compliant with expected professional standards of consumer protection, giving due regard to product communication, informed consumers through disclosures and product information, complaints rights, data handling and due

accountability, governance and compliance (Council Directive, 2005).

Market players can keep up with these challenging times by constantly monitoring, reviewing and updating (where necessary) their products, policies and processes, ensuring that their customers are aware of their updated notices, consumer documents and policy contracts. Moreover, response plans and management systems will look after the operational infrastructure in light of the legal and regulatory framework backed by staff who will undergo training in this regard to acquire knowledge and be able to adapt to the new developments in this volatile regulatory environment (MFSA, 2019). This, in turn, calls for resilience stress tests of the company's operations and a stock-take of resources which need to be equipped with new skills in line with new roles and functions, particularly in IT, compliance, legal and risk management disciplines, among others. This has been said in the context of reforms that inevitably bring calls for reforms and changes.

The main objective of any reform is to harmonise the position of those affected. One expects reform to bring equity upon the contracting parties, with the ultimate goal of reducing differences between these parties. As seen in some countries, the law reform committees played a vital role in putting pressure on institutions who, together with other stakeholders, lobby with parliamentary legislators to bring reform (Lyon, 1974).

On a general note, reform aims to bring about parity and uniformity of practices and therefore, this will enhance customer and stakeholder service who are assured of consistency, transparency and fairness. Moreover, one could deduce that, nowadays, increased customer rights and protection, places these potential purchasers in a stronger position to challenge contract uncertainty and contract complexity. This should bring about more fairness and equity especially in member states of the EU, which is a body that is very much pro-customer in insurance distribution, as witnessed within the latest Insurance Distribution Directive (Insurance Distribution Directive 2016/97, 2016).

2.5.6 Operational reasons

In New Zealand for example, the New Zealand Law Commission highlighted a number of problems with respect to the duty of disclosure. Particularly, the Law Commission highlighted that it is not certain what the proposer is expected to disclose and, worse still, the proposer is expected to disclose beyond what is asked. Such unawareness could still result in a breach, which places disproportionate consequences upon the proposer. In recent years, judges have voiced their concerns and, in their *obiter dicta*, also spoke on the need for reform (New Zealand Law Commission, 1998).

After reforms were undertaken by Australia and New Zealand, the UK addressed the issue of utmost good faith through similar relevant reforms particularly intended to address problems regarding utmost good faith and related conditions precedent, among others (Yeo, 2014).

Such an example reflects the case in many other jurisdictions and highlights the need of ensuring operational soundness when contracting with the consumer to prevent dissatisfaction and contract imbalance, hence the need to reform and update aged policies, regulations and practices.

2.5.7 Technological reasons

Digitisation of the insurance industry has brought about inevitable adjustment in the operational core activities of the insurance business. Moreover, development of information technology (IT) permitted adjustments to new business environments [(Bain and Company 2013) as cited in (Braun & Schreiber, 2017)], especially the relationship between the customer and insurance players [(Mckinsey 2013 as cited in (Braun & Schreiber, 2017)].

Technology is highly influential in bringing change in the way traditional processes are carried out and the insurance market is cognisant of this. The latest technologies, particularly on-demand insurance, Insurtech and artificial intelligence are set to become mandatory in light of the digital shift that customers have made (Braun & Schreiber, 2017). This has put

pressure on the new ways of collecting information, processing of data and dealing with claims.

As technology advances, insurers find themselves in a facilitated situation to acquire material information, reducing the information asymmetry between insurers and their clients. In the UK, for example, the Consumer Insurance (Disclosure and Representations) Act 2012 has completely removed the positive duty of disclosure under personal lines insurance which means that the proposer/insured is not expected to disclose information which was not put on enquiry. What is now required is that the proposer/insured responds honestly to questions asked and must ensure that care is exercised when doing so to ensure the correct information is parted. Failure to do so, will enable the insurers to apply proportional remedies, reducing the amount of claim in relation to the breach. Under the Insurance Act 2015 UK, for non-consumer contracts, that is, for commercial insurance contracts, the requirement to disclose all material facts positively still applies, with proportional remedies available as in the case of the 2012 Act (Parsons, 2016). Other common law States such as US States, most provinces of Canada, and Australia have undertaken similar reforms as in the case of the civil law-based countries of Germany and France (Germany, 2007; France, 1998).

Insurance business is up for new challenges and with technologies such as telematics, on-demand insurance, smart homes, wearable monitors and the onset of driverless cars (Silverberg, et al., 2016), the environment has changed from the traditional face-to-face customer-insurer relationship to smart high-tech information gathering and analysing devices, which bring about a plethora of new challenges. One development of this is insurance on-demand, providing insurance only when it is required (Silverberg, et al., 2016). Today, insurers are equipped to create, capture and analyse data instantaneously, giving them an advantage over the consumer from an underwriting perspective. This means that, not only are insurers able to gather material information, assess and rate the risk accurately and quickly, but they have also increased their potential to manage these risks better and take on risks which they previously had to decline. Devices connected to the internet, known as

Internet of Things (IoT), assist in alerting a loss, monitoring the policyholders' health, behaviour or driving habits or mitigating a loss and deterring fraud in the process (Silverberg, et al., 2016).

Technology is bringing in new devices and processes from which information can be retrieved. This in turn could mean less consumer interaction and increased capacity in data gathering and data analysis, making organisations such as insurers, more efficient and effective. These devises are already used for information purposes and range from mobile apps to wireless detectors, to name a few (Ernst & Young, 2015).

With the advent of improved communication channels, advances in IT and actuarial analysis, businesses possess a wealth of information that they could use to their advantage.

Insurtech has presented a need for reform especially during a time when Insurtech start-ups are practising disruptive technology by virtue of their prompt, efficient and innovative manner of exercising assessments of risk and underwriting. These present a new of underwriting insurable risks using high level of IT capabilities in areas such as cloud computing, big data, mobile and social platforms and IoT [(Feilmeier, 2016) as cited in (Braun & Schreiber, 2017)].

In response to new consumer demands especially through the use of technology, insurers have been on the alert to adapt and invest in modern technology such as AI software (World Economic Forum & Deloitte, 2017). Insurers have become less reliant on the utmost good faith statements made by the proposer and through the use of new tools and sources, they are now in a position to obtain and assess underwriting information efficiently. This could mean that in the future insurers would be in a position to collect the information themselves rather than rely on utmost good faith.

The economy as a whole is facing rapid growth in innovation and customer expectations, in an environment that is becoming more competitive and expensive to operate in. Nowadays, technical members of staff and other frontliners are being replaced by IT systems and other AI equipment. Moreover, the way data is gathered, processed and used for business purposes

is taking a different form of interaction. Accurate risk evaluations require good data and this entails the need to equip companies with fully fledged trained personnel able to deal with sophisticated IT systems and processes, and recruits who are conversant with mathematical models and algorithms coupled with accurate testing models ensuring quality and reliable results (Breen, 2017).

The degree of reliance on traditional practices of sourcing information on a face-to-face basis has diminished greatly and the necessity of introducing modern infrastructure and resources is increasing. This has brought about a change in recruitment, training needs and the type of experts requiring highly qualified technical people. We are now moving towards more legal and tech-savvy personnel who are able to understand and apply the new tools and platforms. The insurance industry is moving away from the premise that the proposer knows more about the risk than the insurer. Today, the insurer is more knowledgeable than the proposer and is distancing from the reliance on utmost good faith and verbal promises, and moving towards algorithms that measure the truthfulness of the proposer and facts about the risk swiftly. All this is shifting insurance from supply-driven to demand-driven and from direct producer to consumer empowerment requiring an increase in transparency, security and speed in an environment of agile markets and advanced analytics (World Economic Forum & Deloitte, 2017).

On-demand insurance with switch on and switch off options and blockchain validation have made insurance accessible, and insurers need to be proactive rather than reactive to customer demands and reach out to the consumer on an individual basis rather than provide a one-size-fits-all.

2.5.8 Socio-economic reasons

Walmsley (n.d.) revealed how public dissatisfaction in a society pushed legislators to pass statutes such as the 1913 Mental Deficiency Act and the UK White Paper Valuing People (2001). Coupled with this were campaigns for reform, particularly by the National

Association for the Care of the Feeble Minded (founded in 1896) and the Eugenics Education Society (founded 1907) which, through their insistence, pressured the Royal Commission to accept the need for legislation.

Traustadottir and Johnson (2005) argued that every generation must seek a solution on the challenges faced since societies are constantly developing [(Traustadottir & Johnson, 2005), as cited in (Walmsley, n.d)].

Shifting the obligation of disclosure on the proposer is a money saver for the insurer (Schoenbaum, 1998), although Yee (2001) argues that inexpensive methods such as the ones where a form is provided on which information is collected should not have any economic or financial bearing (Yee, 2001). Economic regulation is intended to ensure the efficiency of markets, whereas administrative regulation is responsible for ensuring the smooth functioning of operations (OECD, 1996). These are factors that put pressure on the reformation of traditional practices.

Marks (2009) argues that with the progress and development of societies the demographic variables such as education and economic situation, decrease.

2.5.9 Financial, monetary and economic reasons

When studying the requirements for an in-depth reform of the international monetary and financial architecture post the international financial crises of 2007, Ocampo (2011) criticised the reforms on the basis that they fell short in scope since they relied on one source, which was the G20. The author argued that international reform should be based on two fundamental criteria. One of these criteria required a comprehensive regulatory outlook and the other required the involvement of a variety of stakeholders, comprising of a multi-layered network of global, regional, and national financial institutions (Ocampo, 2011).

These works present a solid basis for establishing reform criteria and may be compared alongside various jurisdictions, highlighting convergences and divergences of reform systems in the countries being studied.

When looking at factors affecting regulatory reform, Djankov, Georgieva and Ramalho (2017) prove that periods of fiscal pressures and associated imbalances may have due influence. They discovered that such a correlation is stronger in developing countries, especially those aided by funding and those transitioning out of a communist regime. Those that tend to rely on low-cost borrowing show weaker willingness to effect regulatory reform. (Djankov, et al., 2017). Moreover, reform is triggered in circumstances when governments face difficult times and usually also brings change at the helm. Deterioration of the fiscal policies also present a strong factor for regulatory reform (Drazen, 1993; Romain & Tornell, 2015). When studying the politico-economic situation in Latin America, Krueger (1993) also showed that in an attempt to better the performance, there is a correlation between a deteriorating economy and government regulatory reform (Krueger, 1993).

Williamson (1994) states that political change is usually a determinant of regulatory reform. Moreover, historically, it is when governments face hard economic times that they feel the need to effect structural reform measures (Williamson, 1994), a fact proven by Bruno (1993) when examining high inflation prices and fiscal imbalance bringing about reform in certain countries (Bruno, 1993).

Fernandez and Dani (1991) have shown that when reform is halted, fiscal imbalances would be the triggering factor that sets reform in action (Fernandez & Dani, 1991), and works by Duval (2008) show that fiscal surplus may stimulate a country to launch regulatory reforms, a fact correlated by Agnello, et al. (2014).

2.5.10 International and market reasons

Abiad & Mody (2005) studied the factors that led to financial reform were evidently financial, economic, operational and international business-related.

Australia and New Zealand have already made the utmost good faith reform step for non-marine policies, however, commonwealth countries such as Hong Kong, Singapore, Cyprus and Malta still follow the UK Marine Insurance Act 1906 utmost good faith position. Given

the international presence of UK insurance and reinsurance activity, the newly reformed UK Insurance Acts should serve as a possible reform path for fellow commonwealth counterparts (Merkin & Gurses, 2015). Essentially, the main purpose of reform is to improve the personal and commercial activities in a given society. This is intensified through public dissatisfaction, alerting the attention of legislatures, administrators, courts and other stakeholders who tend to readily serve important social objectives (Spencer, 1961). The market alone may be sufficient to exert certain force, but surely not able to ensure complete satisfactory operations such as claims handling and settlement in insurance (Feinman, 2014), the reason for justifying regulatory/legislative intervention through reform.

The UK insurance industry is influential in world insurance trading and this is not only stemming from its great historical importance especially during the golden age of marine transportation, but also through the rich corpus of insurance knowledge and practice of this relatively old business trade. Moreover, the international interaction, (then through marine insurance, now through international business and reinsurance), makes the UK a tried and trusted insurance industry. In this respect, it is fundamental that international insurance market players are able to converge by having policies, practices and regulation in common, in order to achieve harmonisation and smooth business across the international insurance market (Borscheid, 2012).

This is particularly relevant to those countries that have traditionally followed the UK, like Malta, and are still adopting common law as the basis of insurance practice where there is significant dependence on UK lawsuits and common law. Now that this common law position has changed, it might have an impact on such countries that might be forced to follow the UK reform especially in light of the UK judgements that they depend on to settle their disputes. Moreover, common law-based jurisdictions would need to determine, if they decide to follow the UK reforms, whether they should completely revamp their existing regulatory framework or merely revise the existing practice, if at all. The case of Malta is in fact being explored in this study.

2.6 Conclusion

The literature review presented the knowledge that is existent at the time of writing and an international analysis of those drivers that lead to reform on a general level. Furthermore, the findings of the literature also displayed the manner in which different countries (including Malta, being the country under study) adopt the principle of utmost good faith, which is important in understanding how this principle brings about challenges, how these challenges are remedied, how this principle was reformed in some countries and the consequences of failure to reform. The value of this review lies in the fact that it provided a framework on which this study was built, to reveal a number of factors that influence reform and which were grouped into 5 main categories, referred to as propositions. These were the factors on test using utmost good faith as a case study, as explained in the methodology section in chapter 3.

The following Table 2.3 summarises how the propositions were built based on the various themes identified through literature**.**

Table 2.3 Propositions to be tested built from the themes

Reasons for reform	***Themes***	***Propositions***
Political reasons Reasons due to influence by Institutions Regulatory reasons Reasons due to type of legal system and legislation Reasons due to stakeholder influence	Legal issues Pressure by the law reform committee Court influence and pressure Judicial efficiency Slow dispute resolution Inconsistent decisions Transparency Influence of insurance industry Political influence Institutional power	***Institutions and legal systems***
Operational reasons	Contract uncertainty Contract incomparability Contract complexity Fragmentation of practices Equity and fairness Quality and solidarity Consumer rights and consumer protection Public dissatisfaction Pressure by the media and stakeholders	***Customer and stakeholder influence***
International and market reasons	UK influence and dependency on UK practice International competition Influence of statute law Law harmonisation EU influence Convergence with the West Foreign investment	***International Business***
Technological reasons	Tech related issues Modernisation	***Technology***
Socio-economic reasons Financial, monetary and economic reasons	Demographics Economic benefits Social stability Financial strain Resistance to change Economic climate Competition	***Social and economic factors***

(Source: own compilation)

This chapter concludes with a theoretical conjecture of five propositions that are being presented as those most prevalent factors that bring about reform in a jurisdiction based on extensive literature detailed under this chapter. These are illustrated under Figure 2.1 below.

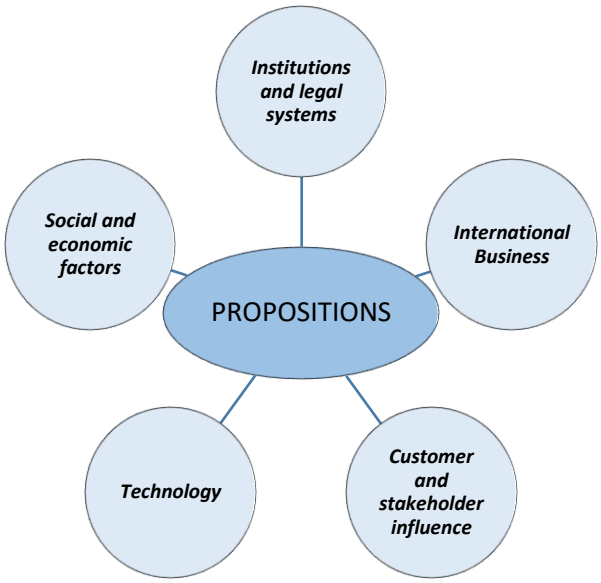


Figure 2.1: Propositions emergent from literature reflecting the general reform factors (Source: own compilation)

CHAPTER 3 - METHODOLOGY

3.1 Research Paradigm

3.1.1 Research Philosophies

A research paradigm is thought of as having, among others, interpretivist or positivist philosophies, and is composed of four components; ontology, epistemology, methodology, and methods (Rehman, et al., 2016), which form the main structure of this chapter.

3.1.1.1 Ontology

The ontology of every research is based either on a single reality or on multiple realities. Ontology refers to how reality is perceived, conceptualised, and modelled by different people through the different claims made about the nature of reality (Guarino, et al., 2009). In the case of this research, some deductions were based on the perception and opinion of those involved, whilst others were based on hard facts. In this respect, the findings of this study took different outlooks of reality by virtue of the factors that constitute reality and perception. This was intended to come close to Realism (Edirisingha, 2012), which refers to how the practice of utmost good faith in the insurance industry is perceived and applied at a given moment in time relevant to the findings of this research.

3.1.1.2 Epistemology

Epistemology, as derived from the Greek words ‘episteme’ (knowledge) and ‘logos’ (reason/argument), is the study of the nature of knowledge (Steup & Neta, 2020).

The understanding of knowledge is derived through the application of various methods, the need to validate and the derived scope. The epistemology attempts to distinguish between justified belief and opinion (Steup & Neta, 2020), seeking theory of knowledge and its justification (Petty, et al., 2012). In view of this, the researcher will in fact, establish knowledge and validate it to justify the findings.

ONTOLOGY Multiple Reality	PROBLEM SOLVING	FILLING KNOWLEDGE GAP	ONTOLOGY Single reality
EPISTEMOLOGY Interpretivist Based on perception			EPISTEMOLOGY Positivist Built on facts
METHODOLOGY Qualitative			METHODOLOGY Quantitative

Figure 3.1: Research paradigm comparative table (Source: own compilation)

3.1.1.3 Interpretivism v. Positivism

Interpretivism is a collection of constructed social accepted realities explaining actions and situations interpreted by individuals based on human behaviour and/or experience (Blaikie, 2007).

The research questions of this study, have been structured with interpretivism in mind, to capture the multiple realties and variation, developing the research investigation as it evolved. This flexible method, which also induces the researcher to become part of the research, triangulates multiple sources of data to build patterns, propositions and categories from the data (Robson, 2011).

Whereas the input of the researcher was intentional in the design of the research questions, care was taken to ensure the values or beliefs of the researcher were not leading or influencing the output of the responses. This was important in ensuring that there was no bias in the gathering of data as well as in the influencing of respondents, to avoid jeopardising the findings and results.

This research was largely based on an inductive theory building approach whereby interpretations of the findings were presented and tested to determine aspects centring

reform, among others. Through data generated, several factors were presented, thus building up theory, based on utmost good faith as a case study. This theory provides a basis for the successful approach of reforming utmost good faith in insurance (or otherwise) and establishes knowledge for the practice of insurance insofar as the principle of utmost good faith is concerned.

Researching potential reform, with respect to the principle of utmost good faith, is subject to interpretation and is largely based on perception, however, some aspects are built on hard facts. This leads to Positivism, which in contrast to Interpretivism, is scientific and the reality is achieved quantitatively by means of measurement, observation, or testing (Bruce, et al., 2008). Such an approach was used in the deductive part of this study during the testing of the propositions that are found to be influential in achieving reform and in the ranking of results. The positivist approach was adopted through fact finding by examining the reform propositions, which are measurable objective facts able to be observed and tested via a structured questionnaire from which data from experts in the field was obtained.

The interpretivist approach was sought via primary research collecting subjective facts based on expert opinion and perception. For this reason, this study adopts a mixed methods approach using both interpretivist and positivist approaches. This is supported by Petty, et al. (2012) who, when analysing different types of research, observed that epistemological approaches could be varied with mixed Interpretivism and Positivism. In their observation, Petty, et al. (2012) observed that Smart and Doody (2007) and Sweeney and Doody (2010) followed the positivist case study approach of Yin (2003) using a rigid method of gathering primary information and using pre-determined codes. Petty, et al. (2011) also used a case study approach but adapted the interview questions as the research developed thereby inducing an interpretivist approach. Alternatively, Strutt, et al. (2008) used an interpretive phenomenological study, however, data was gathered through a questionnaire, which is synonymous with a positivist approach. Moreover, Perry, et al. (2011) also conducted a study within interpretivism, yet analysed it in a positivist style through the analysis of all

propositions and categories. The reason for establishing the epistemological paradigms is to ensure the research uses the tried and tested methods of the conduct of a study.

Recent developments in the field of the mixed methods approach suggest how researchers can combine the two methods namely the quantitative findings and the qualitative findings to derive an interpretation of data through the use of meta-inferences, these being conclusions emergent from the quantitative and qualitative phases of the study (Legocki & et al, 2015). The application of such a novel combination of mixed methods was not only used for the investigative part of the research but also was applied to the analysis section when the case of Malta was being reported as visually summarised under Figure 3.2 below. The complete analysis is being reported under section 4.2.9.

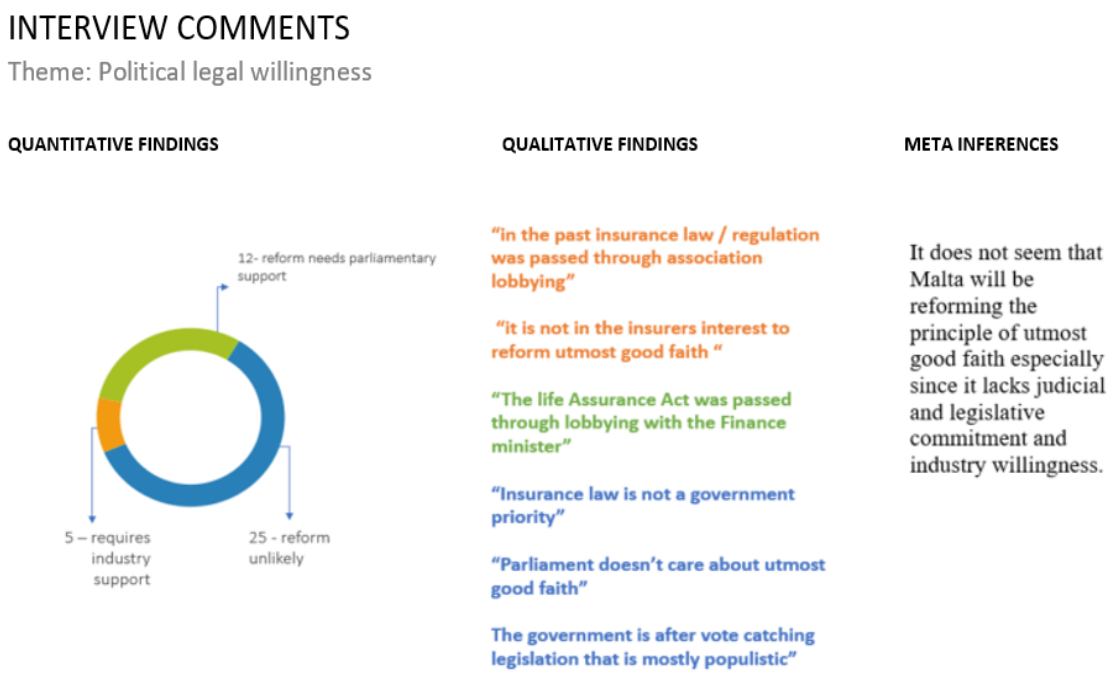


Figure 3.2: Sample combination of mixed methods (Source: own compilation)

3.1.2 Research Approach

3.1.2.1 Inductive v. Deductive

When studying the various forms of knowledge, Petty, et al. (2012) discovered a multitude of types, each of which suitable for the type of research being undertaken. Relative to this research is 'propositional knowledge', that is, emerging from opinions and/or written resources. Moreover, within this research, knowledge also manifests itself as 'knowledge in practice' and 'procedural knowledge', which is derived from experts and practitioners in the respective fields (Petty, et al., 2012).

The formal approaches to the methodologies are in the form of theory building and theory testing, known as inductive and deductive methodologies respectively. Inductive methods search for beliefs and opinions and generate theory, aided by the researcher's input (Glaser and Strauss, 1967), in contrast to deductive methods which test a specific theory or specific state of affairs devoid of the researcher's influence or control (Strauss and Corbin, 1998; Dudovskiy, 2020).

This research adopted a strategy of obtaining data and used this to build theory using a case study approach modelled on Jensen and Gwyer (2000) and Edwards, et al. (2004) and used an inductive approach to build propositions and a deductive approach to test the newly found literature, specifically the factors that affect reform. This corroborates with Morse (2009) who proposes the methodology of literature build-up to form the theory and thereafter using interviews and questionnaires to test these findings.

3.1.3 Research Strategy

3.1.3.1 Background

Research methodology details how the research was carried out according to the theme under study (Kothari, 2004). It refers to techniques used to collect data, to analyse information, to critically evaluate findings, and assess a study's overall validity and reliability. It is the strategy to problem-finding or problem-solving. Opinion-based strategy is the gathering of

opinions and perception using methods such as through interviews and questionnaires, which were used as domain methods (Buckley, et al., 1976). On the other hand, empirical research was based on case studies and desk-based field work to determine the reality, having the researcher involved in design stages of the process. This chapter will therefore explain how the data was collected and the tools used to respond to the research questions.

3.1.3.2 Research design, purpose and form

This study selected a framework that was well established in order to be dependable and robust, and was based on the works of Yin (2003), Stake (1995), Merriam (1998) and Yazan (2015) from which the mixed method approach stemmed and the use of a case study approach originated.

Every research requires a method, designed in such a way that allows one to address the research problem and answer the research question/s. To be able to do so, appropriate data and knowledge needs to be collected and the right tools to achieve these must be used. Moreover, research designs come in the form of descriptive and explanatory methods. Descriptive methods refer to research which provides concrete and solid information addressing "how" questions that trigger the explanatory "why" questions (de Vaus, 2001). In fact, this study seeks to start off with a descriptive design attempting to answer *how* reform is instigated and leads to testing the factors by asking experts "why" they think these factors are valid or not. Therefore, the design of this research sought evidence to build theory in determining the factors that lead to reform in general and then expert knowledge was collected to challenge the supposed propositions and validate whether these propositions apply to insurance, specifically to the case of utmost good faith. In such a "how and why" type of research, a case study approach is the best approach having the researcher carrying out a thorough review of the literature that exists on the topic and coming up with relevant propositions (Yazan, 2015). The case study approach was used again to test the applicability of the findings to Malta which was a country under study.

Robson (2011) defines a “case study” by saying that it is one of the forms of research that investigates a current situation or process in real time using a number of resources.

In the context of this definition, this study considers several countries in the acquisition of information, studying the practice of utmost good faith simultaneously and in real time using indigenous knowledge as a means to build and test theory (Robson, 2011). The results of case studies seek to provide a descriptive, exploratory and explanatory output. In this case, the use of utmost good faith as a case study describes the factors leading to reform, explores the reasons and explains the “why” part of the research, investigating why some countries felt the need to change or reform the principle of utmost good faith and the consequences of non-reform.

The upside of case studies is that the phenomenon under study allows for several variables to be discovered presenting an exhaustion of factors related to the study (Yin, 2003).

3.1.4 Research Methods

Research methods refer to the tools, mechanisms and types of methods that could be used to obtain and analyse information to produce meaningful results (Kothari, 2004).

For the purpose of this study the following methods were used:

1. Desk based research literature revealing the general factors that lead to reform in different countries. The emergent observations presented a framework of the factors that influence reform in a general sense.
2. Questionnaires distributed among experts in the insurance and legal sectors, testing the propositions (and possibly others) using utmost good faith as a case study.
3. Interviews with stakeholders using utmost good faith as a case study to test the position of Malta.

The techniques used for this study varied from passive quantitative techniques, where the researcher remains detached and impersonal basing data analysis on strict rules and procedures, to prudent participation by the researcher involved in the qualitative side of the research providing an explanation to the interviewees where necessary (Blaikie, 2007). The interviewer adopted a cautious approach to avoid leading the interviewees and while conscious of the choice of words, most of time the explanation and intention of the question was illustrated by means of an example as a way to clarify a matter when and as a case for clarification arose.

The mixed method approach used in this research is also known as multi-method (Driscoll, 2007) wherein the study investigates both objective and subjective answers for the purposes of analysing facts and opinions respectively. This method is suitable for this study since it uses a variety of data and thorough cross-responses, better suited to remove bias that can arise (Cresswell, 2009).

For the purpose of obtaining first-hand information, the research adopted both the research exploratory questions and explanatory questions (Tashakkori & Teddlie 2010). These were designed in the form of questionnaires (quantitative) and interviews (qualitative) hence using a mixed-method research approach (Creswell, et al., 2011). The purpose of this method was to be able to understand the real scenario as it presents itself today. It also attempts to address the real practices in the global environment (Johnson, et al., 2007) and uses the advantages of the two methods of data-gathering (qualitative and quantitative) to analyse the research questions (Creswell, et al., 2011). A comprehensive review of the relevant literature was carried out based on the conceptual framework of the study as shown in Figure 3.3.

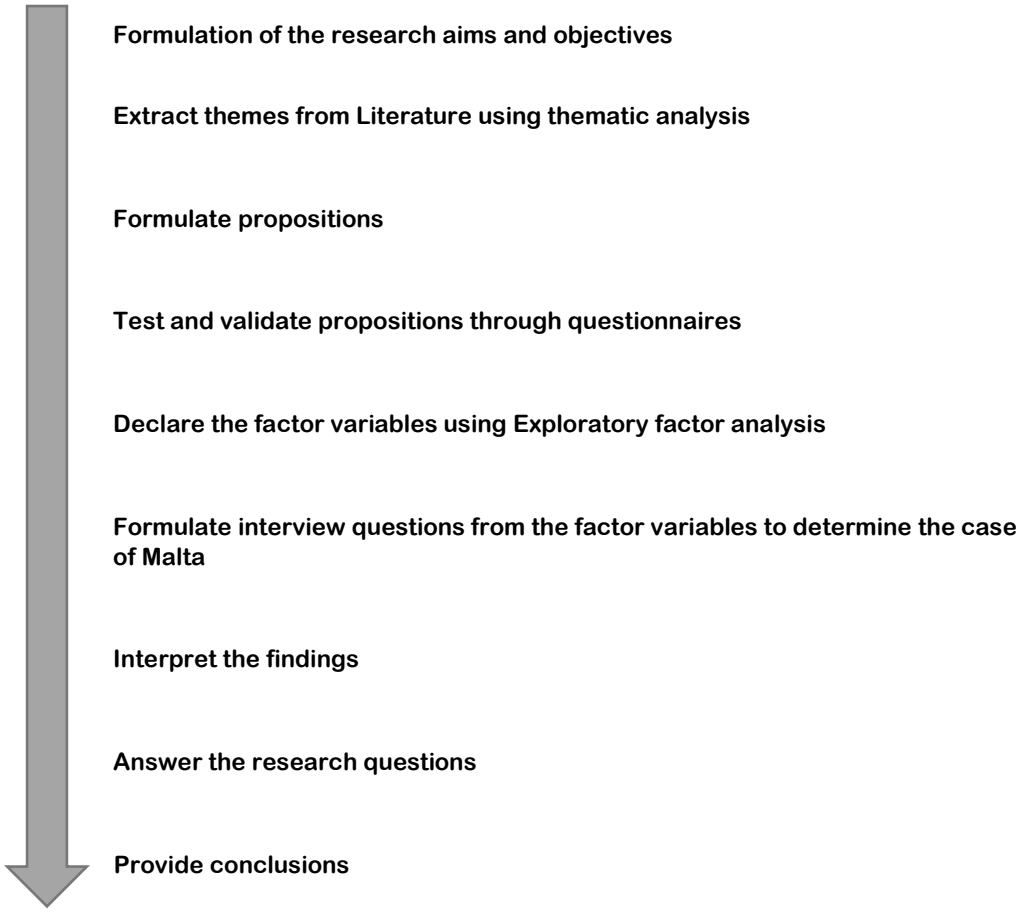


Figure 3.3: Research flow chart highlighting the methodology (Source: own compilation)

3.1.5 Research problem – research questions

The core scope of the research (among others) was to determine the factors that lead a jurisdiction to amend the strict application of utmost good faith in insurance to one which is reformed and possibly more relevant and updated, if at all. To achieve this scope, the following questions were prompted:

a. What are the factors that generally lead to reform and what are the consequences of ignoring the signs pointing to the need for reform?

b. What are the factor variables related to the reform (by regulation) of the principle of utmost good faith and are these variables influenced by (i) demographics and (ii) jurisdiction of the respondents?

c. Which factor variables are the most agreed upon when assessing the need for reform of utmost good faith?

d. Should Malta (as a case study) upkeep its current practice of the utmost good faith principle?

3.1.6 Research sources

3.1.6.1 Data collection

Creswell (2007) states that qualitative research starts with assumptions and presuppositions, and is followed by the researcher collecting natural data from participants, in order to establish patterns or propositions to explain a problem. Qualitative research presents descriptions of different perspectives using information to address research objectives relying on non-numerical resources. Qualitative findings gather rich explanations and details, that complement the quantitative findings and provide a descriptive state of affairs at a given moment in time reflecting reality (Creswell, 2007).

On the other hand, quantitative studies present tested facts and are useful in this research to present hard evidence of factors leading to reform which can be substantiated scientifically. With quantitative analysis, the findings may be replicated to a similar setting elsewhere and thus present a theory which could be transferable and which could change according to the respective research environment (Petty, et al., 2012). Quantitative research uses numeric figures to solve the problems or gaps in literature by assigning quantitative measures to variables (Kothari, 2004). In fact, Zikmund and Babin (2010) explained empirical assessments are derived from quantitative research and such address research objectives through the elaborate interpretations of market characteristics (Zikmund & Babin, 2010).

A concurrent model of both qualitative via interviews and quantitative study via questionnaires was used in this study to gain a wider and deeper understanding of the results.

3.1.6.2 Primary data

Primary data is original data which is collected by the researcher first-hand from source (Dudovskiy, 2018).

3.1.6.2.1 Quantitative data

Structured questionnaires provided quantitative results (Robson, 2011), (Sogunro, 1997) and the results of the primary collection of data were evaluated through the outcomes of the Likert scale and then correlated using the statistical software called Statistical Package for the Social Sciences (SPSS), which enabled the researcher to group the factors using exploratory factor analysis. In relation to this study, information was sought from stakeholders including but not limited to insurance practitioners, legislators, legal personnel, regulators and policy makers who have an influence in ensuring policy wording and regulation is relevant and updated. The reason for choosing such respondents was to ensure the understanding of the perspective of stakeholders in different countries. Specifically, the questions were directed to investigate the incidence of reform of utmost good faith using a variety of possible determinants emergent from the researched literature. This intended to present a picture of the different and/or similar factors of the varying influences of utmost good faith reforms in various countries.

3.1.6.2.2 Qualitative data

The method selected to collect qualitative research was the direct interview type, which has the advantage of collecting first-hand expert information and which could shed light directly on the research questions. A semi-structured interview was prepared allowing for any impromptu questions led by the discussion, according to the progress of the interview encounter. Individual interviews were planned for this research which also included unstructured enquiries to allow for any factors that might have been missed by the researcher during the formulation of the interview questions. The structured questions used in the interview intended to retrieve information directly related to the Maltese scenario and were asked to all the interviewees to establish consistency in the type of enquiries made. This

consistency enabled direct comparison of answers and ensured that all the questions related to the study were prompted without fear of missing out any material information.

The target audience chosen were professionals working in insurance business and experts involved in insurance reforms in general. Purposive sampling was also used wherein a sample of expert respondents was targeted and selected. The sample was not fixed and the research sought more interviewees until saturation was reached which means that further interviews did not contribute to new findings (Mack, et al., 2005). All respondents consented to be interviewed.

Moreover, interviews were used to apply the discovered reform factors to the case of Malta presenting an opportunity to receive first hand qualitative information from experts in the field.

3.1.6.3 Secondary data

The creation of secondary data refers to existing literature on the topic being researched. It refers to that information which already exists and has already been sought by other researchers and which is now available for analysis and evaluation (McLeod, 2008). In this research, the data consisted of normative legal research. Normative research is used to investigate how things should be and although not necessarily proven, they serve as the basis of the theory (Christiani, 2016). Case studies provide an outlook of how utmost good faith practice was interpreted in these countries and a historical desk-based systematic review was undertaken in this respect. Literature serves to build up the history and developments of reform factors and exposes the risk of complacency. This method sought to generate meaningful cross-country comparisons and the revealed the importance of such legislative needs.

Literature revealed a number of influential countries that were the basis of this international study and a comparative study was undertaken from which common themes were identified using the approach that was pioneered by Braun and Clarke in their findings on thematic analysis (Braun & Clarke, 2006).

When investigating multiple sectors across a democratic society, Bryson, et al. (2006) used the literature to derive propositions revealing the complexity of attaining such and Rempel, et al. (2018) used the same technique to derive five propositions when examining public engagement building on models by Grant and Booth (2009).

This research draws on available literature to understand how the principle of utmost good faith operates and, in the meantime, deciphers what causes different practices in various countries to deal with the duty of disclosure under an insurance contract, particularly understanding what factors lead to reform of the strict use of this principle.

The secondary research part of this study consisted of various data collection sources such as but not limited to literature, regulations, soft law and judgements, normative legal research, case studies, law reports, journals, judges' opinions and *obiter dicta*, industry statistics and reports, official online websites, white papers, general articles and scholarly articles, industry practices and policies using PRISMA (Preferred Reporting Items for Systematic Reviews and Meta-Analysis) as the method for literature selection, as explained in more detail under sections 3.3.1 and 3.3.2.

3.2 Conceptual framework pillars

3.2.1 Historical Institutionalism

The methodology on the comparative analysis of different jurisdictions was undertaken by means of a descriptive historical review of the literature on why reforms were necessary. This involved delving into a number of countries especially those that underwent substantial reforms in general and in insurance, specifically on the principle of utmost good faith. Historical research is mostly used to compare socio-political systems across societies and also in the determination of societal trends and social factors (Yuginovich, 2000). Historical research reveals what happened in the past and provides insight into current and future events and cycles.

Historical Institutionalism determines how institutions develop through the years, particularly in the respective operating practices in the countries under study (Hall, 1986).

Rhodes (2006) explains historical institutionalism by how institutions are structured, maintained and developed over time which is relevant to this study in terms of trends and tendencies that are being investigated.

Lasan (2012) states that the first characteristic of historical institutionalism is its tendency to conceptualise the relationship between institutions and individual behaviour, whereas the second characteristic refers to the prominent analysis of asymmetrical relations. In the insurance sense, this refers to the power and undue influence exercised by insurers having the advantage of being able to select the best risks. The third characteristic of historical institutionalism refers to the path-dependence perspective which is an observation revealing that some institutions are in the past, caught up in the traditional processes (Lasan, 2012). Furthermore, this permits lack of willingness to change or reform a practice such as that of the duty of disclosure under utmost good faith.

Historical institutionalism in practice can be found in the works of Walmsley (2008), in the works titled as *'Institutionalisation: a historical perspective'*. People with intellectual disabilities became de-institutionalised and the study determined why in the first place such a category of people was institutionalised by looking back at a historical perspective of the society. The methodology used in Walmsley's work, was largely based on written and verbal sources and sought to answer why people were institutionalised in the first place and what factors pushed towards deinstitutionalisation (Walmsley, 2008).

Historical institutionalism adopts a comparative and historical approach and is embedded in this study by taking a historical institutionalist approach to understand how and why the regulations and requirements governing the principle of utmost good faith in civil law and common law countries have changed over time (Adams, 2012). In a historical and comparative context, it provides the general framework for looking at differences in convergence with transnational market rules (Steinmo, 2008). Accordingly, studies on policy convergence are also embedded in the various strands of institutionalism (Borzel & Risse, 2000; Sedelmeier, 2011). The intention is to develop a theoretical conjecture that

specifies under which conditions regulatory reform is due. If reform is required, the use of conceptualising regulatory convergence (Heichel, et al., 2007) will help to determine an exemplary model for reform.

Xavier Serrano-Guerreroa, et al. (2018) studied energy consumption trends to define patterns, predict and forecast energy use. After building consumption profiles they used statistical methodology to interpret a historical occurrences database (Serrano-Guerreroa, et al., 2018).

Relevant to this research is an explanation of the reasons for reform and the consequences of non-reform from historical institutionalisation as it presents a real case scenario of facts and reasons that could be identified and observed. This is especially important to investigate the position of Malta with respect to utmost good faith, as it provides an understanding why the principle of utmost good faith is being practiced in the manner that it is today and how hindsight might offer an opportunity to project reform opportunities into the future.

3.2.2 Comparative analysis

This study employs, as one of its methodologies, both a qualitative doctrinal and a quantitative analytical comparative framework, as was similarly used by Abuzaid (2018) to study the reform of the principle of utmost good faith. The methodology observed and researched by Hutchinson (2015), explains that reformists and legal scholars have confined to critical analysis and synthesis of the law to make recommendations for reforms and while this method is still the norm, other methods are being imported, such as, comparative perspectives, social science evidence and theoretical analysis. In fact, Hutchinson (2015) observes that many scholars attempt a triangulation of methods to arrive at conclusions. The triangulation achieved under this study emerged from interviews, questionnaires and desk-based research, which incorporate comparative perspectives and historical institutionalism.

Doctrinal research involves the critical analysis of all relevant legislation and case law deciphering the interpretation of binding precedent and statute in the process. Whereas

doctrinal research identifies and analyses current law, reform-oriented research suggests a more consultational role delving deeper into the understanding of the legal principles, concepts and procedures to provide a critical outlook of the law (Hutchinson, 2015).

Siems (2014) suggests 4 steps in the adoption of a comparative study approach. This involves the determination of the research questions and choice of legal system, the description of the laws of the countries under evaluation, the comparison to determine the similarities and disparities among jurisdictions and the critical evaluation of the results to make recommendations (Siems, 2014). These steps form the basis of the theoretical framework of this research which is explained later in this chapter.

Roeger-Varga-Veld (2008) founded the Dynamic Stochastic General Equilibrium (DSGE) model which uses country characteristics to analyse reforms, assessing any similarities or variances by using multiple regression analysis (DíAuria, et al., 2009; Weijters, 2010). A similar approach was adopted in the literature part of this study wherein country reforms were studied, analysed and formulated.

3.2.3 Case Studies

Correlation studies and comparative cross-country analysis determine whether there is basis for comparing and matching jurisdictions and industry practices, to understand whether a country should follow reform patterns of other countries or otherwise (Tsitlenok, et al., 2020).

In every comparative analysis, the point of departure is to measure the pre and the post situation. In the context of this study, the pre-situation would refer to the position of the industry and its effect on the operations of insurance before reform, and the post-situation would be the effect of reform after due changes have been affected, as in the case of the UK, the reason why an extensive literature review of the UK has been undertaken. Comparative analysis studies aim to provide a framework that will assist in determining which reform model best suits the country in question. Such will involve comparative studies of the models

and approaches used to interpret and apply to utmost good faith by various jurisdictions such as the UK, US (Insurance Information Institute, 2015), Australia, China (Thomas, 2002), Germany, France and particularly to understand the position of Malta in response to one of the research questions.

Yin (2003) states that case studies allow the understanding of the real-life situations in the studied scenario, and although they investigate what occurred in the past, they add two sources of evidence beyond what a historian would observe. These two sources are essentially direct observation of the events being studied and the results of the interviews of those connected with the study (Yin, 2003).

3.2.4 Thematic approach

A manual approach of deducing results from literature to derive reform propositions was preferred over ready-made be spoke computer software packages because computer software packages often rely on algorithms that can only detect patterns that are pre-specified by the researcher. In contrast, a human researcher can use intuition and expertise to identify more nuanced themes that might not be detectable by software (Greenhalgh and Peacock, 2005). Moreover, the fact that the researcher has a good understanding of the context, served as an added advantage and justified the use of a manual compilation since the researcher could recognize patterns and themes that are relevant to the research question, and use own expert judgment to determine the most appropriate themes to analyse (Neuman, 2013).

A manual approach allows for greater flexibility in the analysis process and as the data deepens, a manual system would allow for adjustments as deemed necessary. Computer software packages do not offer such flexibility and are indiscriminate in their output. analysis, which can be limiting (Braun and Clarke, 2006).

Following on the works of Yin (2014) and Stake (1995), a similar methodology of deriving propositions from literature was used for this study. This is an alternative framework to hypothesis testing and seeks to build a framework upon which the methods of Braun and

Clarke (2006) were used to analyse and identify common themes that were pronounced from the various secondary research sources. Such a method, based on thematic analysis, was carried out to analyse literature and results were grouped into common propositions with an open eye for new emerging propositions derived from the responses.

The collected data was analysed through qualitative methods and served to build a comparative library of the good faith principle, to determine the likely success, or otherwise, of its interpretation. This addresses the research questions and will shed light on the best model to apply (if at all) for countries still adopting the old principle of utmost good faith. Insofar as data analysis is concerned, Petty, et al. (2012) describe several options, namely: "thematic analysis, content analysis, constant comparison method of data analysis, discourse analysis, critical discourse analysis, conversation analysis and analysis of narratives" (Petty et al., 2012, p. 381). For the purpose of this research thematic analysis was relevant in the search for propositions that were derived from common themes. The six-stage thematic analysis as suggested by Braun and Clarke (2006) as follows:

- Collection of data delineating a corpus of knowledge on the subject
- Engagement with the data by becoming familiar with the information through reading and re-reading transcripts, noting any initial observations
- Coding of the extracts from the data by generating initial codes and labels to represent important features of the data relevant to the research questions
- Creation of code categories
- Formation of themes from categorized coded extracts
- Contextualising to represent the findings leading to the formation of the propositions

The thematic analysis is used again in the analysis of the interview responses from which the position of Malta with respect to the practice of utmost good faith was deduced.

The upside of thematic analysis is that it is very flexible and this can be adapted to a variety of frameworks, which is advantageous considering the mixed methodology used in this study (Braun and Clarke, 2006). As proposed by (Yin, 2003; Stake, 1995), theory emergent from

case studies explain a problem and in the context of this research, provide reasons influencing reform of utmost good faith.

3.2.5 Propositions

Glaser and Strauss (1967), suggest the collection and formation of theory from the related fields of study. The methodology of using such an approach is that the qualitative element is inducted, meaning that the research is concurrently collecting data and analysing it at the same time to build the corresponding facts (Payne, 2007). In this respect, this research builds on literature themes and presents them in the form of propositions as supposed factors that could be tested.

According to Dunne (2011), this methodology requires the researcher to be conversant with the area under study and to be able to construct the relevant theory/theories. Moreover, it encourages the reading of literature in the selected area of research which is core to the quality of research and encourages the formation of theory through literature, which is the case applicable to this research.

The utmost good faith principle was used as a case study. This follows the work of the instrumental framework of (Yin, 2003) and (Stake, 1995) who suggested that from the literature review, a number of propositions may be deduced and will serve as factors that will build the conceptual framework and structure of a study. These factors will be analysed and tested comparing different jurisdictions and their position regarding utmost good faith. The literature presents propositions relating to factors that influence the practice of utmost good faith, which as suggested by Yin (2003), was linked to the data with a similar technique suggested by Stake (1995), known as categorical aggregation and direct interpretation. Therefore, initially, themes were categorised and propositions derived. This 'descriptive' methodology was used to understand and describe the background and environment surrounding the case, using the thematic approach, coding themes in the process (Braun & Clarke, 2006). On the other hand, the propositions determined a benchmark to measure the

viability or otherwise, of reform of utmost good faith.

3.3 Data collection and analysis

3.3.1 Introduction

The Preferred Reporting Items for Systematic Reviews and Meta-Analysis (PRISMA) is a methodology for conducting systematic reviews by synthesizing the findings of multiple studies on a particular topic, with the goal of providing a comprehensive and unbiased overview of the available evidence (BMJ, 2021).

There are several advantages to using PRISMA starting with increased transparency and reproducibility as it follows a regimental checklist and flow diagram by which the review process presents consistent and unbiased findings based on the highest quality evidence available. PRISMA provides a comprehensive framework for conducting systematic reviews, including a detailed checklist of items that must be reported. This assists in identifying and including all relevant studies and assesses the quality of the study in a systematic way. The PRISMA methodology makes it easier to evaluate the quality of a systematic review that has been conducted improving the accuracy and reliability of the review. PRISMA enhances the usefulness of systematic reviews via a standardised approach to conducting and reporting systematic reviews, which makes it easier to conduct meta-analysis (i.e., statistical analyses that combine the results of multiple studies). This can provide a more robust and comprehensive overview of the available evidence than a single study, making it an ideal methodology for conducting and reporting systematic reviews by promoting transparency, reproducibility, and high-quality evidence synthesis (Moher et al., 2015).

PRISMA consists of a checklist and a flow diagram. The checklist, as seen under Table 3.1, covers a wide range of items, including the research question, search strategy, study selection criteria, data extraction methods, and assessment of study quality. By following the checklist, researchers can ensure that their review is comprehensive, transparent, and

reproducible. The PRISMA checklist includes several items organized into four main categories namely introduction, methods, results, and discussion (Mayo Clinic, 2023).

The flow diagram, as displayed in Figure 3.4, is a visual representation of the review process, from initial database searches to the final number of studies included in the review. The diagram allows one to see how the final selection of studies was arrived at, and to identify any potential sources of bias or inconsistency in the review process. The flow diagram typically includes the total number of records identified through database searches, as well as any additional records identified through other sources, such as reference lists; the number of records screened for eligibility based on title and abstract, as well as the number of full-text articles assessed for eligibility; the number of articles excluded after full-text assessment, along with the reasons for exclusion and the number of articles included in the systematic review, along with the reasons for their inclusion (PRISMA, 2023).

The first step in conducting a systematic review is to develop a clear and specific research question focused on a specific topic. This will in turn include a clear definition of the population, intervention, comparator, and outcome (PICO) of interest. Once the research question has been developed, a comprehensive search of the relevant literature is conducted. The PRISMA methodology recommends the use of multiple databases and search engines, and including both published and unpublished studies. After the literature search has been conducted, a screening process identifies studies according to pre-defined inclusion and exclusion criteria. The PRISMA flow diagram provides a visual representation of the study selection process, including the number of studies identified, screened, assessed for eligibility, and included in the final analysis.

Once the studies have been selected, data is extracted from each study using a standardized form. The PRISMA checklist includes items related to the data extraction process, such as the specific data items that should be extracted and how discrepancies between reviewers should be resolved.

In order to ensure that the included studies are of high quality, the PRISMA methodology recommends that the risk of bias in each study is duly assessed. The checklist includes items related to the quality assessment process, such as the specific criteria that should be used to assess the risk of bias and how discrepancies between reviewers should be resolved. After the data has been extracted and the quality of the studies has been assessed, the data is synthesized using appropriate statistical methods. Finally, the findings are presented and reported in a clear and transparent way, following the guidelines set out in the PRISMA checklist. The checklist includes items related to the reporting of the study background, methods, results, and conclusions (Sarkis-Onofre et al., 2021).

The main strength of PRISMA methodology is its focus on transparency and reproducibility. By providing a clear and detailed description of the methods, one is able to understand and evaluate the validity of the findings. Additionally, by using the PRISMA flow diagram, the review process is presented in a consistent and unbiased form allowing the understanding of the selection process used in the review and providing a clear and concise summary of the final set of included studies (Deeks et al., 2021).

3.3.2 Systematic literature review

The search was carried out during the years 2018-2020 and covered literature ranging from 1978 to 2020. A systematic literature review was designed as a method to collect unbiased information eliminating any *a priori* assumptions or judgments made by the researcher. Documenting such a review means that the work is replicable and reliable. This is achieved by following the PRISMA chart flow diagram and search methodology displaying the search criteria in a comprehensive and visual manner as in Table 3.1. Furthermore, PRISMA was also chosen as it presents a comprehensive protocol of checklist items and a corresponding flow diagram that aims to make searches more focused and rigorous (Liberati, et al., 2009). Pahlevan, et al. (2019) provide researchers with best-practice guidelines for conducting a systematic review and the adoption of PRISMA in this study. Articles were selected on a structured approach suggested by Bai, et al. (2019). Primarily, a search was carried out for

the relevant terms in the title, abstract, keywords, authors' names and affiliations, journal name, and year of publication of the searched articles. This search was carried out in reputable literature databases on the basis that these were the most relevant and the ones most related to the study. The journals included Scopus, Web of Science, ResearchGate and EBSCO Business Search Complete. Another search was conducted in Google Scholar selecting articles that matched the title of the searched terms. From these, articles were short-listed according to their relevance in the abstract section, occasionally moving to the main text to confirm relevance, or otherwise, to the criteria (or part thereof) of the search (Bai, et al., 2019). The databases were chosen due to their strength and prominence in the research arena. The keywords used were: 'Regulat* OR Reform*' AND 'Utmost Good Faith' OR 'Insurance Reform' OR 'Regulatory Change' OR 'The Principle of Utmost Good Faith' OR 'Uberrima fides' OR 'Determinants of reform' OR 'country reform' OR 'Factors affecting reform' OR 'Insurance reform'. Each of the above keywords (or combination of keywords) were applied to the different databases using Boolean operators to further filter the results. Tables were created to classify the chosen articles, allowing to organise findings and results (Farrugia & Grima, 2021a).

The criteria used to extract the articles were based on the PRISMA checklist addressing the introduction, methods, results and discussion sections of the systematic review of literature as displayed in Table 3.1.

Table 3.1 PRISMA Checklist

Section and Topic	Item	Checklist item
TITLE		
Title	1	Determining the factors that influence reform in a given country through the use of PRISMA based on a systematic review.
ABSTRACT		
Abstract	2	The review seeks to understand what causes reform in a particular jurisdiction and therefore the search will contain keywords that include, 'Regulat* OR Reform*' AND 'Utmost Good Faith' OR 'Insurance Reform' OR 'Regulatory Change' OR 'The Principle of Utmost Good Faith' OR 'Uberrima fides' OR 'Determinants of reform' OR 'country reform' OR 'Factors affecting reform' OR 'Insurance reform'.
INTRODUCTION		
Rationale	3	Literature presents historical knowledge on what happened in different countries where reform took place to respond or to remedy a situation. This wide perspective will shed light on the determinants typically present prior to the necessity of bring reform to solve issues
Objectives	4	The exact objectives of this search is to determine the factors that bring about reform in general way so that these will then be tested on the insurance industry particularly on a practice which seems to be changing across the insurance international community.
METHODS		
Eligibility criteria	5	Prisma PICO was utilised to provide the eligibility criteria Population: Eligible studies include authors who are familiar with / involved in / worked with / reform matters and/or including insurance without restrictions on age, gender, ethnic, cultural, belief, socioeconomic and demographic backgrounds. Intervention(s)/Exposure(s): none Comparator(s)/control(s): none Outcome: cross-sectional findings of authors restricted to original, peer reviewed articles (published, either online or as hard copy, up to January 2020) in English language. Opinion pieces, conference presentations, letters, editorials or abstracts will not be included.
Information sources	6	Databases, registers, websites, organisations, reference lists and other sources used included the following: Scopus, Web of Science, ResearchGate and EBSCO Business Search Complete.
Search strategy	7	The search was carried out between May 2018 and January 2020 and covered literature ranging from 1978 to 2020.
Selection process	8	Searches are selected based on their relevance, determined by their title and/or abstract. Following the PICO framework specified above, the selection process will be carried out on the basis of eligibility particularly and where possible original and peer-reviewed articles (with available abstracts in English), and / or authoritive authors who are renowned in view of the experience, expertise and authority. The screening process is initiated by running a search on the title as a first search attempt and then the abstract of all studies will be screened. Only studies that satisfy all the eligibility criteria specified above will be kept for full text screening. Full text screening will be reviewed to ensure eligible studies are not missed out.
Data collection process	9	A data extraction sheet will be developed, pilot-tested on and refined accordingly. An excel spreadsheet is used for this purpose.
Data items	10	Data extracted from eligible studies include: year of study, study design, study sample size, country of study, length of follow-up.
Study risk of bias assessment	11	To reduce the risk of bias for individual studies, a rating system was developed classifying the relevance of the searches using a point system Good quality: 3 or 4 stars in selection domain AND 1 or 2 stars in comparability domain AND 2 or 3 stars in outcome/exposure domain Fair quality: 2 stars in selection domain AND 1 or 2 stars in comparability domain AND 2 or 3 stars in outcome/exposure domain Poor quality: 0 or 1 star in selection domain OR 0 star in comparability domain OR 0 or 1 star in outcome / exposure domain.

Section and Topic	Item	Checklist item
Synthesis methods	13a	The processes used to decide which studies were eligible for each synthesis were the following: Related to a country including its governance and political influence, economy, industry, sector, strategy Related to stakeholders including the society, the public, customers, consumer, company clients, employees and third-party service providers Related to the macro environment Related specifically to the international insurance industry
Reporting bias assessment	14	Bias is eliminated by virtue of the criteria and the scoring method which gives and objective analysis of the search and does away with any emotion, sentiment or opinion of the researcher.
Certainty assessment	15	Researched work is not reliant on one source and searches will be corroborated with at least two or three authors who are presenting findings which are complimentary. Any contradictory discussions are also reported in which case increases the reliability of the finding by ascertaining the level of certainty about the findings.
RESULTS		
Study selection	16a	3248 records in databases were retrieved searching. After 1884 duplicates were removed, 1364 records were screened, from which 1112 were reviewed and by applying the inclusion and exclusion criteria a total number of 152 full-text documents were considered.
	16b	Those cite studies that appeared to meet the inclusion criteria, but which were excluded on the basis of them being unable to provide further value or relevance to the findings.
Study characteristics	17	The political climate and influence by governments is a strong factor bringing about reform in insurance (Allan, 2003), (Lowry & Rawlings, 2012), (Williamson, 1994) By trying to achieve contract certainty, insurance policymakers push for insurance reforms especially to improve practices like the duty of disclosure (Elvin, 2015) Through their decisions or comments, the judiciary and the Law Reform Committees influence the need to change insurance practice particularly following disputed cases (UK Law Reform Committee, 1957) The type of legal system (common law or civil law) has a bearing on the application of utmost good faith in insurance (Parsons, 2016) Lack of satisfaction of judiciary decisions and delays in settling insurance matters call for insurance reforms (Bamarouf, 2011) Industry market players, like associations, press for reforms to bring equity and fairness in insurance contract dealings (Merkin & Gurses, 2015) The Regulator has a stronghold in insurance practice and controls this by introducing new regulation to bring fairness and transparency to a contract of insurance (Hertzell, 2017) When placing the responsibility of utmost good faith on to the customer, the insurers are not achieving contract equity increasing the possibility of litigation (Naidoo, 2005) The media plays an influential role in bringing changes in insurance practice especially since it usually voices consumer concerns as in the case of the strict application of the duty of disclosure and the consequences thereof (Belanger & Satin, 2017) Consumers today have more rights and thus make more claims increasing litigation, consequently increase the need to change certain insurance practices like utmost good faith (Hertzell, 2017) Insurers would consider to alter the practice of utmost good faith if statistically court cases on utmost good faith disputes increase (Di Lorenzo, 2014)

Section and Topic	Item	Checklist item
		Different practices of utmost good faith in different countries restricts cross border insurance business due to incompatibility of policies and practices (Di Lorenzo, 2014) International competition and dependency on certain countries for insurance business will force the dependent domicile to reform to bring practices in line (an example of this are countries that traditionally do insurance business with the UK, the latter have recently reformed the principle of utmost good faith and may force dependent countries to follow such reform) (Chen, 2017) EU harmonisation exerts pressure to initiate reform in insurance (e.g. through GDPR and IDD for example) (Cousy, 2017) Reinsurers influence the insurance market and thus any change in the practice of utmost good faith practice in insurance would be led by them (Lowry & Rawlings, 2012), (Chen, 2017) The need for modernisation in the insurance industry will initiate the need to reform in insurance (Rowan, 2017) In view of the increased use of technology and modern social media sources, collecting information by the underwriter has taken a different approach and so the old practice of utmost good faith should be reformed ceasing the placing of obligation of disclosure on to the proposer/insured (Pawlson & O'Kane, 2002) Electronic processes and tech systems such as Insurtech have rendered the utmost good faith principle obsolete (Pawlson & O'Kane, 2002) In a soft market, insurers tend to accommodate and compromise to attract more business and they are likely to reform insurance practices and/or adopt a softer utmost good faith application in such economic times (Yee, 2001) Fragmentation of market players (unlike co-operation) brings disparity in the application of utmost good faith and thus reform is necessary to uniform this practice (Athanassiou, 2006) Competition might entice insurers to cut corners and adopt a soft approach to the application of utmost good faith (Tomic, 2019) Changing demographics and socio-cultural trends are triggering the need to modernise the practice of utmost good faith (Kitching, 2019)
Risk of bias in studies	18	The following biases were checked for: bias arising from the randomisation process, bias arising from the timing of identification and recruitment of individual participants in relation to timing of randomisation, bias due to deviations from intended interventions, bias due to missing outcome data, bias in measurement of the outcome, bias in selection of the reported result.

(Source: http://prisma-statement.org/prismastatement/Checklist.aspx, 2020)

The PRISMA flow diagram under Figure 3.4 explains how the search results were narrowed down to the final chosen articles after these were systematically filtered (Liberati, et al., 2009). The final set of articles (n = 152) which were the resources used for the final review complimented the specified review criteria for determining the propositions. Specifically, this was done by placing the shortlisted articles into an Excel worksheet and the papers that did not meet the inclusion criteria were excluded. Results filtered to eliminate duplicate information and a filtering system adopting the inclusion/exclusion criteria was utilised (Pahlevan, et al., 2019). This included or eliminated studies according to the research aims and objectives. Likewise, repeated search items were also discarded in this way (Farrugia & Grima, 2021a).

A total of 3248 searches were registered in total after the previously mentioned databases were accessed. 1884 duplicates were removed which represents 58% of the total search. This indicates a level of saturation and it confirms that the search achieved its intended objectives to be complete and exhaustive.

The articles of the remaining 252 reviews were analysed after 1112 reviews were excluded, as they fell short of attaining the desired eligibility criteria. Nearly 90% of the remaining reviews described the rationale for the review and provided a statement of the research questions or research objectives being addressed. In the end 152 papers were actually incorporated.

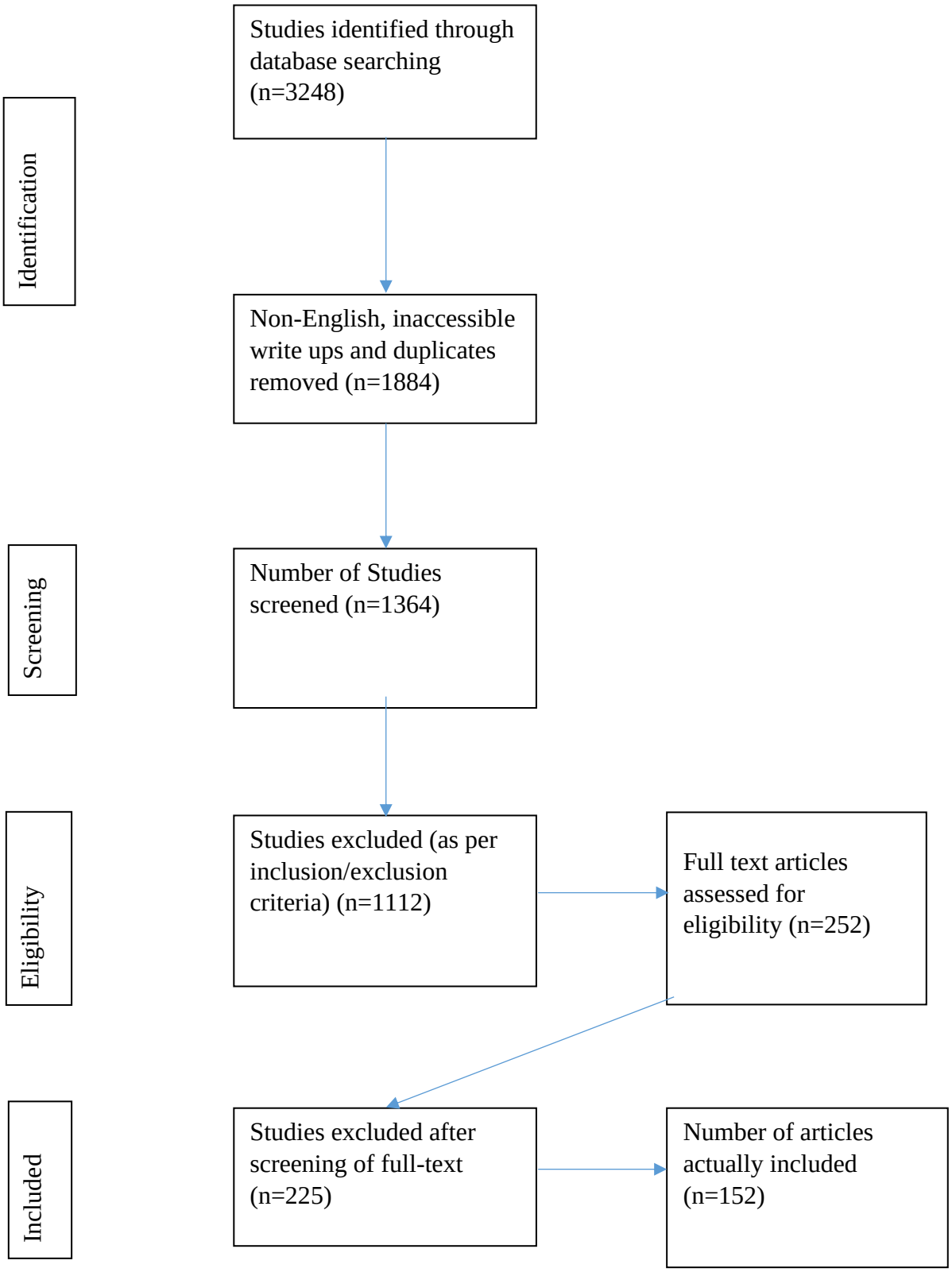


Figure 3.4: PRISMA flow diagram (Source: Farrugia & Grima, 2021a)

3.3.3 Thematic analysis

Using the thematic analysis model by Braun and Clarke (2006), the sorted and filtered themes were colour coded according to their characteristics. A common term identified the cluster corresponding to the themes grouped together in relevance format. In this way, the numerous words suggesting one theme or another could be easily identified and clustered as can be seen in Table 3.2.

Table 3.2 List of propositions and their respective descriptors

	Institutions and legal systems			Legal issues Pressure by the Law reform commission influence and pressure Judicial efficiency Slow dispute resolution Inconsistent decisions Transparency of legal decisions Power of insurance industry and market players Political influence Institutional power
	Customer and stakeholder influence			Contract uncertainty Contract Incomparability Contract complexity Fragmentation of practices Equity and fairness Quality and solidarity Consumer rights and consumer protection Public dissatisfaction Pressure by media and stakeholders
	International business			UK influence and dependency on UK practice International competition Influence of indigenous statute law on other countries Law harmonisation EU influence Convergence with the West Foreign investment
	Technology			Technology issues Modernisation through tech
	Social and economic factors			Demographics Economic benefits Social stability Financial strain Resistance to change Economic climate Competition

Legend:

- Institutional / political themes
- legal connotation
- Customer related
- Stakeholders
- International themes
- Technology
- Social themes
- Economic factors

(Source: own compilation)

The common themes helped to categorise five propositions grouped together as in Table 3.3 hereunder.

Table 3.3 List of five propositions

PROPOSITION 1	Country institutions and legal systems
PROPOSITION 2	Customer/stakeholder influence
PROPOSITION 3	International Business
PROPOSITION 4	Technology
PROPOSITION 5	Socio-economic trends

(Source: Farrugia & Grima, 2021a)

3.3.4 Theory Testing

The research used the principle of utmost good faith as a case study to test theory generated factors that lead to reform. Eisenhardt (1989) refers to three different types of objectives derived from case study research, namely: description, theory testing, and theory generation,

which in the context of this research, seek to link opinions, perspectives and evidence to achieve the representation of a reality (Ragin, 1994).

Løkke & Dissing Sørensen (2014) explain that the use of case studies seeks to understand a phenomenon, and through triangulation of multiple theories, the theory is then tested. In this research, this presented itself as theory-testing based on a case study, the scope of which was to test explanatory theory by evaluating it in different contexts. Moreover, Løkke and Dissing Sørensen (2014) conclude that a research design built on theory testing using case studies, serves to evaluate the explanatory power of theories and their boundaries, thus assessing external validity and encourages more scholars to explore new ways of theory testing using case studies.

Stake (2000) explains that in case study theory testing, propositions are sought and arranged in an orderly manner beforehand. Yin (2014) posits that theory testing is about having external verification that validates what is being tested.

Moreover, Yin (2014) considers case studies leading to analytic generalisations while Stake (1995) talks about a naturalistic generalizability based on the experience of people in the field which is based on their experience, akin to this study.

According to George and Bennett (2005), utilising theory testing case studies has the effect, among others, to best explain a case, type, or general phenomenon. Therefore, in the context of this research, this translates to the explanation of how a country arrives at the point of reform to change its current insurance practices.

3.3.4.1 The questionnaire

Both primary and secondary data were used to gather independent data. For primary data, a survey questionnaire was used obtaining first-hand information from a large number of respondents. The survey was structured into two parts. The first part of the survey questionnaire was designed to seek demographic factors, specifically, age, gender, level of education and occupation. There was also a question inquiring the country where the

respondent works as this could have a bearing on the responses in terms of the jurisdiction being considered.

The section related to the respondents' demographic factors consisted of a number of distinct identifiers where respondents were asked to give details on their Age (grouped as 1- [18-24], 2 - [25-34], 3 - [35-44], 4 - [45-54], 5- [55-64], 6 - [65-74], 7 - [75+]), Gender (grouped as 1- [Male], 2-[Female], 3- [Other]), Level of education (grouped as 1 - [School leaving / SEC / Ordinary level / EQF level 1/2/3], 2 - [Advanced/Matriculation/ Intermediate / EQF level 4], 3 - [Undergraduate / First degree / EQF level 5], 4 - [Bachelors / Hons / EQF level 6], 5 - [Masters / Post graduate / EQF level 7], 6 - [Doctorate / EQF level 8]) and Occupation (grouped as 1 - [Manual], 2 - [Clerical], 3 - [Managerial], 4 - [Professional], 5 - [Other]) (Farrugia & Grima, 2021b).

The reason for grouping the survey respondents in bands was fundamentally important to frame the results in the context of the characteristics of the survey respondents, as these might have an impact on the ensuing results. Therefore, the researcher brings to the fore the demographics of the respondents and studies whether these have affected in any way the output of the research in which case subjectivity and possibly bias would need to be highlighted. The reason for having age as one of the general questions was due to the fact that different ages might view the potential of reform of the principle of utmost good faith differently since through the years, the way insurers have dealt with the collection of information about the risk to be insured has changed, mostly as a result of new technology which makes information collection faster, efficient and readily available. Therefore, one needs to establish whether the results would be affected by those familiar and used to the old principle of utmost good faith and the traditional way of receiving risk data as opposed to those who are accustomed to modern tech media in the receipt of underwriting information. The reason for deciphering gender was inserted as a question in the questionnaire as previous studies (Charness and Gneezy, 2010), (Bezzina and Grima, 2011) and (Langer and Weber, 2004) have shown a tendency of females being more risk averse than mean and therefore

this attitude might influence the output of the survey, thus the reason why the researcher felt the need to declare this parameter when results were interpreted.

The questions on education and occupation were inserted as this variable might influence the response as those proximate to business-work and those who understand the mechanics of business practice might have a prejudiced view of what triggers reform in the principle of utmost good faith. Therefore, the respondents were asked to declare the level of education and the type of occupation to check whether these variables skewed the otherwise objective results of the research.

The question on the country / jurisdiction on which the responses were based was an open field question whereas the second section consisted of 22 statements covering the five propositions that were built from the themes and supported by literature as shown in Table 3.4. This question was asked as it could have had an influence on how respondents look at utmost good faith dependent on the practices in the country they work in. The researcher inserted this question to check whether jurisdiction could have made a difference in responses between those respondents that hail from a common law jurisdiction basing the insurance practice on the principle of utmost good faith and those hailing from a civil law jurisdiction in which the insurance practice is statutory and typically embedded in the civil law.

The survey respondents were asked to answer using a five-point Likert scale with ‘1’ being strongly disagree, ‘2’ being disagree, ‘3’ being neutral, ‘4’ being agree, and ‘5’ being strongly agree (Farrugia & Grima, 2021b). Studies on the type of Likert scale to be used vary, with different authors justifying their preferred scale. Chen, et al. (2015) explores the different studies on the subject highlighting some pros and cons. Particularly Chen, et al. examined the effectiveness of the scale not through the results of the respondents as most studies are based, but on the subjects’ information processing, discovering what is too much or too little choices.

Whereas the more alternative responses presented implies more accurate information, (Cox,

1980; Weijters, 2010) cognitive ability limits the effectiveness of a large scale of preferred options. The human brain may not be able to cope with too many alternatives and people may find it difficult to respond if there are too many response alternatives (Chen, et al., 2015). The study by Chen, et al. revealed that the optimum number of choices is five which is an in-between seeking to obtain the most information, balanced with the ability and limitation of the subjects' cognitive effort. Thus, the reason why a five-point Likert scale was used in this study.

Each of the survey questionnaire statements included an open comment box to enable the respondents to include any additional comments and ensure an open mind for any other factors not emergent from the secondary research or preliminary reviews. This ensured that all factors would be captured safeguarding any propositions that could have not been identified from the literature review. An extract of the open comment box field is displayed under Figure 3.5 below.

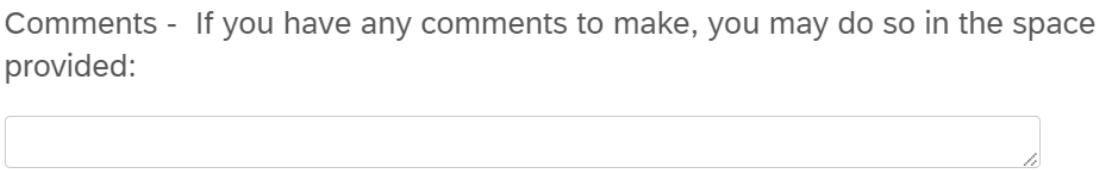


Figure 3.5: Comment box accompanying the survey questionnaire statements (Source: own compilation)

The statements in Table 3.4 were derived from the five propositions and were presented to be rated by the respondents intending to reflect the variables for regulatory reform as revealed by the relevant literature.

Table 3.4 List of statements forming the survey

	STATEMENT
1	The political climate and influence by governments is a strong factor bringing about reform in insurance (Allan, 2003), (Lowry & Rawlings, 2012), (Williamson, 1994)
2	By trying to achieve contract certainty, insurance policymakers push for insurance reforms especially to improve practices like the duty of disclosure (Elvin, 2015)
3	Through their decisions or comments, the judiciary and the Law Reform Committees influence the need to change insurance practice particularly following disputed cases (UK Law Reform Committee, 1957)
4	The type of legal system (common law or civil law) has a bearing on the application of utmost good faith in insurance (Parsons, 2016)
5	Lack of satisfaction of judiciary decisions and delays in settling insurance matters call for insurance reforms (Bamarouf, 2011)
6	Industry market players, like associations, press for reforms to bring equity and fairness in insurance contract dealings (Merkin & Gurses, 2015)
7	The Regulator has a stronghold in insurance practice and controls this by introducing new regulation to bring fairness and transparency to a contract of insurance (Hertzell, 2017)
8	When placing the responsibility of utmost good faith on to the customer, the insurers are not achieving contract equity increasing the possibility of litigation (Naidoo, 2005)
9	The media plays an influential role in bringing changes in insurance practice especially since it usually voices consumer concerns as in the case of the strict application of the duty of disclosure and the consequences thereof (Belanger & Satin, 2017)
10	Consumers today have more rights and thus make more claims increasing litigation, consequently increase the need to change certain insurance practices like utmost good faith (Hertzell, 2017)
11	Insurers would consider to alter the practice of utmost good faith if statistically court cases on utmost good faith disputes increase (Di Lorenzo, 2014)
12	Different practices of utmost good faith in different countries restricts cross border insurance business due to incompatibility of policies and practices (Di Lorenzo, 2014)
13	International competition and dependency on certain countries for insurance business will force the dependent domicile to reform to bring practices in line (an example of this are countries that traditionally do insurance business with the UK, the latter have recently reformed the principle of utmost good faith and may force dependent countries to follow such reform) (Chen, 2017)
14	EU harmonisation exerts pressure to initiate reform in insurance (e.g. through GDPR and IDD for example) (Cousy, 2017)
15	Reinsurers influence the insurance market and thus any change in the practice of utmost good faith practice in insurance would be led by them (Lowry & Rawlings, 2012), (Chen, 2017)
16	The need for modernisation in the insurance industry will initiate the need to reform in insurance (Rowan, 2017)
17	In view of the increased use of technology and modern social media sources, collecting information by the underwriter has taken a different approach and so the old practice of utmost good faith should be reformed ceasing the placing of obligation of disclosure on to the proposer/insured (Pawlson & O'Kane, 2002)
18	Electronic processes and tech systems such as Insurtech have rendered the utmost good faith principle obsolete (Pawlson & O'Kane, 2002)
19	In a soft market, insurers tend to accommodate and compromise to attract more business and they are likely to reform insurance practices and/or adopt a softer utmost good faith application in such economic times (Yee, 2001)
20	Fragmentation of market players (unlike co-operation) brings disparity in the application of utmost good faith and thus reform is necessary to uniform this practice (Athanassiou, 2006)
21	Competition might entice insurers to cut corners and adopt a soft approach to the application of utmost good faith (Tomic, 2019)
22	Changing demographics and socio-cultural trends are triggering the need to modernise the practice of utmost good faith (Kitching, 2019)

(Source: own compilation)

The question number together with the corresponding proposition it seeks to address, is summarised under Table 3.5. Proposition number 1 tested the validity of country institutions and legal systems on reform of the principle of utmost good faith and is incorporated under eight statements that were being tested, whereas Proposition number 2 tested the validity of customer and stakeholder influence on reform of the principle of utmost good faith and incorporated five statements. Proposition number 3 tested the validity of international business on reform of the principle of utmost good faith and included four statements whereas Proposition number 4 tested the validity of technology on reform of the principle of utmost good faith and included three statements. Proposition number 5 tested the validity of socio-economic trends on reform of the principle of utmost good faith and incorporated seven statements.

Table 3.5 Question number and corresponding Proposition

QUEST	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
PROP.	P1	P1	P1	P1	P1	P1	P1	P2	P2	P2	P1	P3	P3/P5	P3	P2/P3	P4/P5	P4/P5	P4	P5	P2/P5	P3/P5	P5

(Source: own compilation)

The results of the primary collection of data were grouped into factor variables using the method of exploratory factor analysis by which the variants and co variants that have an influence on reform of utmost good faith in insurance relevant in today's operating environment were identified. Glaser and Strauss (1967) first developed this investigative framework having established the creation of theory from data which is collected, coded and analysed.

3.3.5 Ranking

The Freidman test backed by Kendall's W was used to rank the factor variables in order of how agreeable these are in influencing reform.

This rank was able to be established since the Friedman test is used on quantitative or ordinal variables which in the case of this research, would be the Likert scale scores that were derived from the respondents. The average scores of the respective respondents served as a basis for the corresponding rank. This effectively was the average (mean) rank and was derived using the software known as SPSS (Statistical Package for the Social Sciences), the results of which determined the extent of accord of the statements by the respondents.

This method aligns with the one used by Košičiarová, et al. (2020) when analysing customer preferences in the context of loyalty to the brand of selected food products. They achieved this by using 693 random structured questionnaires and using the statistical methods of the Friedman test among others (Košičiarová, et al., 2020).

3.3.6 Exploratory factor analysis

Exploratory Factor Analysis (EFA) and Confirmatory Factor Analysis (CFA) are both techniques used in factor analysis with varying purposes and methods.

EFA is used to identify the underlying structure of a set of variables, without any prior knowledge of the number of factors or the relationships among them. It is an exploratory technique that seeks to uncover patterns in the data that can help to explain the correlations among variables. On the other hand, CFA is used to test a specific hypothesis about the number and nature of factors that underlie a set of variables. It requires a priori specification of the number of factors and the nature of the relationships among them, and it tests the fit of the data to the specified model.

In most cases, EFA is used first to explore the underlying structure of the data, and then CFA is used to test a specific model that was derived from the EFA results.

If the purpose of the analysis is to explore the underlying structure of the data, without any specific hypotheses about the number and nature of factors, then only EFA may be used (Thompson, 2004).

On the other hand, CFA requires a specific hypothesis about the number and nature of factors to be tested and may not be suitable for highly complex or multidimensional data. Since the goal was not to test a specific hypothesis about the number and nature of factors, CFA was ruled out.

CFA, on the other hand, is a statistical technique used to test a pre-specified hypothesis about the relationships between a set of variables. It is a confirmatory method because it requires researchers to specify in advance the number of factors, the variables that belong to each factor, and the relationships between the factors. CFA is often used when researchers have a theory or hypothesis about the underlying factor structure of their data and want to test it using statistical methods.

Since this research sought to explore the underlying structure of the data, without any specific hypotheses about the number and nature of factors or the relationships among them, EFA was the method to adopt to uncover the underlying structure of the data, without the constraints of a specific model(Watkins, 2018), which fits in perfectly with the methodology of this research.

To confirm the appropriateness of the use of exploratory factor analysis there must be a correlation of the measured variables which has to exceed 0.3 (Tabachnick & Fidell, 2013). The result of the Barlett's test must be significant for the exploratory factor analysis to be relevant and a result of 0.6 to 0.9 is acceptable for the Kaiser Meir Olkin (KMO-MSA), the higher score, the better (Tabachnick & Fidell, 2013). The results are reported under section 4.2.3.

Confirmation of the effective use of such an analysis is witnessed by the works of Siegling, et al. (2015) in 'Measures of Personality and Social Psychological Constructs', who used exploratory factor analysis on the data from a sample of 189 undergraduate students producing a clear four-factor structure with the selected 16 items, the four factors explaining nearly 72% of the total variance (Siegling, et al., 2015).

Zuckerman and Aluja (2005), extracted five factors in the exploratory factor analysis

calibration sample using a principal components method with Varimax rotation from a sample of 4621. The five factors accounted for 25.69% of the variance when studying the measure of sensation seeking (Zuckerman & Aluja, 2015).

Chi-yue Chiu, et al. (2015) also performed an exploratory factor analysis on a 27-scale response sheet reflecting the cross-cultural value personalities and beliefs of their 326 respondents' sample.

María Teresa Frías, et al. (2015) carried out exploratory factory analysis to measure adult attachment and related constructs from which three factors emerged.

In this research, exploratory factor analysis was used to determine the influencing factor variables affecting reform and confirming, or otherwise, the proposition/s presented by the researcher following the findings of the secondary research after the criteria for the use of this method were duly satisfied. An explanation of this is detailed under section 4.2.3.

3.3.7 Validity testing

Cronbach's Alpha is utilised to determine how much the items on a scale are measuring the same underlying dimension. Cronbach's Alpha is used typically when the research contains a Likert scale as this test will identify how reliable the scale is (Farrugia & Grima, 2021a). Buhagiar, et al. (1994) used Cronbach's Alpha to test the quality of the Physics examination paper by analysing all 1125 exam papers measuring the reliability and validity of the June 1992 exam sitting.

Cronbach's Alpha was used to measure the reliability and the internal consistency of each of the factors under this study as detailed in the analysis under section 4.2.4.2. This follows the approach adopted by Wirth, et al. (2011) who determined the opinion of perception of pharmacists in Malta studying how they view supplementary prescribing. This they did by distributing a questionnaire using Cronbach's Alpha to test the validity and achieving a strong level of reliability with a score of 0.8191. Wirth, et al. (2011) advised that community pharmacy in Malta was in need of a reform in order to initiate community services to

patients.

In this research, descriptive statistics were applied to analyse the demographics of respondents. Multiple linear regression was carried out to determine if the factors vary with the respondents' demographic variables. To achieve this, SPSS (version 20), was used in which all of the quantitative data was inputted.

3.3.8 Rationale and explanation of the survey questionnaire statements

This type of data collection method (via a survey questionnaire) allows for control over the type of data and is efficient and time saving in its collection and interpretation.

One challenge of this type of collection is that the response rate might be slow or poor requiring a lot of chasing and persistence which may, in this respect, be time consuming (Axinn & Pearce, 2006). However, although time consuming, this method is efficient for filtering results during the interpretation stage.

The first set of questions collected information on the demographics of the respondents particularly, the age, gender, level of education and occupation, seeking a meaningful group of respondents across a spectrum of stakeholders that were involved in the study as well as the country where the respondent worked. Questions set were data protection compliant and ensured that the respondent was not identified unless consented. This ensured to protect the identity and confidentiality rights of the respondent who was assured that no names of the respondents will be divulged in the study.

The question regarding age ensured integration of different ages and experiences presenting a sample that could reveal trends from the varying perspectives.

The questions on academic status and occupation, sought a proper mix of respondents, ensuring that the opinions and outlook of different stakeholders were investigated. Moreover, the nationality and residency made sure that the questionnaire was spread internationally to obtain a wider outlook.

3.3.8.1 General opinion

As to the spirit of the questions, a general statement was made to set the context within which the respondent was expected to respond. The opening statement which was *"In insurance the utmost good faith principle expects the proposer / insured to disclose all material facts connected to the risk being insured, even if not asked for by the insurer. If this requirement is breached, even innocently, the contract of insurance is rendered void. Some countries have reformed / changed this principle to smoothen its effects and now only expect the proposer / insured to answer questions truthfully when prompted".* This statement was made to set the scene and to align the interviewee to the scope of the questionnaire and a sample can be seen under Appendix 1.

3.3.8.2 Question/s related to political climate

To test proposition number 1, the political climate and influence by governments were the factors considered in bringing about reform in insurance, as governments and their policies have a major influence on any industry. In most countries, any legislation must be approved through parliament and therefore, if reform is ever to be in effect, it must invariably have government support and also must be in sync with the policies of the incumbent indigenous leadership. Questions related to the political climate, tested the strength of the influence of the political climate on insurance reform in different countries.

3.3.8.3 Question/s related to political power and influence by institutions such as the regulator

Question/s related to political power and influence by institutions, sought to test whether reform is as a result of influence by industry institutions such as the regulator and the influence of the incumbent government that support the notion of reform if it is felt that this is due. The questions tested whether politics and institutional lobbying plays a part in reform (or otherwise) and intended to respond to proposition number 1.

3.3.8.4 Question/s related to contract uncertainty and incomparability

Insurance reform is called upon to achieve contract certainty and this could be spearheaded

by stakeholders pushing insurance policymakers to improve practices (Farrugia & Grima, 2021a). Questions which were designed to test contract certainty sought to test proposition number 2, namely customer and stakeholder influence.

Normally, contract terms that are unclear or ambiguous, present application and interpretation issues and could be a source of contract dispute. Contract uncertainty will lead to dissatisfaction and litigation, and policymakers strive to eliminate this as much as possible. Therefore, these questions tested whether dissatisfaction by consumers and stakeholders are an influence to reform the principle of utmost good faith. These factors sought to test proposition number 2 and 3, namely customer and stakeholder influence and international business respectively.

3.3.8.5 Question/s related to policy makers and law reformists

If reform or changes in practice are to occur, these need the intervention of field experts to draw up revised wording of policies or procedures. Questions related to this aspect tested whether these experts have an influence on the reform process.

3.3.8.6 Question/s related to public dissatisfaction

Questions related to public dissatisfaction have been drawn up to test the public's perception in moving towards changes in a country. The researcher tested whether public dissent leads to reform especially in the area of utmost good faith, which sometimes brings hardship on the consumer or criticism by the public. Such, tested proposition number 2 namely customer and stakeholder influence.

3.3.8.7 Question/s related to Influence by the Law Reform Committee of the country

The judiciary and the law reformists influence the need to change insurance practice through their decisions or comments, particularly the judiciary following disputed cases. Questions prompted on the judiciary and Law Reform Committees tested proposition number 1, namely institutions and legal systems.

The Law Reform committee is established in various countries to handle all reforms and in

doing so, it will look at aged legislation and seeks to update or modernise where necessary. Related questions tested the degree of dependency of law reform committees to bring about change in insurance regulation and practice.

3.3.8.8 Question/s related to court influence, decisions and case law

Courts are not law makers, however, through their decisions and *obiter dicta*, they exercise great influence in bringing change. Judges and magistrates are in an ideal position to challenge contract wording and try to bring fairness through their judgements. Therefore, through the research questions related to court influence, decisions and case law, this study tested the extent, if at all, of influence exerted by the judiciary in initiating insurance reform especially through what the judiciary criticise to be unjust or unfair particularly in relation to the strict application of the duty of disclosure. This addressed proposition number 1 on country institutions and legal systems.

3.3.8.9 Question/s related to legal system of the country

The type of legal system (common law or civil law) may have a bearing on the application of utmost good faith in insurance especially since the establishment of this principle was based on practice and case law that established certain decisions based on the equitable law of precedent.

There are various legal systems in various countries. Some adopt the common law position based on judicial precedent and some rely on the civil code which is written law on the subject. There are other jurisdictions that have mixed system of law. If one takes the principle of utmost good faith in the UK, the insurance industry based this on judicial precedent until a statute was enacted in 2012 which changed and reformed the practice. Related questions therefore tested whether the legal system aided or hindered reform of the utmost good faith practice in difference countries having different legal systems. In civil law countries, judges have to adjudicate according to what is written in the law and cannot base their decision on what they think is equitable, in contrast to common law which allows the interpretation of the judiciary and the formation of precedent.

In the UK, the principle of utmost good faith emerged from common law, as it was customary that the proposer had the obligation to disclose all facts material to the risk. Common law is based on the law of legal precedent which is thus developed by the courts through a number of cases establishing positions according to the case being considered. Countries adopting civil law on the other hand, rely on the written law and the courts only have to apply what is stated in the law. This study sought to test whether the type of legal system has a bearing on the need to reform and whether those adopting common law, as was the case of the UK pre-2012, might be up for change of the aged insurance principle. This intended to test proposition number 1 on institutions and legal systems.

3.3.8.10 Question/s related to legislation and regulation

Legislation and regulations in an industry, such as financial services, are volatile and are ever changing aiming to safeguard the consumer through transparent operations. Legislation and regulation also have a great influence on the operations of organisations such as insurance, as these push for more consumer rights and awareness and invariably have pressed for changing insurance practices to smoothen the rough edges of certain market positions and practices. Related questions tested whether legislation and regulation do actually assist in bringing reform (or otherwise) and proposition number 2 on customer and stakeholder influence was duly tested.

3.3.8.11 Question/s related to lack of satisfaction of judiciary decisions and delays in settling insurance matters

Questions under this heading were made to test the degree of satisfaction experienced by the contracting parties vis-a-vis the decisions based on the strict principle of utmost good faith as well as the dissatisfaction of the litigants in the delays of judicial decisions in this respect. This is especially relevant when considering policyholders insured who, through their dissatisfaction of decisions based on the principle of utmost good faith, showed lack of satisfaction in the judiciary in bringing equity and fairness. There have been cases where the judges, in their *obiter dicta*, hinted to the unfairness that the utmost good faith principle

brings in certain cases especially in circumstances where there is innocent misrepresentation or non-disclosure. Therefore, the intention of setting questions in this regard sought to examine whether such dissatisfaction is a factor which affects the need for reform and through this, proposition number 2 on customer and stakeholder influence was being tested.

3.3.8.12 Question/s related to dispute resolution, inefficiency and inconsistency

Pressure for reform could be the result of judicial dissatisfaction. In civil law countries, judges adjudicate according to what is written in the law rather than base their decision on what they think is equitable. This contrasts with common law, which is based on the interpretation of the judiciary. Slow, bureaucratic and inconsistent courts decisions could prompt reform and this question sought to test this through proposition number 1 on institutions and legal systems.

3.3.8.13 Question/s related to industry market players

Industry stakeholders such as associations, strive to ensure that there is a level playing field in the market and that contracts of insurance are equitable and fair. In view of their representative status, associations hold an influential standing in the society (Farrugia & Grima, 2021a). Insurance Associations are representatives of insurance market players and these bring forward the interest of their members to the fore. In most cases when there is a general concern experienced by the market, this is debated at association level and members come together to try and find a mutually agreeable solution. In this respect, associations may hold a position of promoting reform in certain practices and may act as a lobby group with the authorities to have practices changed in the best interest of the industry they serve. This question tested whether institutions like association, institutes, arbitrators and voluntary organisations are influential in initiating insurance reforms in the area of utmost good faith and questions to this effect intended to verify proposition number 2 on stakeholder influence.

3.3.8.14 Question/s related to political power and influence by institutions such as the regulator

One of the regulator's roles is to control and monitor the insurance sector and this it does via a variety of regulatory tools including the introduction of new regulation to bring fairness and transparency to a contract of insurance. Through this question, the influential power of institutions was examined. The question sought to test whether reform is as a result of influence by industry institutions such as the regulator and the influence of the incumbent government which supports the notion of reform if it feels this is due. The questions tested whether politics and institutional lobbying plays a part in reform or not.

When insurers, through their contract wording, are shifting the responsibility of utmost good faith on to the customer, they are not presenting an equitable contractual position and thus are possibly increasing the likelihood of litigation (Farrugia & Grima, 2021a). With this in mind, questions were designed to verify proposition number 2 on customer and stakeholder influence.

3.3.8.15 Question/s related to increasing consumer protection and rights

This question was set to explore and test the level of consumer protection that exists and whether consumers are actually aware of their contractual rights. This factor was examined to determine whether the introduction of consumer rights legislation and regulation had any effect on reform.

3.3.8.16 Question/s related to the need for transparent relations with the customer

The insurance contract has been criticised for being one sided and for giving the insurers an advantage especially since the insurance company would have written the contract itself, and thus presenting no choice or option to change. The contract is offered to the client on a 'take it or leave it' basis and the terms which have been set are not usually negotiable with the prospective insured. In fact, in most cases, the prospective insured is compelled to accept the insurance contract 'as is' especially if the policy is required by statute. This could result in lack of transparency and most of the time customers do not understand their responsibility and the consequences of a breach of utmost good faith. Such a seemingly imbalanced

contract could signal the need to reform. Questions in relation to this, tested whether contract imbalance leads to change in the practice of utmost good faith and addressed proposition number 2 on customer and stakeholder influence.

3.3.8.17 Question/s related to pressure by the media

The media may be considered to be a powerful medium in a society and has an influential role in bringing changes. This also applies to insurance practice especially since any consumer complaints, dissatisfaction or concerns are usually voiced through the media. This could apply to litigation or dissatisfaction originating for a dispute involving the utmost good faith principle. The pressure of the media needs to be considered since this is part of the social communications medium in a particular country. Most of the time, unbiased media reflect public sentiment and thus it is important to explore whether this has any sort of influence on insurance reform. This question tested whether the media is influential in triggering reform in insurance and intended to address proposition number 2 on customer and stakeholder influence.

3.3.8.18 Question/s related to consumer complaints

Consumers today enjoy better treatment through regulation, quality charter and customer service standards, to name a few. This position places the consumer in a position of exercising their rights through the respective litigation channels with the consequence of increased disputes and court cases, potentially pushing for the need to change certain insurance practices like utmost good faith.

Consumer complaints have an effect on a company and on the industry at large, since their dissatisfaction could reflect in a drop in business. This question sought to test the bargaining position of the consumer vis-à-vis the insurance contract. Usually, consumers feel they are at the mercy of the insurers especially since the policy wording is drawn up by the insurer. Also, an increase in number of complaints point at increased dissatisfaction which could also be a factor pushing towards reform and change in practice. The question sought to test this assumption thus testing proposition number 2 on customer and stakeholder influence.

3.3.8.19 Question/s related to tendency to litigate

Questions related to tendency to litigate will test whether the consumers in a particular country are more ready to take their rights to be tested before a court of law, also suggesting whether consumers are more confident in their contractual position in the light of increased consumer rights. The relevance of this is to test whether consumers are ready to push their rights and put pressure to trigger reform on those matters that are causing unfairness or undue concern. The questions posed under this heading investigated whether insurers might be compelled to consider reforming the principle of utmost good faith based on the augmenting frequency of disputes in this area, testing proposition number 1 on Institutions and legal systems.

3.3.8.20 Question/s related to type and frequency of complaints

Question/s related to type and frequency of complaints intended to single out sources of complaints by identifying those areas that tend to feature more prominently in litigation. This could reveal an issue involving the terms of an agreement. In the context of insurance, this attempts to verify whether utmost good faith presents an issue in the respective country by virtue of how many times it features in court and questions to this effect, sought to address proposition number 2 on stakeholder influence.

3.3.8.21 Question/s related to international business and competition

The issue with different contracts having different applications as in the case of utmost good faith, present cross border challenges due to difference in policy wording and insurance practice (Farrugia & Grima, 2021a). This is particularly important and relevant to reinsurance, co-insurance and other forms of co-agreements made by the respective insurance market players. To be able to trade smoothly, companies need to communicate effectively, and their products and practices need to be readily adaptable to the business in question. In insurance, this manifests itself in the product and its corresponding policy wording, which needs to be agreed between the parties. Moreover, this also manifests itself in the way such wording is applied and the insurance processes in practice. In this respect,

questions in this context tested how, if at all, international business might influence reform of utmost good faith especially the influence of reformed countries who are doing business with non-reformed countries. Such questions sought to test proposition number 3 on international business.

3.3.8.22 Question/s related to dependency on UK insurance practice

International competition may compel insurance undertakings to bring policies and practices in line with the respective international counterparts (Farrugia & Grima, 2021a). An example of this would be applicable to those countries which followed UK law and practice and which could be affected by the recent reform in the UK (Farrugia & Grima, 2021a).

The UK insurance industry has undertaken a major overhaul in the principle of utmost good faith and has passed reforms by enacting two pieces of legislation superseding the century-old principle. In this respect, organisations which do business with UK counterparts and which are reliant on UK practice, might have a great deal of influence in copying suit. This question therefore sought to test whether companies dependent on UK practice are indeed required to adopt reform. Also, it tested whether competition as an economic force, is a factor which compels changes in insurance practice which later leads to the passing of reformed regulation. The questions that have been made in this respect, tested proposition number 3 on international business and proposition number 5 on social and economic factors.

3.3.8.23 Question/s related to the need to harmonise law with other jurisdictions

Insurance is an international business and firms need to communicate and transact business with each other, especially when it comes to the sharing of large risks and exposures. If the laws of the country and the practice of utmost good faith are different in different jurisdictions, there could be difficulty in establishing how a claim will be dealt with, especially if contracts are subjected to the respective indigenous jurisdiction.

This question tested whether international business by insurance market players, forces a country to reform in line with other countries to ensure the seamless undertaking of insurance

business internationally. Harmonisation of laws and regulations will eliminate contract disparity and claim handling difficulties and will facilitate cross country business with a certain degree of compatibility with respect to the legal side of the transaction. Moreover, EU harmonisation puts pressure to consider reform in insurance (e.g., through GDPR and IDD for example) and questions set in relation to this, tested proposition number 3 on international business.

3.3.8.24 Question/s related to influence by reinsurers

Change in the practice of utmost good faith practice in insurance could be spearheaded by reinsurers who are powerful market players in the insurance business and without whom, lack of insurance support would mean that insurers would not be able to take on large risks and exposures (Farrugia & Grima, 2021a). Reinsurance presents the facility of sharing risks and/or losses. It is therefore important to test whether these players have a strong effect on the market and whether they can stimulate reform through their influence, in view of their international role in the insurance industry. This consideration on reinsurance tested propositions number 2 on stakeholder influence and proposition number 3 on international business.

3.3.8.25 Question/s related to modernisation

Keeping in touch with developments in the business world is vital for insurance companies because it is in their interest to ensure that their products and services meet the demands of the modern consumer. On a national scale, reforms are introduced to either update current legislation or practice, or to completely rewrite the applicable law afresh, keeping in mind the modern society demands and practices. The need for modernisation in the insurance industry will initiate the need to reform in insurance (Farrugia & Grima, 2021a).

These questions tested the extent of modernisation of products and services in insurance, especially the new way information is collected and processed at the disclosure stages of the insurance agreement and tested propositions number 4 on technology and proposition number 5 on social and economic factors.

3.3.8.26 Question/s related to use of technology

With the advent of technology and modern social media sources, the collection of material information relevant for insurance purposes has taken a different approach and this could be a factor triggering reform (Farrugia & Grima, 2021a).

New and faster technological tools, especially those that are associated with utmost good faith like the collection of information, are changing the way underwriters exercise their practice. Technology has made insurers smarter and in possession of material information long before this is disclosed by the prospective policyholder. This fact has been put to test by questions enquiring whether such technological advances push for reform, aligning with proposition number 4 on technology and proposition number 5 on social and economic factors.

3.3.8.27 Question/s related to Insurtech

Electronic processes and tech systems could render the utmost good faith principle obsolete since there is no longer the 'old-fashioned' need to interview the prospective policyholder when most of the information is already known to the insurer through modern mechanisms and devices (Farrugia & Grima, 2021a). Insurtech is the use of technological tools and systems able to provide efficient and accurate data through the use of internet of things (IOT) and artificial intelligence (AI) software that facilitate behavioural policy pricing, customer experience and coverage personalization to customized claims settlement, and dynamically price premiums according to observed behaviour (Gerlick & Liozu, 2020). Such technology has already been launched and some insurers are reliant on the data it generates. In this respect, this has brought about a drastic change in the way insurance is underwritten and thus could influence the reliance on the principle of utmost good faith. This could mean less onus on the proposer/policyholder to disclose all facts related to the risk. In this study, the questions tested whether technological initiatives lead to utmost good faith reform and specifically tested proposition number 4 on technology.

3.3.8.28 Question/s related to economic situation in the country

In times when the market is very soft in economic terms, market players tend to accommodate and compromise to attract more business unlike when the consumers are at the mercy of the producers. When this happens in insurance, it might shed light on why reform was in place in certain countries, yet not in others. The fact that when supply is greater than demand could mean that the seller (insurer) is in a more accommodating position and might in itself, mean that there is more scope to soften the strict effect of the principle of utmost good faith in this respect one could argue that a soft market might present a likely opportunity to reform insurance practices (Farrugia & Grima, 2021a). Therefore, this question tested whether reform is influenced by the economic situation of the country, thus investigated propositions number 5 on social and economic factors.

3.3.8.29 Question/s related to fragmentation of market practice

In an industry where the practice and application of the principle of utmost good faith takes several forms, having different market players applying different degree of approaches to the principle will result in market fragmentation in terms of this. Related questions tested whether market and economic forces lead to reform which aligned with proposition number 2 on customer and stakeholder influence, and proposition number 5 on social and economic factors.

3.3.8.30 Question/s related to what the competitors are doing

Competition is a very strong marketing force and will affect the way market players behave in a given market. In the context of insurance, any advantage gained by one market player will sooner be copied establishing equilibrium. This question tested whether there is a tendency for reform emanating from the behaviour of the competitive forces indigenously, and internationally tested propositions number 3 on international business and proposition number 5 on social and economic factors.

3.3.8.31 Question/s related to changing demographics

With the advent of modernisation, the society sees a changing demography and a shift in socio-cultural behaviour. These factors could trigger the need to modernise the practice of utmost good faith. This question tested whether changes in demographics have an influence in changing practices. This could point to what is driving insurers to change their practices such as marketing and distribution of products. This in turn could have an effect on reform in insurance, thus tested proposition number 5 on social and economic factors.

3.3.8.32 Question/s related to social trends and social stability

The social environment has always been dynamic, reflecting in different styles and approaches by people in a society. Mixed and multicultural societies have exacerbated this phenomenon and respond differently to insurance business. This itself could highlight the need to change systems and processes and be influential in initiating reform.

This question tested how, if at all, societies change with respect to how they communicate and respond to business such as insurance and specifically tested proposition number 5 on social and economic trends.

3.3.9 Rationale and explanation of the interview questions – the case of Malta

The style of questions that were formulated for the interviews in this research intended to obtain an unbiased opinion from the chosen respondents and achieve a response, based on experience and technical expertise. The interview questions were purposely formulated to be both open-ended and generic, to avoid leading the respondent to particular information. This was primarily done to avoid introducing bias, especially when the interviewer was asked to further explain the intention of a particular question. Furthermore, the questions were specifically formulated in a way that allowed for the exploration of the context of the Maltese scenario.

The general intention of the questions was to find out the position of Malta with respect to the reform of the principle of utmost good faith by obtaining first-hand information from

experts in an attempt to answer research question (d).

The following were the interview questions that were prompted to the interviewees together with a narrative of the reason for the intention of the question and the corresponding context:

Question 1

- Is the application of the insurance principle of utmost good faith in Malta fair and effective? If so, how?

The insurance contract has been criticised for being one-sided and for giving the insurers the upper hand. This is because as the drafter of the contract, the insurance company, would have written the contract on its own terms and conditions and hence offering no choice or option to change any of the standard wording. This implies that the customer must accept it 'as is' and as a result, there could be lack of fairness as most of the time customers do not understand their responsibility and the consequences of a breach of utmost good faith. Such a seemingly unbalanced contract could signal the need to reform.

Through this question, the interviewer specifically asked the interviewee to relate to the Maltese practice and posed an open subjective question on effectiveness which implies how successful as a remedy is the adoption of the principle of utmost good faith and whether the respondent considers this principle to be adequate and fair on both parties.

Question 2

- Is there consumer / market pressure (including the media) to introduce utmost good faith reforms? If so, how?

Consumer complaints have an effect on a company and on an industry at large, since these dissatisfactions could lead to distrust, disrepute and potentially loss of business appeal. The interview question in this respect sought to address the wider picture and took into consideration the public at large, as these have a relationship directly or indirectly with insurance. Such an enquiry investigated whether reform is industry-driven or nationally-

driven, if at all. This question was therefore asked to test whether consumers are prepared to take their rights to be tested before a court of law, whilst also investigating the degree of consumer confidence as a contracting party. It is also intended to test the influence of the consumers on voicing their dissatisfaction upon being faced with an unfair contract. Policyholders or claimants may, through their ability of voicing their complaints, have an influence on the need to change policy terms and conditions. Such a question sought to understand whether consumers in Malta have become more or less litigious (if at all), and will serve to test whether any initiation of reform would actually stem from the fact that social behaviour has become increasingly litigious (if at all). The relevance of this is to establish whether consumers are ready to push their rights and put pressure to trigger reform on those matters that are causing unfairness or undue concern. It also indicates the ease or otherwise of the enforcement of consumer rights under a contract assessing the bargaining position of the consumer vis-à-vis the insurance contract.

Moreover, this question is set to explore and test the level of consumer protection that exists and whether the consumers are actually aware of their contractual rights. Therefore, the enquiry investigates whether the introduction of consumer legislation assisted in highlighting contract issues like those experienced by insurance policyholders who are obliged to observe the strict requirements of the principle of utmost good faith.

The pressure of the media also needs to be considered since this is an integral and influential part of the social communications medium in a given domicile. Most of the time, unbiased media reflects public sentiment, and thus, it is important to explore whether this has any sort of influence on insurance reform. The question set examined whether the media has a bearing on reform in insurance especially following controversial judgements which although might be legitimately and correctly adjudicated, in the eyes of the public they might however be considered to be adverse and unjust. This in itself, might tend to inflate the public sentiment and may bring about awareness and pressure on the industry to rectify the position. The respondents were asked if this was in fact a factor they consider to be influential or not.

Moreover, the question investigates the influence of the media as a vehicle for reform in insurance, by virtue of the publishing of cases involving the practice of utmost good faith and tests whether the media has an influence in reform initiation.

Question 3

- Is there any dissatisfaction on the application of the principle and if so, how has this effected the indigenous socio-economic environment?

The social environment has always been dynamic reflecting the different styles and approach by people in a society. Mixed and multicultural societies have exacerbated this phenomenon and we have societies today which are different and which respond differently to insurance business. This itself could point to the need to change systems and processes and be influential in initiating reform.

This question investigated how, if at all, society is changing especially with respect to how it is communicating and responding to business such as insurance.

Changes in demography will test whether the country in question has been affected by particular socio-economic trends that led to reform in insurance particularly to the duty of disclosure. This question examined if social and economic factors have an influence in changing practices pointing to what might drive insurers to change their practices. This, in turn, could have an effect on reform in insurance and in this respect, the open question sought to test the effect of socio-economic trends. The aim was to single out sources of complaints by identifying those areas that tend to feature more prominently in litigation, which imply an issue associated with the terms of the agreement.

Relevant to insurance, this question attempted to establish whether utmost good faith is a problem, by virtue of how common this area of litigation presents itself. The intention was directed to how often and how acute the problems associated with utmost good faith are, thereby testing the influence this might have on consumers and other stakeholders (if at all)

on initiating justification for reform.

Also, competition could have an influence on the way market players act and in insurance, competing firms may quickly adjust to meet the demand of the consumer even if this may mean softening the obligations under the contract to accommodate the potential insured. Through this question, the researcher explored whether there is a tendency for reform to emanate from the behaviour of the competition both indigenously and internationally. The objective was therefore to test the extent of these economic factors in nudging reform and whether in times of a soft market (for example), insurers would try to lax the strict practice of the principle which in turn could push for a permanent reform of this principle.

Question 4

- Does Malta have a sound socio-technological infrastructure to be able to effect changes in the application of the principle of utmost good faith? If so, how?

Keeping in touch with developments in the business world is vital for insurance companies as it is in their interest to ensure that their products and services meet the demands of the modern consumer. On a national scale, reforms are introduced to either update current legislation or practice or to completely rewrite the applicable law afresh, keeping in mind the modern society demands and practices.

Insurtech has already been launched and some insurers are reliant on the data it generates. In this respect, this has brought about a drastic change in the way insurance is underwritten and thus could influence the reliance on the principle of utmost good faith wherein it is expected that the policyholder discloses all facts related to the risk and the onus is on the policyholder to do so, otherwise, the contract is invalidated. Therefore, if Insurtech is the way forward, this could force a reform in the practice of utmost good faith and this question explored this possibility. New and more efficient technological tools especially those that are associated with utmost good faith like the collection of information, are changing the way underwriters exercise their practice. Technology has made insurers smarter and in

possession of material information long before this is disclosed by the prospective policyholder.

Therefore, this leads to question whether such technological advances push for reform and whether insurers have more information than the proposer due to the possession of a large database of customer information known as 'big data'. This could potentially place the insurer at an advantage in information collection and may do away with the traditional forms of receiving material facts via utmost good faith proposal form disclosures. In view of the changing mode of obtaining information accelerated by the advent of technology, this question tested whether the principle of utmost good faith is up for change.

Question 5

- How important is reform in the insurance principle of utmost good faith in the context of international business? Explain why.

The nature of the insurance business is such that insurers need to communicate and collaborate with international counterparts especially to secure risks which are beyond their retention limits. Moreover, insurers and other market players also need to serve cross border clients and thus are very much aware of the need to be in harmony with international legislation. Regulation and market practices, thereby the need of having harmonised business in this respect. In insurance, this manifests itself in the product particularly tin the contract itself whereby the policy wording is such that it is compatible with the clients; domicile. Moreover, this also manifests itself in the way such wording is applied and processed in practice. In this respect, this question explores how, if at all, international business may influence reform in utmost good faith especially the influence of 'reformed' countries (those countries that have reformed the application of utmost good faith) who are undertaking business with 'non-reformed' countries.

It also tests the importance of having a common technical language between insurers internationally by which they can apply common disclosure practices facilitating co-

operation for co-insurance, fronting and reinsurance purposes.

Therefore, this open question has been set to establish whether international business by insurance market players influences a country to reform in line with other countries to ensure the seamless undertaking of insurance business internationally. It also specifically tested whether dependency on international companies *per se*, is itself a factor affecting a change in the practice of utmost good faith by virtue of having a business reliant on a supplier or customer for insurance. This in turn means that if the host jurisdiction changes its practice of utmost good faith, then the dependent company might need to follow suit, which also might be a factor leading to reform.

Usually, contract terms which are unclear or ambiguous present issues of application and interpretation and could be a source of contract dispute. Contract uncertainty will lead to dissatisfaction and litigation and policymakers strive to eliminate this as much as possible. When insurance contracts are not comparable, any joint collaboration between insurers as in the case of co-insurance, reinsurance or in the application of the contribution clause, might bring disparity in the potential to do business and the lack of match could result in the inability to co-operate. If such incomparability is due to the nature of the principle of utmost good faith, then this could also mean that insurers in one country are unable (or find it difficult) to co-operate with other insurers in other countries with the resultant loss in business. Therefore, this question sought to discover whether the respondent feels that this is an issue *per se* and tests the strength of this factor (if at all) in bringing reform in a jurisdiction. Experts were asked whether situations like the strict duty of disclosure could bring negative effects to businesses through the imbalance of the contract terms, conditions or other wording. This tested the position of consumers and their significance under the policy, especially in the light of utmost good faith and also uncertainty in the comparability of different policies by different insurers in the domicile or beyond.

Question 6

- How do you see the involvement of institutions (e.g. courts, regulators, associations, reinsurers, reformists and other stakeholders) in potentially reforming utmost good faith?

This question investigated the significance of organisations and industry set-ups in the persuasion of legislative and/or regulatory reform in the practice of utmost good faith and tests whether such bodies have an influence in changing the practice of utmost good faith. The interviewer particularly looked at those stakeholders that typically provide a service to the insurance industry and which provide a service closely linked to the application and/or interpretation of the principle of utmost good faith.

Judges and magistrates try to bring about equity however they are constrained to the law and can only provide an interpretation when they deliver a judgement. Therefore, through this question, the researcher investigated the extent, if at all, of the influence exerted by the judiciary in initiating reform especially through what they criticise to be unjust or unfair. Slow, bureaucratic and inconsistent court decisions could prompt reform and this question seeks to test this.

If reform or changes in practice are to occur, these need the intervention of field experts to draw up revised policy wording and/or procedures. Insurance associations are representatives of insurance companies that bring forward the interest of their members to the fore. Associations may hold a considerable position in promoting or preventing reform in certain insurance practices and surely may act as a lobby group with the authorities to have practices changed in the best interest of the industry they serve, if that is the case. In fact, the objective of this question was to recognise whether the local insurance association has indeed this interest at heart (that of reforming utmost good faith) or whether it was content with the current situation and practice. Answers were expected to divulge the level of readiness of market players particularly insurers in changing their utmost good faith

practices.

The question was also intended to assess the influence of regulators (if at all) on legislative and/or regulatory reform in the practice of utmost good faith. This was mainly addressed to the Malta Financial Services Authority although other authorities such as the consumer and communications authority were also relevant to this prompt.

Reinsurers are powerful market players in the insurance business, and without their support, no insurance set up would survive. This is because they are large companies supporting the insurers via the sharing of the risk or the sharing of the losses. It is therefore important to investigate whether these powerful players have a strong effect on the market and whether they can stimulate reform through their influence in view that they have an international role in the insurance industry at large. The question obtained information from experts to determine whether reinsurers are in fact influencers in bringing reform in insurance practice as they hold a strong position in the insurance business chain. The question specifically tested the power and significance of reinsurers in persuading legislative and/or regulatory reforms in the practice of utmost good faith.

The law reform committee (LRC) is established in various countries to take care of all the reforms in the country. In doing so it will look at aged legislation and seeks to update and modernise were necessary. This question will examine the degree of dependency of law reform committees to bring about change in insurance regulation and practice.

The question investigated the operations of the LRC and whether it considers insurance reform as a priority or not. It seeks to understand how likely reform of the principle of utmost good faith is, depending on the agenda of priorities and tests whether LRCs have an influence on the principle of utmost good faith and its application.

Question 7

> Do you think there is political-legal willingness to reform utmost good faith practice? If so, why?

There is no doubt that governments and their policies have a major influence on the industry, even on the private sector. In most countries, any legislation must be approved through parliament, and therefore, if reform is ever to be in effect, it must invariably have the support of the legislature and in sync with the policy of the incumbent government. Governments hold legislative power and the reason to include a relevant question in the interview, was to seek whether the political determinants have an effect in bringing on reform. Through this, the influential power of institutions was examined. The intended objective was to test whether reform is as a result of influence by the government testing whether politics and institutional lobbying plays a part in reform. This in the context of knowing that eventually, any reform in the form of an act of parliament needs the consent of the members of parliament who usually delegate the actually drafting to a sub-committee which is typically composed of stakeholders including (but not limited to), the regulator, associations, policymakers, among others.

Legislation and regulation in an industry such as the financial services are volatile and ever changing. This is to ensure there is more consumer safeguard and transparent operations. Legislation and regulation also have a great influence on the operations of organisations such as insurance as these push for more consumer rights and awareness, and invariably have pressed for changing insurance practices to smoothen the rough edges of certain market positions and practices. In the light of this, the question posed to the interviewees explored whether legislation and regulation do actually assist in bringing reform or not. In this respect, the interviewees were specifically asked to relate whether the Maltese government, politicians, policymakers and regulators in the Maltese market are influencers or otherwise.

Questions 8 and 9

- Since Malta is dependent on the UK practice, should it now follow the UK in reforming the principle of utmost good faith? If so, why?
- How important is UK practice to the practice in insurance in Malta?

In the UK, the principle of utmost good faith emerged from common law. It was deemed that the insured had an obligation to disclose all facts material to the risk. There are various legal systems in various countries. Some adopt the common law position based on judicial precedent, whilst others rely on the civil code which is written law on the subject. There are other jurisdictions that have mixed system of law. Common law is based on the law of legal precedent which is thus developed by the courts through a number of cases establishing positions according to the case being considered. Civil law-based jurisdictions on the other hand, rely on the written law and the courts only have to apply what is stated in the law. Common law jurisdictions tend to favour the original principle of utmost good faith with its strict duties of disclosure whereas civil law tends to take a different approach to the principle (Parsons, 2016).

The insurance industry in the UK has undertaken a major overhaul in the principle of utmost good faith and have passed reforms by enacting two pieces of legislation replacing the century-old principle. In this respect, organisations which do business with UK counterparts and which are reliant on UK practice, might have a great deal of influence in copying suit. These questions therefore sought to investigate whether companies dependent on UK practice have indeed felt the need to adopt reform. Furthermore, these questions specifically retrieved information on how much the country being investigated (Malta), is dependent on UK business especially in the light of the recent reform in the UK of the principle of utmost good faith in 2012 and 2015.

These questions therefore explored whether the legal system will aid (or otherwise) reform of the utmost good faith practice in Malta, and sought to verify whether dependency on UK practice and jurisdiction are factors which will lead to reform.

Question 10

> Should Malta wait for the EU to take the initiative to release its own laws, rules regulation or guidelines on this matter of utmost good faith and why?

European countries need to harmonise their laws and regulations with those of the EU and must follow this requirement strictly. In this respect, the question related to influence by the EU was set to test whether harmonisation of EU law and regulations by EU member state countries (including Malta) is in fact a factor which brings changes to insurance practice. This question therefore sought to test the opinion of the respondents on whether Malta should act (if at all) or wait for an EU position.

Question 11

- How prepared is the insurance industry in Malta to reform the practice of the principle of utmost good faith?

This was another specific question that sought the respondents' perceptions on the level of preparedness to reform the principle of utmost good faith, if at all. The interviewer sought opinions from the interviewees as to where Malta stands with respect to the reform position of utmost good faith and the accompanying factors that could be driving this development forward, if at all. The purpose of such an open-ended question was to enable the respondents to provide an opportunity to express their unencumbered sentiment on the position of Malta achieving an opinion-based reply built on experience and expertise.

Question 12

- Should Malta reform its current practice of utmost good faith? If so, why?

This direct question was made to understand whether experts feel that the current utmost good faith practice is adequate or whether they believe it should be reformed. The way the question was made avoids leading the interviewee to a particular aspect or reason so a wealth of subjective responses were expected reflecting on whether Malta should reform and why. Specifically, this question addressed the research question on the case of Malta.

3.4 Sample

3.4.1 Design / Methodology

To reiterate, desk-based research yielded 3,248 valid records and resulted in the inclusion of 152 research articles through a scoping review after considering inclusion/exclusion criteria using PRISMA (Preferred Reporting Items for Systematic Reviews and Meta-Analysis) as the search and analysis tool (Farrugia & Grima, 2021a).

The survey was addressed to insurance associations, professional members, executives of large corporates in the insurance industry and selected experts in the field who were purposely selected based on the work experience held, roles occupied in the industry, qualifications attained and area of expertise (Farrugia & Grima, 2021a). The data emergent from the questionnaire consisted of 1794 valid responses, derived from a purposely-built survey using the social network platforms and verbal/online communication systems. The quantitative data was analysed using statistical tools mainly SPSS version 20, descriptive statistics, exploratory factor analysis, Cronbach's Alpha, Friedman test and Kendall W, and multiple linear regression.

3.4.2 Sample size

The survey questionnaire part of this research required a quantitative approach and the sample size was based on the work of Cochran (2007) particularly with reference to determining the sample size when the population is infinite and unknown in which case, the following formula applies (Cochran, 2007):

$$n = \frac{p(1-p)z^2}{e^2}$$

Where, **n** is the sample size of the study

p is the proportion of population

z represents the z score, which is the confidence of the analysis

e is the acceptable sampling error

n represents the sample size to determine for an unknown population size and is the subject of the formula. In view that the population was unknown, 0.5 was used as a standard for the purposes of assuming the population size which is represented by the letter **p**.

The letter **z** represents the value from the z score tables at confidence level 95%. This is read off the tables and is equivalent to 1.96. The letter **e** is the acceptable sampling error and for the purpose of this exercise it was based on 5% or 0.05.

Therefore:

$$n = \frac{p(1-p)z^2}{e^2}$$

$$n = \frac{0.5(1-0.5)1.96^2}{0.05^2}$$

$$n = 384.16$$

Thus, the study required a sample of at least 385 respondents answering the questionnaire.

The other form of data collection was through a structured interview derived through purposive convenience and snowballing, and the sample in this case was determined on the attainment of saturation rather than by statistical analysis (Suen, et al., 2014). In this case, no more interviews were conducted when responses were repetitive and further interviews did not produce more value to the findings.

3.4.3 Non probability purposive sampling

There are a number of stakeholders who are directly or indirectly influenced by the insurance principle of utmost good faith, such as customers in their private capacity, commercial business persons and those in various industries who either provide or receive a service from the insurance fraternity. However, the research focussed on the more direct stakeholders who are posed to insightfully shed light on the specific reasons for reform in insurance as these hail from sectors directly connected to insurance including but not limited to professional practitioners, legislators and reformists.

Questionnaires were sent to associations of different countries and asked to disseminate

these to stakeholders accordingly. In this way, those professionals and practitioners who were conversant with the aspects of insurance practice particularly on the practice of utmost good faith and reform were duly reached.

For interviews, a purposeful and convenience sampling method was initiated and the data was collected through selective interviewees. As the research progressed, the sample selected was based on the analytical insights, snowballing onto identified experts in the field nominated by the initial samples (Petty, et al., 2012). A non-probability purposive sample was the most appropriate as this consists of interviews with seasoned practitioners chosen purposively on the basis of relevance. The appropriate sample was not pre-determined or pre calculated but was achieved on the basis of the information that was being received until no new aspects surfaced.

Such convenience sampling is a non-probabilistic, where subjects are more readily accessible to the researcher and carefully chosen based on a set of criteria (explained later under section 3.4.4.1 and 3.4.4.2) which would give value to the research (Suen, et al., 2014).

SAMPLING METHODS

NON-PROBABILITY

- Judgement sampling
- Quota Sampling
- **Convenience Sampling**

PROBABILITY

- Simple random
- Stratified Sampling
- Systematic Sampling
- Cluster Sampling

Figure 3.6: Classification of types of sampling methods relevant to the study (Source: own compilation)

3.4.4 Pilot testing and methods for collecting primary data

3.4.4.1 Questionnaire

The survey questionnaire was distributed to three local insurance practitioners in the market as a pilot test was propagated prior, to ascertain the comprehensibility and clarity of the

questions being asked, eliminating any ambiguity which might arise and amending the questionnaire wording where applicable.

The actual survey questionnaire was administered during the years 2020 and 2021, using social networks (such as LinkedIn, Twitter and Facebook); meetings over the phone, and online communication using Zoom, MS Teams and Goto applications particularly due to the circumstances presented by the COVID-19 pandemic during the time data was being collected (Farrugia & Grima, 2021a).

The eligible sample was initially filtered according to whether the prospective survey participant had working experience in the area of regulation and whether the prospective participant had experience with the principle and practice of utmost good faith in insurance. Once these criteria were satisfied, then the survey respondent could take the questionnaire and submit the respective responses. Moreover, the sample was targeted using purposive sampling whereby the chosen respondents were those working within the insurance sector including, but not restricted, to those working within insurance associations, professional members, and practitioners and experts in the field of insurance, regulation and reform. This approach was modelled on non-probability purposive sampling where the participants were chosen on the basis of certain criteria, who in turn, were invited to source out any peers who they thought could contribute to the scope of the research thus propagating the survey further by what is known as snowballing sampling. As the researcher holds years of experience in the insurance market on a widespread basis, identification of the first layer of experts was a straightforward and readily available platform by which the most relevant survey participants were identified and selected (Farrugia & Grima, 2021a).

The responses were collected by means of a dedicated software known as Qualtrics (Suen, et al., 2014) which enabled the set up and structure of the survey, facilitated the dispatch to prospective participants and also assisted in the analysis of the ensuing raw data (see Appendix 2). Any express comments received beyond the questions set, were transcribed on

Microsoft Word and grouped into common themes contributing to the findings (Farrugia & Grima, 2021a).

A total of 1794 valid responses were received, which provided the expected confidence that this is a representative sample and consequently allowed the progression of the analysis (Cochran, 2007; Naderifar, 2017).

3.4.4.2 Interviews

Semi-structured open-ended interviews were carried out with 32 respondents, who are involved in various roles and positions in the insurance business in Malta. For the purposes of the interview, purposive sampling was again adopted relying on the researcher's experience to identify the most relevant experts in the field, based on experience and knowledge, who could provide meaningful and grounded opinions allowing for suggestions by the respondent of other relevant persons who could contribute to the research. In the case of the interviews, the number of respondents was not set prior, and the saturation point was identified when the answers to the interview questions did not contribute to new or more meaningful knowledge than what had been collected. The saturation point was reached after approximately 25 responses (Mack, et al., 2005; Petty, et al., 2012) and (Suen, et al., 2014). Special care was given to interview guides given by Merriam (1998) on what to ask and how to avoid bias or leading answers that could distort the results. Merriam (1988) suggests what questions to avoid, how the questions should be worded, how any communication with the respondents should be introduced and how a communicative rapport should be established to ensure clarity of responses.

The responses of the interviews were recorded, analysed and subjected to a thematic analysis for identifying, analysing, and reporting of patterns (Braun & Clarke, 2006) to derive conclusions on the case of Malta.

3.5 Rigour of research – Qualitative studies

In qualitative research there is no formal confidence in the findings except for strong arguments which support the ontology of the research. In this respect, rigour in qualitative studies is very important to justify the reality and the work is defended by virtue of the results through multiple sources and triangulation of results, explaining how bias was eliminated and challenging the assumptions made.

To substantiate qualitative rigour, four trustworthiness criteria are suggested by Lincoln & Guba (1985) namely, credibility, transferability, dependability and confirmability. These criteria were used as basis for the attainment of rigour under this study.

3.5.1 Credibility

Credibility ensures that the work presented is one which represents the perspectives, experiences and opinions of the respondents/interviewees as accurately as possible. A qualitative study presents its own challenges in view of the variety of responses based on subjectivity. This research required additional tools to check and test the credibility of the wide range of responses through cross-check triangulation, contradiction spotting and personal data verification especially by those external to the study (Petty, et al., 2012).

This research ensured credibility by having the interview transcripts scrutinised via the extraction of the common responses and salient features of the responses. Member-checking was also applied, wherein the finished summary of every interview was given to the respondent to ensure that it reflects the expressed intentions accurately (Krefting, 1991).

In line with the suggestions of Saunders and Townsend (2018), the research was monitored by the researcher for credibility without introducing bias, as the researcher holds vast experience and expertise on the subject.

Moreover, the fact that the sample was selected using eligibility criteria as described under section 3.4.4.1 and section 3.4.4.2 added to the credibility of the information achieved since

authoritive and credible information was received from respondents based on the technical and professional standing of the questionnaire participants and / or interviewees.

The ability to replicate further studies from the findings also provides a degree of credibility as any of the findings can be further examined, proven or fine-tuned. Replicability is further discussed in the next section 3.5.2 headed as Transferability.

3.5.2 Transferability

Another test to validate the research is its ability to be a base for replication. The ability by other authors to use the study as a model approach for similar works on different industries or different case scenarios, tests the transferability of the study (Lincoln & Guba, 1985). To ensure transferability, care was taken to ensure that the target audience, the data collection methods (especially through the use of the structured PRISMA method) used to include sampling and boundaries were well documented and explained, providing a platform of transfer research findings and methods. An approach model was built using thematic analysis to form propositions which were tested through primary research and exploratory factor analysis confirmed or otherwise the propositions using utmost good faith as a case study and finally applying the results to the case of Malta. This model can be used for other countries, industries or other sectors using any other aspect, business or operations as the basis of the testing of propositions, thus transferable.

3.5.3 Dependability

A qualitative study is varied and dynamic, and therefore, if the research is replicated elsewhere, different results are inevitable. Qualitative studies tend to be less dependable than quantitative studies due to their intrinsic multiple realty ontology (Petty, et al., 2012).

The qualitative part of this research is tested for dependability through, the explanation of the purpose of the study, how the investigative process was carried out and the explanation of the findings and results. This audit trail gave the study a strong degree of dependability, by providing a step-by-step explanation (Thomas & Magilvy, 2011).

3.5.4 Confirmability

By keeping an open mind especially when conducting the interviews and interpreting the results, the research ensured that it followed the statements made by the respondent rather than having the interviewer/researcher taking the lead to formulate the conclusions of the findings. In this sense, the research was reflective on the interpretations that produce new insights and instil a sense of trust in the credibility of the study (Thomas & Magilvy, 2011). The use of the Friedman test and Kendall W provided a degree of confirmability among the respondents by which the level of agreement was measured and which provided a degree of confirmability of the ensuing results.

3.6 Objectivity of research – Quantitative studies

Whereas in qualitative research, it is the rigour that provides the necessary trust and confidence of the findings that posit reality (Thomas & Magilvy, 2011), in quantitative studies, which are backed by facts and statistics, the reliability and validity is the measure of the credibility of the research.

3.6.1 Consistency and Reliability

Reliability refers to whether the data collection techniques and analysis procedures would produce consistent findings if they were created on another occasion or by another researcher (Heale & Twycross, 2015).

Cronbach's Alpha measures the consistency of the questions and tests the reliability of the responses, that is, how closely related a set of items are as a group. Through its correlation of the factors under study, results establishing strong, weak or no relation at all assisted in the understanding of what stimulates demand for reform.

Therefore, since Cronbach’s Alpha provides a measure of the internal consistency a scale was used and this is expressed as a number between 0 and 1, where the higher the number, the more consistency the finding is.

There are different reports about the acceptable values of Cronbach’s Alpha. A low value of

Cronbach's Alpha, typically below 0.7, may be attributed to a low number of questions, poor interrelatedness between items or heterogeneous constructs (Tavakol & Dennick, 2011).

For the purpose of this research, a Cronbach's Alpha of 0.7 or greater was considered adequate as a successful test for the reliability of the questions (Taber, 2018).

3.6.2 Validity

Construct validity refers to the extent to which the research measures what it seeks to measure and the questions were designed with this in mind. Internal validity is established when research demonstrates that a researched study can be generalised to other relevant settings or groupings, that is whether it really represents the actual reality (Grimm, 2012). Care has been taken during the course of the research to ensure there is confidence that the cause and effect are valid. This was ensured through decreasing the possibility of confounding, that is, the elimination of other factors which will shed doubt on the relationship between the cause and effect which in the context of this study, is the relationship between the factors affecting the reform of utmost good faith. The strength of a research is determined by its confirmability through collecting a variety of data from different perspectives and cross-check interpretations known as triangulation, which reduces bias and solidifies results through repetitive common findings (Petty, et al., 2012).

To strengthen the validity of the research, purposive sampling was used which entailed targeting experts and professionals in the field making the output relevant and significant.

The questions in the questionnaire were chosen with care to ensure there is no ambiguity especially when it comes to opinion. To do this, the survey questionnaire was spread and the questions were such that no bias or leading questions were set. Moreover, the questionnaire has laid a range of pre-determined responses which were up for rating, achieving a more accurate and hence more reliable answer. The pilot test ensured the comprehensibility of the questions which was vital in the receipt of properly intended answers. Pilot testing was also used prior to the conduct of the interviews.

3.7 Bias

Care was taken to eliminate error or bias. Such bias may be attributed to the interviewer, to the choice of sample and interviewees, to questions and responses and also to the reporting of the findings.

Bias is said to manifest itself when factors distort the truth emergent from the collection of information, its interpretation and reporting. This will lead to deviated analysis and results, possibly providing false conclusions (Simundić, 2013).

To prevent bias, the building of theory emerging from qualitative data analysis and subsequent theory supposes no preconceived influences or ideas (Heath & Cowley, 2004).

3.7.1 Interviewer bias

Interviews and questionnaires were designed to ensure that bias was eliminated particularly responsive bias, cognitive bias and strategic bias (Coglianese, 2012).

A pilot test was conducted to ascertain that any investigative questions (both those within the questionnaire and those prompted during the interviews) were comprehensible and relevant, and sought to verify whether a respondent would be able to respond free from ambiguity and assistance. The enquiring instrument was, following the pilot study, updated to ensure better comprehension of questions and ensured relevance at all times (Van Teijlingen, & Hundley, 2001). Moreover, to eliminate interviewer bias, the questionnaire was built on researched information and during the interviews, the interviewer took care not to make any leading statements or influence the interviewee in the process.

3.7.2 Answer bias

The respondents of the questionnaire were given a supplementary information sheet which detailed the scope of the question and the corresponding intention and interpretation. The purpose of this sheet was to reduce biased answers and to facilitate the understanding of every statement being questioned. Clear and proof-read questions also assisted in facilitating bias-free answers (Jenn, 2006).

The respondents of the interviews were encouraged to ask questions if they were unsure of the intention of the questions. Prior to the launch of the questionnaire and interviews, a pilot study was carried out among 3 respondents to test the clarity and intentions of the questions, ensuring that the questions were comprehensible and unambiguous (Teijlingen van, et al., 2001). In fact, some adjustments were made to the original scripts reflecting the feedback obtained from the pilot study.

Furthermore, the interviews and questionnaires contained open questions keeping an open mind for any adjustments as the primary research developed (Noble & Mitchell, 2016). Glaser and Strauss (1967) purported this theory having established the creation of theory from data which was collected, coded and analysed.

3.7.3 Sample bias

While questionnaires have their advantages, they also have their disadvantages. Oppenheim (1992) says that questionnaires are inherently subject to bias if wrongly designed, sampled, responded, misunderstood, processed and reported.

Data collection bias presents itself in the type of sample that is selected and the population under study (Simundić, 2013). It is easy to introduce bias in sampling and therefore to eliminate this, the research expanded its sources to different strata of the population and different countries. To further counteract this sample bias, a sample was selected which was beyond the calculated minimum sample of 385 respondents for questionnaires and with respect to the interviews no definite number was set allowing the number of interviews to augment until saturation was reached. The sample presented its own challenges, the most evident being the availability or geographical location of the respondents and other factors such as bias due to experience, age and gender. Every effort was made by the researcher to reach as many experts as possible and to ensure a varied database of respondents. With the use of online technology, which undoubtedly was the most frequent mode of communication during the outbreak of the pandemic, it was easier to arrange virtual interviews and meetings

and reach out to practitioners, even in distant countries.

3.7.4 Reporting bias

In the analysis part of the research, care was taken to base results purely on findings and facts, and the researcher only interpreted what was revealed and not what the researcher felt, believed or opined.

3.8 Ethics and confidentiality

The research design followed the requirements of the research standards of the University of Malta.

The applicable sections which set the ethics and confidentiality parameters of this research were the following:

"Principles of ethical research conduct

- Observance with all legal, regulatory and ethical requirements in Malta and in countries where research is conducted or participants are from
- Respect the integrity and dignity of persons
- Recognition of the rights of individuals to privacy and personal data protection
- Honour the requirement of informed consent and continuous dialogue with research participants
- Respect the principle of proportionality
- Treat societal concerns seriously
- Recognise the wholeness of an individual
- Respect biodiversity
- Build on the understanding that any benefits are for the good of society"

(Adapted from the University of Malta – Research Code of Practice, 2018, pp. 1-2)

The research ensured anonymity by omitting any identifiable personal data, and reference was made to the communication channels available in case the participant required more information about the research scope, collection of data, processing, analysis and result

reporting. A description of any benefits to the participant or to others which may reasonably be expected from the research was communicated. The right reserved for refusal to participate at any point in the study was also informed to the participant and this at no penalty or loss of benefits to the participant.

3.9 Research Challenges and solutions

The design of the research was primarily based on the aims and objective of this research which is testing the reform determinants by using utmost good faith as a case study (Brinkmann & Kvale, 2015) and then applying these to the case of Malta. The type of participants chosen ensured that the research questions were addressed to the right people and the responses received, reflected reality (Saunders, et al., 2016).

Saunders, et al. (2016) opined that propositional research from literature, provides the right framework for a well-defined study. Also, Saunders (2016) considers four challenges to ensure right sample choice summarizing these as the challenge to gain access, identifying the right gateways, selecting the correct number of participants and justifying the transparent selection. This confirmed the manner by which the primary research was obtained in this study.

3.9.1 Research Challenge 1 - Accessibility of survey questionnaire respondents

The starting point is to establish the degree of accessibility both in terms of the specific organisation/s and the corresponding practitioner participants (Van De Ven & Johnson, 2006). This proved to be a real challenge as the more experienced practitioners were usually the most unavailable and difficult to reach especially those who operate in jurisdictions distant from Malta (the place from where this study originates).

Solution

To increase success of acceptance to participate as suggested by Saunders (2012), the research took into consideration the time taken to respond, the relevance and sensitivity of the questions, the value of the research and the credibility of the researcher.

Prior to implementing the survey, the respondents, most specifically the gatekeepers of the firm (in the case of organisational research requiring respondents from a specific insurance firm), were contacted and a verbal communication instilled confidence in providing the necessary brief through explaining the value and the credibility of the research. Also, the question statements were brief, straightforward and easy to answer with check boxes for the survey questionnaire, being the mode of responses based on a Likert scale for ease of response.

3.9.2 Research Challenge 2 - Adequate sample

The sample chosen for the adoption of any research method must be one yielding enough respondents to make the research results credible (Baker & Edwards, 2012).

Solution

As for the questionnaires, an increase in sample size and homogeneity of the propositions sampled counteract for errors in the sample (Babbie, 1990). Therefore, this research tried to obtain as much respondents as possible. In fact, the sample size of 1794 respondents far exceeded the minimum of 385 respondents as calculated by the sample size calculator (Cochran, 2007).

For the scope of ensuring that the research obtains adequate insights from the questions, non-probability sampling techniques were most suitable for the interview part of the study (Patton, 2015). Better still, not all the respondents were preselected, in fact only a few were earmarked adding on as the survey progressed and after obtaining more knowledge on who should be approached from the snowballing effect of sample targets (Miles, et al., 2013).

The advantage of using non-probability sampling techniques, particularly purposive choice of respondents who were carefully selected by the researcher, allowed for the development of choice-based respondents as the research unfolded. Singh (2015) finds and reports that such non-probability purposive sampling is most appropriate when there are few selected sampling units as is the case of this research being specifically connected to insurance practice. Furthermore, Singh (2015) states that judgement sampling removes the bias from a random sample, as random sampling could very well miss out on the most suited respondents.

Through this sampling technique, the respondents were able to collectively test emerging theory. This is known as the theoretical sampling technique (Saunders & Townsend, 2018). This type of technique allows for respondents to support or otherwise, inductive theory (Corbin & Strauss, 2015) and the research continued until saturation (Morse, 1994) or until information was of no further value or contribution (Lincoln & Guba, 1985). Creswell (2007) suggests between 20 and 30 participants as ideal for a theory-building study which corroborates with the sample of 32 interviewees approached in this study.

3.9.3 Research Challenge 3 - Transparent Reporting

Lastly, the reporting of the selection process is one which needs to prove transparency and representation (Robinson, 2014).

Solution

Justification of the research is due to the sample size which is good enough up to the point of saturation, (Saunders & Townsend, 2018) and the research design is one which is capable of being replicated (Baker & Edwards, 2012).

Various authors have found some inconsistencies between questionnaires and interviews when used together in research, although Harris and Brown (2010) advocate that both are important to obtain meaningful results. To bring these methods together in data collection and data analysis, Harris and Brown (2010) state that both interviews and questionnaires

must be carried out in a short span of time to avoid change in conditions and to ensure that the reporting is concrete and specific. This will present results that are comparable which is important for the analysis and results. To this effect, the obtaining of information was carried out within a span of approximately 9/10 months, which is a relatively short span of time reducing the possibility of time bias.

An explanation of how data was gathered was provided, specifically and primarily, through the use of PRISMA to filter the relevant journals and use of propositions to build the questionnaire and interview questions. A narrative of the sample and analysis was also provided referring to the statistical tool 'Statistical Package for the Social Sciences' (SPSS) for the generation of the quantitative results. Due regard to the avoidance of bias and to ethical obligations was also observed and explained. The methodology, as explained, provides a sound and robust process that is replicable, transferable, dependable and confirmable.

3.10 Conclusion

The methodology serves as an explanation of how the research was carried out to attain the aim of the study, achieve the objectives and answer the research questions.

A summary of the methods used, together with a description of reason for choice and expected outcome is being presented under Table 3.6.

Table 3.6 Summary of methods used

Outcome required	Method used	Reason for choice of method	Modelled on
Interpretivist approach to capture the multiple realties.	Qualitative, using interviews.	Research based on subjective facts by experts in the field to collect first-hand information of the real and practical scenario.	(Robson, 2011)
Positivist approach to identify empirical facts.	Quantitative, using questionnaires.	Based on inductive theory building whereby interpretations of the findings are presented and tested to fill gaps in literature and to generate new literature.	(Bruce, et al., 2008), (Smart and Doody, 2007), (Yin, 2003), (Strutt et al., 2008)
Mixed methods approach.	Using both qualitative and quantitative methods. Using inductive and deductive approaches	To be able to understand the real scenario as it presents itself today and also attempts to address the real situation in the global environment. To build and test theory Triangulation of results achieved that cross check each other via interviews, questionnaires and desk based research.	(Legocki, et al, 2015) (Driscoll, 2007)
To obtain relevant secondary research.	Preferred Reporting Items for Systematic Reviews and Meta-Analyses (PRISMA) to filter relevant literature.	To develop a protocol to derive relevant studies and to sort and narrow down the search results in order of relevance.	(Liberati, 2009), (Pahlevan, et al., 2019), (Bai, et al., 2019)
To verify how reform, in general, is initiated in various countries.	Comparative cross-country analysis.	The use a variety of data and thorough cross-responses assisted in the understanding of the perspective of stakeholders hailing from different countries.	(Abuzaid, 2018)

Outcome required	Method used	Reason for choice of method	Modelled on
To determine the factors that influence reform generally.	Historical institutionalism and Case study cross country analysis using a desk-based method of literature filtering.	Looking at past occurrences and happenings can shed light onto how certain features will manifest in the future. This method was useful because the general reform factors were deduced based on what happened in various sectors in the past in various countries.	(Serrano-Guerreroa, et al., 2018) (Løkke & Dissing Sørensen, 2014) (Yin, 2014), (Stake, 2000), (Roger-Varga-Veld, 2008), (Tsitlenok, et al., 2020), (Yin, 2003)
To build propositions and research questionnaire statements.	Desk based literature review and thematic analysis to build a set of propositions from which the questionnaire statements were formed.	Propositions are suggested statements that can be put on test by obtaining first hand feedback from the respondents. This enabled the researcher to test the relevance and applicability of these propositions to the scope of the study.	(Bryson, et al., 2006) (Rempel, et al., 2018), (Yin, 2003), (Stake, 1995), (Merriam, 1998), (Yazan, 2015), (Glaser and Strauss, 1967), (Payne, 2007), (Braun and Clarke, 2006)
To test propositions using utmost good faith as a case study.	Use of a questionnaire having a five-point Likert scale as a measure.	This method will confirm or otherwise whether the general reasons for reform apply to the principle of utmost good faith in insurance by receiving first-hand information from practitioners in the field who are closest to the understanding of the corresponding industry signs.	(Dudovskiy, 2020), (Jensen & Gwyer, 2000), (Edwards, et al., 2004)

Outcome required	Method used	Reason for choice of method	Modelled on
To ascertain reliability of the questions that were asked to the respondents.	Cronbach's Alpha.	Cronbach's Alpha measures the reliability and the internal consistency of each of the question/statements under this study.	(Buhagiar, et al., 1994) (Wirth, et al., 2011)
To test the comprehensibility of the questions.	Pilot study.	The pilot study was used as a pre survey / interview to evaluate the clarity and comprehensibility of the questions. Pilot studies help identify design issues before the main research is conducted.	(Van Teijlingen, & Hundley, 2001)
To ensure the adequacy of the sample size.	Cochran's online survey sample calculator.	To obtain an adequate sample size representative of the population under study. Sample was selected which was beyond the calculated minimum sample of 385.	(Cochran's, 2007), (Naderifar, 2017)
To achieve a thorough and relevant sample.	Purposive sampling and snowballing sampling methods based on relevant respondents' criteria of experience, qualifications, expertise, role and positions held in their respective industries, contribution to the industry and repute.	The sampling methods used ensured that the right persons and the relevant stakeholders were selected to represent the population under study. This is more suitable than random data sampling which does not necessarily relevant candidates for participation.	(Petty et al., 2012), (Suen, et al., 2014), (Singh, 2015)
To measure the opinions of various experts and practitioners in the field of insurance and reform.	Five-point Likert scale.	To obtain the most relevant information quantified for the provision of a measured result that will confirm the reform factors, or otherwise, and provide a score of the perception and opinion of stakeholders.	(Chen, et al., 2015)

Outcome required	Method used	Reason for choice of method	Modelled on
To test the appropriateness of the use of Exploratory Factor Analysis.	Correlation of the measured variables using Barlett's test and Kaiser Meir Olkin (KMO-MSA) test.	These methods established, or otherwise, the relationship of demographics with the factors under study.	(Tabachnick & Fidell, 2013)
To investigate which factors would be influential in initiating reform in the application of the insurance principle of utmost good faith.	Exploratory factor analysis (EFA).	Exploratory factor analysis was suitable as it identified those factors that had an influence on reform of utmost good faith in insurance and created theory from data which was collected, coded and analysed.	(Siegling, et al., 2015), (Watkins, 2018), (Glaser and Strauss, 1967), (Zuckerman and Aluja, 2005), (Chiu, et al., 2015), (Frías, et al., 2015)
To extract factor clusters representing factor variable influencing reform of utmost good faith.	Parallel analysis and Velicer's test.	Identifying which components are relevant to consider according to the results of the questionnaire.	(Cliff, 1988)
To determine which rotational method to use for EFA.	Direct Oblimin run performed on SPSS.	To determine whether components are orthogonal or oblique.	(Tabachnick & Fidell, 2007), (Brown, 2009)
To extract factor variables that affect reform of utmost good faith in insurance.	Equamax rotation using Kaiser normalisation.	To group the four components representing the four factor variables.	(Costello & Osborne, 2005), (Gorsuch, 1983)

Outcome required	Method used	Reason for choice of method	Modelled on
To verify where the majority of the responses lie.	Descriptive statistics including mean, mode, median and standard deviation.	To determine whether the respondents agree or disagree with the propositions and to what extent.	(Farrugia & Grima, 2021a)
To verify whether the age, gender, education and occupation of the respondents had an influence on the responses.	Multiple linear regression.	This method determined how much the dependent variables were individually influenced by different independent demographic variables and by how much.	(Roeger-Varga-Veld, 2008)
To rank factors variables.	Friedman test and Kendall's W.	To rank the factor variables in order of how agreeable these are in influencing reform, the Friedman test was used on quantitative which in the case of this research, were the Likert scale scores that were derived from the respondents. The Kendall W is the normalization of the statistic of the Friedman test.	(Košičiarová, et al., 2020)
To test the case of Malta.	Qualitative, using interviews built on the factor variables emergent from the questionnaire.	To test the applicability of the findings to Malta which is a country under study by asking the stakeholders closest to the practice of insurance in Malta receiving first-hand information.	(Merriam,1998)

Outcome required	Method used	Reason for choice of method	Modelled on
To obtain credibility of the research.	Wide range of responses through cross-check triangulation, contradiction spotting and personal data verification especially by those external to the study. Interview transcripts scrutinised by extracting common responses and salient features of the responses. Member-checking was also applied, wherein the finished summary of every interview was given to the respondent to ensure that it reflects the expressed intentions accurately. The research relied on the experience and expertise of the researcher and the ability to replicate further studies.	These methods were used because they act to validate the findings making the results more robust and credible. The strength of the qualitative research is tested through its credibility, transferability, dependability and confirmability. The strength of the quantitative research is tested through its consistency and reliability.	(Lincoln & Guba, 1985), (Petty, et al., 2012), (Krefting, 1991) (Saunders and Townsend, 2018) (Lincoln & Guba, 1985) (Thomas & Magilvy, 2011)
To ensure transferability of the research.	Preferred Reporting Items for Systematic Reviews and Meta-Analyses (PRISMA).	The PRISMA is a structured literature filter that enables replication, that is, it will produce the same results if it is repeated.	(Lincoln & Guba, 1985)

Outcome required	Method used	Reason for choice of method	Modelled on
To attain dependability of the research.	Audit trail by explaining the purpose of the study, how the investigative process was carried out and the explanation of the findings and results.	This method presents a strong degree of dependability, by providing a step-by-step explanation of the various processes undertaken. Such a structured approach makes the study transparent and traceable wherein the process can be scrutinised for consistency and accuracy.	(Thomas & Magilvy, 2011)
To ascertain confirmability of the research.	Use of the Friedman test and Kendall W. Confirmability through collecting a variety of data from different perspectives and cross-check interpretations known as triangulation namely achieved from interviews, questionnaires and desk-based research, which incorporate comparative perspectives and historical institutionalism and case study approaches.	This test enabled the degree of confirmability among the respondents by which the level of agreement was measured and which provided a degree of confirmability of the ensuing results. Triangulation of sources aims to reduce bias and solidifies results through repetitive common findings emergent from literature and from reputable sources via primary research.	(Petty, et al., 2012)

Outcome required	Method used	Reason for choice of method	Modelled on
To achieve consistency and reliability of the research.	Cronbach's Alpha.	Cronbach's Alpha measures the consistency of the questions and tests the reliability of the responses.	(Heale & Twycross, 2015)
To confirm the validity of the research.	Purposive and snowballing sampling.	Targeting experts and professionals in the field, making the output relevant and significant.	(Singh, 2015)
To eliminate responsive bias.	Data collection entailed an open study and information was gathered from a wide database of resources without a pre-defined number of the population under study. Research expanded its sources to different strata of the population and different countries.	Questions in the questionnaires and interviews were chosen with care to ensure there is no ambiguity and were objectively derived from an open study. The questionnaire has laid a range of pre-determined responses which were up for rating, achieving a more accurate and hence more reliable answer.	(Coglianese, 2012), (Simundić, 2013), (Petty, et al., 2012), (Grimm, 2012)

Outcome required	Method used	Reason for choice of method	Modelled on
To eliminate interviewer bias and reporting bias.	Questionnaire and interviews built on researched information. Supplementary information sheet provided to respondents to detail the scope of the question and the corresponding intention and interpretation.	The method of using robust research information provided a strong basis for the structuring of the questionnaire interview questions which were modelled to ensure that the interviewer/ researcher did not have to intervene or influence any of the answers or make any leading statements or influence the interviewee in the process. Supplementary information was provided to avoid having the interviewer to interact with the respondents reduce the risk of bias.	(Jenn, N.C., 2006)
To eliminate answer bias.	Pilot study was carried out among three respondents.	To test the clarity and intentions of the questions, ensuring that the questions were comprehensible and unambiguous.	(Teijlingen van, et al., 2001)
To eliminate sample bias.	Use of technology and social media.	To ensure a varied database of respondents eliminating demographic variables bias and obtaining information from a broad base of respondents reaching out to practitioners, even in distant countries.	(Coglianese, 2012)

(Source: own compilation)

CHAPTER 4 - ANALYSIS AND FINDINGS

4.1 Introduction

Following the data collection process (both quantitative and qualitative), data analysis was conducted. Data analysis shows how meaningful the results are and is arrived at after recognising the objectives of the research and evaluating the type of data in possession. Such, enables the best analytical options commensurate with the scope of the study (Anderson, 2010).

Data analysis is largely descriptive, using tables and figures to display results in a visual manner, thus making the corresponding interpretation easier to follow. Through data analysis, the researcher intended to present findings and make corresponding suggestions and conclusions, in connection with the research objectives. The main analysis tool used in this part of the research was the software known as Statistical Package for the Social Sciences (SPSS), which is a powerful analysis tool used by many researchers worldwide. Results achieved through SPSS clearly explain and support, with justifications, the choice and use of the selected statistical methods (Briggs, et al., 2012).

4.1.1 The intention of the study

The aim of the study is to understand the factors that bring about reforms particularly related to the insurance practice of utmost good faith. Therefore, the main purpose is one which is tending towards seeking a relationship between reform and a number of variables, also determining the strength of such relationships. Moreover, the researcher discovers the consequences of ignoring reform triggers and what model should Malta determine (if at all) with respect to the practice of utmost good faith in insurance, especially now that the UK have reformed their own utmost good faith practice, which practice was traditionally followed by the insurance industry in Malta.

To reiterate, the full research questions were the following:

a. What are the factors that generally lead to reform and what are the consequences of ignoring the signs pointing to the need for reform?
b. What are the factor variables related to the reform (by regulation) of the principle of utmost good faith and are these variables influenced by (i) demographics and (ii) jurisdiction of the respondents?
c. Which factor variables are the most agreed upon when assessing the need for reform of utmost good faith?
d. Should Malta (as a case study) upkeep its current practice of the utmost good faith principle?

4.1.2 Type of data

4.1.2.1 Questionnaires

In the context of this research, qualitative data emanating from the questionnaire was transposed into a quantitative format by assigning a rank response via the five-point Likert scale. The Likert items were used to measure the respondents' opinion related to a particular question or statement. Likert-type data is ordinal data, and thus, the scores can indicate that one score is higher than another. However, such a data type, falls short in explaining the distance between the points and the corresponding reasons for the selection, hence the reason why a comment box was inserted in the questionnaire, seeking to make up for any shortfall or gaps in the information that a respondent would have failed to share or clarify during the survey.

4.1.2.2 Interviews

The interview questions on the other hand, were designed to obtain answers in a qualitative explanatory fashion rather than a mere score, and this method was used since it was more adequate for the determination of reform, when the case of Malta was being investigated and analysed.

4.2 Findings

4.2.1 Factors that generally lead to reform

After filtering the existing literature via PRISMA, country analysis determined what led to reform in different countries, the preliminary findings revealing several themes emergent from different sectors. As explained and stated in chapter 3, these findings were categorised into five propositions as follows:

1. Country institutions and legal systems
2. Customer/stakeholder influence
3. International Business
4. Technology
5. Socio-economic trends (Farrugia & Grima, 2021a)

These answer the first research question (a) specifically the first part namely, "What are the factors that generally lead to reform?".

4.2.2 Factor variables related to reform of the principle of utmost good faith

4.2.2.1 General data analysis

The data to determine the factor variables that relate specifically to the principle of utmost good faith was acquired via a survey questionnaire. The survey questionnaire consisted of Likert scale option responses and an open box for comments and clarification.

For the 22 statements on test, in the survey questionnaire, descriptive statistics were produced to analyse the general results of responses including the demographics. Multiple linear regression was adopted to verify whether the respondents' demographics had an effect on the responses. To do this, IBM software SPSS (version 20) was used, where all the quantitative data was inputted and a raw dataset was generated. Exploratory factor analysis was used to determine the influencing factor variables for the need of regulatory reform in utmost good faith and Cronbach's Alpha measured the corresponding consistency. The result was the determination of the influencing factor variables that affect reform of the utmost

good faith insurance principle (Farrugia & Grima, 2021a).

4.2.2.2 Descriptive statistics

The survey was administered to approximately over 2300 potential respondents and a total of 1794 valid responses (78%) were received reaching the expected confidence levels to allow the analysis to proceed (Cochran, 2007; Naderifar, 2017).

47 (2.6%), respondents completed the open-ended comments box giving further information or explaining the reason for their score. Most (90%) of these comments were mainly received from respondents who participated either face-to-face or on the phone, unlike those using online surveys on social media mainly via Facebook and LinkedIn, who in the majority, left no express comments. These ancillary comments, made in the available questionnaire comment box, were analysed and grouped together as these contributed to the results of the variables that influence reform in the practice of utmost good faith in insurance.

The following figure (Figure 4.1) represents are the tables and box plot graphs generated for every question on survey, segregated according to the dependent variables of age, gender, education and occupation.

S1The political climate and influence by governments is a strong factor in bringing about reform in insurance * Age of respondent Crosstabulation

			Age of respondent							Total
			18-24	25-34	35-44	45-54	55-64	65-74	75+	
S1The political climate and influence by governments is a strong factor in bringing about reform in insurance	Strongly Disagree	Count	156	66	125	59	339	30	0	775
		% of Total	8.7%	3.7%	7.0%	3.3%	18.9%	1.7%	0.0%	43.2%
	Disagree	Count	52	33	56	26	132	8	1	308
		% of Total	2.9%	1.8%	3.1%	1.4%	7.4%	0.4%	0.1%	17.2%
	Nuetral	Count	61	42	69	29	123	15	0	339
		% of Total	3.4%	2.3%	3.8%	1.6%	6.9%	0.8%	0.0%	18.9%
	Agree	Count	41	83	76	37	30	4	1	272
		% of Total	2.3%	4.6%	4.2%	2.1%	1.7%	0.2%	0.1%	15.2%
	Strongly Agree	Count	11	26	24	20	14	5	0	100
		% of Total	0.6%	1.4%	1.3%	1.1%	0.8%	0.3%	0.0%	5.6%
Total		Count	321	250	350	171	638	62	2	1794
		% of Total	17.9%	13.9%	19.5%	9.5%	35.6%	3.5%	0.1%	100.0%

S1The political climate and influence by governments is a strong factor in bringing about reform in insurance * Gender Crosstabulation

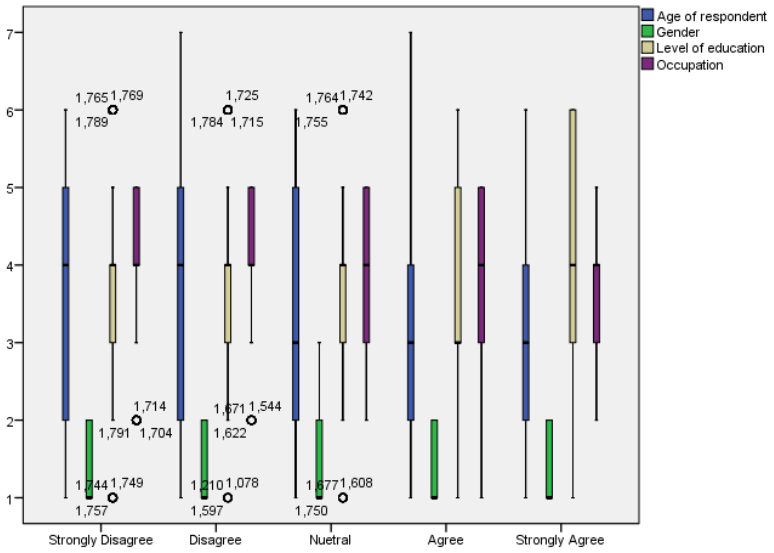
			Gender			Total
			Male	Female	Other	
S1The political climate and influence by governments is a strong factor in bringing about reform in insurance	Strongly Disagree	Count	557	218	0	775
		% of Total	31.0%	12.2%	0.0%	43.2%
	Disagree	Count	222	86	0	308
		% of Total	12.4%	4.8%	0.0%	17.2%
	Nuetral	Count	217	121	1	339
		% of Total	12.1%	6.7%	0.1%	18.9%
	Agree	Count	142	130	0	272
		% of Total	7.9%	7.2%	0.0%	15.2%
	Strongly Agree	Count	66	34	0	100
		% of Total	3.7%	1.9%	0.0%	5.6%
Total		Count	1204	589	1	1794
		% of Total	67.1%	32.8%	0.1%	100.0%

S1The political climate and influence by governments is a strong factor in bringing about reform in insurance * Level of education Crosstabulation

			Level of education						Total
			School leaving / SEC / Ordinary level (EQF level 1/2/3)	Advanced / Matriculation / Intermediate (EQF level 4)	Undergraduate / First degree (EQF level 5)	Bachelors / Hons (EQF level 6)	Masters / Post graduate (EQF level 7)	Doctorate (EQF level 8)	
S1The political climate and influence by governments is a strong factor in bringing about reform in insurance	Strongly Disagree	Count	27	57	153	366	41	131	775
		% of Total	1.5%	3.2%	8.5%	20.4%	2.3%	7.3%	43.2%
	Disagree	Count	9	26	57	140	19	57	308
		% of Total	0.5%	1.4%	3.2%	7.8%	1.1%	3.2%	17.2%
	Nuetral	Count	15	28	85	137	22	52	339
		% of Total	0.8%	1.6%	4.7%	7.6%	1.2%	2.9%	18.9%
	Agree	Count	12	33	95	54	17	61	272
		% of Total	0.7%	1.8%	5.3%	3.0%	0.9%	3.4%	15.2%
	Strongly Agree	Count	4	4	24	20	12	36	100
		% of Total	0.2%	0.2%	1.3%	1.1%	0.7%	2.0%	5.6%
Total		Count	67	148	414	717	111	337	1794
		% of Total	3.7%	8.2%	23.1%	40.0%	6.2%	18.8%	100.0%

S1The political climate and influence by governments is a strong factor in bringing about reform in insurance * Occupation Crosstabulation

			Occupation					Total
			Manual	Clerical	Managerial	Professional	Other	
S1The political climate and influence by governments is a strong factor in bringing about reform in insurance	Strongly Disagree	Count	0	51	100	246	378	775
		% of Total	0.0%	2.8%	5.6%	13.7%	21.1%	43.2%
	Disagree	Count	0	18	49	107	134	308
		% of Total	0.0%	1.0%	2.7%	6.0%	7.5%	17.2%
	Nuetral	Count	0	32	61	102	144	339
		% of Total	0.0%	1.8%	3.4%	5.7%	8.0%	18.9%
	Agree	Count	1	21	90	82	78	272
		% of Total	0.1%	1.2%	5.0%	4.6%	4.3%	15.2%
	Strongly Agree	Count	0	2	27	47	24	100
		% of Total	0.0%	0.1%	1.5%	2.6%	1.3%	5.6%
Total		Count	1	124	327	584	758	1794
		% of Total	0.1%	6.9%	18.2%	32.6%	42.3%	100.0%



S1The political climate and influence by governments is a strong factor in bringing about reform in insurance

S2Insurance policymakers push for insurance refrorms especially to improve practices like the duty of disclosure * Age of respondent Crosstabulation

			Age of respondent							Total
			18-24	25-34	35-44	45-54	55-64	65-74	75+	
S2Insurance policymakers push for insurance refrorms especially to improve practices like the duty of disclosure	Strongly Disagree	Count	0	4	8	6	3	0	0	21
		% of Total	0.0%	0.2%	0.4%	0.3%	0.2%	0.0%	0.0%	1.2%
	Disagree	Count	211	88	174	90	460	44	1	1068
		% of Total	11.8%	4.9%	9.7%	5.0%	25.6%	2.5%	0.1%	59.5%
	Nuetral	Count	62	38	69	27	132	7	0	335
		% of Total	3.5%	2.1%	3.8%	1.5%	7.4%	0.4%	0.0%	18.7%
	Agree	Count	25	74	73	33	28	9	1	243
		% of Total	1.4%	4.1%	4.1%	1.8%	1.6%	0.5%	0.1%	13.5%
	Strongly Agree	Count	23	46	26	15	15	2	0	127
		% of Total	1.3%	2.6%	1.4%	0.8%	0.8%	0.1%	0.0%	7.1%
Total		Count	321	250	350	171	638	62	2	1794
		% of Total	17.9%	13.9%	19.5%	9.5%	35.6%	3.5%	0.1%	100.0%

S2Insurance policymakers push for insurance refrorms especially to improve practices like the duty of disclosure * Gender Crosstabulation

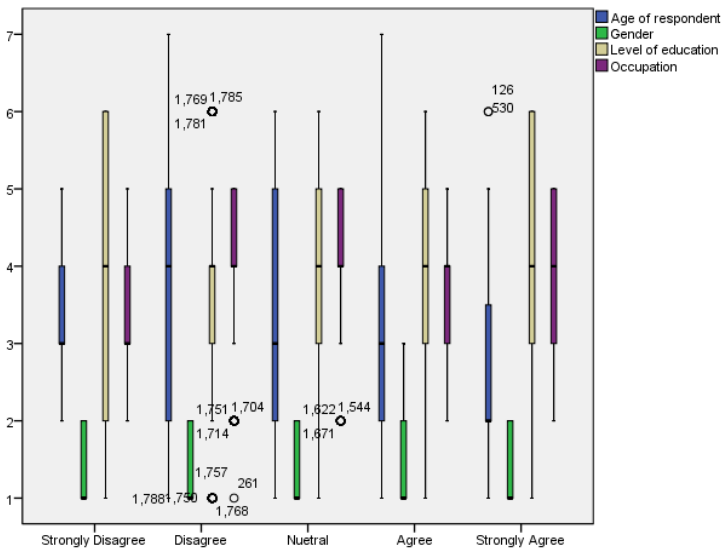
			Gender			Total
			Male	Female	Other	
S2Insurance policymakers push for insurance refrorms especially to improve practices like the duty of disclosure	Strongly Disagree	Count	14	7	0	21
		% of Total	0.8%	0.4%	0.0%	1.2%
	Disagree	Count	749	319	0	1068
		% of Total	41.8%	17.8%	0.0%	59.5%
	Nuetral	Count	229	106	0	335
		% of Total	12.8%	5.9%	0.0%	18.7%
	Agree	Count	144	98	1	243
		% of Total	8.0%	5.5%	0.1%	13.5%
	Strongly Agree	Count	68	59	0	127
		% of Total	3.8%	3.3%	0.0%	7.1%
Total		Count	1204	589	1	1794
		% of Total	67.1%	32.8%	0.1%	100.0%

S2Insurance policymakers push for insurance refrorms especially to improve practices like the duty of disclosure * Level of education Crosstabulation

			Level of education						Total
			School leaving / SEC / Ordinary level (EQF level 1/2/3)	Advanced / Matriculation / Intermediate (EQF level 4)	Undergraduate / First degree (EQF level 5)	Bachelors / Hons (EQF level 6)	Masters / Post graduate (EQF level 7)	Doctorate (EQF level 8)	
S2Insurance policymakers push for insurance refrorms especially to improve practices like the duty of disclosure	Strongly Disagree	Count	3	3	3	6	0	6	21
		% of Total	0.2%	0.2%	0.2%	0.3%	0.0%	0.3%	1.2%
	Disagree	Count	39	75	216	497	64	177	1068
		% of Total	2.2%	4.2%	12.0%	27.7%	3.6%	9.9%	59.5%
	Nuetral	Count	11	30	71	137	22	64	335
		% of Total	0.6%	1.7%	4.0%	7.6%	1.2%	3.6%	18.7%
	Agree	Count	10	28	79	54	18	54	243
		% of Total	0.6%	1.6%	4.4%	3.0%	1.0%	3.0%	13.5%
	Strongly Agree	Count	4	12	45	23	7	36	127
		% of Total	0.2%	0.7%	2.5%	1.3%	0.4%	2.0%	7.1%
Total		Count	67	148	414	717	111	337	1794
		% of Total	3.7%	8.2%	23.1%	40.0%	6.2%	18.8%	100.0%

S2Insurance policymakers push for insurance refrorms especially to improve practices like the duty of disclosure * Occupation Crosstabulation

			Occupation					Total
			Manual	Clerical	Managerial	Professional	Other	
S2Insurance policymakers push for insurance refrorms especially to improve practices like the duty of disclosure	Strongly Disagree	Count	0	4	9	7	1	21
		% of Total	0.0%	0.2%	0.5%	0.4%	0.1%	1.2%
	Disagree	Count	1	70	151	336	510	1068
		% of Total	0.1%	3.9%	8.4%	18.7%	28.4%	59.5%
	Nuetral	Count	0	24	48	111	152	335
		% of Total	0.0%	1.3%	2.7%	6.2%	8.5%	18.7%
	Agree	Count	0	16	85	85	57	243
		% of Total	0.0%	0.9%	4.7%	4.7%	3.2%	13.5%
	Strongly Agree	Count	0	10	34	45	38	127
		% of Total	0.0%	0.6%	1.9%	2.5%	2.1%	7.1%
Total		Count	1	124	327	584	758	1794
		% of Total	0.1%	6.9%	18.2%	32.6%	42.3%	100.0%



S2Insurance policymakers push for insurance refrorms especially to improve practices like the duty of disclosure

S3Through their decisions the Judiciary and the LRC influence the need to change insurance practice * Age of respondent Crosstabulation

			Age of respondent							Total
			18-24	25-34	35-44	45-54	55-64	65-74	75+	
S3Through their decisions the Judiciary and the LRC influence the need to change insurance practice	Strongly Disagree	Count	57	25	43	21	115	9	0	270
		% of Total	3.2%	1.4%	2.4%	1.2%	6.4%	0.5%	0.0%	15.1%
	Disagree	Count	158	65	143	70	348	34	0	818
		% of Total	8.8%	3.6%	8.0%	3.9%	19.4%	1.9%	0.0%	45.6%
	Nuetral	Count	76	55	73	26	132	9	2	373
		% of Total	4.2%	3.1%	4.1%	1.4%	7.4%	0.5%	0.1%	20.8%
	Agree	Count	20	70	56	37	34	7	0	224
		% of Total	1.1%	3.9%	3.1%	2.1%	1.9%	0.4%	0.0%	12.5%
	Strongly Agree	Count	10	35	35	17	9	3	0	109
		% of Total	0.6%	2.0%	2.0%	0.9%	0.5%	0.2%	0.0%	6.1%
Total		Count	321	250	350	171	638	62	2	1794
		% of Total	17.9%	13.9%	19.5%	9.5%	35.6%	3.5%	0.1%	100.0%

S3Through their decisions the Judiciary and the LRC influence the need to change insurance practice * Gender Crosstabulation

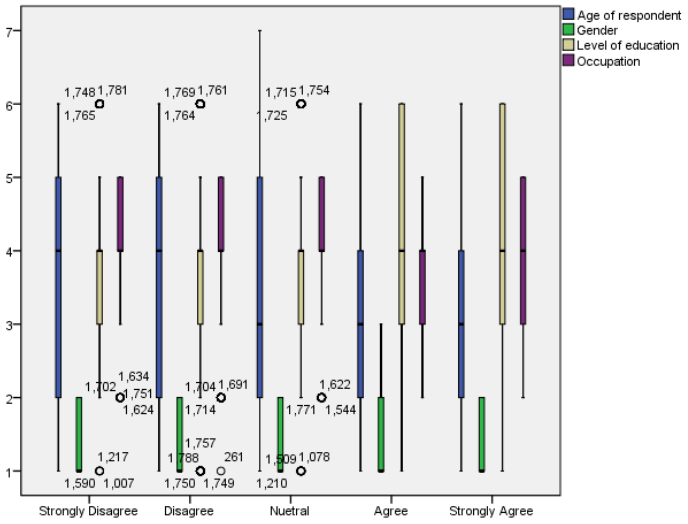
			Gender			Total
			Male	Female	Other	
S3Through their decisions the Judiciary and the LRC influence the need to change insurance practice	Strongly Disagree	Count	196	74	0	270
		% of Total	10.9%	4.1%	0.0%	15.1%
	Disagree	Count	565	253	0	818
		% of Total	31.5%	14.1%	0.0%	45.6%
	Nuetral	Count	246	127	0	373
		% of Total	13.7%	7.1%	0.0%	20.8%
	Agree	Count	130	93	1	224
		% of Total	7.2%	5.2%	0.1%	12.5%
	Strongly Agree	Count	67	42	0	109
		% of Total	3.7%	2.3%	0.0%	6.1%
Total		Count	1204	589	1	1794
		% of Total	67.1%	32.8%	0.1%	100.0%

S3Through their decisions the Judiciary and the LRC influence the need to change insurance practice * Level of education Crosstabulation

			Level of education						Total
			School leaving / SEC / Ordinary level (EQF level 1/2/3)	Advanced / Matriculation / Intermediate (EQF level 4)	Undergraduate / First degree (EQF level 5)	Bachelors / Hons (EQF level 6)	Masters / Post graduate (EQF level 7)	Doctorate (EQF level 8)	
S3Through their decisions the Judiciary and the LRC influence the need to change insurance practice	Strongly Disagree	Count	4	18	57	129	14	48	270
		% of Total	0.2%	1.0%	3.2%	7.2%	0.8%	2.7%	15.1%
	Disagree	Count	37	58	164	379	47	133	818
		% of Total	2.1%	3.2%	9.1%	21.1%	2.6%	7.4%	45.6%
	Nuetral	Count	13	37	96	140	26	61	373
		% of Total	0.7%	2.1%	5.4%	7.8%	1.4%	3.4%	20.8%
	Agree	Count	9	19	66	45	18	67	224
		% of Total	0.5%	1.1%	3.7%	2.5%	1.0%	3.7%	12.5%
	Strongly Agree	Count	4	16	31	24	6	28	109
		% of Total	0.2%	0.9%	1.7%	1.3%	0.3%	1.6%	6.1%
Total		Count	67	148	414	717	111	337	1794
		% of Total	3.7%	8.2%	23.1%	40.0%	6.2%	18.8%	100.0%

S3Through their decisions the Judiciary and the LRC influence the need to change insurance practice * Occupation Crosstabulation

			Occupation					Total
			Manual	Clerical	Managerial	Professional	Other	
S3Through their decisions the Judiciary and the LRC influence the need to change insurance practice	Strongly Disagree	Count	0	15	32	90	133	270
		% of Total	0.0%	0.8%	1.8%	5.0%	7.4%	15.1%
	Disagree	Count	1	54	124	255	384	818
		% of Total	0.1%	3.0%	6.9%	14.2%	21.4%	45.6%
	Nuetral	Count	0	29	61	113	170	373
		% of Total	0.0%	1.6%	3.4%	6.3%	9.5%	20.8%
	Agree	Count	0	20	76	87	41	224
		% of Total	0.0%	1.1%	4.2%	4.8%	2.3%	12.5%
	Strongly Agree	Count	0	6	34	39	30	109
		% of Total	0.0%	0.3%	1.9%	2.2%	1.7%	6.1%
Total		Count	1	124	327	584	758	1794
		% of Total	0.1%	6.9%	18.2%	32.6%	42.3%	100.0%



S3Through their decisions the Judiciary and the LRC influence the need to change insurance practice

S4The type of legal system has a bearing on the application of utmost good faith * Age of respondent Crosstabulation

			Age of respondent							Total
			18-24	25-34	35-44	45-54	55-64	65-74	75+	
S4The type of legal system has a bearing on the application of utmost good faith	Strongly Disagree	Count	1	2	8	4	2	0	0	17
		% of Total	0.1%	0.1%	0.4%	0.2%	0.1%	0.0%	0.0%	0.9%
	Disagree	Count	102	45	96	49	232	19	0	543
		% of Total	5.7%	2.5%	5.4%	2.7%	12.9%	1.1%	0.0%	30.3%
	Nuetral	Count	117	73	113	48	243	19	1	614
		% of Total	6.5%	4.1%	6.3%	2.7%	13.5%	1.1%	0.1%	34.2%
	Agree	Count	89	102	98	48	143	19	0	499
		% of Total	5.0%	5.7%	5.5%	2.7%	8.0%	1.1%	0.0%	27.8%
	Strongly Agree	Count	12	28	35	22	18	5	1	121
		% of Total	0.7%	1.6%	2.0%	1.2%	1.0%	0.3%	0.1%	6.7%
Total		Count	321	250	350	171	638	62	2	1794
		% of Total	17.9%	13.9%	19.5%	9.5%	35.6%	3.5%	0.1%	100.0%

S4The type of legal system has a bearing on the application of utmost good faith * Gender Crosstabulation

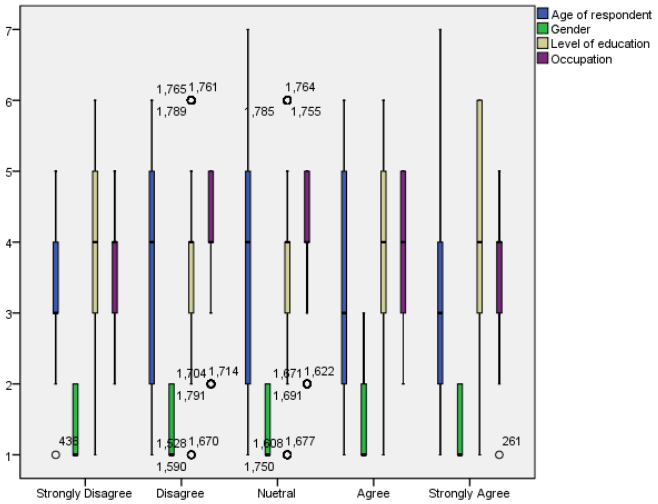
			Gender			Total
			Male	Female	Other	
S4The type of legal system has a bearing on the application of utmost good faith	Strongly Disagree	Count	9	8	0	17
		% of Total	0.5%	0.4%	0.0%	0.9%
	Disagree	Count	372	171	0	543
		% of Total	20.7%	9.5%	0.0%	30.3%
	Nuetral	Count	422	192	0	614
		% of Total	23.5%	10.7%	0.0%	34.2%
	Agree	Count	323	175	1	499
		% of Total	18.0%	9.8%	0.1%	27.8%
	Strongly Agree	Count	78	43	0	121
		% of Total	4.3%	2.4%	0.0%	6.7%
Total		Count	1204	589	1	1794
		% of Total	67.1%	32.8%	0.1%	100.0%

S4The type of legal system has a bearing on the application of utmost good faith * Level of education Crosstabulation

			Level of education						Total
			School leaving / SEC / Ordinary level (EQF level 1/2/3)	Advanced / Matriculation / Intermediate (EQF level 4)	Undergraduate / First degree (EQF level 5)	Bachelors / Hons (EQF level 6)	Masters / Post graduate (EQF level 7)	Doctorate (EQF level 8)	
S4The type of legal system has a bearing on the application of utmost good faith	Strongly Disagree	Count	2	2	4	4	2	3	17
		% of Total	0.1%	0.1%	0.2%	0.2%	0.1%	0.2%	0.9%
	Disagree	Count	11	38	112	251	30	101	543
		% of Total	0.6%	2.1%	6.2%	14.0%	1.7%	5.6%	30.3%
	Nuetral	Count	22	52	140	262	38	100	614
		% of Total	1.2%	2.9%	7.8%	14.6%	2.1%	5.6%	34.2%
	Agree	Count	22	47	132	165	33	100	499
		% of Total	1.2%	2.6%	7.4%	9.2%	1.8%	5.6%	27.8%
	Strongly Agree	Count	10	9	26	35	8	33	121
		% of Total	0.6%	0.5%	1.4%	2.0%	0.4%	1.8%	6.7%
Total		Count	67	148	414	717	111	337	1794
		% of Total	3.7%	8.2%	23.1%	40.0%	6.2%	18.8%	100.0%

S4The type of legal system has a bearing on the application of utmost good faith * Occupation Crosstabulation

			Occupation					Total
			Manual	Clerical	Managerial	Professional	Other	
S4The type of legal system has a bearing on the application of utmost good faith	Strongly Disagree	Count	0	1	6	9	1	17
		% of Total	0.0%	0.1%	0.3%	0.5%	0.1%	0.9%
	Disagree	Count	0	37	85	174	247	543
		% of Total	0.0%	2.1%	4.7%	9.7%	13.8%	30.3%
	Nuetral	Count	0	44	93	191	286	614
		% of Total	0.0%	2.5%	5.2%	10.6%	15.9%	34.2%
	Agree	Count	0	33	112	156	198	499
		% of Total	0.0%	1.8%	6.2%	8.7%	11.0%	27.8%
	Strongly Agree	Count	1	9	31	54	26	121
		% of Total	0.1%	0.5%	1.7%	3.0%	1.4%	6.7%
Total		Count	1	124	327	584	758	1794
		% of Total	0.1%	6.9%	18.2%	32.6%	42.3%	100.0%



S4The type of legal system has a bearing on the application of utmost good faith

S5Lack of satisfaction of Judiciary decisions and delays in settling insurance matters call for insurance reforms by the litigants * Age of respondent Crosstabulation

			Age of respondent							Total
			18-24	25-34	35-44	45-54	55-64	65-74	75+	
S5Lack of satisfaction of Judiciary decisions and delays in settling insurance matters call for insurance reforms by the litigants	Strongly Disagree	Count	55	23	44	21	116	9	0	268
		% of Total	3.1%	1.3%	2.5%	1.2%	6.5%	0.5%	0.0%	14.9%
	Disagree	Count	153	63	141	73	349	33	0	812
		% of Total	8.5%	3.5%	7.9%	4.1%	19.5%	1.8%	0.0%	45.3%
	Nuetral	Count	70	58	84	36	130	11	0	389
		% of Total	3.9%	3.2%	4.7%	2.0%	7.2%	0.6%	0.0%	21.7%
	Agree	Count	33	79	62	27	33	6	1	241
		% of Total	1.8%	4.4%	3.5%	1.5%	1.8%	0.3%	0.1%	13.4%
	Strongly Agree	Count	10	27	19	14	10	3	1	84
		% of Total	0.6%	1.5%	1.1%	0.8%	0.6%	0.2%	0.1%	4.7%
Total		Count	321	250	350	171	638	62	2	1794
		% of Total	17.9%	13.9%	19.5%	9.5%	35.6%	3.5%	0.1%	100.0%

S5Lack of satisfaction of Judiciary decisions and delays in settling insurance matters call for insurance reforms by the litigants * Gender Crosstabulation

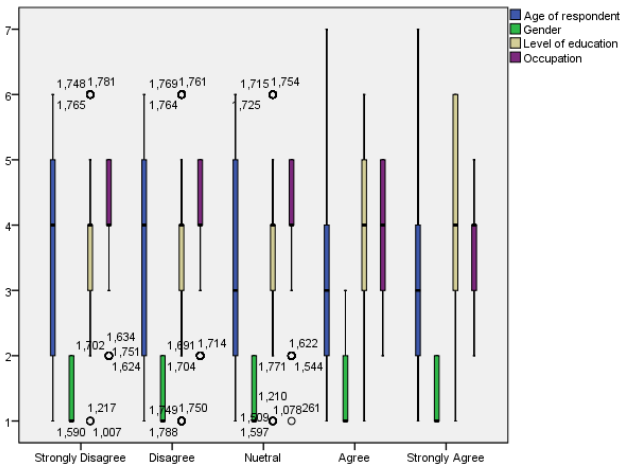
			Gender			Total
			Male	Female	Other	
S5Lack of satisfaction of Judiciary decisions and delays in settling insurance matters call for insurance reforms by the litigants	Strongly Disagree	Count	194	74	0	268
		% of Total	10.8%	4.1%	0.0%	14.9%
	Disagree	Count	562	250	0	812
		% of Total	31.3%	13.9%	0.0%	45.3%
	Nuetral	Count	256	133	0	389
		% of Total	14.3%	7.4%	0.0%	21.7%
	Agree	Count	136	104	1	241
		% of Total	7.6%	5.8%	0.1%	13.4%
	Strongly Agree	Count	56	28	0	84
		% of Total	3.1%	1.6%	0.0%	4.7%
Total		Count	1204	589	1	1794
		% of Total	67.1%	32.8%	0.1%	100.0%

S5Lack of satisfaction of Judiciary decisions and delays in settling insurance matters call for insurance reforms by the litigants * Level of education Crosstabulation

			Level of education						Total
			School leaving / SEC / Ordinary level (EQF level 1/2/3)	Advanced / Matriculation / Intermediate (EQF level 4)	Undergraduate / First degree (EQF level 5)	Bachelors / Hons (EQF level 6)	Masters / Post graduate (EQF level 7)	Doctorate (EQF level 8)	
S5Lack of satisfaction of Judiciary decisions and delays in settling insurance matters call for insurance reforms by the litigants	Strongly Disagree	Count	5	20	52	129	14	48	268
		% of Total	0.3%	1.1%	2.9%	7.2%	0.8%	2.7%	14.9%
	Disagree	Count	35	56	167	377	45	132	812
		% of Total	2.0%	3.1%	9.3%	21.0%	2.5%	7.4%	45.3%
	Nuetral	Count	11	39	96	147	22	74	389
		% of Total	0.6%	2.2%	5.4%	8.2%	1.2%	4.1%	21.7%
	Agree	Count	12	26	75	47	24	57	241
		% of Total	0.7%	1.4%	4.2%	2.6%	1.3%	3.2%	13.4%
	Strongly Agree	Count	4	7	24	17	6	26	84
		% of Total	0.2%	0.4%	1.3%	0.9%	0.3%	1.4%	4.7%
Total		Count	67	148	414	717	111	337	1794
		% of Total	3.7%	8.2%	23.1%	40.0%	6.2%	18.8%	100.0%

S5Lack of satisfaction of Judiciary decisions and delays in settling insurance matters call for insurance reforms by the litigants * Occupation Crosstabulation

			Occupation					Total
			Manual	Clerical	Managerial	Professional	Other	
S5Lack of satisfaction of Judiciary decisions and delays in settling insurance matters call for insurance reforms by the litigants	Strongly Disagree	Count	0	15	31	93	129	268
		% of Total	0.0%	0.8%	1.7%	5.2%	7.2%	14.9%
	Disagree	Count	0	55	129	250	378	812
		% of Total	0.0%	3.1%	7.2%	13.9%	21.1%	45.3%
	Nuetral	Count	1	28	68	126	166	389
		% of Total	0.1%	1.6%	3.8%	7.0%	9.3%	21.7%
	Agree	Count	0	21	66	86	68	241
		% of Total	0.0%	1.2%	3.7%	4.8%	3.8%	13.4%
	Strongly Agree	Count	0	5	33	29	17	84
		% of Total	0.0%	0.3%	1.8%	1.6%	0.9%	4.7%
Total		Count	1	124	327	584	758	1794
		% of Total	0.1%	6.9%	18.2%	32.6%	42.3%	100.0%



S5Lack of satisfaction of Judiciary decisions and delays in settling insurance matters call for insurance reforms by the litigants

S6Industry market players press for reforms to bring equity and fairness in insurance practice * Age of respondent Crosstabulation

			Age of respondent							Total
			18-24	25-34	35-44	45-54	55-64	65-74	75+	
S6Industry market players press for reforms to bring equity and fairness in insurance practice	Strongly Disagree	Count	1	2	6	2	4	0	0	15
		% of Total	0.1%	0.1%	0.3%	0.1%	0.2%	0.0%	0.0%	0.8%
	Disagree	Count	112	59	102	50	238	22	0	583
		% of Total	6.2%	3.3%	5.7%	2.8%	13.3%	1.2%	0.0%	32.5%
	Nuetral	Count	13	31	40	26	15	4	1	130
		% of Total	0.7%	1.7%	2.2%	1.4%	0.8%	0.2%	0.1%	7.2%
	Agree	Count	26	68	55	29	36	6	1	221
		% of Total	1.4%	3.8%	3.1%	1.6%	2.0%	0.3%	0.1%	12.3%
	Strongly Agree	Count	169	90	147	64	345	30	0	845
		% of Total	9.4%	5.0%	8.2%	3.6%	19.2%	1.7%	0.0%	47.1%
Total		Count	321	250	350	171	638	62	2	1794
		% of Total	17.9%	13.9%	19.5%	9.5%	35.6%	3.5%	0.1%	100.0%

S6Industry market players press for reforms to bring equity and fairness in insurance practice * Gender Crosstabulation

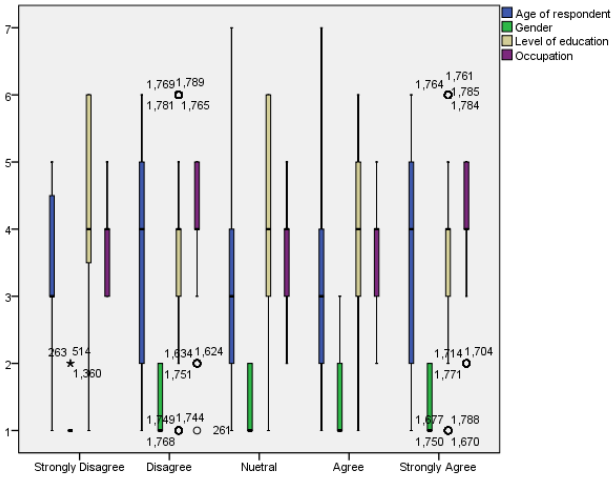
			Gender			Total
			Male	Female	Other	
S6Industry market players press for reforms to bring equity and fairness in insurance practice	Strongly Disagree	Count	12	3	0	15
		% of Total	0.7%	0.2%	0.0%	0.8%
	Disagree	Count	422	161	0	583
		% of Total	23.5%	9.0%	0.0%	32.5%
	Nuetral	Count	70	60	0	130
		% of Total	3.9%	3.3%	0.0%	7.2%
	Agree	Count	119	101	1	221
		% of Total	6.6%	5.6%	0.1%	12.3%
	Strongly Agree	Count	581	264	0	845
		% of Total	32.4%	14.7%	0.0%	47.1%
Total		Count	1204	589	1	1794
		% of Total	67.1%	32.8%	0.1%	100.0%

S6Industry market players press for reforms to bring equity and fairness in insurance practice * Level of education Crosstabulation

			Level of education						Total
			School leaving / SEC / Ordinary level (EQF level 1/2/3)	Advanced / Matriculation / Intermediate (EQF level 4)	Undergraduate / First degree (EQF level 5)	Bachelors / Hons (EQF level 6)	Masters / Post graduate (EQF level 7)	Doctorate (EQF level 8)	
S6Industry market players press for reforms to bring equity and fairness in insurance practice	Strongly Disagree	Count	2	0	2	4	1	6	15
		% of Total	0.1%	0.0%	0.1%	0.2%	0.1%	0.3%	0.8%
	Disagree	Count	20	44	116	263	34	106	583
		% of Total	1.1%	2.5%	6.5%	14.7%	1.9%	5.9%	32.5%
	Nuetral	Count	3	13	37	31	12	34	130
		% of Total	0.2%	0.7%	2.1%	1.7%	0.7%	1.9%	7.2%
	Agree	Count	9	25	70	54	11	52	221
		% of Total	0.5%	1.4%	3.9%	3.0%	0.6%	2.9%	12.3%
	Strongly Agree	Count	33	66	189	365	53	139	845
		% of Total	1.8%	3.7%	10.5%	20.3%	3.0%	7.7%	47.1%
Total		Count	67	148	414	717	111	337	1794
		% of Total	3.7%	8.2%	23.1%	40.0%	6.2%	18.8%	100.0%

S6Industry market players press for reforms to bring equity and fairness in insurance practice * Occupation Crosstabulation

			Occupation					Total
			Manual	Clerical	Managerial	Professional	Other	
S6Industry market players press for reforms to bring equity and fairness in insurance practice	Strongly Disagree	Count	0	0	6	7	2	15
		% of Total	0.0%	0.0%	0.3%	0.4%	0.1%	0.8%
	Disagree	Count	1	32	85	196	269	583
		% of Total	0.1%	1.8%	4.7%	10.9%	15.0%	32.5%
	Nuetral	Count	0	10	49	46	25	130
		% of Total	0.0%	0.6%	2.7%	2.6%	1.4%	7.2%
	Agree	Count	0	22	66	82	51	221
		% of Total	0.0%	1.2%	3.7%	4.6%	2.8%	12.3%
	Strongly Agree	Count	0	60	121	253	411	845
		% of Total	0.0%	3.3%	6.7%	14.1%	22.9%	47.1%
Total		Count	1	124	327	584	758	1794
		% of Total	0.1%	6.9%	18.2%	32.6%	42.3%	100.0%



S6Industry market players press for reforms to bring equity and fairness in insurance practice

S7The regulator has a stronghold in insurance pratice introducing fairness and transperancy which might lead to reform * Age of respondent Crosstabulation

			Age of respondent							Total
			18-24	25-34	35-44	45-54	55-64	65-74	75+	
S7The regulator has a stronghold in insurance pratice introducing fairness and transperancy which might lead to reform	Strongly Disagree	Count	1	1	1	3	3	0	0	9
		% of Total	0.1%	0.1%	0.1%	0.2%	0.2%	0.0%	0.0%	0.5%
	Disagree	Count	57	32	55	27	128	13	1	313
		% of Total	3.2%	1.8%	3.1%	1.5%	7.1%	0.7%	0.1%	17.4%
	Nuetral	Count	8	24	22	19	16	1	0	90
		% of Total	0.4%	1.3%	1.2%	1.1%	0.9%	0.1%	0.0%	5.0%
	Agree	Count	87	89	104	46	135	15	1	477
		% of Total	4.8%	5.0%	5.8%	2.6%	7.5%	0.8%	0.1%	26.6%
	Strongly Agree	Count	168	104	168	76	356	33	0	905
		% of Total	9.4%	5.8%	9.4%	4.2%	19.8%	1.8%	0.0%	50.4%
Total		Count	321	250	350	171	638	62	2	1794
		% of Total	17.9%	13.9%	19.5%	9.5%	35.6%	3.5%	0.1%	100.0%

S7The regulator has a stronghold in insurance pratice introducing fairness and transperancy which might lead to reform * Gender Crosstabulation

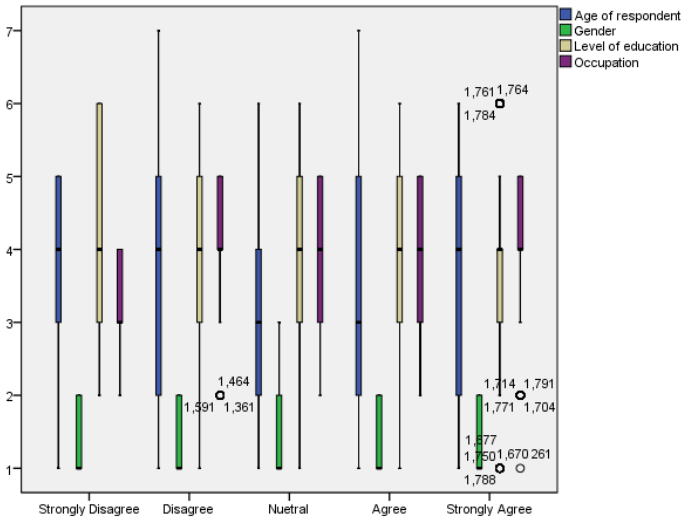
			Gender			Total
			Male	Female	Other	
S7The regulator has a stronghold in insurance pratice introducing fairness and transperancy which might lead to reform	Strongly Disagree	Count	6	3	0	9
		% of Total	0.3%	0.2%	0.0%	0.5%
	Disagree	Count	223	90	0	313
		% of Total	12.4%	5.0%	0.0%	17.4%
	Nuetral	Count	47	42	1	90
		% of Total	2.6%	2.3%	0.1%	5.0%
	Agree	Count	313	164	0	477
		% of Total	17.4%	9.1%	0.0%	26.6%
	Strongly Agree	Count	615	290	0	905
		% of Total	34.3%	16.2%	0.0%	50.4%
Total		Count	1204	589	1	1794
		% of Total	67.1%	32.8%	0.1%	100.0%

S7The regulator has a stronghold in insurance pratice introducing fairness and transperancy which might lead to reform * Level of education Crosstabulation

			Level of education						Total
			School leaving / SEC / Ordinary level (EQF level 1/2/3)	Advanced / Matriculation / Intermediate (EQF level 4)	Undergraduate / First degree (EQF level 5)	Bachelors / Hons (EQF level 6)	Masters / Post graduate (EQF level 7)	Doctorate (EQF level 8)	
S7The regulator has a stronghold in insurance pratice introducing fairness and transperancy which might lead to reform	Strongly Disagree	Count	0	1	2	3	0	3	9
		% of Total	0.0%	0.1%	0.1%	0.2%	0.0%	0.2%	0.5%
	Disagree	Count	15	26	60	132	20	60	313
		% of Total	0.8%	1.4%	3.3%	7.4%	1.1%	3.3%	17.4%
	Nuetral	Count	1	8	30	26	9	16	90
		% of Total	0.1%	0.4%	1.7%	1.4%	0.5%	0.9%	5.0%
	Agree	Count	12	44	118	170	30	103	477
		% of Total	0.7%	2.5%	6.6%	9.5%	1.7%	5.7%	26.6%
	Strongly Agree	Count	39	69	204	386	52	155	905
		% of Total	2.2%	3.8%	11.4%	21.5%	2.9%	8.6%	50.4%
Total		Count	67	148	414	717	111	337	1794
		% of Total	3.7%	8.2%	23.1%	40.0%	6.2%	18.8%	100.0%

S7The regulator has a stronghold in insurance pratice introducing fairness and transperancy which might lead to reform * Occupation Crosstabulation

			Occupation					Total
			Manual	Clerical	Managerial	Professional	Other	
S7The regulator has a stronghold in insurance pratice introducing fairness and transperancy which might lead to reform	Strongly Disagree	Count	0	2	3	4	0	9
		% of Total	0.0%	0.1%	0.2%	0.2%	0.0%	0.5%
	Disagree	Count	0	19	47	108	139	313
		% of Total	0.0%	1.1%	2.6%	6.0%	7.7%	17.4%
	Nuetral	Count	0	4	29	33	24	90
		% of Total	0.0%	0.2%	1.6%	1.8%	1.3%	5.0%
	Agree	Count	0	35	105	157	180	477
		% of Total	0.0%	2.0%	5.9%	8.8%	10.0%	26.6%
	Strongly Agree	Count	1	64	143	282	415	905
		% of Total	0.1%	3.6%	8.0%	15.7%	23.1%	50.4%
Total		Count	1	124	327	584	758	1794
		% of Total	0.1%	6.9%	18.2%	32.6%	42.3%	100.0%



S7The regulator has a stronghold in insurance pratice introducing fairness and transperancy which might lead to reform

S8When placing the responsibility of utmost good faith on the consumer the insurers are not achieving contract equity increasing litgation * Age of respondent Crosstabulation

			Age of respondent							Total
			18-24	25-34	35-44	45-54	55-64	65-74	75+	
S8When placing the responsibility of utmost good faith on the consumer the insurers are not achieving contract equity increasing litgation	Agree	Count	313	228	330	158	632	57	2	1720
		% of Total	17.4%	12.7%	18.4%	8.8%	35.2%	3.2%	0.1%	95.9%
	Strongly Agree	Count	8	22	20	13	6	5	0	74
		% of Total	0.4%	1.2%	1.1%	0.7%	0.3%	0.3%	0.0%	4.1%
Total		Count	321	250	350	171	638	62	2	1794
		% of Total	17.9%	13.9%	19.5%	9.5%	35.6%	3.5%	0.1%	100.0%

S8When placing the responsibility of utmost good faith on the consumer the insurers are not achieving contract equity increasing litgation * Gender Crosstabulation

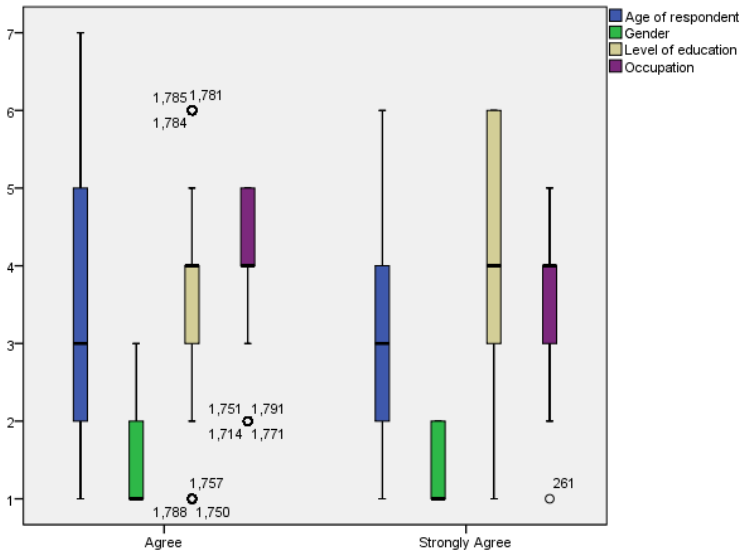
			Gender			Total
			Male	Female	Other	
S8When placing the responsibility of utmost good faith on the consumer the insurers are not achieving contract equity increasing litgation	Agree	Count	1158	561	1	1720
		% of Total	64.5%	31.3%	0.1%	95.9%
	Strongly Agree	Count	46	28	0	74
		% of Total	2.6%	1.6%	0.0%	4.1%
Total		Count	1204	589	1	1794
		% of Total	67.1%	32.8%	0.1%	100.0%

S8When placing the responsibility of utmost good faith on the consumer the insurers are not achieving contract equity increasing litgation * Level of education Crosstabulation

			Level of education						Total
			School leaving / SEC / Ordinary level (EQF level 1/2/3)	Advanced / Matriculation / Intermediate (EQF level 4)	Undergraduate / First degree (EQF level 5)	Bachelors / Hons (EQF level 6)	Masters / Post graduate (EQF level 7)	Doctorate (EQF level 8)	
S8When placing the responsibility of utmost good faith on the consumer the insurers are not achieving contract equity increasing litgation	Agree	Count	60	142	394	702	107	315	1720
		% of Total	3.3%	7.9%	22.0%	39.1%	6.0%	17.6%	95.9%
	Strongly Agree	Count	7	6	20	15	4	22	74
		% of Total	0.4%	0.3%	1.1%	0.8%	0.2%	1.2%	4.1%
Total		Count	67	148	414	717	111	337	1794
		% of Total	3.7%	8.2%	23.1%	40.0%	6.2%	18.8%	100.0%

S8When placing the responsibility of utmost good faith on the consumer the insurers are not achieving contract equity increasing litgation * Occupation Crosstabulation

			Occupation					Total
			Manual	Clerical	Managerial	Professional	Other	
S8When placing the responsibility of utmost good faith on the consumer the insurers are not achieving contract equity increasing litgation	Agree	Count	0	118	309	552	741	1720
		% of Total	0.0%	6.6%	17.2%	30.8%	41.3%	95.9%
	Strongly Agree	Count	1	6	18	32	17	74
		% of Total	0.1%	0.3%	1.0%	1.8%	0.9%	4.1%
Total		Count	1	124	327	584	758	1794
		% of Total	0.1%	6.9%	18.2%	32.6%	42.3%	100.0%



S8When placing the responsibility of utmost good faith on the consumer the insurers are not achieving contract equity increasing litgation

S9The media plays an influential role in brining changes in insurance practice as it voices concerns * Age of respondent Crosstabulation

			Age of respondent							Total
			18-24	25-34	35-44	45-54	55-64	65-74	75+	
S9The media plays an influential role in brining changes in insurance practice as it voices concerns	Strongly Disagree	Count	155	64	126	57	333	29	0	764
		% of Total	8.6%	3.6%	7.0%	3.2%	18.6%	1.6%	0.0%	42.6%
	Disagree	Count	112	61	100	47	248	19	0	587
		% of Total	6.2%	3.4%	5.6%	2.6%	13.8%	1.1%	0.0%	32.7%
	Nuetral	Count	12	25	39	25	27	3	1	132
		% of Total	0.7%	1.4%	2.2%	1.4%	1.5%	0.2%	0.1%	7.4%
	Agree	Count	22	59	69	34	22	8	1	215
		% of Total	1.2%	3.3%	3.8%	1.9%	1.2%	0.4%	0.1%	12.0%
	Strongly Agree	Count	20	41	16	8	8	3	0	96
		% of Total	1.1%	2.3%	0.9%	0.4%	0.4%	0.2%	0.0%	5.4%
Total		Count	321	250	350	171	638	62	2	1794
		% of Total	17.9%	13.9%	19.5%	9.5%	35.6%	3.5%	0.1%	100.0%

S9The media plays an influential role in brining changes in insurance practice as it voices concerns * Gender Crosstabulation

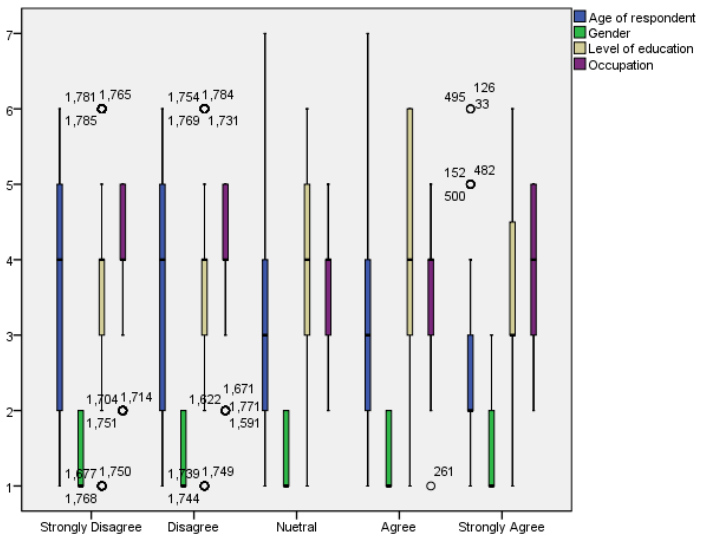
			Gender			Total
			Male	Female	Other	
S9The media plays an influential role in brining changes in insurance practice as it voices concerns	Strongly Disagree	Count	540	224	0	764
		% of Total	30.1%	12.5%	0.0%	42.6%
	Disagree	Count	418	169	0	587
		% of Total	23.3%	9.4%	0.0%	32.7%
	Nuetral	Count	70	62	0	132
		% of Total	3.9%	3.5%	0.0%	7.4%
	Agree	Count	118	97	0	215
		% of Total	6.6%	5.4%	0.0%	12.0%
	Strongly Agree	Count	58	37	1	96
		% of Total	3.2%	2.1%	0.1%	5.4%
Total		Count	1204	589	1	1794
		% of Total	67.1%	32.8%	0.1%	100.0%

S9The media plays an influential role in brining changes in insurance practice as it voices concerns * Level of education Crosstabulation

			Level of education						Total
			School leaving / SEC / Ordinary level (EQF level 1/2/3)	Advanced / Matriculation / Intermediate (EQF level 4)	Undergraduate / First degree (EQF level 5)	Bachelors / Hons (EQF level 6)	Masters / Post graduate (EQF level 7)	Doctorate (EQF level 8)	
S9The media plays an influential role in brining changes in insurance practice as it voices concerns	Strongly Disagree	Count	27	53	156	360	43	125	764
		% of Total	1.5%	3.0%	8.7%	20.1%	2.4%	7.0%	42.6%
	Disagree	Count	21	44	116	265	35	106	587
		% of Total	1.2%	2.5%	6.5%	14.8%	2.0%	5.9%	32.7%
	Nuetral	Count	5	19	35	31	13	29	132
		% of Total	0.3%	1.1%	2.0%	1.7%	0.7%	1.6%	7.4%
	Agree	Count	6	24	65	47	14	59	215
		% of Total	0.3%	1.3%	3.6%	2.6%	0.8%	3.3%	12.0%
	Strongly Agree	Count	8	8	42	14	6	18	96
		% of Total	0.4%	0.4%	2.3%	0.8%	0.3%	1.0%	5.4%
Total		Count	67	148	414	717	111	337	1794
		% of Total	3.7%	8.2%	23.1%	40.0%	6.2%	18.8%	100.0%

S9The media plays an influential role in brining changes in insurance practice as it voices concerns * Occupation Crosstabulation

			Occupation					Total
			Manual	Clerical	Managerial	Professional	Other	
S9The media plays an influential role in brining changes in insurance practice as it voices concerns	Strongly Disagree	Count	0	54	97	235	378	764
		% of Total	0.0%	3.0%	5.4%	13.1%	21.1%	42.6%
	Disagree	Count	0	31	87	196	273	587
		% of Total	0.0%	1.7%	4.8%	10.9%	15.2%	32.7%
	Nuetral	Count	0	9	55	46	22	132
		% of Total	0.0%	0.5%	3.1%	2.6%	1.2%	7.4%
	Agree	Count	1	18	69	81	46	215
		% of Total	0.1%	1.0%	3.8%	4.5%	2.6%	12.0%
	Strongly Agree	Count	0	12	19	26	39	96
		% of Total	0.0%	0.7%	1.1%	1.4%	2.2%	5.4%
Total		Count	1	124	327	584	758	1794
		% of Total	0.1%	6.9%	18.2%	32.6%	42.3%	100.0%



S9The media plays an influential role in brining changes in insurance practice as it voices concerns

S10Consumers today have more rights and thus litigate more increasing the need to change insurance practices like utmost good faith * Age of respondent Crosstabulation

			Age of respondent							Total
			18-24	25-34	35-44	45-54	55-64	65-74	75+	
S10Consumers today have more rights and thus litigate more increasing the need to change insurance practices like utmost good faith	Strongly Disagree	Count	57	27	43	24	115	9	0	275
		% of Total	3.2%	1.5%	2.4%	1.3%	6.4%	0.5%	0.0%	15.3%
	Disagree	Count	58	31	59	22	119	14	0	303
		% of Total	3.2%	1.7%	3.3%	1.2%	6.6%	0.8%	0.0%	16.9%
	Nuetral	Count	161	76	147	63	349	30	0	826
		% of Total	9.0%	4.2%	8.2%	3.5%	19.5%	1.7%	0.0%	46.0%
	Agree	Count	24	68	67	40	36	6	2	243
		% of Total	1.3%	3.8%	3.7%	2.2%	2.0%	0.3%	0.1%	13.5%
	Strongly Agree	Count	21	48	34	22	19	3	0	147
		% of Total	1.2%	2.7%	1.9%	1.2%	1.1%	0.2%	0.0%	8.2%
Total		Count	321	250	350	171	638	62	2	1794
		% of Total	17.9%	13.9%	19.5%	9.5%	35.6%	3.5%	0.1%	100.0%

S10Consumers today have more rights and thus litigate more increasing the need to change insurance practices like utmost good faith * Gender Crosstabulation

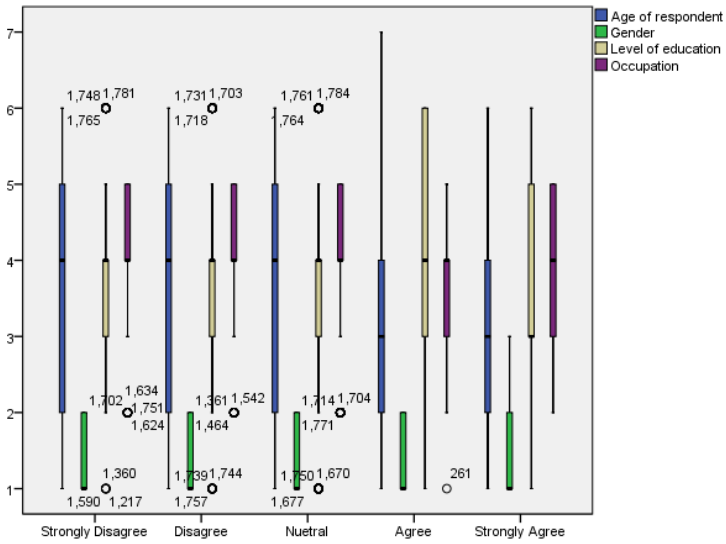
			Gender			Total
			Male	Female	Other	
S10Consumers today have more rights and thus litigate more increasing the need to change insurance practices like utmost good faith	Strongly Disagree	Count	197	78	0	275
		% of Total	11.0%	4.3%	0.0%	15.3%
	Disagree	Count	215	88	0	303
		% of Total	12.0%	4.9%	0.0%	16.9%
	Nuetral	Count	578	248	0	826
		% of Total	32.2%	13.8%	0.0%	46.0%
	Agree	Count	132	111	0	243
		% of Total	7.4%	6.2%	0.0%	13.5%
	Strongly Agree	Count	82	64	1	147
		% of Total	4.6%	3.6%	0.1%	8.2%
Total		Count	1204	589	1	1794
		% of Total	67.1%	32.8%	0.1%	100.0%

S10Consumers today have more rights and thus litigate more increasing the need to change insurance practices like utmost good faith * Level of education Crosstabulation

			Level of education						Total
			School leaving / SEC / Ordinary level (EQF level 1/2/3)	Advanced / Matriculation / Intermediate (EQF level 4)	Undergraduate / First degree (EQF level 5)	Bachelors / Hons (EQF level 6)	Masters / Post graduate (EQF level 7)	Doctorate (EQF level 8)	
S10Consumers today have more rights and thus litigate more increasing the need to change insurance practices like utmost good faith	Strongly Disagree	Count	5	21	54	129	14	52	275
		% of Total	0.3%	1.2%	3.0%	7.2%	0.8%	2.9%	15.3%
	Disagree	Count	15	27	58	132	18	53	303
		% of Total	0.8%	1.5%	3.2%	7.4%	1.0%	3.0%	16.9%
	Nuetral	Count	32	60	177	371	52	134	826
		% of Total	1.8%	3.3%	9.9%	20.7%	2.9%	7.5%	46.0%
	Agree	Count	7	21	78	55	20	62	243
		% of Total	0.4%	1.2%	4.3%	3.1%	1.1%	3.5%	13.5%
	Strongly Agree	Count	8	19	47	30	7	36	147
		% of Total	0.4%	1.1%	2.6%	1.7%	0.4%	2.0%	8.2%
Total		Count	67	148	414	717	111	337	1794
		% of Total	3.7%	8.2%	23.1%	40.0%	6.2%	18.8%	100.0%

S10Consumers today have more rights and thus litigate more increasing the need to change insurance practices like utmost good faith * Occupation Crosstabulation

			Occupation					Total
			Manual	Clerical	Managerial	Professional	Other	
S10Consumers today have more rights and thus litigate more increasing the need to change insurance practices like utmost good faith	Strongly Disagree	Count	0	18	35	92	130	275
		% of Total	0.0%	1.0%	2.0%	5.1%	7.2%	15.3%
	Disagree	Count	0	15	47	104	137	303
		% of Total	0.0%	0.8%	2.6%	5.8%	7.6%	16.9%
	Nuetral	Count	0	55	124	250	397	826
		% of Total	0.0%	3.1%	6.9%	13.9%	22.1%	46.0%
	Agree	Count	1	20	72	95	55	243
		% of Total	0.1%	1.1%	4.0%	5.3%	3.1%	13.5%
	Strongly Agree	Count	0	16	49	43	39	147
		% of Total	0.0%	0.9%	2.7%	2.4%	2.2%	8.2%
Total		Count	1	124	327	584	758	1794
		% of Total	0.1%	6.9%	18.2%	32.6%	42.3%	100.0%



S10Consumers today have more rights and thus litigate more increasing the need to change insurance practices like utmost good faith

S11Insurers would consider to alter the practice of utmost good faith if court cases increase * Age of respondent Crosstabulation

Count

		Age of respondent							Total
		18-24	25-34	35-44	45-54	55-64	65-74	75+	
S11Insurers would consider to alter the practice of utmost good faith if court cases increase	Strongly Disagree	110	47	86	39	236	21	0	539
	Disagree	110	57	106	45	246	22	0	586
	Nuetral	65	53	84	47	121	12	1	383
	Agree	25	68	56	33	26	5	1	214
	Strongly Agree	11	25	18	7	9	2	0	72
Total		321	250	350	171	638	62	2	1794

S11Insurers would consider to alter the practice of utmost good faith if court cases increase * Gender Crosstabulation

Count

		Gender			Total
		Male	Female	Other	
S11Insurers would consider to alter the practice of utmost good faith if court cases increase	Strongly Disagree	387	152	0	539
	Disagree	416	170	0	586
	Nuetral	235	148	0	383
	Agree	121	92	1	214
	Strongly Agree	45	27	0	72
Total		1204	589	1	1794

S11Insurers would consider to alter the practice of utmost good faith if court cases increase * Level of education Crosstabulation

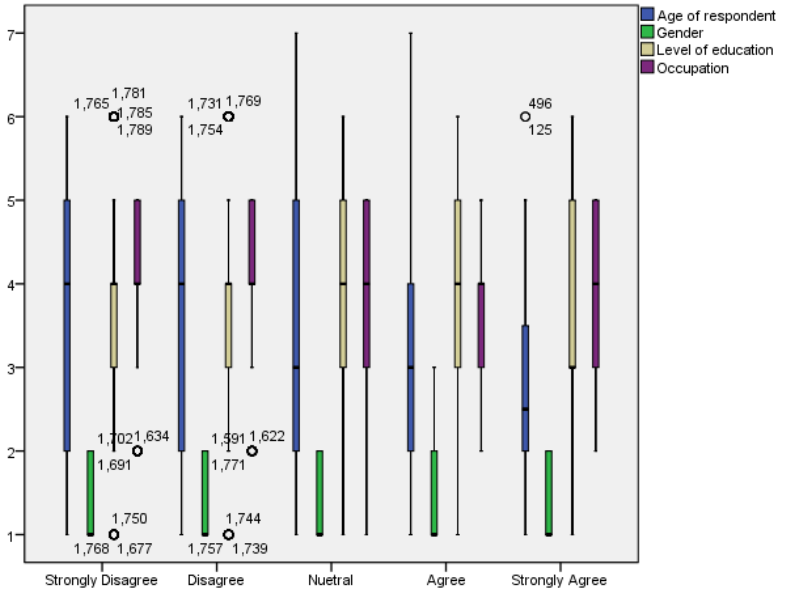
Count

		Level of education						Total
		School leaving / SEC / Ordinary level (EQF level 1/2/3)	Advanced / Matriculation / Intermediate (EQF level 4)	Undergraduate / First degree (EQF level 5)	Bachelors / Hons (EQF level 6)	Masters / Post graduate (EQF level 7)	Doctorate (EQF level 8)	
S11Insurers would consider to alter the practice of utmost good faith if court cases increase	Strongly Disagree	21	38	109	249	30	92	539
	Disagree	24	48	113	262	35	104	586
	Nuetral	11	32	99	140	29	72	383
	Agree	8	23	65	52	14	52	214
	Strongly Agree	3	7	28	14	3	17	72
Total		67	148	414	717	111	337	1794

S11Insurers would consider to alter the practice of utmost good faith if court cases increase * Occupation Crosstabulation

Count

		Occupation					Total
		Manual	Clerical	Managerial	Professional	Other	
S11Insurers would consider to alter the practice of utmost good faith if court cases increase	Strongly Disagree	0	38	65	174	262	539
	Disagree	0	29	90	199	268	586
	Nuetral	1	31	81	114	156	383
	Agree	0	22	66	77	49	214
	Strongly Agree	0	4	25	20	23	72
Total		1	124	327	584	758	1794



S11Insurers would consider to alter the practice of utmost good faith if court cases increase

S12Different practices of utmost good faith in different countries restricts cross border insurance * Age of respondent Crosstabulation

			Age of respondent							Total
			18-24	25-34	35-44	45-54	55-64	65-74	75+	
S12Different practices of utmost good faith in different countries restricts cross border insurance	Strongly Disagree	Count	2	4	7	2	8	0	0	23
		% of Total	0.1%	0.2%	0.4%	0.1%	0.4%	0.0%	0.0%	1.3%
	Disagree	Count	266	116	230	106	575	51	0	1344
		% of Total	14.8%	6.5%	12.8%	5.9%	32.1%	2.8%	0.0%	74.9%
	Nuetral	Count	14	52	46	23	16	1	2	154
		% of Total	0.8%	2.9%	2.6%	1.3%	0.9%	0.1%	0.1%	8.6%
	Agree	Count	24	62	53	31	27	7	0	204
		% of Total	1.3%	3.5%	3.0%	1.7%	1.5%	0.4%	0.0%	11.4%
	Strongly Agree	Count	15	16	14	9	12	3	0	69
		% of Total	0.8%	0.9%	0.8%	0.5%	0.7%	0.2%	0.0%	3.8%
Total		Count	321	250	350	171	638	62	2	1794
		% of Total	17.9%	13.9%	19.5%	9.5%	35.6%	3.5%	0.1%	100.0%

S12Different practices of utmost good faith in different countries restricts cross border insurance * Gender Crosstabulation

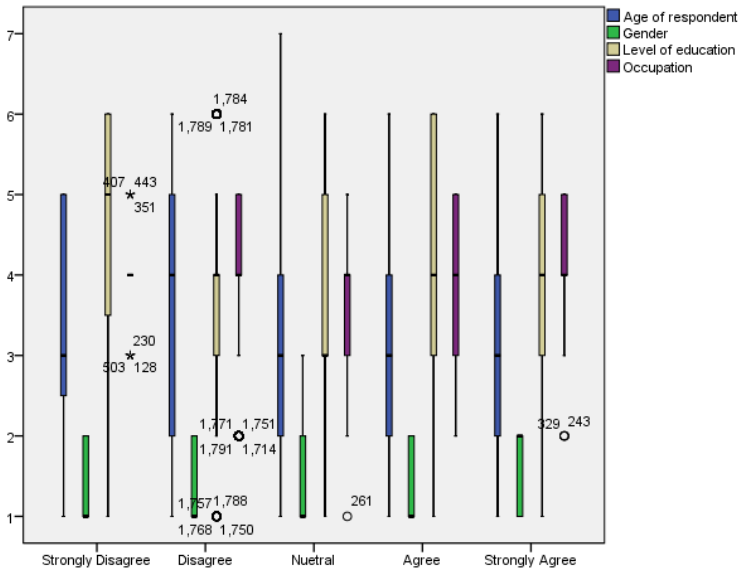
			Gender			Total
			Male	Female	Other	
S12Different practices of utmost good faith in different countries restricts cross border insurance	Strongly Disagree	Count	16	7	0	23
		% of Total	0.9%	0.4%	0.0%	1.3%
	Disagree	Count	953	391	0	1344
		% of Total	53.1%	21.8%	0.0%	74.9%
	Nuetral	Count	95	58	1	154
		% of Total	5.3%	3.2%	0.1%	8.6%
	Agree	Count	106	98	0	204
		% of Total	5.9%	5.5%	0.0%	11.4%
	Strongly Agree	Count	34	35	0	69
		% of Total	1.9%	2.0%	0.0%	3.8%
Total		Count	1204	589	1	1794
		% of Total	67.1%	32.8%	0.1%	100.0%

S12Different practices of utmost good faith in different countries restricts cross border insurance * Level of education Crosstabulation

			Level of education						Total
			School leaving / SEC / Ordinary level (EQF level 1/2/3)	Advanced / Matriculation / Intermediate (EQF level 4)	Undergraduate / First degree (EQF level 5)	Bachelors / Hons (EQF level 6)	Masters / Post graduate (EQF level 7)	Doctorate (EQF level 8)	
S12Different practices of utmost good faith in different countries restricts cross border insurance	Strongly Disagree	Count	2	0	4	5	1	11	23
		% of Total	0.1%	0.0%	0.2%	0.3%	0.1%	0.6%	1.3%
	Disagree	Count	45	98	268	631	77	225	1344
		% of Total	2.5%	5.5%	14.9%	35.2%	4.3%	12.5%	74.9%
	Nuetral	Count	12	22	52	27	11	30	154
		% of Total	0.7%	1.2%	2.9%	1.5%	0.6%	1.7%	8.6%
	Agree	Count	6	23	66	39	14	56	204
		% of Total	0.3%	1.3%	3.7%	2.2%	0.8%	3.1%	11.4%
	Strongly Agree	Count	2	5	24	15	8	15	69
		% of Total	0.1%	0.3%	1.3%	0.8%	0.4%	0.8%	3.8%
Total		Count	67	148	414	717	111	337	1794
		% of Total	3.7%	8.2%	23.1%	40.0%	6.2%	18.8%	100.0%

S12Different practices of utmost good faith in different countries restricts cross border insurance * Occupation Crosstabulation

			Occupation					Total
			Manual	Clerical	Managerial	Professional	Other	
S12Different practices of utmost good faith in different countries restricts cross border insurance	Strongly Disagree	Count	0	0	4	16	3	23
		% of Total	0.0%	0.0%	0.2%	0.9%	0.2%	1.3%
	Disagree	Count	0	86	188	421	649	1344
		% of Total	0.0%	4.8%	10.5%	23.5%	36.2%	74.9%
	Nuetral	Count	1	18	55	50	30	154
		% of Total	0.1%	1.0%	3.1%	2.8%	1.7%	8.6%
	Agree	Count	0	17	66	68	53	204
		% of Total	0.0%	0.9%	3.7%	3.8%	3.0%	11.4%
	Strongly Agree	Count	0	3	14	29	23	69
		% of Total	0.0%	0.2%	0.8%	1.6%	1.3%	3.8%
Total		Count	1	124	327	584	758	1794
		% of Total	0.1%	6.9%	18.2%	32.6%	42.3%	100.0%



S12Different practices of utmost good faith in different countries restricts cross border insurance

S13International competition and depndency on certain countries like the UK will force the dependent domicile to follow reforms * Age of respondent Crosstabulation

			Age of respondent							Total
			18-24	25-34	35-44	45-54	55-64	65-74	75+	
S13International competition and depndency on certain countries like the UK will force the dependent domicile to follow reforms	Strongly Disagree	Count	0	0	9	3	6	0	0	18
		% of Total	0.0%	0.0%	0.5%	0.2%	0.3%	0.0%	0.0%	1.0%
	Disagree	Count	105	52	101	45	229	18	0	550
		% of Total	5.9%	2.9%	5.6%	2.5%	12.8%	1.0%	0.0%	30.7%
	Nuetral	Count	21	46	33	26	15	3	1	145
		% of Total	1.2%	2.6%	1.8%	1.4%	0.8%	0.2%	0.1%	8.1%
	Agree	Count	185	129	192	88	376	39	1	1010
		% of Total	10.3%	7.2%	10.7%	4.9%	21.0%	2.2%	0.1%	56.3%
	Strongly Agree	Count	10	23	15	9	12	2	0	71
		% of Total	0.6%	1.3%	0.8%	0.5%	0.7%	0.1%	0.0%	4.0%
Total		Count	321	250	350	171	638	62	2	1794
		% of Total	17.9%	13.9%	19.5%	9.5%	35.6%	3.5%	0.1%	100.0%

S13International competition and depndency on certain countries like the UK will force the dependent domicile to follow reforms * Gender Crosstabulation

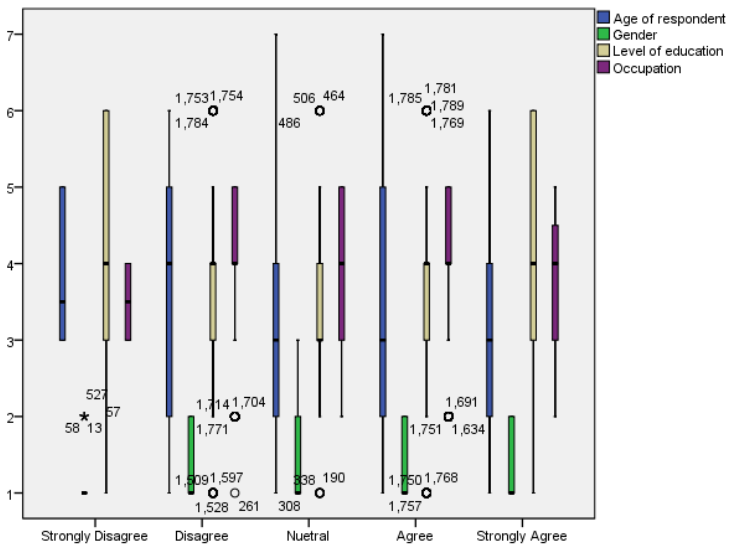
			Gender			Total
			Male	Female	Other	
S13International competition and depndency on certain countries like the UK will force the dependent domicile to follow reforms	Strongly Disagree	Count	14	4	0	18
		% of Total	0.8%	0.2%	0.0%	1.0%
	Disagree	Count	384	166	0	550
		% of Total	21.4%	9.3%	0.0%	30.7%
	Nuetral	Count	74	70	1	145
		% of Total	4.1%	3.9%	0.1%	8.1%
	Agree	Count	692	318	0	1010
		% of Total	38.6%	17.7%	0.0%	56.3%
	Strongly Agree	Count	40	31	0	71
		% of Total	2.2%	1.7%	0.0%	4.0%
Total		Count	1204	589	1	1794
		% of Total	67.1%	32.8%	0.1%	100.0%

S13International competition and depndency on certain countries like the UK will force the dependent domicile to follow reforms * Level of education Crosstabulation

			Level of education						Total
			School leaving / SEC / Ordinary level (EQF level 1/2/3)	Advanced / Matriculation / Intermediate (EQF level 4)	Undergraduate / First degree (EQF level 5)	Bachelors / Hons (EQF level 6)	Masters / Post graduate (EQF level 7)	Doctorate (EQF level 8)	
S13International competition and depndency on certain countries like the UK will force the dependent domicile to follow reforms	Strongly Disagree	Count	1	0	4	6	0	7	18
		% of Total	0.1%	0.0%	0.2%	0.3%	0.0%	0.4%	1.0%
	Disagree	Count	17	40	119	245	32	97	550
		% of Total	0.9%	2.2%	6.6%	13.7%	1.8%	5.4%	30.7%
	Nuetral	Count	7	16	50	36	12	24	145
		% of Total	0.4%	0.9%	2.8%	2.0%	0.7%	1.3%	8.1%
	Agree	Count	39	87	218	418	63	185	1010
		% of Total	2.2%	4.8%	12.2%	23.3%	3.5%	10.3%	56.3%
	Strongly Agree	Count	3	5	23	12	4	24	71
		% of Total	0.2%	0.3%	1.3%	0.7%	0.2%	1.3%	4.0%
Total		Count	67	148	414	717	111	337	1794
		% of Total	3.7%	8.2%	23.1%	40.0%	6.2%	18.8%	100.0%

S13International competition and depndency on certain countries like the UK will force the dependent domicile to follow reforms * Occupation Crosstabulation

			Occupation					Total
			Manual	Clerical	Managerial	Professional	Other	
S13International competition and depndency on certain countries like the UK will force the dependent domicile to follow reforms	Strongly Disagree	Count	0	0	9	9	0	18
		% of Total	0.0%	0.0%	0.5%	0.5%	0.0%	1.0%
	Disagree	Count	1	35	76	174	264	550
		% of Total	0.1%	2.0%	4.2%	9.7%	14.7%	30.7%
	Nuetral	Count	0	16	49	42	38	145
		% of Total	0.0%	0.9%	2.7%	2.3%	2.1%	8.1%
	Agree	Count	0	67	173	332	438	1010
		% of Total	0.0%	3.7%	9.6%	18.5%	24.4%	56.3%
	Strongly Agree	Count	0	6	20	27	18	71
		% of Total	0.0%	0.3%	1.1%	1.5%	1.0%	4.0%
Total		Count	1	124	327	584	758	1794
		% of Total	0.1%	6.9%	18.2%	32.6%	42.3%	100.0%



S13International competition and depndency on certain countries like the UK will force the dependent domicile to follow reforms

S14EU harmonisation exerts pressure to initiate reform in insurance * Age of respondent Crosstabulation

			Age of respondent							Total
			18-24	25-34	35-44	45-54	55-64	65-74	75+	
S14EU harmonisation exerts pressure to initiate reform in insurance	Strongly Disagree	Count	2	2	2	0	0	0	0	6
		% of Total	0.1%	0.1%	0.1%	0.0%	0.0%	0.0%	0.0%	0.3%
	Disagree	Count	101	48	95	36	221	23	0	524
		% of Total	5.6%	2.7%	5.3%	2.0%	12.3%	1.3%	0.0%	29.2%
	Nuetral	Count	167	81	137	69	356	29	0	839
		% of Total	9.3%	4.5%	7.6%	3.8%	19.8%	1.6%	0.0%	46.8%
	Agree	Count	30	62	71	37	36	4	0	240
		% of Total	1.7%	3.5%	4.0%	2.1%	2.0%	0.2%	0.0%	13.4%
	Strongly Agree	Count	21	57	45	29	25	6	2	185
		% of Total	1.2%	3.2%	2.5%	1.6%	1.4%	0.3%	0.1%	10.3%
Total		Count	321	250	350	171	638	62	2	1794
		% of Total	17.9%	13.9%	19.5%	9.5%	35.6%	3.5%	0.1%	100.0%

S14EU harmonisation exerts pressure to initiate reform in insurance * Gender Crosstabulation

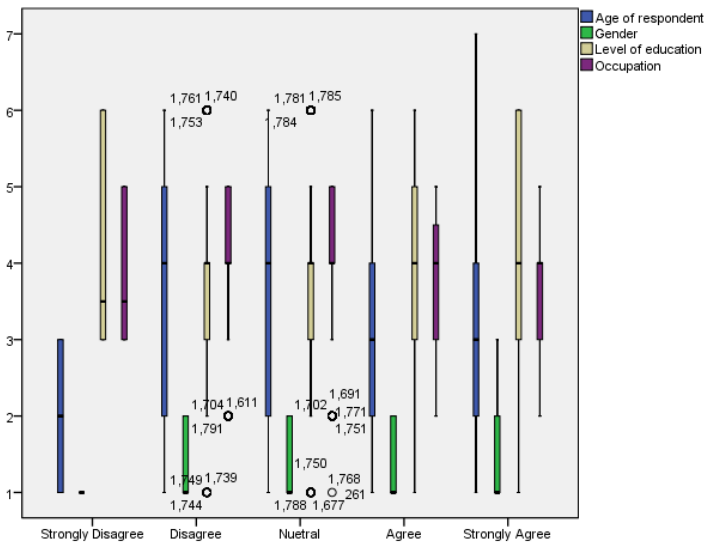
			Gender			Total
			Male	Female	Other	
S14EU harmonisation exerts pressure to initiate reform in insurance	Strongly Disagree	Count	6	0	0	6
		% of Total	0.3%	0.0%	0.0%	0.3%
	Disagree	Count	370	154	0	524
		% of Total	20.6%	8.6%	0.0%	29.2%
	Nuetral	Count	601	238	0	839
		% of Total	33.5%	13.3%	0.0%	46.8%
	Agree	Count	132	108	0	240
		% of Total	7.4%	6.0%	0.0%	13.4%
	Strongly Agree	Count	95	89	1	185
		% of Total	5.3%	5.0%	0.1%	10.3%
Total		Count	1204	589	1	1794
		% of Total	67.1%	32.8%	0.1%	100.0%

S14EU harmonisation exerts pressure to initiate reform in insurance * Level of education Crosstabulation

			Level of education						Total
			School leaving / SEC / Ordinary level (EQF level 1/2/3)	Advanced / Matriculation / Intermediate (EQF level 4)	Undergraduate / First degree (EQF level 5)	Bachelors / Hons (EQF level 6)	Masters / Post graduate (EQF level 7)	Doctorate (EQF level 8)	
S14EU harmonisation exerts pressure to initiate reform in insurance	Strongly Disagree	Count	0	0	3	1	0	2	6
		% of Total	0.0%	0.0%	0.2%	0.1%	0.0%	0.1%	0.3%
	Disagree	Count	19	38	105	244	31	87	524
		% of Total	1.1%	2.1%	5.9%	13.6%	1.7%	4.8%	29.2%
	Nuetral	Count	33	61	172	382	48	143	839
		% of Total	1.8%	3.4%	9.6%	21.3%	2.7%	8.0%	46.8%
	Agree	Count	7	30	76	52	17	58	240
		% of Total	0.4%	1.7%	4.2%	2.9%	0.9%	3.2%	13.4%
	Strongly Agree	Count	8	19	58	38	15	47	185
		% of Total	0.4%	1.1%	3.2%	2.1%	0.8%	2.6%	10.3%
Total		Count	67	148	414	717	111	337	1794
		% of Total	3.7%	8.2%	23.1%	40.0%	6.2%	18.8%	100.0%

S14EU harmonisation exerts pressure to initiate reform in insurance * Occupation Crosstabulation

			Occupation					Total
			Manual	Clerical	Managerial	Professional	Other	
S14EU harmonisation exerts pressure to initiate reform in insurance	Strongly Disagree	Count	0	0	3	1	2	6
		% of Total	0.0%	0.0%	0.2%	0.1%	0.1%	0.3%
	Disagree	Count	0	36	69	165	254	524
		% of Total	0.0%	2.0%	3.8%	9.2%	14.2%	29.2%
	Nuetral	Count	1	52	114	270	402	839
		% of Total	0.1%	2.9%	6.4%	15.1%	22.4%	46.8%
	Agree	Count	0	21	77	82	60	240
		% of Total	0.0%	1.2%	4.3%	4.6%	3.3%	13.4%
	Strongly Agree	Count	0	15	64	66	40	185
		% of Total	0.0%	0.8%	3.6%	3.7%	2.2%	10.3%
Total		Count	1	124	327	584	758	1794
		% of Total	0.1%	6.9%	18.2%	32.6%	42.3%	100.0%



S14EU harmonisation exerts pressure to initiate reform in insurance

S15Reinsurers influence the insurance market and also any changes in the practice of utmost good faith * Age of respondent Crosstabulation

			Age of respondent							Total
			18-24	25-34	35-44	45-54	55-64	65-74	75+	
S15Reinsurers influence the insurance market and also any changes in the practice of utmost good faith	Strongly Disagree	Count	52	25	49	20	123	7	0	276
		% of Total	2.9%	1.4%	2.7%	1.1%	6.9%	0.4%	0.0%	15.4%
	Disagree	Count	155	77	152	69	351	33	0	837
		% of Total	8.6%	4.3%	8.5%	3.8%	19.6%	1.8%	0.0%	46.7%
	Nuetral	Count	15	29	29	17	15	3	0	108
		% of Total	0.8%	1.6%	1.6%	0.9%	0.8%	0.2%	0.0%	6.0%
	Agree	Count	83	90	97	54	137	17	2	480
		% of Total	4.6%	5.0%	5.4%	3.0%	7.6%	0.9%	0.1%	26.8%
	Strongly Agree	Count	16	29	23	11	12	2	0	93
		% of Total	0.9%	1.6%	1.3%	0.6%	0.7%	0.1%	0.0%	5.2%
Total		Count	321	250	350	171	638	62	2	1794
		% of Total	17.9%	13.9%	19.5%	9.5%	35.6%	3.5%	0.1%	100.0%

S15Reinsurers influence the insurance market and also any changes in the practice of utmost good faith * Gender Crosstabulation

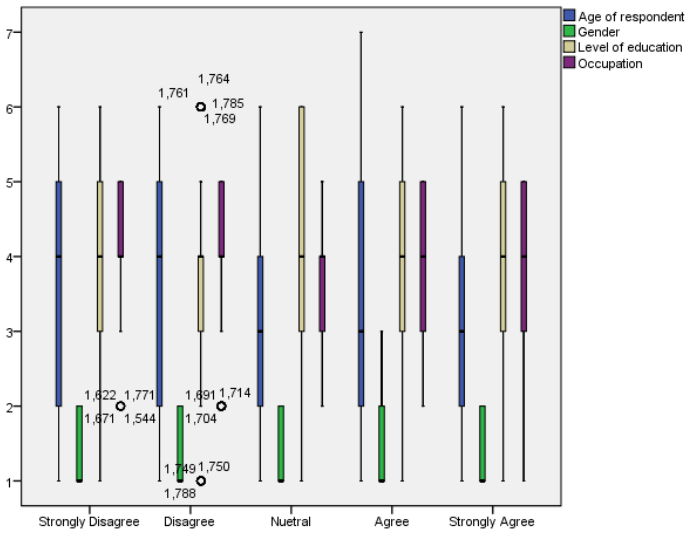
			Gender			Total
			Male	Female	Other	
S15Reinsurers influence the insurance market and also any changes in the practice of utmost good faith	Strongly Disagree	Count	201	75	0	276
		% of Total	11.2%	4.2%	0.0%	15.4%
	Disagree	Count	581	256	0	837
		% of Total	32.4%	14.3%	0.0%	46.7%
	Nuetral	Count	61	47	0	108
		% of Total	3.4%	2.6%	0.0%	6.0%
	Agree	Count	313	166	1	480
		% of Total	17.4%	9.3%	0.1%	26.8%
	Strongly Agree	Count	48	45	0	93
		% of Total	2.7%	2.5%	0.0%	5.2%
Total		Count	1204	589	1	1794
		% of Total	67.1%	32.8%	0.1%	100.0%

S15Reinsurers influence the insurance market and also any changes in the practice of utmost good faith * Level of education Crosstabulation

			Level of education						Total
			School leaving / SEC / Ordinary level (EQF level 1/2/3)	Advanced / Matriculation / Intermediate (EQF level 4)	Undergraduate / First degree (EQF level 5)	Bachelors / Hons (EQF level 6)	Masters / Post graduate (EQF level 7)	Doctorate (EQF level 8)	
S15Reinsurers influence the insurance market and also any changes in the practice of utmost good faith	Strongly Disagree	Count	7	21	52	126	18	52	276
		% of Total	0.4%	1.2%	2.9%	7.0%	1.0%	2.9%	15.4%
	Disagree	Count	38	62	172	385	46	134	837
		% of Total	2.1%	3.5%	9.6%	21.5%	2.6%	7.5%	46.7%
	Nuetral	Count	4	6	37	25	7	29	108
		% of Total	0.2%	0.3%	2.1%	1.4%	0.4%	1.6%	6.0%
	Agree	Count	14	51	120	162	34	99	480
		% of Total	0.8%	2.8%	6.7%	9.0%	1.9%	5.5%	26.8%
	Strongly Agree	Count	4	8	33	19	6	23	93
		% of Total	0.2%	0.4%	1.8%	1.1%	0.3%	1.3%	5.2%
Total		Count	67	148	414	717	111	337	1794
		% of Total	3.7%	8.2%	23.1%	40.0%	6.2%	18.8%	100.0%

S15Reinsurers influence the insurance market and also any changes in the practice of utmost good faith * Occupation Crosstabulation

			Occupation					Total
			Manual	Clerical	Managerial	Professional	Other	
S15Reinsurers influence the insurance market and also any changes in the practice of utmost good faith	Strongly Disagree	Count	0	15	37	91	133	276
		% of Total	0.0%	0.8%	2.1%	5.1%	7.4%	15.4%
	Disagree	Count	0	57	134	258	388	837
		% of Total	0.0%	3.2%	7.5%	14.4%	21.6%	46.7%
	Nuetral	Count	0	6	38	40	24	108
		% of Total	0.0%	0.3%	2.1%	2.2%	1.3%	6.0%
	Agree	Count	0	40	86	166	188	480
		% of Total	0.0%	2.2%	4.8%	9.3%	10.5%	26.8%
	Strongly Agree	Count	1	6	32	29	25	93
		% of Total	0.1%	0.3%	1.8%	1.6%	1.4%	5.2%
Total		Count	1	124	327	584	758	1794
		% of Total	0.1%	6.9%	18.2%	32.6%	42.3%	100.0%



S15Reinsurers influence the insurance market and also any changes in the practice of utmost good faith

S16The need for modernisation in the insurance industry will initiate the need to reform in insurance * Age of respondent Crosstabulation

			Age of respondent							Total
			18-24	25-34	35-44	45-54	55-64	65-74	75+	
S16The need for modernisation in the insurance industry will initiate the need to reform in insurance	Strongly Disagree	Count	0	1	4	0	0	0	0	5
		% of Total	0.0%	0.1%	0.2%	0.0%	0.0%	0.0%	0.0%	0.3%
	Disagree	Count	108	52	90	40	240	19	0	549
		% of Total	6.0%	2.9%	5.0%	2.2%	13.4%	1.1%	0.0%	30.6%
	Nuetral	Count	57	38	62	37	112	12	2	320
		% of Total	3.2%	2.1%	3.5%	2.1%	6.2%	0.7%	0.1%	17.8%
	Agree	Count	135	106	155	75	266	25	0	762
		% of Total	7.5%	5.9%	8.6%	4.2%	14.8%	1.4%	0.0%	42.5%
	Strongly Agree	Count	21	53	39	19	20	6	0	158
		% of Total	1.2%	3.0%	2.2%	1.1%	1.1%	0.3%	0.0%	8.8%
Total		Count	321	250	350	171	638	62	2	1794
		% of Total	17.9%	13.9%	19.5%	9.5%	35.6%	3.5%	0.1%	100.0%

S16The need for modernisation in the insurance industry will initiate the need to reform in insurance * Gender Crosstabulation

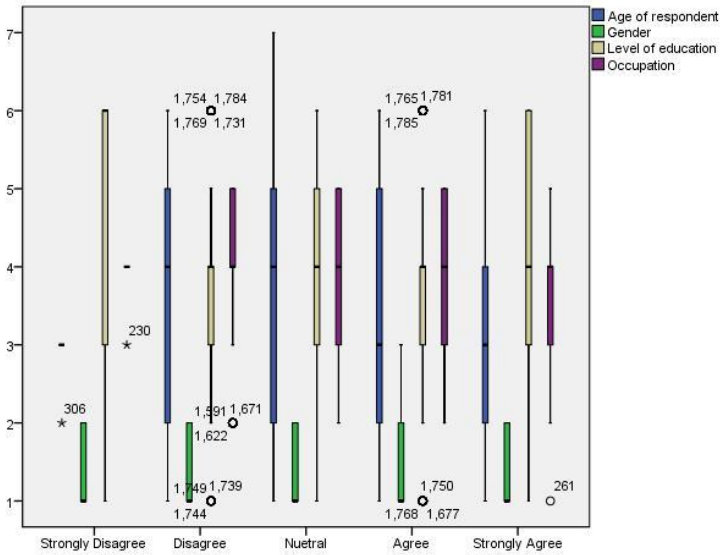
			Gender			Total
			Male	Female	Other	
S16The need for modernisation in the insurance industry will initiate the need to reform in insurance	Strongly Disagree	Count	3	2	0	5
		% of Total	0.2%	0.1%	0.0%	0.3%
	Disagree	Count	396	153	0	549
		% of Total	22.1%	8.5%	0.0%	30.6%
	Nuetral	Count	212	108	0	320
		% of Total	11.8%	6.0%	0.0%	17.8%
	Agree	Count	494	267	1	762
		% of Total	27.5%	14.9%	0.1%	42.5%
	Strongly Agree	Count	99	59	0	158
		% of Total	5.5%	3.3%	0.0%	8.8%
Total		Count	1204	589	1	1794
		% of Total	67.1%	32.8%	0.1%	100.0%

S16The need for modernisation in the insurance industry will initiate the need to reform in insurance * Level of education Crosstabulation

			Level of education						Total
			School leaving / SEC / Ordinary level (EQF level 1/2/3)	Advanced / Matriculation / Intermediate (EQF level 4)	Undergraduate / First degree (EQF level 5)	Bachelors / Hons (EQF level 6)	Masters / Post graduate (EQF level 7)	Doctorate (EQF level 8)	
S16The need for modernisation in the insurance industry will initiate the need to reform in insurance	Strongly Disagree	Count	1	0	1	0	0	3	5
		% of Total	0.1%	0.0%	0.1%	0.0%	0.0%	0.2%	0.3%
	Disagree	Count	20	44	110	255	30	90	549
		% of Total	1.1%	2.5%	6.1%	14.2%	1.7%	5.0%	30.6%
	Nuetral	Count	10	23	72	129	21	65	320
		% of Total	0.6%	1.3%	4.0%	7.2%	1.2%	3.6%	17.8%
	Agree	Count	30	67	177	302	52	134	762
		% of Total	1.7%	3.7%	9.9%	16.8%	2.9%	7.5%	42.5%
	Strongly Agree	Count	6	14	54	31	8	45	158
		% of Total	0.3%	0.8%	3.0%	1.7%	0.4%	2.5%	8.8%
Total		Count	67	148	414	717	111	337	1794
		% of Total	3.7%	8.2%	23.1%	40.0%	6.2%	18.8%	100.0%

S16The need for modernisation in the insurance industry will initiate the need to reform in insurance * Occupation Crosstabulation

			Occupation					Total
			Manual	Clerical	Managerial	Professional	Other	
S16The need for modernisation in the insurance industry will initiate the need to reform in insurance	Strongly Disagree	Count	0	0	1	4	0	5
		% of Total	0.0%	0.0%	0.1%	0.2%	0.0%	0.3%
	Disagree	Count	0	29	67	180	273	549
		% of Total	0.0%	1.6%	3.7%	10.0%	15.2%	30.6%
	Nuetral	Count	0	24	61	102	133	320
		% of Total	0.0%	1.3%	3.4%	5.7%	7.4%	17.8%
	Agree	Count	0	56	153	239	314	762
		% of Total	0.0%	3.1%	8.5%	13.3%	17.5%	42.5%
	Strongly Agree	Count	1	15	45	59	38	158
		% of Total	0.1%	0.8%	2.5%	3.3%	2.1%	8.8%
Total		Count	1	124	327	584	758	1794
		% of Total	0.1%	6.9%	18.2%	32.6%	42.3%	100.0%



S16The need for modernisation in the insurance industry will initiate the need to reform in insurance

S17In view of technology and social media collecting information changed and correspondingly so should the prinicple of utmost good faith * Age of respondent Crosstabulation

			Age of respondent							Total
			18-24	25-34	35-44	45-54	55-64	65-74	75+	
S17In view of technology and social media collecting information changed and correspondingly so should the prinicple of utmost good faith	Strongly Disagree	Count	1	9	11	8	7	1	0	37
		% of Total	0.1%	0.5%	0.6%	0.4%	0.4%	0.1%	0.0%	2.1%
	Disagree	Count	56	37	60	25	127	10	1	316
		% of Total	3.1%	2.1%	3.3%	1.4%	7.1%	0.6%	0.1%	17.6%
	Nuetral	Count	63	46	74	32	110	12	0	337
		% of Total	3.5%	2.6%	4.1%	1.8%	6.1%	0.7%	0.0%	18.8%
	Agree	Count	180	118	177	91	382	36	1	985
		% of Total	10.0%	6.6%	9.9%	5.1%	21.3%	2.0%	0.1%	54.9%
	Strongly Agree	Count	21	40	28	15	12	3	0	119
		% of Total	1.2%	2.2%	1.6%	0.8%	0.7%	0.2%	0.0%	6.6%
Total		Count	321	250	350	171	638	62	2	1794
		% of Total	17.9%	13.9%	19.5%	9.5%	35.6%	3.5%	0.1%	100.0%

S17In view of technology and social media collecting information changed and correspondingly so should the prinicple of utmost good faith * Gender Crosstabulation

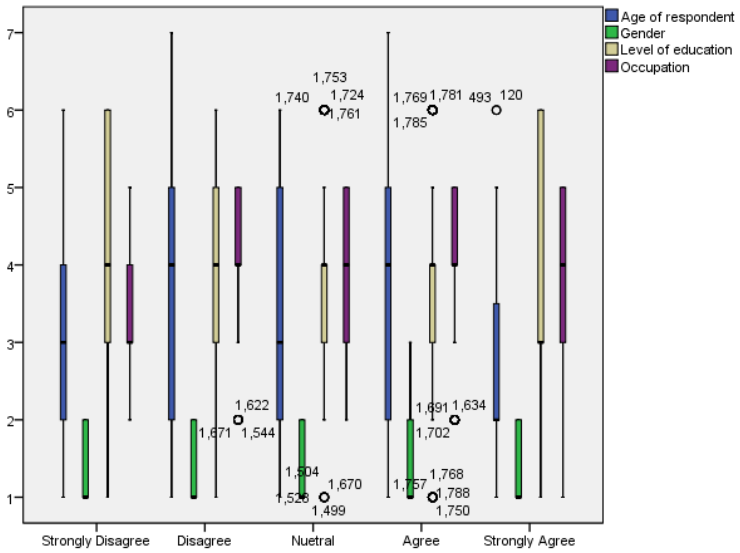
			Gender			Total
			Male	Female	Other	
S17In view of technology and social media collecting information changed and correspondingly so should the prinicple of utmost good faith	Strongly Disagree	Count	24	13	0	37
		% of Total	1.3%	0.7%	0.0%	2.1%
	Disagree	Count	227	89	0	316
		% of Total	12.7%	5.0%	0.0%	17.6%
	Nuetral	Count	212	125	0	337
		% of Total	11.8%	7.0%	0.0%	18.8%
	Agree	Count	679	305	1	985
		% of Total	37.8%	17.0%	0.1%	54.9%
	Strongly Agree	Count	62	57	0	119
		% of Total	3.5%	3.2%	0.0%	6.6%
Total		Count	1204	589	1	1794
		% of Total	67.1%	32.8%	0.1%	100.0%

S17In view of technology and social media collecting information changed and correspondingly so should the prinicple of utmost good faith * Level of education Crosstabulation

			Level of education						Total
			School leaving / SEC / Ordinary level (EQF level 1/2/3)	Advanced / Matriculation / Intermediate (EQF level 4)	Undergraduate / First degree (EQF level 5)	Bachelors / Hons (EQF level 6)	Masters / Post graduate (EQF level 7)	Doctorate (EQF level 8)	
S17In view of technology and social media collecting information changed and correspondingly so should the prinicple of utmost good faith	Strongly Disagree	Count	1	6	5	10	4	11	37
		% of Total	0.1%	0.3%	0.3%	0.6%	0.2%	0.6%	2.1%
	Disagree	Count	10	26	62	132	20	66	316
		% of Total	0.6%	1.4%	3.5%	7.4%	1.1%	3.7%	17.6%
	Nuetral	Count	11	24	89	131	19	63	337
		% of Total	0.6%	1.3%	5.0%	7.3%	1.1%	3.5%	18.8%
	Agree	Count	38	84	208	427	62	166	985
		% of Total	2.1%	4.7%	11.6%	23.8%	3.5%	9.3%	54.9%
	Strongly Agree	Count	7	8	50	17	6	31	119
		% of Total	0.4%	0.4%	2.8%	0.9%	0.3%	1.7%	6.6%
Total		Count	67	148	414	717	111	337	1794
		% of Total	3.7%	8.2%	23.1%	40.0%	6.2%	18.8%	100.0%

S17In view of technology and social media collecting information changed and correspondingly so should the prinicple of utmost good faith * Occupation Crosstabulation

			Occupation					Total
			Manual	Clerical	Managerial	Professional	Other	
S17In view of technology and social media collecting information changed and correspondingly so should the prinicple of utmost good faith	Strongly Disagree	Count	0	3	17	15	2	37
		% of Total	0.0%	0.2%	0.9%	0.8%	0.1%	2.1%
	Disagree	Count	0	16	44	116	140	316
		% of Total	0.0%	0.9%	2.5%	6.5%	7.8%	17.6%
	Nuetral	Count	0	31	59	99	148	337
		% of Total	0.0%	1.7%	3.3%	5.5%	8.2%	18.8%
	Agree	Count	0	63	180	313	429	985
		% of Total	0.0%	3.5%	10.0%	17.4%	23.9%	54.9%
	Strongly Agree	Count	1	11	27	41	39	119
		% of Total	0.1%	0.6%	1.5%	2.3%	2.2%	6.6%
Total		Count	1	124	327	584	758	1794
		% of Total	0.1%	6.9%	18.2%	32.6%	42.3%	100.0%



S17In view of technology and social media collecting information changed and correspondingly so should the prinicple of utmost good faith

S18Electronic processes and tech systems auch as insurtech have rendered utmost good faith obsolete * Age of respondent Crosstabulation

			Age of respondent							Total
			18-24	25-34	35-44	45-54	55-64	65-74	75+	
S18Electronic processes and tech systems auch as insurtech have rendered utmost good faith obsolete	Strongly Disagree	Count	2	7	20	10	8	3	1	51
		% of Total	0.1%	0.4%	1.1%	0.6%	0.4%	0.2%	0.1%	2.8%
	Disagree	Count	155	96	159	69	345	31	1	856
		% of Total	8.6%	5.4%	8.9%	3.8%	19.2%	1.7%	0.1%	47.7%
	Nuetral	Count	78	65	84	38	135	11	0	411
		% of Total	4.3%	3.6%	4.7%	2.1%	7.5%	0.6%	0.0%	22.9%
	Agree	Count	69	56	83	44	139	14	0	405
		% of Total	3.8%	3.1%	4.6%	2.5%	7.7%	0.8%	0.0%	22.6%
	Strongly Agree	Count	17	26	4	10	11	3	0	71
		% of Total	0.9%	1.4%	0.2%	0.6%	0.6%	0.2%	0.0%	4.0%
Total		Count	321	250	350	171	638	62	2	1794
		% of Total	17.9%	13.9%	19.5%	9.5%	35.6%	3.5%	0.1%	100.0%

S18Electronic processes and tech systems auch as insurtech have rendered utmost good faith obsolete * Gender Crosstabulation

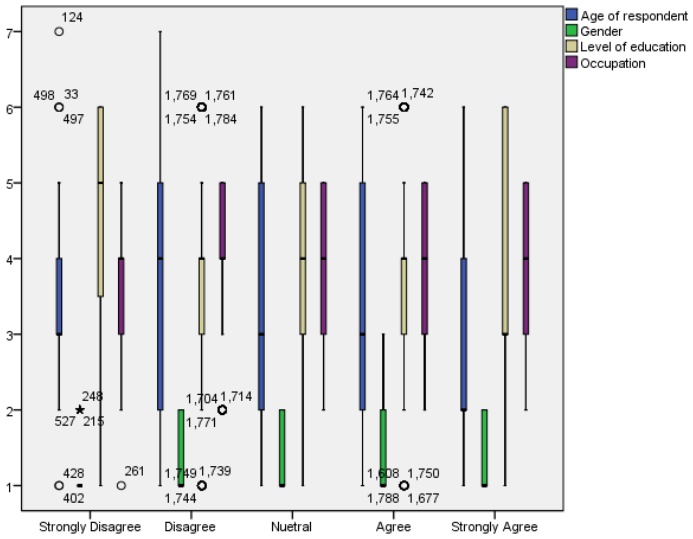
			Gender			Total
			Male	Female	Other	
S18Electronic processes and tech systems auch as insurtech have rendered utmost good faith obsolete	Strongly Disagree	Count	42	9	0	51
		% of Total	2.3%	0.5%	0.0%	2.8%
	Disagree	Count	606	250	0	856
		% of Total	33.8%	13.9%	0.0%	47.7%
	Nuetral	Count	261	150	0	411
		% of Total	14.5%	8.4%	0.0%	22.9%
	Agree	Count	257	147	1	405
		% of Total	14.3%	8.2%	0.1%	22.6%
	Strongly Agree	Count	38	33	0	71
		% of Total	2.1%	1.8%	0.0%	4.0%
Total		Count	1204	589	1	1794
		% of Total	67.1%	32.8%	0.1%	100.0%

S18Electronic processes and tech systems auch as insurtech have rendered utmost good faith obsolete * Level of education Crosstabulation

			Level of education						Total
			School leaving / SEC / Ordinary level (EQF level 1/2/3)	Advanced / Matriculation / Intermediate (EQF level 4)	Undergraduate / First degree (EQF level 5)	Bachelors / Hons (EQF level 6)	Masters / Post graduate (EQF level 7)	Doctorate (EQF level 8)	
S18Electronic processes and tech systems auch as insurtech have rendered utmost good faith obsolete	Strongly Disagree	Count	4	3	6	11	7	20	51
		% of Total	0.2%	0.2%	0.3%	0.6%	0.4%	1.1%	2.8%
	Disagree	Count	28	66	172	380	56	154	856
		% of Total	1.6%	3.7%	9.6%	21.2%	3.1%	8.6%	47.7%
	Nuetral	Count	10	36	98	162	25	80	411
		% of Total	0.6%	2.0%	5.5%	9.0%	1.4%	4.5%	22.9%
	Agree	Count	22	39	106	156	20	62	405
		% of Total	1.2%	2.2%	5.9%	8.7%	1.1%	3.5%	22.6%
	Strongly Agree	Count	3	4	32	8	3	21	71
		% of Total	0.2%	0.2%	1.8%	0.4%	0.2%	1.2%	4.0%
Total		Count	67	148	414	717	111	337	1794
		% of Total	3.7%	8.2%	23.1%	40.0%	6.2%	18.8%	100.0%

S18Electronic processes and tech systems auch as insurtech have rendered utmost good faith obsolete * Occupation Crosstabulation

			Occupation					Total
			Manual	Clerical	Managerial	Professional	Other	
S18Electronic processes and tech systems auch as insurtech have rendered utmost good faith obsolete	Strongly Disagree	Count	1	1	15	30	4	51
		% of Total	0.1%	0.1%	0.8%	1.7%	0.2%	2.8%
	Disagree	Count	0	49	128	282	397	856
		% of Total	0.0%	2.7%	7.1%	15.7%	22.1%	47.7%
	Nuetral	Count	0	32	79	134	166	411
		% of Total	0.0%	1.8%	4.4%	7.5%	9.3%	22.9%
	Agree	Count	0	35	88	120	162	405
		% of Total	0.0%	2.0%	4.9%	6.7%	9.0%	22.6%
	Strongly Agree	Count	0	7	17	18	29	71
		% of Total	0.0%	0.4%	0.9%	1.0%	1.6%	4.0%
Total		Count	1	124	327	584	758	1794
		% of Total	0.1%	6.9%	18.2%	32.6%	42.3%	100.0%



S18Electronic processes and tech systems auch as insurtech have rendered utmost good faith obsolete

S19In a soft market insurers tend to accommodate and compromise and thus are more likely to reform the principle of utmost good faith * Age of respondent Crosstabulation

			Age of respondent							Total
			18-24	25-34	35-44	45-54	55-64	65-74	75+	
S19In a soft market insurers tend to accommodate and compromise and thus are more likely to reform the principle of utmost good faith	Strongly Disagree	Count	1	0	3	4	4	0	0	12
		% of Total	0.1%	0.0%	0.2%	0.2%	0.2%	0.0%	0.0%	0.7%
	Disagree	Count	61	36	68	28	120	15	0	328
		% of Total	3.4%	2.0%	3.8%	1.6%	6.7%	0.8%	0.0%	18.3%
	Nuetral	Count	73	65	70	41	140	8	1	398
		% of Total	4.1%	3.6%	3.9%	2.3%	7.8%	0.4%	0.1%	22.2%
	Agree	Count	181	128	193	91	368	36	1	998
		% of Total	10.1%	7.1%	10.8%	5.1%	20.5%	2.0%	0.1%	55.6%
	Strongly Agree	Count	5	21	16	7	6	3	0	58
		% of Total	0.3%	1.2%	0.9%	0.4%	0.3%	0.2%	0.0%	3.2%
Total		Count	321	250	350	171	638	62	2	1794
		% of Total	17.9%	13.9%	19.5%	9.5%	35.6%	3.5%	0.1%	100.0%

S19In a soft market insurers tend to accommodate and compromise and thus are more likely to reform the principle of utmost good faith * Gender Crosstabulation

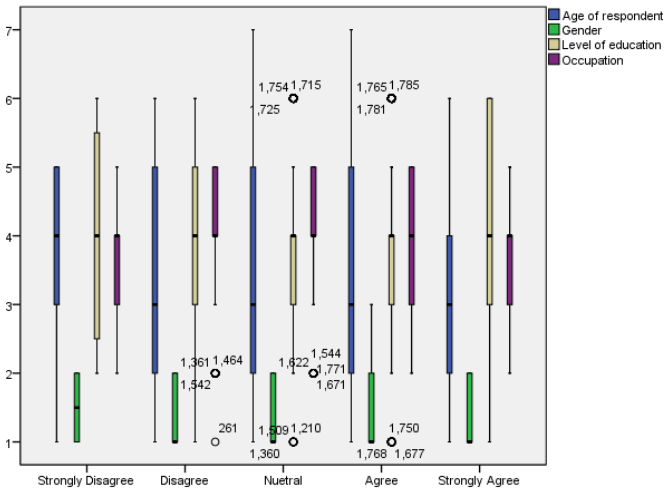
			Gender			Total
			Male	Female	Other	
S19In a soft market insurers tend to accommodate and compromise and thus are more likely to reform the principle of utmost good faith	Strongly Disagree	Count	6	6	0	12
		% of Total	0.3%	0.3%	0.0%	0.7%
	Disagree	Count	227	101	0	328
		% of Total	12.7%	5.6%	0.0%	18.3%
	Nuetral	Count	265	133	0	398
		% of Total	14.8%	7.4%	0.0%	22.2%
	Agree	Count	669	328	1	998
		% of Total	37.3%	18.3%	0.1%	55.6%
	Strongly Agree	Count	37	21	0	58
		% of Total	2.1%	1.2%	0.0%	3.2%
Total		Count	1204	589	1	1794
		% of Total	67.1%	32.8%	0.1%	100.0%

S19In a soft market insurers tend to accommodate and compromise and thus are more likely to reform the principle of utmost good faith * Level of education Crosstabulation

			Level of education						Total
			School leaving / SEC / Ordinary level (EQF level 1/2/3)	Advanced / Matriculation / Intermediate (EQF level 4)	Undergraduate / First degree (EQF level 5)	Bachelors / Hons (EQF level 6)	Masters / Post graduate (EQF level 7)	Doctorate (EQF level 8)	
S19In a soft market insurers tend to accommodate and compromise and thus are more likely to reform the principle of utmost good faith	Strongly Disagree	Count	0	3	2	3	1	3	12
		% of Total	0.0%	0.2%	0.1%	0.2%	0.1%	0.2%	0.7%
	Disagree	Count	19	24	62	137	21	65	328
		% of Total	1.1%	1.3%	3.5%	7.6%	1.2%	3.6%	18.3%
	Nuetral	Count	11	35	108	149	27	68	398
		% of Total	0.6%	2.0%	6.0%	8.3%	1.5%	3.8%	22.2%
	Agree	Count	32	80	227	415	59	185	998
		% of Total	1.8%	4.5%	12.7%	23.1%	3.3%	10.3%	55.6%
	Strongly Agree	Count	5	6	15	13	3	16	58
		% of Total	0.3%	0.3%	0.8%	0.7%	0.2%	0.9%	3.2%
Total		Count	67	148	414	717	111	337	1794
		% of Total	3.7%	8.2%	23.1%	40.0%	6.2%	18.8%	100.0%

S19In a soft market insurers tend to accommodate and compromise and thus are more likely to reform the principle of utmost good faith * Occupation Crosstabulation

			Occupation					Total
			Manual	Clerical	Managerial	Professional	Other	
S19In a soft market insurers tend to accommodate and compromise and thus are more likely to reform the principle of utmost good faith	Strongly Disagree	Count	0	1	4	6	1	12
		% of Total	0.0%	0.1%	0.2%	0.3%	0.1%	0.7%
	Disagree	Count	1	21	54	111	141	328
		% of Total	0.1%	1.2%	3.0%	6.2%	7.9%	18.3%
	Nuetral	Count	0	25	64	134	175	398
		% of Total	0.0%	1.4%	3.6%	7.5%	9.8%	22.2%
	Agree	Count	0	74	182	313	429	998
		% of Total	0.0%	4.1%	10.1%	17.4%	23.9%	55.6%
	Strongly Agree	Count	0	3	23	20	12	58
		% of Total	0.0%	0.2%	1.3%	1.1%	0.7%	3.2%
Total		Count	1	124	327	584	758	1794
		% of Total	0.1%	6.9%	18.2%	32.6%	42.3%	100.0%



S19In a soft market insurers tend to accommodate and compromise and thus are more likely to reform the principle of utmost good faith

S20Fragmentation of market players brings disparity in the application of utmost good faith necessitating reform * Age of respondent Crosstabulation

			Age of respondent							Total
			18-24	25-34	35-44	45-54	55-64	65-74	75+	
S20Fragmentation of market players brings disparity in the application of utmost good faith necessitating reform	Disagree	Count	7	13	14	16	10	1	0	61
		% of Total	0.4%	0.7%	0.8%	0.9%	0.6%	0.1%	0.0%	3.4%
	Nuetral	Count	227	126	210	98	469	39	1	1170
		% of Total	12.7%	7.0%	11.7%	5.5%	26.1%	2.2%	0.1%	65.2%
	Agree	Count	81	94	114	43	151	18	1	502
		% of Total	4.5%	5.2%	6.4%	2.4%	8.4%	1.0%	0.1%	28.0%
	Strongly Agree	Count	6	17	12	14	8	4	0	61
		% of Total	0.3%	0.9%	0.7%	0.8%	0.4%	0.2%	0.0%	3.4%
Total		Count	321	250	350	171	638	62	2	1794
		% of Total	17.9%	13.9%	19.5%	9.5%	35.6%	3.5%	0.1%	100.0%

S20Fragmentation of market players brings disparity in the application of utmost good faith necessitating reform * Gender Crosstabulation

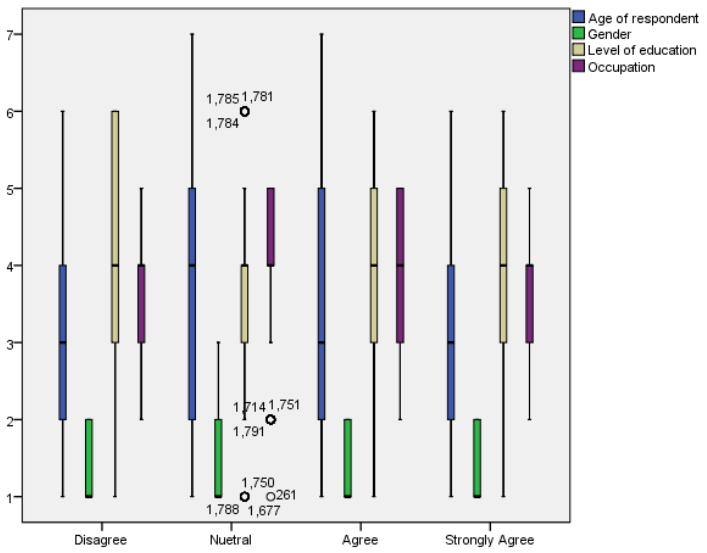
			Gender			Total
			Male	Female	Other	
S20Fragmentation of market players brings disparity in the application of utmost good faith necessitating reform	Disagree	Count	40	21	0	61
		% of Total	2.2%	1.2%	0.0%	3.4%
	Nuetral	Count	804	365	1	1170
		% of Total	44.8%	20.3%	0.1%	65.2%
	Agree	Count	326	176	0	502
		% of Total	18.2%	9.8%	0.0%	28.0%
	Strongly Agree	Count	34	27	0	61
		% of Total	1.9%	1.5%	0.0%	3.4%
Total		Count	1204	589	1	1794
		% of Total	67.1%	32.8%	0.1%	100.0%

S20Fragmentation of market players brings disparity in the application of utmost good faith necessitating reform * Level of education Crosstabulation

			Level of education						Total
			School leaving / SEC / Ordinary level (EQF level 1/2/3)	Advanced / Matriculation / Intermediate (EQF level 4)	Undergraduate / First degree (EQF level 5)	Bachelors / Hons (EQF level 6)	Masters / Post graduate (EQF level 7)	Doctorate (EQF level 8)	
S20Fragmentation of market players brings disparity in the application of utmost good faith necessitating reform	Disagree	Count	4	8	14	12	6	17	61
		% of Total	0.2%	0.4%	0.8%	0.7%	0.3%	0.9%	3.4%
	Nuetral	Count	40	88	261	511	71	199	1170
		% of Total	2.2%	4.9%	14.5%	28.5%	4.0%	11.1%	65.2%
	Agree	Count	19	47	122	181	27	106	502
		% of Total	1.1%	2.6%	6.8%	10.1%	1.5%	5.9%	28.0%
	Strongly Agree	Count	4	5	17	13	7	15	61
		% of Total	0.2%	0.3%	0.9%	0.7%	0.4%	0.8%	3.4%
Total		Count	67	148	414	717	111	337	1794
		% of Total	3.7%	8.2%	23.1%	40.0%	6.2%	18.8%	100.0%

S20Fragmentation of market players brings disparity in the application of utmost good faith necessitating reform * Occupation Crosstabulation

			Occupation					Total
			Manual	Clerical	Managerial	Professional	Other	
S20Fragmentation of market players brings disparity in the application of utmost good faith necessitating reform	Disagree	Count	0	6	23	21	11	61
		% of Total	0.0%	0.3%	1.3%	1.2%	0.6%	3.4%
	Nuetral	Count	1	84	176	363	546	1170
		% of Total	0.1%	4.7%	9.8%	20.2%	30.4%	65.2%
	Agree	Count	0	31	108	176	187	502
		% of Total	0.0%	1.7%	6.0%	9.8%	10.4%	28.0%
	Strongly Agree	Count	0	3	20	24	14	61
		% of Total	0.0%	0.2%	1.1%	1.3%	0.8%	3.4%
Total		Count	1	124	327	584	758	1794
		% of Total	0.1%	6.9%	18.2%	32.6%	42.3%	100.0%



S20Fragmentation of market players brings disparity in the application of utmost good faith necessitating reform

S21Competition might entice insurers to cut corners and adopt a soft approach on the application of utmost good faith * Age of respondent Crosstabulation

			Age of respondent							Total
			18-24	25-34	35-44	45-54	55-64	65-74	75+	
S21Competition might entice insurers to cut corners and adopt a soft approach on the application of utmost good faith	Strongly Disagree	Count	1	9	3	3	9	0	0	25
		% of Total	0.1%	0.5%	0.2%	0.2%	0.5%	0.0%	0.0%	1.4%
	Disagree	Count	63	35	70	30	123	14	0	335
		% of Total	3.5%	2.0%	3.9%	1.7%	6.9%	0.8%	0.0%	18.7%
	Nuetral	Count	17	24	31	18	19	4	1	114
		% of Total	0.9%	1.3%	1.7%	1.0%	1.1%	0.2%	0.1%	6.4%
	Agree	Count	230	151	232	109	477	42	1	1242
		% of Total	12.8%	8.4%	12.9%	6.1%	26.6%	2.3%	0.1%	69.2%
	Strongly Agree	Count	10	31	14	11	10	2	0	78
		% of Total	0.6%	1.7%	0.8%	0.6%	0.6%	0.1%	0.0%	4.3%
Total		Count	321	250	350	171	638	62	2	1794
		% of Total	17.9%	13.9%	19.5%	9.5%	35.6%	3.5%	0.1%	100.0%

S21Competition might entice insurers to cut corners and adopt a soft approach on the application of utmost good faith * Gender Crosstabulation

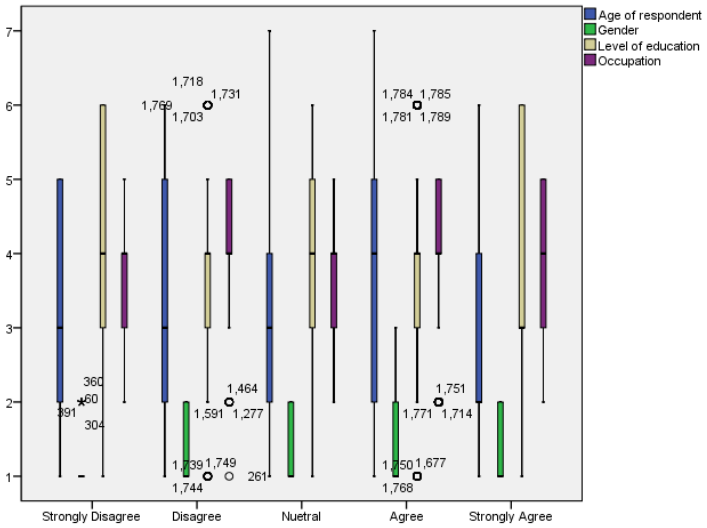
			Gender			Total
			Male	Female	Other	
S21Competition might entice insurers to cut corners and adopt a soft approach on the application of utmost good faith	Strongly Disagree	Count	21	4	0	25
		% of Total	1.2%	0.2%	0.0%	1.4%
	Disagree	Count	232	103	0	335
		% of Total	12.9%	5.7%	0.0%	18.7%
	Nuetral	Count	63	51	0	114
		% of Total	3.5%	2.8%	0.0%	6.4%
	Agree	Count	840	401	1	1242
		% of Total	46.8%	22.4%	0.1%	69.2%
	Strongly Agree	Count	48	30	0	78
		% of Total	2.7%	1.7%	0.0%	4.3%
Total		Count	1204	589	1	1794
		% of Total	67.1%	32.8%	0.1%	100.0%

S21Competition might entice insurers to cut corners and adopt a soft approach on the application of utmost good faith * Level of education Crosstabulation

			Level of education						Total
			School leaving / SEC / Ordinary level (EQF level 1/2/3)	Advanced / Matriculation / Intermediate (EQF level 4)	Undergraduate / First degree (EQF level 5)	Bachelors / Hons (EQF level 6)	Masters / Post graduate (EQF level 7)	Doctorate (EQF level 8)	
S21Competition might entice insurers to cut corners and adopt a soft approach on the application of utmost good faith	Strongly Disagree	Count	4	2	4	7	1	7	25
		% of Total	0.2%	0.1%	0.2%	0.4%	0.1%	0.4%	1.4%
	Disagree	Count	13	28	65	146	24	59	335
		% of Total	0.7%	1.6%	3.6%	8.1%	1.3%	3.3%	18.7%
	Nuetral	Count	12	10	34	26	8	24	114
		% of Total	0.7%	0.6%	1.9%	1.4%	0.4%	1.3%	6.4%
	Agree	Count	34	101	281	525	76	225	1242
		% of Total	1.9%	5.6%	15.7%	29.3%	4.2%	12.5%	69.2%
	Strongly Agree	Count	4	7	30	13	2	22	78
		% of Total	0.2%	0.4%	1.7%	0.7%	0.1%	1.2%	4.3%
Total		Count	67	148	414	717	111	337	1794
		% of Total	3.7%	8.2%	23.1%	40.0%	6.2%	18.8%	100.0%

S21Competition might entice insurers to cut corners and adopt a soft approach on the application of utmost good faith * Occupation Crosstabulation

			Occupation					Total
			Manual	Clerical	Managerial	Professional	Other	
S21Competition might entice insurers to cut corners and adopt a soft approach on the application of utmost good faith	Strongly Disagree	Count	0	1	6	12	6	25
		% of Total	0.0%	0.1%	0.3%	0.7%	0.3%	1.4%
	Disagree	Count	1	18	56	115	145	335
		% of Total	0.1%	1.0%	3.1%	6.4%	8.1%	18.7%
	Nuetral	Count	0	11	40	39	24	114
		% of Total	0.0%	0.6%	2.2%	2.2%	1.3%	6.4%
	Agree	Count	0	88	204	394	556	1242
		% of Total	0.0%	4.9%	11.4%	22.0%	31.0%	69.2%
	Strongly Agree	Count	0	6	21	24	27	78
		% of Total	0.0%	0.3%	1.2%	1.3%	1.5%	4.3%
Total		Count	1	124	327	584	758	1794
		% of Total	0.1%	6.9%	18.2%	32.6%	42.3%	100.0%



S21Competition might entice insurers to cut corners and adopt a soft approach on the application of utmost good faith

S22Changing demographics and socio-cultural trends are triggering the need to modernise the practice of utmost good faith * Age of respondent Crosstabulation

			Age of respondent							Total
			18-24	25-34	35-44	45-54	55-64	65-74	75+	
S22Changing demographics and socio-cultural trends are triggering the need to modernise the practice of utmost good faith	Strongly Disagree	Count	1	3	3	1	5	0	0	13
		% of Total	0.1%	0.2%	0.2%	0.1%	0.3%	0.0%	0.0%	0.7%
	Disagree	Count	58	34	54	29	121	13	0	309
		% of Total	3.2%	1.9%	3.0%	1.6%	6.7%	0.7%	0.0%	17.2%
	Nuetral	Count	12	21	35	12	15	2	1	98
		% of Total	0.7%	1.2%	2.0%	0.7%	0.8%	0.1%	0.1%	5.5%
	Agree	Count	230	156	239	110	483	43	1	1262
		% of Total	12.8%	8.7%	13.3%	6.1%	26.9%	2.4%	0.1%	70.3%
	Strongly Agree	Count	20	36	19	19	14	4	0	112
		% of Total	1.1%	2.0%	1.1%	1.1%	0.8%	0.2%	0.0%	6.2%
Total		Count	321	250	350	171	638	62	2	1794
		% of Total	17.9%	13.9%	19.5%	9.5%	35.6%	3.5%	0.1%	100.0%

S22Changing demographics and socio-cultural trends are triggering the need to modernise the practice of utmost good faith * Gender Crosstabulation

			Gender			Total
			Male	Female	Other	
S22Changing demographics and socio-cultural trends are triggering the need to modernise the practice of utmost good faith	Strongly Disagree	Count	8	5	0	13
		% of Total	0.4%	0.3%	0.0%	0.7%
	Disagree	Count	220	89	0	309
		% of Total	12.3%	5.0%	0.0%	17.2%
	Nuetral	Count	56	42	0	98
		% of Total	3.1%	2.3%	0.0%	5.5%
	Agree	Count	863	398	1	1262
		% of Total	48.1%	22.2%	0.1%	70.3%
	Strongly Agree	Count	57	55	0	112
		% of Total	3.2%	3.1%	0.0%	6.2%
Total		Count	1204	589	1	1794
		% of Total	67.1%	32.8%	0.1%	100.0%

S22Changing demographics and socio-cultural trends are triggering the need to modernise the practice of utmost good faith * Level of education Crosstabulation

			Level of education						Total
			School leaving / SEC / Ordinary level (EQF level 1/2/3)	Advanced / Matriculation / Intermediate (EQF level 4)	Undergraduate / First degree (EQF level 5)	Bachelors / Hons (EQF level 6)	Masters / Post graduate (EQF level 7)	Doctorate (EQF level 8)	
S22Changing demographics and socio-cultural trends are triggering the need to modernise the practice of utmost good faith	Strongly Disagree	Count	0	2	3	2	1	5	13
		% of Total	0.0%	0.1%	0.2%	0.1%	0.1%	0.3%	0.7%
	Disagree	Count	17	28	59	136	21	48	309
		% of Total	0.9%	1.6%	3.3%	7.6%	1.2%	2.7%	17.2%
	Nuetral	Count	5	12	19	23	9	30	98
		% of Total	0.3%	0.7%	1.1%	1.3%	0.5%	1.7%	5.5%
	Agree	Count	42	97	288	531	76	228	1262
		% of Total	2.3%	5.4%	16.1%	29.6%	4.2%	12.7%	70.3%
	Strongly Agree	Count	3	9	45	25	4	26	112
		% of Total	0.2%	0.5%	2.5%	1.4%	0.2%	1.4%	6.2%
Total		Count	67	148	414	717	111	337	1794
		% of Total	3.7%	8.2%	23.1%	40.0%	6.2%	18.8%	100.0%

S22Changing demographics and socio-cultural trends are triggering the need to modernise the practice of utmost good faith * Occupation Crosstabulation

			Occupation					Total
			Manual	Clerical	Managerial	Professional	Other	
S22Changing demographics and socio-cultural trends are triggering the need to modernise the practice of utmost good faith	Strongly Disagree	Count	0	0	2	8	3	13
		% of Total	0.0%	0.0%	0.1%	0.4%	0.2%	0.7%
	Disagree	Count	1	18	52	98	140	309
		% of Total	0.1%	1.0%	2.9%	5.5%	7.8%	17.2%
	Nuetral	Count	0	9	25	44	20	98
		% of Total	0.0%	0.5%	1.4%	2.5%	1.1%	5.5%
	Agree	Count	0	91	215	400	556	1262
		% of Total	0.0%	5.1%	12.0%	22.3%	31.0%	70.3%
	Strongly Agree	Count	0	6	33	34	39	112
		% of Total	0.0%	0.3%	1.8%	1.9%	2.2%	6.2%
Total		Count	1	124	327	584	758	1794
		% of Total	0.1%	6.9%	18.2%	32.6%	42.3%	100.0%

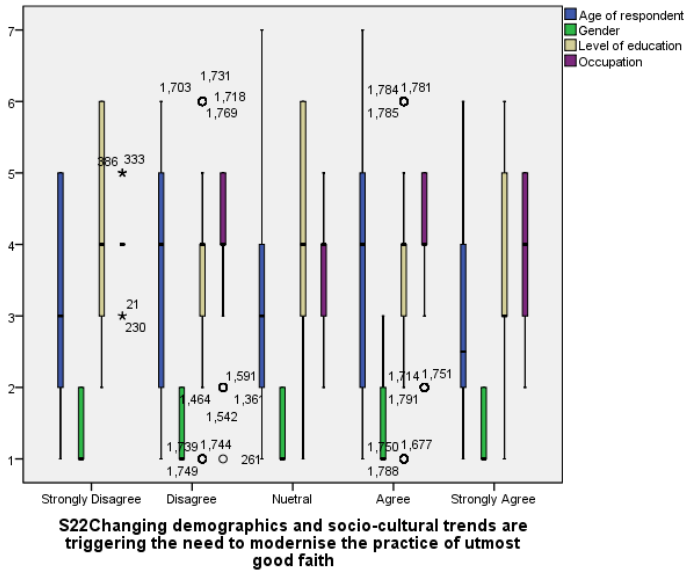


Figure 4.1: Tables and box plot graphs generated for every question on survey, segregated according to the dependent variables of age, gender, education and occupation. (Source: own compilation)

4.2.2.2.1 General results

Overall, the mean results tend to show a neutral position. Only in a few cases was the median slightly different from the mean, particularly in responses under statements numbers S2, S7, S13, S16, S18 and S20. These were responses to questions namely; 'By trying to achieve contract certainty, insurance policymakers push for insurance reforms especially to improve practices like the duty of disclosure', 'The regulator has a stronghold in insurance practice and controls this by introducing new regulation to bring fairness and transparency to a contract of insurance', 'International competition and dependency on certain countries for insurance business will force the dependent domicile to reform to bring practices in line', 'The need for modernisation in the insurance industry will initiate the need to reform in insurance', 'Electronic processes and tech systems such as Insurtech have rendered the utmost good faith principle obsolete' and 'Fragmentation of market players (unlike co-operation) brings disparity in the application of utmost good faith and thus reform is necessary to uniform this practice', respectively (Farrugia & Grima, 2021a, p. 464).

Since the median is less affected by outliers and skewed data, the results of the median prove to be the more accurate reflection of the responses. The result of this shows that most of the questions were clustered within a mid-range of 2 (disagree) to 4 (agree) with only question S7 on regulation ('The Regulator has a stronghold in insurance practice and controls this by introducing new regulation to bring fairness and transparency to a contract of insurance') being rated as 5 (strongly agree) when assessing the median. Most of the results show that the mean and the median are very close confirming that overall, the results were consistent and there were no surprises by respondents answering completely opposite to the majority of the answers (Farrugia & Grima, 2021a, p. 464).

On the other extreme, the most popular selected Likert option that tended towards disagreement referred to questions S1 and S9 that were both predominantly denoted as '1', meaning full disagreement with the statements of "The political climate and influence by

governments is a strong factor bringing about reform in insurance [and] The media plays an influential role in bringing changes in insurance practice especially since it usually voices consumer concerns as in the case of the strict application of the duty of disclosure and the consequences thereof" respectively (Farrugia & Grima, 2021a, p. 464).

4.2.2.2.2 Outliers

The box plots show outliers denoted as a circle or asterisk and indicate the survey participant number code as it appears in the raw data sheet. The SPSS program displays a median value by a horizontal line inside the shaded box plot. The rectangle box extends from the bottom covering the lower quartile to the top which is the upper quartile. The whiskers extend from the box and are representing the minimum and maximum values excluding the outliers since the outliers are the extreme positions and singled out by a circle (o) if it is a mild outlier and an asterisk (*) if is it an extreme outlier. The length of the box plot displays the interquartile range.

Outliers are data points that are far removed from the majority of the other data points in a dataset. Such data points may be caused by a variety of factors, including measurement error and data entry errors. However, outliers can also represent legitimate data points that are important for understanding the overall trends and patterns in the data and can be the presence of extreme values in the population being studied.

Several authors have argued for the importance of retaining outliers in research. Hair et al. (2010) suggest that outliers may represent genuine phenomena rather than errors, and excluding them could lead to biased or incomplete conclusions. Similarly, Osborne and Overbay (2004) argue that outliers can provide valuable information about the distribution of the data and the potential presence of subgroups within the population.

Additionally, researchers should consider the impact of outliers on the overall analysis and interpretation of the findings, and be transparent in reporting the presence and handling of outliers in their research.

Overall, outliers can provide valuable information about the data, and retaining them can lead to more accurate and comprehensive results. That being said however, one must not allow outliers to distort or bias the findings.

Relevant to this study is the fact that outliers assisted in the accuracy of the results as all the mild and extreme points were examined and where errors in inputting was the result of an outlier, then this was duly corrected. The remaining outliers were consistently scare and univariate so, in line with Hair (2010), these were tolerated and were not removed from the results especially since the outliers of this research were very few, do not skew the dataset and do not exert too much leverage on the mean.

4.2.2.3 Correlation matrix

A correlation matrix is a table that displays the correlation coefficients between variables in a dataset. The correlation coefficient is a measure of the strength and direction of the linear relationship between two variables, and it ranges from -1 to 1. A correlation coefficient of 0 indicates no linear relationship between the variables, while a correlation coefficient of -1 or 1 indicates a perfect negative or positive linear relationship, respectively (Field, 2013).

Such a correlation matrix can identify relationships between variables that may not be apparent from examining the variables individually. A correlation matrix can be used to check for multicollinearity, which occurs when two or more variables are highly correlated with each other (Miles et al., 2001).

Relevant to this study is the correlation between the dependent variables of this research namely age, gender, education and occupation which examine the strength of the relationships between these multiple variables simultaneously (if at all). It provides a quick

overview of how strongly and in what direction the variables are related to each other (if at all).

Table 4.1 KMO and Barlett's test

KMO and Bartlett's Test

Kaiser-Meyer-Olkin Measure of Sampling Adequacy.		.571
Bartlett's Test of Sphericity	Approx. Chi-Square	547.301
	df	6
	Sig.	.000

(Source: own compilation)

First a Barlett's test was carried out as displayed in Table 4.1, to check whether the matrix of the dependent variables as a whole is significant. At a value of 0.000 this was proven to be significant and therefore the correlation matrix could be drawn up to examine the relationships further.

Using SPSS, a correlation matrix was drawn up as displayed in Table 4.2 from which one can deduce that age is negatively correlated with gender (r= -0.449) but positively correlated with education (r= 0.218) and occupation (r= 0.120) respectively, albeit showing a weak correlation. This effectively means that the demographics revealed a marginally higher level of education and occupation with increase in age, registering more males than females.

Table 4.2 Correlation matrix between the dependent variables

Correlations

		Age of respondent	Gender	Level of education	Occupation
Age of respondent	Pearson Correlation	1	-.449**	.218**	.120**
	Sig. (2-tailed)		.000	.000	.000
	N	1794	1794	1794	1794
Gender	Pearson Correlation	-.449**	1	-.127**	-.165**
	Sig. (2-tailed)	.000		.000	.000
	N	1794	1794	1794	1794
Level of education	Pearson Correlation	.218**	-.127**	1	.056*
	Sig. (2-tailed)	.000	.000		.017
	N	1794	1794	1794	1794
Occupation	Pearson Correlation	.120**	-.165**	.056*	1
	Sig. (2-tailed)	.000	.000	.017	
	N	1794	1794	1794	1794

**. Correlation is significant at the 0.01 level (2-tailed).

*. Correlation is significant at the 0.05 level (2-tailed).

(Source: own compilation)

Gender has a very weak correlation with the variables of education and occupation, registering a negative relationship with these variables. Since males were coded as 1 and females coded as 2 this effectively means that males taking the survey were marginally older and held a higher level of education and marginally higher occupational position than females.

Level of education shows a positive relationship with both age and occupation (r= 0.120) and (r= 0.056) respectively while a negative relationship with gender (r= -0.165) effectively meaning that a higher level of education was registered with increase in age and level of occupation with higher levels shown in males.

Finally, the relationship with occupation and gender displayed a negative relationship (r= -0.165) while a positive relationship registered with age and level of education as explained above.

4.2.3 Exploratory Factor Analysis

Exploratory Factor Analysis was used in the analysis part of this study since through this method, the number of variables were reduced to clusters and the appropriate examination of the relationship between the variables could be deduced. This enabled the evaluation of correlations in the development of a theoretical conjecture, which in the case of this research, was the determination of the factors affecting reform of utmost good faith.

The manner undertaken followed the five-step exploratory factor analysis protocol suggested by Williams, et al. (2010) in their paper titled “Exploratory factor analysis: a five-step guide for novices”.

Williams, et al. (2010) posit that the first step is to ensure that the data being proposed is one which is suitable for factor analysis, while the second step determines how the factors are extracted and thereafter, what criteria assist in the determination of the factor extraction as the next third step. The fourth step refers to the selection of the rotational method and the

final step being the one where an interpretation is presented (Williams, et al., 2010). These steps are individually explained in the coming sections.

4.2.3.1 Step 1: Suitability of sample size

Several authors have attempted to propose the ideal sample size for a questionnaire, and from the literature sourced, it was revealed that the ideal sample size ranges between 100 and 1000 cases. Tabachnick and Fidell (2013) found that 300 cases were considered to be a good benchmark. This study had a sample of 1794 respondents which, *prima facie*, seemed more than adequate. A more distinct measure of sample adequacy follows suggestions by Hogarty, et al. (2005) and MacCallum, et al. (1999) who posit that the adequacy of a sample size is in accordance to the 'sample to variable ratio' (*N:p* ratio) where *N* is the number of respondents and *p* is the number of variables. The research under this study had a ratio of 1794:22 (or 82:1) which seemed to be more than adequate in the light of findings by Hogarty, et al. (2005) and MacCallum, et al. (1999) who further suggest that, the minimum ratio of respondents required per variable, ranges from 3:1 to 20:1.

Moreover, prior to the extraction of the factors, Williams, et al. (2010) suggest that the Kaiser–Meyer–Olkin (KMO) measure of sampling and the Barlett's test of sphericity is to be used as a measure of sampling adequacy for the appropriateness of applying factor analysis as it indicates whether or not the variables are able to be grouped into a smaller set of underlying factors.

The result of the KMO fell within the acceptable range (above 0.6), registering a value of 0.887. In fact, Kaiser and Rice (1974) classify the results of KMO and describe anything between 0.8 and 0.9 as meritorious and any results between 0.9 and 1 as marvellous.

Table 4.3 KMO and Barlett's test

KMO AND BARTLETT'S TEST	
Kaiser - Meyer -Olkin Measure of Sampling Adequacy	*.887*
Bartlett's test of sphericity Approx. Chi-Square	*33776.74*
df	*231*
Sig.	*.000*

(Source: own compilation)

The results confirm justification for the use of exploratory factor analysis as the Barlett's test of sphericity is statistically significant shown as .000 in Table 4.3 above.

4.2.3.2 Step 2: Extracting the factors

The intention of applying a rotation to the dataset is to group items together. In the context of this research, the statements were grouped through rotation, extracting 4 groups representing the factor structure of the components under this study.

4.2.3.3 Step 3: Criteria to determine factor extraction

The method of data extraction was determined by the cumulative percentage of variance and the eigenvalue. This method indicated when the selection of the factors should stop based upon a percentage. This percentage is not fixed, however in humanities, it is recommended that at least 60% of the variance is explained. This study exceeded the suggested 60% benchmark having 73.4% of the variance explained as seen in Table 4.4, which also shows the 22 statements grouped under each of the four factors.

Table 4.4 Total Variance

Total Variance Explained

Component	Initial Eigenvalues			Extraction Sums of Squared Loadings			Rotation Sums of Squared Loadings		
	Total	% of Variance	Cumulative %	Total	% of Variance	Cumulative %	Total	% of Variance	Cumulative %
1	6.982	31.735	31.735	6.982	31.735	31.735	6.709	30.496	30.496
2	4.436	20.164	51.900	4.436	20.164	51.900	4.442	20.190	50.686
3	3.555	16.159	68.059	3.555	16.159	68.059	3.151	14.321	65.007
4	1.172	5.327	73.385	1.172	5.327	73.385	1.843	8.378	73.385
5	.892	4.054	77.439						
6	.815	3.705	81.145						
7	.632	2.875	84.019						
8	.445	2.024	86.044						
9	.389	1.770	87.813						
10	.329	1.497	89.310						
11	.316	1.437	90.748						
12	.284	1.291	92.038						
13	.257	1.166	93.205						
14	.239	1.086	94.291						
15	.204	.926	95.217						
16	.184	.838	96.054						
17	.172	.781	96.835						
18	.164	.745	97.580						
19	.152	.690	98.270						
20	.137	.625	98.895						
21	.131	.594	99.489						
22	.112	.511	100.000						

Extraction Method: Principal Component Analysis.

(Source: own compilation)

To confirm the adequacy of the best four factors, a parallel analysis and Velicer's test were carried out. These methods assist in identifying which components are relevant to consider. The actual eigenvalues are compared with random order parallel eigenvalues. As a rule of thumb, those components that have an eigenvalue of greater than 1 are the ones that should be considered. Moreover, the selected factors would be those actual eigenvalues that are higher than the parallel eigenvalues (Cliff, 1988).

Table 4.5 Results of the Parallel test analysis

Component	Actual Eigenvalue	Parallel Eigenvalue
1	*6.982*	*1.227229*
2	*4.436*	*1.190964*
3	*3.555*	*1.162371*
4	*1.172*	*1.136441*
5	*0.892*	*1.117503*
6	*0.815*	*1.100938*
7	*0.632*	*1.080963*
8	*0.445*	*1.065619*
9	*0.389*	*1.050663*
10	*0.329*	*1.032630*
11	*0.316*	*1.017447*
12	*0.284*	*0.999761*
13	*0.257*	*0.984935*
14	*0.239*	*0.970914*
15	*0.204*	*0.957946*
16	*0.184*	*0.941223*
17	*0.172*	*0.924967*
18	*0.164*	*0.911742*
19	*0.152*	*0.893408*
20	*0.137*	*0.874208*
21	*0.131*	*0.858886*
22	*0.112*	*0.837852*

(Source: https://analytics.gonzaga.edu/parallelengine/ 2020)

The actual eigenvalues were derived from SPSS whereas the results of the parallel eigenvalues displayed under Table 4.5 were achieved by using the online calculator provided by Vivek, et al. (2017). The sample size (1794) was inputted together with the number of

variables (22 questions) and a table was generated as shown in Table 4.5 above. If the total eigenvalue established from the SPSS analysis is greater than the parallel test value revealed by the calculator, then that is a factor which should be kept as a valid component. This is true for component 1, where the SPSS program generated eigenvalue is 6.982 and the parallel test was 1.227229 thus the result of the SPSS was higher than the parallel test making it relevant. This was also relevant for component 2, where the SPSS generated an eigenvalue of 4.436 and the parallel test was 1.190964. For component 3, the SPSS generated an eigenvalue of 3.555 and the parallel test was 1.162371 and for component 4, the SPSS generated an eigenvalue of 1.172 and the parallel test was 1.136441. However, as for component 5, the SPSS generated an eigenvalue of 0.892 and the parallel test was 1.117503 and thus the SPSS figure was lower than the parallel test meaning that the component should not be considered. So, according to the parallel test, only the first four component factors were confirmed to be valid.

4.2.3.4 Step 4: Selection of rotational method

For exploratory factor analysis, the Equamax Rotation (Orthogonal Rotation) was used via principal components extraction with Kaiser normalization. The purpose of rotation is to create a simple structure that will be easy to interpret to make sense of the factor loadings. The use of rotation, as presented by SPSS, determined the respective load factors which present a measure of representation of the dataset. Those presenting high loads are grouped together into factors reducing the complexity of the dataset into four factors (Gorsuch, 1983). The first step in determining the type of rotational method to use, was to find whether the factors in the analysis were correlated or uncorrelated. On the SPSS software, the oblique methods come in the form of direct Oblimin or Promax for factors that are correlated and the orthogonal methods are either Quartimax, Varimax or Equamax for factors that are uncorrelated.

Therefore, as a first step, to determine whether the factors were correlated or uncorrelated, an oblique run was first performed. The four factor components which were the factors valid under this part of the study, were subjected to a Direct Oblimin run performed on SPSS. This produced a component correlation matrix table from which it was determined whether the components are orthogonal or oblique. This was performed with a coefficient of 0.32 as a cut off (Tabachnick & Fidell, 2007) and the results are shown under Table 4.6 below. If the figures are not greater than 0.32 or less than -0.32, this means that the factors are uncorrelated and an orthogonal matrix method of rotation is used, whereas if the correlation is higher than 0.32 or less than -0.32, then the factors are strongly correlated and therefore oblique rotation is utilised (Brown, 2009).

Table 4.6 Results of the Principal Component Analysis using Oblimin with Kaiser Normalization

Component Correlation Matrix

Component	1	2	3	4
1	1.000	.043	.119	-.066
2	.043	1.000	.044	.082
3	.119	.044	1.000	-.234
4	-.066	.082	-.234	1.000

Extraction Method: Principal Component Analysis.
Rotation Method: Oblimin with Kaiser Normalization.

(Source: own compilation)

From Table 4.6, it transpires that the figures are uncorrelated since they are not greater than 0.32 or less than -0.32, confirming an orthogonal matrix, in which case, the orthogonal rotation method is used (Costello & Osborne, 2005).

The rotated component matrix using Equamax (a type of orthogonal rotation method) was analysed to verify whether it qualifies as having a simple structure (a pattern of associations to which the variables are associated strongly) by virtue of its significant loadings on the 4 components with the respective 22 items under study. A simple structure would be one having a significant loading under one component. Whereas Tabachnick and Fidell (2007) suggest 0.32 or higher capturing 2 or more factors, Costello & Osborne (2005) propose a

range between 0.4 to 0.7 which should capture at least 3 components for a more accurate analysis. For the purpose of this study a loading of 0.45 or higher or -0.45 or lower was applied capturing 4 components. This data was derived from the SPSS results of the Principal Component Analysis using Equamax rotation with kaiser normalisation shown under Table 4.7 below.

Table 4.7 First results of Principal Component Analysis using Equamax rotation

Rotated Component Matrix[a]

	Component			
	1	2	3	4
S5Lack of satisfaction of Judiciary decisions and delays in settling insurance matters call for insurance reforms by the litigants	.831	-.046	-.137	.376
S3Through their decisions the Judiciary and the LRC influence the need to change insurance practice	.830	-.050	-.144	.358
S10Consumers today have more rights and thus litigate more increasing the need to change insurance practices like utmost good faith	.825	.204	-.049	.182
S1The political climate and influence by governments is a strong factor in bringing about reform in insurance	.783	.163	.315	.241
S2Insurance policymakers push for insurance reforms especially to improve practices like the duty of disclosure	.676	.035	-.028	.534
S4The type of legal system has a bearing on the application of utmost good faith	.665	-.576	.168	.095
S9The media plays an influential role in brining changes in insurance practice as it voices concerns	.638	-.259	.034	.569
S14EU harmonisation exerts pressure to initiate reform in insurance	.518	.222	.335	.504
S21Competition might entice insurers to cut corners and adopt a soft approach on the application of utmost good faith	-.015	.860	.035	.107
S22Changing demographics and socio-cultural trends are triggering the need to modernise the practice of utmost good faith	.084	.852	.086	.185
S7The regulator has a stronghold in insurance pratice introducing fairness and transperancy which might lead to reform	.206	.841	-.140	-.138
S19In a soft market insurers tend to accommodate and compromise and thus are more likely to reform the principle of utmost good faith	-.087	.786	.312	.151
S6Industry market players press for reforms to bring equity and fairness in insurance practice	.518	.624	-.268	-.329
S20Fragmentation of market players brings disparity in the application of utmost good faith necessitating reform	.183	-.544	.170	.276
S17In view of technology and social media collecting information changed and correspondingly so should the prinicple of utmost good faith	-.144	-.184	.813	.047
S13International competition and dependency on certain countries like the UK will force the dependent domicile to follow reforms	-.045	-.325	.810	.100
S18Electronic processes and tech systems auch as insurtech have rendered utmost good faith obsolete	.207	.333	.779	-.066
S16The need for modernisation in the insurance industry will initiate the need to reform in insurance	.075	.436	.686	.382
S15Reinsurers influence the insurance market and also any changes in the practice of utmost good faith	-.151	.038	.535	.729
S12Different practices of utmost good faith in different countries restricts cross border insurance	.474	.004	.221	.653
S11Insurers would consider to alter the practice of utmost good faith if court cases increase	.495	-.057	-.246	.612
S8When placing the responsibility of utmost good faith on the consumer the insurers are not achieving contract equity increasing litgation	.158	.022	.061	.448

Extraction Method: Principal Component Analysis.
Rotation Method: Equamax with Kaiser Normalization.
a. Rotation converged in 9 iterations.

(Source: own compilation)

Table 4.8 shows how the rotation method presented correlated items grouping S5, S3, S10, S1, S2, S4, S9, S14 under one factor, S21, S22, S7, S19, S6, S20 under a second factor, S17, S13, S18, S16 under a third factor and S15, S12, S11, S8 under a final factor after the extraction method using Equamax orthogonal rotation method was used sorting out the results according to the significant loadings. Each of the 4 components incorporated the corresponding items which represent the 22 statements under review and which were the basis of the survey questionnaire.

Table 4.8 Extraction Method: Principal Component Analysis; Rotation Method: Equamax with Kaiser Normalization after data was sorted according to the significant loadings

	COMPONENTS			
ITEMS	1	2	3	4
S5	0.831			
S3	0.830			
S10	0.825			
S1	0.783			
S2	0.676			
S4	0.665			
S9	0.638			
S14	0.518			
S21		0.860		
S22		0.852		
S7		0.841		
S19		0.786		
S6		0.624		
S20		0.544		
S17			0.813	
S13			0.810	
S18			0.779	
S16			0.686	
S15				0.729
S12				0.653
S11				0.612
S8				0.448

(Source: Farrugia & Grima, 2021a)

4.2.3.5 Step 5: Interpretation

Through the technique of Exploratory Factor Analysis, the researcher determined the number of factors believed to be sufficient to explain the correlations among the variables. These factors were extracted on the strength of their relationship after they are rotated which is a method used to rescale the results. In this way, exploratory factor analysis was used for identifying correlated group of items, which in the case of this study, refers to the statements representing the propositions. These groups represent some reflective factor or construct because they move together consistently and consist of those influencing factors that bring about the need to reform the insurance principle of utmost good faith. The intention of this method is to determine clusters assisting in the relationships and patterns derived from the outcome of the survey questionnaire. Such clustering would enable ease of interpretation of the results by categorising those factors that hold a relationship.

Exploratory factor analysis loaded the best four factors from 22 statements, which in combination explained 73.39% of the variance representing the responses as determined by extracting the total variance from the dataset as shown in the Table 4.3. Factor 1 (F1) incorporates statements S5, S3, S10, S1, S2, S4, S9, S14 and explains 31.74% of the variance (Hair, 1998). Factor 2 (F2), incorporates statements S21, S22, S7, S19, S6, S20 and explains 20.16% of the total variance (Hair, 1998). Factor 3 (F3) incorporates statements S17, S13, S18, S16 and explains 16.16% of the total variance (Hair, 1998). Factor 4 (F4) incorporates statements S15, S12, S11, S8 and explains 5.33% of the total variance (Hair, 1998).

4.2.4 Factor variables

4.2.4.1 Derived factors variables F1 to F4

From Table 4.8, the four factors represent the four main propositions/factors that the survey revealed as influential to bring about reform in the practice of the principle of utmost good faith in insurance.

These influencing variables may be considered by policymakers and reformists since these have been the result of a test using utmost good faith as a basis. These variables influence the carrying out of regulatory reform and seek to achieve uniformity of principle and practice away the strict application of utmost good faith. Moreover, the results show whether these variables differ, given the different demographic factors of survey respondents as reported later under section 4.2.5.

The derived factor variables were constructed on the basis of how these were clustered through exploratory factor analysis and their respective representation is explained as follows:

4.2.4.1.1 Factor 1 (F1) - Institutional stakeholders and the political-legal framework

Derived from Table 4.8, Factor 1 (F1) represents the influence of the politico-jurisprudence, law reform, legal system, and the various stakeholders influencing the insurance industry. It incorporates statements S5, S3, S10, S1, S2, S4, S9, S14 (namely and respectively: "Lack of satisfaction of judiciary decisions and delays in settling insurance matters call for insurance reforms', 'Through their decisions or comments, the judiciary and the Law Reform Committees influence the need to change insurance practice particularly following disputed cases', 'Consumers today have more rights and thus make more claims increasing litigation, consequently increase the need to change certain insurance practices like utmost good faith', 'The political climate and influence by governments is a strong factor bringing about reform in insurance', 'By trying to achieve contract certainty, insurance policymakers push for insurance reforms especially to improve practices like the duty of disclosure', 'The type of legal system (common law or civil law) has a bearing on the application of utmost good faith in insurance', 'The media plays an influential role in bringing changes in insurance practice especially since it usually voices consumer concerns as in the case of the strict application

of the duty of disclosure and the consequences thereof', 'EU harmonisation exerts pressure to initiate reform in insurance) " (Farrugia & Grima, 2021a, p.464).

Thus, this factor (F1) was collectively termed as 'institutional stakeholders and the political-legal framework'.

4.2.4.1.2 Factor 2 (F2) - The market, consumer influence and the socio-economic environment

Factor 2 (F2), incorporates the industry and its consumers as well as socio-economic aspects. It encompasses statements S21, S22, S7, S19, S6, S20 (namely and respectively: "Competition might entice insurers to cut corners and adopt a soft approach to the application of utmost good faith', 'Changing demographics and socio-cultural trends are triggering the need to modernise the practice of utmost good faith', 'The Regulator has a stronghold in insurance practice and controls this by introducing new regulation to bring fairness and transparency to a contract of insurance', 'In a soft market, insurers tend to accommodate and compromise to attract more business and they are likely to reform insurance practices and/or adopt a softer utmost good faith application in such economic times', 'Industry market players, like associations, press for reforms to bring equity and fairness in insurance contract dealings', 'Fragmentation of market players (unlike co-operation) brings disparity in the application of utmost good faith and thus reform is necessary to uniform this practice')". Thus, this factor (F2) was referred to as the 'the market, consumer influence and the socio-economic environment' (Farrugia & Grima, 2021a, p.464).

4.2.4.1.3 Factor 3 (F3) - Socio-technological environment

Factor 3 (F3) represents the influence of advent of technological modernisation and its influence on the society. It incorporates statements S17, S13, S18, S16 (namely and respectively: "In view of the increased use of technology and modern social media sources, collecting information by the underwriter has taken a different approach and so the old

practice of utmost good faith should be reformed ceasing the placing of obligation of disclosure on to the proposer/insured', 'International competition and dependency on certain countries for insurance business will force the dependent domicile to reform to bring practices in line', 'Electronic processes and tech systems such as Insurtech have rendered the utmost good faith principle obsolete', 'The need for modernisation in the insurance industry will initiate the need to reform in insurance) " (Farrugia & Grima, 2021a, p.464).

This factor (F3) has been hence termed 'socio-technological environment'.

4.2.4.1.4 Factor 4 (F4) - Insurance practice and international business

Factor 4 (F4) is a combination of contract equity and consumer satisfaction as well as industry practice with the various market players. It incorporates statements S15, S12, S11, S8 (namely and respectively: "Reinsurers influence the insurance market and thus any change in the practice of utmost good faith practice in insurance would be led by them', 'Different practices of utmost good faith in different countries restricts cross border insurance business due to incompatibility of policies and practices', 'Insurers would consider to alter the practice of utmost good faith if statistically court cases on utmost good faith disputes increase', 'When placing the responsibility of utmost good faith on to the customer, the insurers are not achieving contract equity increasing the possibility of litigation) " (Farrugia & Grima, 2021a, p.464).

In this regard this factor (F4) was themed as 'insurance practice and international business'.

4.2.4.1.5 Factors 1 to 4

Such an analysis yielded four variables that determine the need for reform of regulatory requirements and these have been found to be: 'institutional stakeholders and the political-legal framework'; 'the market, consumer influence and the socio-economic environment'; 'socio-technological environment' and 'insurance practice and international business'.

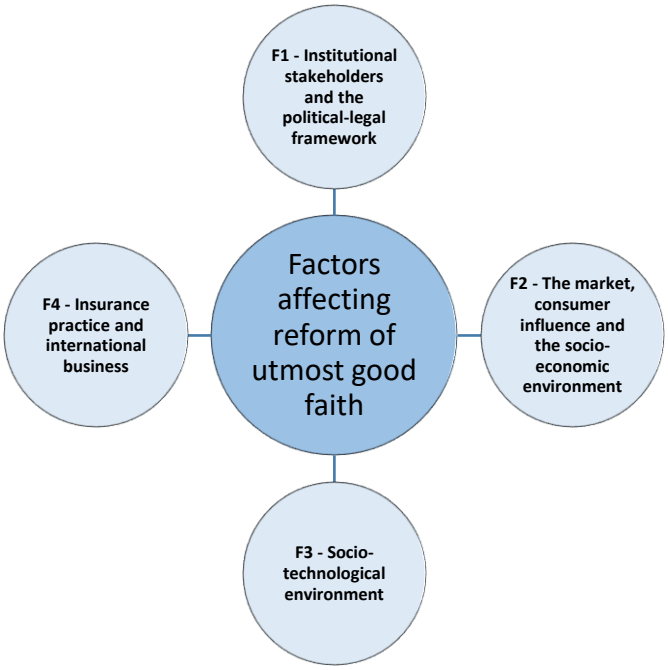


Figure 4.2: Factor variables influencing reform of the utmost good faith principle (Source: own compilation)

4.2.4.2 Cronbach's Alpha testing reliability

Cronbach's Alpha is a test for the determination of the reliability of a scale, which in the case of this study, consists of 1794 respondents and 22 questions, the latter representing individual statements answered by means of a selection from a Likert scale of 1 to 5.

Specifically, the Cronbach's Alpha is the ratio of the number of items multiplied by the average correlation between the items, divided by the total variance in the composite scores as follows: $\alpha = k\bar{r}/(1 + (k - 1)\bar{r})$ where k is the number of factors and $\bar{r}$ is the mean scores of the responses for all of the 22 statements. The respective 22 item statements were loaded onto the SPSS tool and the Cronbach's Alpha results were determined for the clustered items forming the four factors under study.

The total Cronbach's Alpha stood at 0.867 for the full dataset as shown in Table 4.9 and the individual Cronbach's Alpha coefficients of this scale represented by the four factors F1 to F4 were between 0.62–0.93 as displayed under Table 4.10, Table 4.11, Table 4.12 and Table 4.13 respectively.

The results of the Cronbach's Alpha must be higher than 0.6 to be considered acceptable. In fact, Hulin, et al. (2001) claim that, as a rule of thumb, a Cronbach's Alpha value of 0.6-0.7 indicates an acceptable level of reliability, with 0.8 and above producing a very good level (Farrugia & Grima, 2021a). Lance, et al. (2006) find that for exploratory research, Cronbach's Alpha values should be at least valued at 0.7.

Therefore, it can be concluded that the scale at 0.867 as displayed under Table 4.9 below relevant to this study, is adequate and reliable (Taber, 2016).

Table 4.9 Cronbach's Alpha for the full dataset

Cronbach's Alpha	Cronbach's Alpha based on Standardized Items	Number of Items
0.867	0.867	22

(Source: own compilation)

Individually, the Cronbach's Alpha measures the internal consistency of each of the factors F1, F2, F3 and F4 and determines how much the items, that form the respective factors, are measuring the same underlying dimension. For each of the factor clusters (factors 1 to 4), a Cronbach's Alpha test was applied which is the composite mean score of all the respondents for each of the factors as shown under Table 4.10, Table 4.11, Table 4.12 and Table 4.13 hereunder:

Table 4.10 Cronbach's Alpha for Factor 1

Cronbach's Alpha	Cronbach's Alpha based on Standardized Items	Number of Items
0.927	0.928	8

(Source: own compilation)

The Cronbach's Alpha for Factor F1 is deemed to be very high and this means that there is reliability estimate of 0.927 for this data, showing nearly 93% of the variance in the composite scores of the respondents for Factor F1 is reliable variance with only 7% error.

Table 4.11 Cronbach's Alpha for Factor 2

Cronbach's Alpha	Cronbach's Alpha based on Standardized Items	Number of Items
0.863	0.880	6

(Source: own compilation)

The Cronbach's Alpha for Factor F2 has a reliability estimate of 0.863 for this data meaning that 86.3% of the variance in the composite scores of the respondents for Factor F2 is reliable variance with 13.7% error.

Table 4.12 Cronbach's Alpha for Factor 3

Cronbach's Alpha	Cronbach's Alpha based on Standardized Items	Number of Items
0.803	0.805	4

(Source: own compilation)

The Cronbach's Alpha for Factor F3 has a reliability estimate of 0.803 for this data meaning that 80.3% of the variance in the composite scores of the respondents for Factor F3 is reliable variance with 19.7% error.

Table 4.13 Cronbach's Alpha for Factor 4

Cronbach's Alpha	Cronbach's Alpha based on Standardized Items	Number of Items
0.621	0.679	4

(Source: own compilation)

The Cronbach's Alpha for Factor F4 has a reliability estimate of 0.621 for this data meaning that nearly 62% of the variance in the composite scores of the respondents for Factor F4 is reliable variance with 38% error as seen in Table 4.13.

Overall, the Cronbach's Alpha revealed a high level of consistency for each of the four factors confirming the reliability of the questionnaire. Factors F1, F2 and F3 showed a high level of consistency explaining that the respective statements were being understood and interpreted consistently by the respondents. F4 also produced a satisfactory level of consistence at 62%.

A summary of the Cronbach's Alpha results for all of the 4 variables is being presented under Table 4.14 hereunder:

Table 4.14 Cronbach's Alpha values

Factor	Name of factor	Item	Mean	Min-Max	Cronbach Alpha
Factor 1 (F1)	Institutional stakeholders and the political-legal framework	8	2.607	2.05-3.09	0.93
Factor 2 (F2)	The market, consumer influence and the socio- economic environment	6	3.626	3.31-4.09	0.86
Factor 3 (F3)	Socio-technological environment	4	3.210	2.77-3.46	0.80
Factor 4 (F4)	Insurance practice and international business	4	2.832	2.27-4.04	0.62

(Source: Farrugia & Grima, 2021a)

4.2.5 Factor variables related to the respondents' demographics

4.2.5.1 Demographic descriptors and statistics

Knowing and understanding the source of the dataset, puts into perspective the point of view of the findings under the study. The relevant demographics were collected by the questionnaire and these served to give credit to the responses and also to frame the study. The effect of these demographic characteristics is tested under 4.2.5.2 through the use of liner multiple regression to determine the extent of the influence by demographics if at all.

Table 4.15 Descriptive statistics: Age of respondents

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	18-24	321	17.9	17.9	17.9
	25-34	250	13.9	13.9	31.8
	35-44	350	19.5	19.5	51.3
	45-54	171	9.5	9.5	60.9
	55-64	638	35.6	35.6	96.4
	65-74	62	3.5	3.5	99.9
	75+	2	.1	.1	100.0
	Total	1794	100.0	100.0	

(Source: own compilation)

The majority of the respondents were between 55 and 64 years of age, representing a third of the respondents. Experienced respondents were targeted by sending the survey to top executives and qualified established practitioners in the market. That being said, another 14% of the responses, hailed from ages 25 to 44 as those who are serving the sector also fell in line with those targeted since the survey was also sent to front liners and those dealing specifically with insurance customers. This involved those who work in insurance but do not necessarily carry years of experience and who are also very relevant to the study since they are close to the customer and understand, first-hand, their position with respect to utmost good faith. The ranges used for the ages were as “21-24”; “25-34”; “35-44”; “45-54”; “55-64”; “65-74”; and “75 and over”, shown in Table 4.14 above.

One third of the respondents were female as opposed to two thirds being male summarised under Table 4.16 below.

Table 4.16 Descriptive statistics: Gender

	Frequency	Percent	Valid Percent	Cumulative Percent
Male	1204	67.1	67.1	67.1
Female	589	32.8	32.8	99.9
Other	1	.1	.1	100.0
Total	1794	100.0	100.0	

(Source: own compilation)

As seen from Table 4.17, most respondents held a qualification ranging from first degree to doctorate level. Those holding such qualifications represented 88% of the sample, which is not surprising given the purposive sampling carried out targeting professional practitioners in the insurance industry.

Table 4.17 Descriptive statistics: Level of Education

	Frequency	Percent	Valid Percent	Cumulative Percent
School leaving / SEC / Ordinary level (EQF level 1/2/3)	67	3.7	3.7	3.7
Advanced / Matriculation / Intermediate (EQF level 4)	148	8.2	8.2	12.0
Undergraduate / First degree (EQF level 5)	414	23.1	23.1	35.1
Bachelors / Hons (EQF level 6)	717	40.0	40.0	75.0
Masters / Post graduate (EQF level 7)	111	6.2	6.2	81.2
Doctorate (EQF level 8)	337	18.8	18.8	100.0
Total	1794	100.0	100.0	

(Source: own compilation)

For the purposes of analysis, the following classification was used: School leaving/SEC/Ordinary level (EQF level 1/2/3); Advanced/Matriculation/Intermediate (EQF level 4); Undergraduate/first degree (EQF level 5); Bachelors/Hons (EQF level 6); Masters/Post graduate (EQF level 7); Doctorate (EQF level 8). These different classes were modelled on the European Qualifications Framework (National Commission for Higher Education, 2016).

To distinguish the different categories, the occupations were classified as “Manual work”; “Clerical work”; “Managerial work”; “Professional work”; and “Other work”. The results are displayed in the Table 4.18 below.

Table 4.18 Descriptive statistics: Occupation

	Frequency	Percent	Valid Percent	Cumulative Percent
Manual (1)	1	.1	.1	.1
Clerical (2)	123	6.9	6.9	6.9
Managerial (3)	312	17.4	17.4	24.3
Professional (4)	581	32.4	32.4	56.7
Other (5)	757	42.2	42.2	98.9
Total	1794	100.0	100.0	

(Source: own compilation)

49.8% of the sample held managerial and professional positions particularly since in the identification process of the sample, potential respondents who held the relevant expertise were looked for through purposive and snowballing of the sample.

Finally, 837 respondents hailed from civil law countries whereas 957 respondents hailed from common law countries which is 47% and 53% of the total survey respondents of 1794, respectively.

4.2.5.2 The relationship between demographics and the four factors F1 – F4 using Multiple Linear Regression

The factor variables F1 to F4 were examined to understand whether they hold relationships with some demographic variables related to the respondents, specifically the relationship with age, gender, level of education and occupation. Multiple linear regression was used to explain the possible relationship between one dependent variable and two or more independent variables providing a measure of how much the dependent variable changes with changes in the independent variables. Through multiple linear regression, one can predict the value of an outcome from several variables. In this research, multiple regression was used to determine whether the four factor dependent variables were individually influenced by different independent demographic variables and by how much.

Applicable to this research was the linear relationship between the explanatory dependent variables (that variable which has been the subject of measure and that has been tested a number of time) namely F1 to F4 [Factor 1 (F1) - Institutional stakeholders and the political-legal framework; Factor 2 (F2) - The market, consumer influence and the socio-economic environment; Factor 3 (F3) - Socio-technological environment; Factor 4 (F4) - Insurance practice and international business] and on the other hand the independent variables (those that are different and do not depend on each other) namely D1 to D4, where D1 represents age, D2 represents gender, D3 represents level of education and D4 represents occupation of the survey questionnaire respondents. Moreover, multiple linear regression can also

indicate how much for every unit of the demographics will change each of the factor variables (if at all).

4.2.5.2.1 F Mean ($\tilde{F}$)

For the purposes of testing the validity of using multiple linear regression, the dependent variables were averaged and represented by one mean variable abbreviated as $\tilde{F}$ which was generated by averaging F1 to F4 (F1+F2+F3+F4 / 4). Thus $\tilde{F}$ = (F1+F2+F3+F4 / 4).

Using the multiple linear regression formula

$$y = b+mx_1 + mx_2+ mx_3+ mx_4$$

substituting the components by the letters used in this research then

$$y = b+mD_1 + mD_2+ mD_3+ mD_4$$

where y = the dependent variable of the regression
m = slope of the regression
D_1 = first independent variable of the regression
D_2 = second independent variable of the regression
D_3 = third independent variable of the regression
D_4 = fourth independent variable of the regression
b = constant

if y = F1 or F2 or F3 or F4

and F1+ F2+ F3+ F4 = $\tilde{F}$; where $\tilde{F} = \text{Fmean}$

then $\tilde{F} = b+mD_1+ mD_2+ mD_3+ mD_4$

The column $\tilde{F}$ was thus created in SPSS and the $\tilde{F}$ for each of the respondents was generated. Linear regression was applied to determine how $\tilde{F}$ was influenced by the demographics as a whole as explained under section 4.2.5.3, and also how $\tilde{F}$ was influenced by the demographics individually which is explained under section 4.2.5.4. The results of the multiple linear regression were generated via SPSS.

4.2.5.2.2 R value

The R value, which is the measure of the dependency, was measured and stood at 0.192. This is considered to be very low and only slightly significant. R^2 is the coefficient of determination and it is a number between 0 and 1 that measures how well a statistical model

predicts an outcome (Zhang, 2016). In the context of the study R^2 measures how much the proportion of variance in the dependent variable can be explained by the independent variables of age, gender, level of education and occupation.

Table 4.19 R values for independent variables with dependent variable F̃ mean

Model	R	R square	Adjusted R square	Std Error of the Estimate	R Square Change	F change	df1	Df2	Sig. F Change
1	*.192[a]*	*.037*	*.035*	*.48028*	*.037*	*17.092*	*4*	*1789*	*.000*
a. Predictors: (constant), Occupation, Age of Respondent, Level of Education, Gender									

(Source: own compilation)

The R value refers to the multiple correlation between the set of independent variables and the actual scores on the dependent variable. The information is taken from the original set of independent variables and generating a new variable which is a close fit.

The multiple correlation ranges between 0 and 1 where the lower the number, the lower the relationship with the independent variables. Values of 1 would mean all of the points on a plot of dependent variables versus independent values, fall on the regression line whereas a value of 0 would indicate the points are all scattered and do not fall on the regression line (Zhang, 2016). Therefore, a value of 0.192 as displayed by Table 4.19 is very low and this is further shown by a low R^2 value which is the coefficient of determination of 0.037. In this respect it can be said that the value of R^2 is 3.7% explaining how influential independent variable is on the any influence on the dependent variable. Since the adjusted R^2 is how close the data fits the regression model (goodness of fit), at 3.5% fit, it is considered to be very low, explaining that the independent variables have a very slight influence on the dependent variables. Therefore, reasons for reform as interpreted by the respondents are negligibly dependent on age, gender, level of education or occupation albeit results show that the correlation is significant as the p value is less than 0.05.

4.2.5.3 General Analysis of dependent variables v. independent variables using multiple linear regression

The unstandardised coefficients strongly showed that there is nearly no variation for the dependent variable $\tilde{\mathbf{F}}$ for occupation and education, both registering approximately a zero value, while the gender and age also show a quasi-zero value, also confirming hardly any relation.

Table 4.20 Dependent variable $\tilde{F}$ vs. independent variables

Coefficients[a]

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	3.049	.064		47.606	.000
	Age of respondent	-.041	.008	-.134	-5.080	.000
	Gender	.092	.027	.089	3.423	.001
	What is your current level of education	.006	.009	.015	.624	.533
	Occupation	.004	.002	.051	2.174	.030

(Source: own compilation)

This effectively means that a change in the independent variables has a slight effect on the dependent variable confirming that there is a low influence of age, gender, education and occupation on the results of what triggers reform in insurance.

The standardised beta values are used to determine the contribution of significance for each of the variables and the beta value of -0.134 is the strongest variable, albeit all show a very low relationship. The other variables hardly make any contribution to the predication model. This is followed by gender at 0.089 and both age and gender show some significance although very low dependency. We can certainly exclude level of education as a variable that explains any dependency on the dependent variable as the p value is well above 0.05 and thus is insignificant. Therefore, the level of education of the respondents has no bearing on providing their opinion as to whether certain factors lead to reform or otherwise. This analysis is further broken down to analyse the respective factors 1 to 4 individually to show how each of these individual dependent variables relate to the independent variables of age,

gender, education and occupation respectively. This is explained under the following section 4.2.5.4 below.

4.2.5.4 Individual analysis of factors 1 to 4 using Multiple linear regression

A list of factors that influence the modernising of regulations was generated. From these four factors (F1 to F4) and twenty-two statements, multiple linear regression was carried out to determine how each of these factors individually vary with the demographic factors namely: age, gender, level of education and occupation responding to research question (b) namely; "What are the factor variables related to the reform (by regulation) of the principle of utmost good faith and are these variables influenced by (i) demographics and (ii) jurisdiction of the respondents?"

4.2.5.4.1 Factor F1 - Institutional stakeholders and the political-legal framework

The strength of the relationship between F1, Institutional stakeholders and the political-legal framework (the dependent variable), and the respondents' demographics (independent variables) is shown by the R^2 which as displayed in Table 4.21 is 3.10% (Farrugia & Grima, 2021a).

Table 4.21 Dependent variable F1 vs. Independent variables – Model summary

Model Summary[b]

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate	Durbin-Watson
1	.175[a]	.031	.029	.86416	.633

a. Predictors: (Constant), D4, D1, D3, D2

b. Dependent Variable: F1

(Source: own compilation)

The results of the ANOVA indicate that some of the independent variables are statistically significant and predict the dependent variable, $F(4, 1789) = 14.187$, $p < 0.05$ (Farrugia & Grima, 2021a).

Table 4.22 Dependent variable F1 vs. Independent variables - Anova

ANOVA[a]

Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	42.377	4	10.594	14.187	.000[b]
	Residual	1335.981	1789	.747		
	Total	1378.358	1793			

a. Dependent Variable: F1

b. Predictors: (Constant), D4, D1, D3, D2

(Source: own compilation)

Coefficients

The coefficients show that age and gender have a significant statistical relationship on factor F1 - Institutional stakeholders and the political-legal framework (β =-0.077, t = -5.286, $p < 0.05$) and (β = 0.123, t = 2.552, $p < 0.05$) respectively. Thus, 1 point in age and gender is associated with a 5.286 point decrease and a 2.552 point increase in the Institutional stakeholders and the political-legal framework variables respectively. Whilst on the other hand, level of education and occupation have an insignificant relationship having a p value of greater than 0.05 as displayed under Table 4.23 below (Farrugia & Grima, 2021a).

Table 4.23 Dependent variable F1 vs. Independent variables - Coefficients

Coefficients[a]

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	2.625	.115		22.785	.000
	D1	-.077	.015	-.140	-5.286	.000
	D2	.123	.048	.066	2.552	.011
	D3	.019	.016	.028	1.173	.241
	D4	.002	.003	.012	.519	.604

a. Dependent Variable: F1

(Source: Farrugia & Grima, 2021a)

Interpretation

This effectively means that the older the respondent, the less they believed that ‘institutional stakeholders and the political-legal framework’ have a bearing on the initiation of reform of

the insurance principle of utmost good faith and conversely females tend to agree more than males that 'institutional stakeholders and the political-legal framework' have a bearing on the initiation of reform of the insurance principle of utmost good faith. Level of education and occupation have no bearing on Factor F1 (Farrugia & Grima, 2021a).

4.2.5.4.2 Factor F2 - The market, consumer influence and the socio-economic environment

The strength of the relationship between F2 – 'the market, consumer influence and the socio-economic environment' (the dependent variable) explained by the respondents' demographics (independent variables) is shown by the R^2 of 0.2% (Farrugia & Grima, 2021a).

Table 4.24 Dependent variable F2 vs. Independent variables – Model Summary

Model Summary[b]

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate	Durbin-Watson
1	.045[a]	.002	.000	.66183	2.095

a. Predictors: (Constant), D4, D1, D3, D2

b. Dependent Variable: F2

(Source: own compilation)

The results of the ANOVA indicate that the independent variables are statistically insignificant and do not predict the dependent variable, $F(4, 1789) = 0.926$, $p > 0.05$ (Farrugia & Grima, 2021a).

Table 4.25 Dependent variable F2 vs. Independent variables - Anova

ANOVA[a]

Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	1.622	4	.406	.926	.448[b]
	Residual	783.614	1789	.438		
	Total	785.236	1793			

a. Dependent Variable: F2

b. Predictors: (Constant), D4, D1, D3, D2

(Source: own compilation)

Coefficients

There is no relationship between Factor 2 – 'the market, consumer influence and the socio-economic environment' (the dependent variable) and the respondents' demographic variables (independent variables) as the p value is greater than 0.05 in all cases (Farrugia & Grima, 2021a).

Table 4.26 Dependent variable F2 vs. Independent variables - Coefficients

Coefficients[a]

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	3.585	.088		40.628	.000
	D1	-.006	.011	-.013	-.498	.619
	D2	.043	.037	.031	1.169	.243
	D3	-.002	.012	-.004	-.180	.857
	D4	.003	.003	.024	1.018	.309

a. Dependent Variable: F2

(Source: Farrugia & Grima, 2021a)

Interpretation

Examining whether 'the market, consumer influence and the socio-economic environment' has a bearing on the reform of utmost good faith, it transpires that this is not affected by any of the independent variables of age, gender, level of education or occupation of the respondents (Farrugia & Grima, 2021a).

4.2.5.4.3 Factor F3 - Socio-technological environment

The strength of the relationship between F3 – 'socio-technological environment' (the dependent variable) explained by the respondents' demographics (independent variables) is shown by the R^2 of 1.10% (Farrugia & Grima, 2021a).

Table 4.27 Dependent variable F3 vs. Independent variables – Model summary

Model Summary[b]

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate	Durbin-Watson
1	.104[a]	.011	.009	.76577	1.645

a. Predictors: (Constant), D4, D1, D3, D2

b. Dependent Variable: F3

(Source: own compilation)

The results of the ANOVA indicate that the independent variables are statistically significant and predict the dependent variable, $F(4, 1789) = 4.898$, $p < 0.05$ (Farrugia & Grima, 2021a).

Table 4.28 Dependent variable F3 vs. Independent variables - Anova

ANOVA[a]

Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	11.488	4	2.872	4.898	.001[b]
	Residual	1049.079	1789	.586		
	Total	1060.568	1793			

a. Dependent Variable: F3

b. Predictors: (Constant), D4, D1, D3, D2

(Source: own compilation)

Coefficients

The coefficients show that age has a significant statistical relationship on F3 – 'socio-technological environment' ($\beta = -0.026$, $t = -2.022$, $p < 0.05$). Thus, 1 point in age is associated with a decrease in F3 – 'socio-technological environment' of 2.022 points. Occupation has a significant statistical relationship on F3 - 'socio-technological environment' ($\beta = 0.006$, $t = 2.094$, $p < 0.05$). Thus, 1 point in occupation is associated with an increase in F3 - 'socio-technological environment' of 2.094 points. On the other hand, gender and level of education have an insignificant relationship as $p > 0.05$ (Farrugia & Grima, 2021a).

Table 4.29 Dependent variable F3 vs. Independent variables - Coefficients

Coefficients[a]

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	3.199	.102		31.330	.000
	D1	-.026	.013	-.054	-2.022	.043
	D2	.083	.043	.051	1.936	.053
	D3	-.009	.014	-.016	-.663	.507
	D4	.006	.003	.049	2.094	.036

a. Dependent Variable: F3

(Source: Farrugia & Grima, 2021a)

Interpretation

The results mean that the older the respondent, the less they believed that the 'socio-technological environment' has a bearing on the initiation of reform of the insurance principle of utmost good faith. Conversely, the more the occupation tends to be of a technical and professional nature (as opposed to manual and clerical) the more likely the respondents agreed that 'socio-technological environment' has an effect on the reform of utmost good faith. Level of education and gender have no bearing on Factor F3 - 'socio-technological environment' (Farrugia & Grima, 2021a).

4.2.5.4.4 Factor F4 - Insurance practice and international business

The strength of the relationship between F4 – 'insurance practice and international business' (the dependent variable) explained by the respondents' demographics (independent variables) is shown by the R^2 of 3.8% (Farrugia & Grima, 2021a).

Table 4.30 Dependent variable F4 vs. Independent variables – Model summary

Model Summary[b]

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate	Durbin-Watson
1	.196[a]	.038	.036	.62273	.669

a. Predictors: (Constant), D4, D1, D3, D2

b. Dependent Variable: F4

(Source: own compilation)

The results of the ANOVA indicate that the independent variables are statistically significant and thus predict the dependent variable, $F(4, 1789) = 17.808$, $p < 0.05$ (Farrugia & Grima, 2021a).

Table 4.31 Dependent variable F4 vs. Independent variables - Anova

ANOVA[a]

Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	27.624	4	6.906	17.808	.000[b]
	Residual	693.766	1789	.388		
	Total	721.390	1793			

a. Dependent Variable: F4

b. Predictors: (Constant), D4, D1, D3, D2

(Source: own compilation)

Coefficients

The coefficients show that age, gender and occupation have a significant statistical relationship on F4 - 'insurance practice and international business' ($\beta = -0.056$, $t = -5.330$, $p < 0.01$), ($\beta = 0.118$, $t = 3.390$, $p < 0.05$) and ($\beta = 0.006$, $t = 2.323$, $p < 0.05$) respectively. Thus, 1 point in age, gender and occupation are associated with a decrease of 5.330, an increase of 3.390 points and an increase of 2.323 points respectively in opinion on factor F4 - 'insurance practice and international business'. Whilst on the other hand, level of education has an insignificant relationship as $p > 0.05$ (Farrugia & Grima, 2021a).

Table 4.32 Dependent variable F4 vs. Independent variables - Coefficients

Coefficients[a]

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	2.782	.083		33.505	.000
	D1	-.056	.011	-.141	-5.330	.000
	D2	.118	.035	.088	3.390	.001
	D3	.015	.012	.031	1.310	.190
	D4	.006	.002	.054	2.323	.020

a. Dependent Variable: F4

(Source: Farrugia & Grima, 2021a)

Interpretation

The older the respondents, the less they believed that 'insurance practice and international business' had a bearing on the initiation of reform of the insurance principle of utmost good faith and females tend to agree more than males that 'insurance practice and international business' have a bearing on the initiation of reform of the insurance principle of utmost good faith. Moreover, the more the occupation tends to be of a technical and professional nature (as opposed to manual and clerical) the more likely the respondents agreed that 'insurance practice and international business' is a relevant factor bringing on reform. On the other hand, level of education has an insignificant relationship as $p > 0.05$ (Farrugia & Grima, 2021a).

4.2.6 Factors related to Jurisdiction

4.2.6.1 General analysis of the responses

Since there was a question related to the jurisdiction from where the respondent resided, the relationships of the civil and common law systems as influenced by the demographics of the respondents were also available for analysis. This addresses the second part of research question (b) of this study namely; "What are the factor variables related to the reform (by regulation) of the principle of utmost good faith and are these variables influenced by (i) demographics and (ii) jurisdiction of the respondents?".

The respondents were also selected on the basis of their opinion with respect to the country that they operate in. Respondents were thus coded as those providing their opinion based on the civil law jurisdiction of the country and those based on common law jurisdiction of the country.

The strength of the relationship between the independent variables of civil and common law denoted and coded as 1 and 2 respectively with all the dependent variables F1 to F4 is shown by the R^2 of 5.8%, which is very low and although significant, does not hold a considerable

relationship to conclude that jurisdiction had an impact on the responses (Farrugia & Grima, 2021a).

Table 4.33 Dependent variables F1 to F4 vs. Independent variable

Model Summary[b]

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate	Durbin-Watson
1	.241[a]	.058	.051	2.62099	.100

a. Predictors: (Constant), insurance practice and contract equity, socio-demography and stakeholders, legal socio-political, business modernisation

b. Dependent Variable: Country Code

(Source: own compilation)

In furtherance to the general analysis, an individual analysis was carried out wherein the dependent variables factor F1 to F4 individually were related to the independent variables of civil or common law measuring their relationship and by how much, using multiple linear regression.

4.2.6.2 Analysis of Factor 1

For the dependent variable F1, the results of the ANOVA indicate that the independent variable is statistically significant and predicts the dependent variable for 'institutional stakeholders and the political-legal framework', $F(1, 1792) = 268.132$, $p < 0.05$ (Farrugia & Grima, 2021a).

Table 4.34 Dependent variable F1 vs. Independent variables - Anova

ANOVA[a]

Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	179.329	1	179.329	268.132	.000[b]
	Residual	1198.510	1792	.669		
	Total	1377.840	1793			

a. Dependent Variable: Institutional stakeholders and the political-legal framework

b. Predictors: (Constant), Civil Law or Common law based jurisdiction

(Source: own compilation)

The coefficients show a significant relationship between common law or civil law jurisdictions and 'institutional stakeholders and the political-legal framework' (β=0.634, t=16.375, p<0.05). Thus, for every unit of civil/common law, there is a 16.3-fold increase in believe of influence by 'institutional stakeholders and the political-legal framework'.

Table 4.35 Dependent variable F1 vs. Independent variables - Coefficients

Coefficients[a]

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	1.638	.062		26.246	.000
	Civil Law or Common law based jurisdiction	.634	.039	.361	16.375	.000

a. Dependent Variable: Institutional stakeholders and the political-legal framework

(Source: own compilation)

Interpretation

This means that since civil law was coded as 1 and common law was coded as 2, those countries whose jurisdiction is based on common law tend to believe more than those hailing from a civil law jurisdiction, that 'institutional stakeholders and the political-legal framework' has an influence in the determination of reform of the principle of utmost good faith.

4.2.6.3 Analysis of Factor 2

For the dependent variable F2, the results of the ANOVA indicate that the independent variable is statistically insignificant and does not predict the dependent variable for the market, consumer influence and the 'socio-economic environment', F(1, 1792) = 0.876, p > 0.05 (Farrugia & Grima, 2021a).

Table 4.36 Dependent variable F2 vs. Independent variables - Anova

ANOVA[a]

Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	.386	1	.386	.876	.349[b]
	Residual	788.865	1792	.440		
	Total	789.250	1793			

a. Dependent Variable: The market, consumer influence and the socio-economic environment

b. Predictors: (Constant), Civil Law or Common law based jurisdiction

(Source: own compilation)

Interpretation

This means that there is no difference in responses by those respondents hailing from a civil law jurisdiction and those hailing from common law jurisdictions to the questions on the 'market, consumer influence and the socio-economic environment'.

4.2.6.4 Analysis of Factor 3

For the dependent variable F3, the results of the ANOVA indicate that the independent variable is statistically significant and predicts the dependent variable for 'socio-technological environment', $F(1, 1792) = 36.538$, $p < 0.05$ (Farrugia & Grima, 2021a).

Table 4.37 Dependent variable F3 vs. Independent variables - Anova

ANOVA[a]

Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	21.193	1	21.193	36.538	.000[b]
	Residual	1039.375	1792	.580		
	Total	1060.568	1793			

a. Dependent Variable: Socio-technological environment

b. Predictors: (Constant), Civil Law or Common law based jurisdiction

(Source: own compilation)

The coefficients show a significant relationship between common law or civil law jurisdictions and 'socio-technological environment' ($\beta=0.218$, $t=6.045$, $p<0.05$). Thus, for every unit of civil/common law, a 6-fold increase in influence by 'institutional stakeholders and the political-legal framework' as displayed in Table 4.37.

Table 4.38 Dependent variable F3 vs. Independent variables - Coefficients

Coefficients[a]

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	2.876	.058		49.483	.000
	Civil Law or Common law based jurisdiction	.218	.036	.141	6.045	.000

a. Dependent Variable: Socio-technological environment

(Source: own compilation)

Interpretation

This means that since civil law was coded as 1 and common law was coded as 2, those countries whose jurisdiction is based on common law tend to believe more than those hailing from a civil law jurisdiction that the 'socio-technological environment' has an influence in the determination of reform of the principle of utmost good faith.

4.2.6.5 Analysis of Factor 4

For the dependent variable F4, the results of the ANOVA indicate that the independent variable is statistically significant and predicts the dependent variable for 'insurance practice and international business', $F(1, 1792) = 249.009$, $p < 0.05$ (Farrugia & Grima, 2021a).

Table 4.39 Dependent variable F4 vs. Independent variables - Anova

ANOVA[a]

Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	88.012	1	88.012	249.009	.000[b]
	Residual	633.378	1792	.353		
	Total	721.390	1793			

a. Dependent Variable: Insurance practice and international business

b. Predictors: (Constant), Civil Law or Common law based jurisdiction

(Source: own compilation)

The coefficients show a significant relationship between common law or civil law jurisdictions and 'institutional stakeholders and the political-legal framework' ($\beta=0.444$, $t=15.78$, $p<0.05$). Thus, for every unit of civil/common law, a 15.78-fold increase in 'insurance practice and international business'.

Table 4.40 Dependent variable F4 vs. Independent variables - Coefficients

Coefficients[a]

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	2.151	.045		47.404	.000
	Civil Law or Common law based jurisdiction	.444	.028	.349	15.780	.000

a. Dependent Variable: Insurance practice and international business

(Source: own compilation)

Interpretation

This means that since civil law was coded as 1 and common law was coded as 2, those countries whose jurisdiction is based on common law tend to believe more than those hailing from a civil law jurisdiction that 'insurance practice and international business' has an influence in the determination of reform of the principle of utmost good faith.

4.2.7 Ranking of factor variables

The next analysis explored whether there were any significant differences among the respondents for the 22 question scenarios, conversely analysed the level of agreement by respondents and ranked these factors according to how much or how little the respondent agrees. To analyse this, the Friedman's test was used as this test determines whether the respondents can be relied on by looking at the degree of agreement. This test was further corroborated by Kendall concordance coefficient in section 4.2.7.3. The purpose of this analysis was to directly address research question (c) which was prompting the question "Which factor variables are the most agreed upon when assessing the need for reform of utmost good faith?".

4.2.7.1 Mean rank

The mean rank measures the average response on the Likert scale and has been used to provide an indicator of which factor variables the respondents mostly agreed upon and to what extent, by ranking them according to the level of agreement where "5" was total agreement and "1" was total disagreement.

The mean ranks display a relatively higher score in relation to the 'market, consumer influence and the socio-economic environment', which is the most agreed factor affecting reform, followed by the 'socio-technological environment' and 'insurance practice and international business' respectively both tending towards a neutral position, and relatively least related being the 'institutional stakeholders and the political-legal framework'.

Table 4.41 Factors 1 to 4 vs. Mean Rank

Factor number	Description of Factors	Mean Rank
Factor 2	**The market, consumer influence and the socio- economic environment**	3.12
Factor 3	**Socio-technological environment**	2.67
Factor 4	**Insurance practice and international business**	2.26
Factor 1	**Institutional stakeholders and the political-legal framework**	1.94

(Source: own compilation)

The results display a relatively stronger rank of agreement related to 'the market, consumer influence' and the socio-economic environment', which is the most agreed factor affecting reform. As the mean rank is a basic analysis and gives a face value result, the Friedman test with Kendall's concordance was further carried out.

1.2.7.2 Friedman's test

Table 4.42, displays the type of suitable tests according to the type of study (Sheskin, 2011). The Friedman test can be used for non-parametric data and it is assumed that the respondents are being subjected to respond to at least two factors. Both assumptions fit the criteria for the purpose of this study as the data is not necessarily normally distributed and the number of dependent variables on test are four.

Table 4.42 Choice of test

	PARAMETRIC TESTS	NON-PARAMETRIC TESTS
One sample	*Simple t-test*	*Wilcoxon test for one sample*
Two dependent samples	*Paired sample t-test*	*Wilcoxon test*
Two independent samples	*Unpaired sample t-test*	*Mann-Whitney U test*
More than two independent samples	*One factorial ANOVA*	*Kruskal-Wallis test*
More than two dependent samples	*Repeated measures ANOVA*	***Friedman test***
Correlation between two variables	*Pearson correlation*	*Spearman-correlation*

(Source: own compilation)

The null hypothesis would assume that there will be no difference between the perception of the four dependent variable factors F1 to F4 that will influence reform of the insurance principle of utmost good faith whereas the alternative hypothesis will assume there is a difference in perception and thus ranking is possible and significant.

The Friedman test was selected on the basis of the four factors F1 to F4 ranking them in an order which provides a scale of how respondents classify the influence on reform of these established factors. This is possible through the scoring emergent from the Likert scale. The Friedman test provides an analysis of how strongly in relative terms the respondents agree on what could affect reform of utmost good faith. Specifically, how much the respondents agree on the effect of the variables of 'institutional stakeholders and the political-legal framework', 'the market, consumer influence and the socio-economic environment', 'socio-technological environment' and 'insurance practice and international business', have on reform which is a significant test judging from the p-value of less than 0.05 refuting the null hypothesis of equal distributions.

Table 4.43 Friedman Test

N	***Chi Square***	***df***	***Asymp. Sig.***
1794	*854.829*	*3*	*.000*
Friedman Test			

(Source: own compilation)

Moreover, the Chi square statistic which is the Friedman's test, shows that the mean ranks lie apart, in view of the large figure recorded. The lower the Chi square tending towards zero, the more the mean ranks are similar. This also means that there is a considerable level of difference in rating of the questions by the respondents.

4.2.7.3 Kendall's W

Kendall's W is used to determine the degree of agreement between rating respondents when the responses are collected in a ranked form as in the case of this research. In this respect, it is widely known as the normalisation of the Friedman statistic.

Kendall's W shows the effect size and calculates the degree of association of the variables. On a scale of 0 to 1, the higher the value of Kendall's value, the relatively stronger the association. On one extreme a value of 0 would mean that none of the respondents' responses agree whereas a value of 1 signifies that all ranks chosen by the respondents are in full agreement, essentially the respondents are applying the same standard when assessing the responses. Usually, Kendall's coefficients of 0.9 or higher are considered very good. The Kendall W for the four factors as ranked by the respondents was 0.159, which is on the low side of the scale as 0.2 is considered to be low denoting that respondents were in slight agreement, a range of 0.20 and 0.40 is considered to be interpreted as respondents being in fair agreement, a range of 0.40 to 0.60 is considered to be respondents are in moderate agreement and 0.60 to 0.80 is considered to be a finding denoting that respondents are in substantial agreement with a result of greater than 0.80 denoting almost perfect agreement among the respondents. (Landis, 1977).

Table 4.44 Kendall's Coefficient of Concordance

N	*Kendall's W* [a]	*Chi Square*	*df*	*Asymp. Sig.*
1794	*.159*	*854.828*	*3*	*.000*
a. Kendall's coefficient of concordance				

(Source: own compilation)

There is significance on the tested variables on factors influencing reform (p values< 0.05) as shown in Table 4.43 above.

Therefore, while the mean rank explains prima facie which factor was the more mentioned as being the most influential, the Friedman chi square test suggested that respondents did not rank similarly and the Kendall's w confirms that there was a varied degree of opinion surrounding the 22 statements testing which of the factors mostly influences utmost good faith reform.

4.2.8 The case of Malta

Thirty-two (32) interviews were carried out virtually via ZOOM, since this part of the research occurred during the COVID-19 pandemic. All interviewees were based in Malta and were chosen specifically on the basis of their respective experience, expertise, professional status, repute, roles and positions held in the industry. Some of the interviewees had been involved in the reform of the Malta Life Assurance Act enacted in year 2005 and a good number were actively involved in the work of the Malta Insurance Association and/or the Association of Insurance Brokers. All interviewees hailed from the insurance industry and some were involved in the legal side of the insurance business. A few others worked for the regulator and most had first-hand judicial experience due to the nature of their work involving insurance claims.

The analysis of the responses was carried out by extracting common and/or different arguments using an Excel spreadsheet to code and sort the responses via a thematic analysis.

4.2.8.1 Workability of the principle in the Maltese insurance industry: fairness and effectiveness

Responses from the interviews were mixed, depending on whether the interviewee was looking at the matter from the point of view of the insurer or from a consumer perspective. When specifically asked whether the way the utmost good faith principle is applied in Malta and particularly whether it is fair and reasonable, most interviewees (26 out of 32) responded

to the question “Is the application of the insurance principle of utmost good faith in Malta fair and effective? If so, how?” by saying that from an insurer’s perspective, the rule is a way by which the insurers are able to decipher the fraudulent policyholders from the genuine ones, as it relies on honesty and truthfulness. If the proposer/insured tries to hide or misrepresent the facts, then the insurers are safeguarded by rendering the insurance contract void.

There were twelve interviewees who commented that the insurance principle of utmost good faith was designed to protect the insurer and they felt that it was attaining its well-intended scope. In this respect, they argued, insurers do not have an interest in reforming this principle anytime soon as it continues to act as a shield against the fraudulent proposer/insured/claimant.

One interviewee provided a real case example of how utmost good faith protected the insurer from a fraudulent claim recounting how a proposer wanting to insure his boat, came to the office and provided all the associated details only to find out that the boat never existed when claim investigations came to the fore, allowing the insurers to exercise their right to avoid the contract *ab initio*. In this way the insurers were relieved from any responsibility under the insurance contract avoiding to pay a fraudulent claim and proving how the principle works in defending the insurers from such unfaithfulness. Eleven interviewees commented that the principle of utmost good faith places full obligation onto the proposer to be faithful, making the application form the basis of the contract and thus any shortcomings have a validity impact on the insurance policy. Another twelve interviewees defended the position of the oblivious proposer who is expected to disclose material facts without readily understanding what is material, and more so, what facts exist even if these are beyond the immediate knowledge of the proposer/insured at that moment in time. Six of the interviewees agreed that the principle of utmost good faith as adopted under the common law position, is inherently unfair on the consumer. This is because the unwary proposer/insured is led to believe that he/she holds a valid contract and that the insurance cover is in force, only to find

that the ensuing claim is invalidated for a breach of utmost good faith which sometimes is purely committed innocently (Farrugia & Grima, 2021b).

In this respect, there seems to be conflicting views as to whether the current practice of utmost good faith in Malta is working well depending on which side or point of view one takes.

4.2.8.2 Consumer and market pressure

Most interviewees did recognise that politicians and law makers usually give priority to reforming those areas where there is public dissatisfaction and public outcry, however when answering the question "Is there consumer / market pressure (including the media) to introduce utmost good faith reforms? If so, how?", none of the interviewees feel that there is enough dissatisfaction to the point of influencing reform. None of the interviewees felt that a breach of utmost good faith would receive media attention and would ever receive national interest for it to be voluntarily picked up by reformists.

4.2.8.3 Impact of dissatisfaction on the socio-economic environment

Questions related to the social-economic impact, specifically the question "Is there any dissatisfaction on the application of the principle and if so, how has this effected the indigenous socio-economic environment?" received unanimous responses as interviewees did not feel the scale and size of a select issue under a private insurance contract (as that of utmost good faith) is important enough to have any true impact on the society or the economy of the country. One interviewee did refer to how the consumer affairs unit brought the insured's rights to the fore on an industry level but definitely not on a national level. Interviewees do not feel that by dealing with cases of breaches of utmost good faith *per se*, will in itself lead to reform.

4.2.8.4 The evolving nature of the socio-technological infrastructure

Nine interviewees acknowledged and recounted how insurers have embraced technology and how their respective firms are using automated algorithms and information-collecting platforms and devices to obtain material facts possibly moving away from the strict nature

of utmost good faith. In response to the question "Does Malta have a sound socio-technological infrastructure to be able to effect changes in the application of the principle of utmost good faith? If so, how?", twelve interviewees said that reliance on technology to bring in material facts is already with us and feel that insurers have become, in some cases, more knowledgeable than the insured. Four interviewees gave first-hand information of how their companies acquire knowledge through telematic devices and one interviewee informed how foreign insurers are already tracking the health of their health policyholders. Notwithstanding the general acknowledgement that technology and technological infrastructure could make insurers more intelligent from a 'material facts' point of view, none of the interviewees committed to say that technology might in itself be the prime driver of reform.

4.2.8.5 Importance of utmost good faith in the context of international business

The question related to international business, particularly "How important is reform in the insurance principle of utmost good faith in the context of international business? Explain why", was asked in the context of the business relationships held between local companies and foreign counterparts. Maltese insurance business is reliant on reinsurance and when asked whether policy wording or contract disparity (especially on how the principle of utmost good faith principle is applied) was a determining factor in bringing about reform to achieve harmonisation, no interviewee answered in the affirmative with two interviewees saying that insurance being a contract, will be dictated by the terms and provisions of the insurance undertaking issuing the policy wording. Generally, interviewees do not see international business as putting pressure on the Maltese industry to voice their concern and ask for insurance reform although competitively the business might be affected if the insurance community fails to adapt and align their respective policies and practices.

4.2.8.6 Involvement of institutions in potentially reforming utmost good faith

Answers to whether institutions like the MFSA, insurance associations and other trade bodies could potentially press for reform, six interviewees acknowledged that associations are strong in voicing the needs of their respective industries although no interviewees agreed that the regulator has any role to play in asking the government to pass reform legislation. On the other hand, eleven responded to "How do you see the involvement of institutions (e.g. courts, regulators, associations, reinsurers, reformists and other stakeholders) in potentially reforming utmost good faith?" by stating that reform needs the support of the judiciary. One interviewee specifically replied that the judges and the courts might suggest the need for reform through their courts' case interpretation, although this is unlikely given that the number of dissatisfied cases on utmost good faith are relatively small to influence a change in practice.

4.2.8.7 Political-legal willingness to reform utmost good faith practice

Interviewees responding to whether reforms (especially in insurance) require political commitment, were largely in agreement on the fact that the members of parliament do not have utmost good faith on their agenda and will take a great deal of lobbying to get voluntary reform to the fore. Twenty-five interviewees responded to the question "Do you think there is political-legal willingness to reform utmost good faith practice? If so, why?" by commenting that bringing about reform is a laborious task and they do not feel that politicians have the necessary motivation to consider this aspect of insurance business as a priority (Farrugia & Grima, 2021b).

Three recalled and mentioned how reform was handled in the past when Malta enacted the Life Assurance Act in 2005. This was an Act which was introduced to make certain contractual positions clear, especially since certain matters were being disputed for lack of clarity. The stakeholders, notably the regular and associations, lobbied with the minister of finance to receive support in having this proposed piece of legislation passed through the channels of parliament and to have it embedded in the laws of Malta. The reform of the life

insurance business was as a result of a concerted effort albeit bringing stakeholders together was, in itself, cumbersome. Two commented that it would be more likely that law makers would take heed of the discussions with the industry associations who seem to be quite influential in the lobbying phase of reform. One participant recounted how the divorce bill become an act in a few weeks as this stemmed from a private members bill via a member of parliament, proving the importance of the political influence in reforms.

A domestic reform requires the support and commitment of various stakeholders most notably the legislature and judiciary and requires structures such as the law reform committees to build a robust regulatory framework. Twelve interviewees specifically opined that such reforms require the support of the members of parliament (Farrugia & Grima, 2021b).

4.2.8.8 The UK model – does it work for Malta?

In response to the question on whether "Since Malta is dependent on the UK practice, should it now follow the UK in reforming the principle of utmost good faith? If so, why?" and "How important is UK practice to the practice in insurance in Malta?", all interviewees confirmed the fact that insurance practice in Malta is largely based on UK practice and this is not surprising considering the 164 years of British rule between 1800-1964. Most interviewees (24) reported that the principle of utmost good faith as practice under the UK Marine Insurance Act has now stood the test of time in Malta and has been applied by the courts for several years. With all its downsides, this principle has served the industry fairly well and they do not see the practice change any time soon. However, six interviewees did acknowledge that the changing needs of the Maltese insurance environment is inevitable and sooner rather than later, will need some form of adjustment especially since a number of firms from countries other than the UK have invested in Malta, requesting new needs and demands.

Some interviewees (10) observed that insurance practice in Malta is based on borrowed practices in the absence of a comprehensive law on matters of insurance. Twenty-seven

interviewees were of the opinion that reliance on UK law and practice, cannot be ignored and that Malta needs to remain vigilant with the developments in the UK industry. Moreover, all interviewees were unanimous in endorsing that changes in UK practices would definitely have some sort of impact on the practice in insurance in Malta.

Most interviewees (28) were sceptical that Malta should design its own utmost good faith model and change the way it deals with breaches of disclosure, the main reason being that the market is too fragmented to encourage a concerted effort to bring reform.

Four other interviewees were on the other hand, keen to show interest in the involvement of any reform if this was ever being considered at a legislative level.

4.2.8.9 The EU factor as a ready-made solution

When asked whether Malta should wait for the EU to take the initiative to release its own laws, rules regulation or guidelines on this matter of utmost good faith, all interviewees agreed that being a member of the EU automatically implies that all laws and directives will need to be incorporated in national law, a process known as transposition.

Responding to the question "Should Malta wait for the EU to take the initiative to release its own laws, rules regulation or guidelines on this matter of utmost good faith and why?", eight interviewees recounted their own experience from the Motor insurance sector which is not alien to directives of the EU having to incorporate no less than 5EU directives "namely the 1st EU Motor Insurance Directive 1972, the 2nd EU Motor Insurance Directive 1983, the 3rd EU Motor Insurance Directive 1990, the 4th EU Motor Insurance Directive 2000, and the most recent 5th EU Motor Insurance Directive enacted in 2005, with the sixth Directive currently in progress" (Farrugia & Grima, 2021b, p.8).

When it comes to Regulations of the EU, nine interviewees explained how these are introduced into the legal framework intact and cannot be in any way modified or amended as these regulations are specific and apply in the same way throughout the EU member states. Six of these interviewees mentioned how the GDPR regulations were incorporated into Maltese legislation straight from the EU with little legislative effort. However, four

interviewees were of the opinion that taking a reactive approach and thus waiting for initiatives to emerge from the EU will not remedy any of the poor practices in the domestic scenario. Another five interviewees commented that EU orders are obligatory on member states especially regulations although the proportionality principle applies to small countries (Negrut, 2010) such as Malta.

Three interviewees responded by saying that the European Union is an advocate for consumer rights and, directives and regulations are most of the time consumer driven smoothing situations of dissatisfaction. A reformed utmost good faith could find itself being adopted across all EU member states having a common policy as in the EU Motor Insurance directives and of course this would then have to be adopted by Malta although three interviewees were sceptical on how much the European Association of Insurers, Insurance Europe, was actively working on this initiative.

4.2.8.10 The pros and cons of reinventing the wheel through reform

When asked whether Malta was prepared to reform the practice of the principle of utmost good faith, specifically answering the questions "How prepared is the insurance industry in Malta to reform the practice of the principle of utmost good faith?" and "Should Malta reform its current practice of utmost good faith, if so, why?", only five interviewees were confident that Malta is ready for change while ten interviewees were not sure whether there should be a change at all. Half of the interviewees were of the opinion that unless there is a concerted effort among all stakeholders, then there will not be adequate attention sufficient to bring any form of change or reform. Five interviewees noted that the UK had already allowed self-regulation for a time, which in itself was a precursor to reform. Five interviewees noted that pressure is only created when the situation escalates to the point of receiving national attention, a matter which does not seem to have attracted any such interest in Malta, at least for the time being.

Four interviewees claimed they had first experience in insurance reform talks via their involvement in the works of the Malta Insurance although no progress was reported.

4.2.9 Results emergent from the interviews

All the comments were sorted, coded and grouped together where the comments were common and discarded where the comments were irrelevant or repetitive. Table 4.45 shows the results emergent from the interviews with verbatim extracts of the interviewees.

Table 4.45 Results of the interview questions

Is the application of the insurance principle of utmost good faith in Malta fair and effective? If so, how?		
QUANTITATIVE FINDINGS	QUALITATIVE FINDINGS	META INFERENCES
26 interviewees	"utmost good faith reveals fraudulent claims", "utmost good faith is the basis of insurance practice", "utmost good faith sorts out the asymmetry issue", "Insurance is based in utmost good faith", "utmost good faith protects the insurer"	conflicting views as to whether the current practice of utmost good faith in Malta is working well
12 interviewees	"the proposer does not know what to disclose", "sometimes the prosper is innocent", "insurance is at times too technical for the proposer to understand the duties", "utmost good faith sweeps everything under the principle punishing the innocent proposer"	
Is there consumer / market pressure (including the media) to introduce utmost good faith reforms? If so, how?		
QUANTITATIVE FINDINGS	QUALITATIVE FINDINGS	META INFERENCES
32 interviewees	"breaches of utmost good faith do not have any evident media impact", "the consumer alone cannot exert pressure", "consumer organisations might voice concerns but not enough to push for reforms", "breaches of utmost good faith do not bring any negative economic impact"	not enough customer dissatisfaction, media attention or economic impact to merit reform
Is there any dissatisfaction on the application of the principle and if so, how has this effected the indigenous socio-economic environment?		
QUANTITATIVE FINDINGS	QUALITATIVE FINDINGS	META INFERENCES
32 interviewees	"I don't believe that dissatisfaction alone will push for any change", "utmost good faith is	dissatisfaction in dealing with cases

	not newsworthy", "utmost good faith does not receive any media attention", "dissatisfactions are not reported", "only a few cases come before the court", "only the major issues are voiced and exert pressure to change"	of breaches of utmost good faith will in itself lead to reform
Does Malta have a sound socio-technological infrastructure to be able to effect changes in the application of the principle of utmost good faith? If so, how?		
QUANTITATIVE FINDINGS	QUALITATIVE FINDINGS	META INFERENCES
9 interviewees	"technology has become integral in insurance operations", "underwriting has seen a change with devices that can transmit information to the insurer", "devices like telematics, health monitors and GPS enabled devices are providing information", "today insurers knows more than the insured"	technology is in itself not a driver of reform
12 interviewees	"insurers today have invested in technology", "some companies are smarter than the insured", "some insurers can analyse insured's behaviour and make adjustments", "today the concept of utmost good faith is changing through tech devices and software"	
How important is reform in the insurance principle of utmost good faith in the context of international business? Explain why.		
QUANTITATIVE FINDINGS	QUALITATIVE FINDINGS	META INFERENCES
28 interviewees	"international business is not really affected by a change in utmost good faith", "different insurers have different wording and insurers agree to the wording and practice to adopt", "so far I cannot see why business should be affected with different adoption of the utmost good faith principle", "in the future if underwriting and claims practices change there could be some operational disparity"	international business does not exert influence to reform
How do you see the involvement of institutions (e.g. courts, regulators, associations, reinsurers, reformists and other stakeholders) in potentially reforming utmost good faith?		

QUANTITATIVE FINDINGS	QUALITATIVE FINDINGS	META INFERENCES
6 interviewees	"institutions are powerful representative bodies", "if something will be done this will be through the MIA and AIB (associations in Malta)"	although influential it is unlikely that institutions will play a part in reform
11 interviewees	"judges can be influential in their decisions", "I experienced a court case where the judge passed on a comment to say that the position of utmost good faith is seemingly tipped in favour of the insurer"	
1 interviewees	"judges can disapprove and can prevent the insurer from taking advantage and prevent the insurer from relying on the principle in a particular case"	
Do you think there is political-legal willingness to reform utmost good faith practice? If so, why?		
QUANTITATIVE FINDINGS	QUALITATIVE FINDINGS	META INFERENCES
25 interviewees	"politicians have their own agenda", "politicians are inclined to consider reform which affect the society at large", "I cannot see how the government will be bothered with reforming an insurance principle", "utmost good faith is not a national concern"	needs political support but utmost good faith is not on the political agenda of the government
2 interviewees	"if at all, associations will need to forward a call for reform to the government"	
3 interviewees	"when we wanted to pass the Life Assurance Act we lobbied with the minister of finance"	
Since Malta is dependent on the UK practice, should it now follow the UK in reforming the principle of utmost good faith? If so, why? **How important is UK practice to the practice in insurance in Malta?**		

Should Malta wait for the EU to take the initiative to release its own laws, rules regulation or guidelines on this matter of utmost good faith and why?		
QUANTITATIVE FINDINGS	QUALITATIVE FINDINGS	META INFERENCES
32 interviewees	"we always tend to follow UK practice", "we always based our operations on utmost good faith", "Malta follows UK cases even in the courts", "usually what happens in the UK is later adopted by our industry", "Malta needs to follow the EU", "as a member state, we are now obliged to transpose EU law regulations and practice"	UK practice has now been cemented in insurance practice and only EU law can change this
How prepared is the insurance industry in Malta to reform the practice of the principle of utmost good faith? **Should Malta reform its current practice of utmost good faith? If so, why?**		
QUANTITATIVE FINDINGS	QUALITATIVE FINDINGS	META INFERENCES
28 interviewees	"utmost good faith stood the test of time", "unless the industry comes together and voice the need for change, utmost good faith will not be reformed", "cannot see the utmost good faith principle change anytime soon"	Practitioners do not see the practice of utmost good faith in insurance practice change in the near future in Malta

(Source: own compilation)

4.3 Conclusion

The findings reveal relevant results and address the research questions by providing concrete responses reflecting the reality in the insurance market today and beyond.

4.3.1 Factors affecting reform in general and factors affecting reform of utmost good faith in insurance

The results of the findings confirmed (to a large extent) and redefined the general factors affecting reform by transforming the five initially found factors to the redefined four factors which specifically, affect reform of utmost good faith in insurance as shown in Figure 4.3 below:

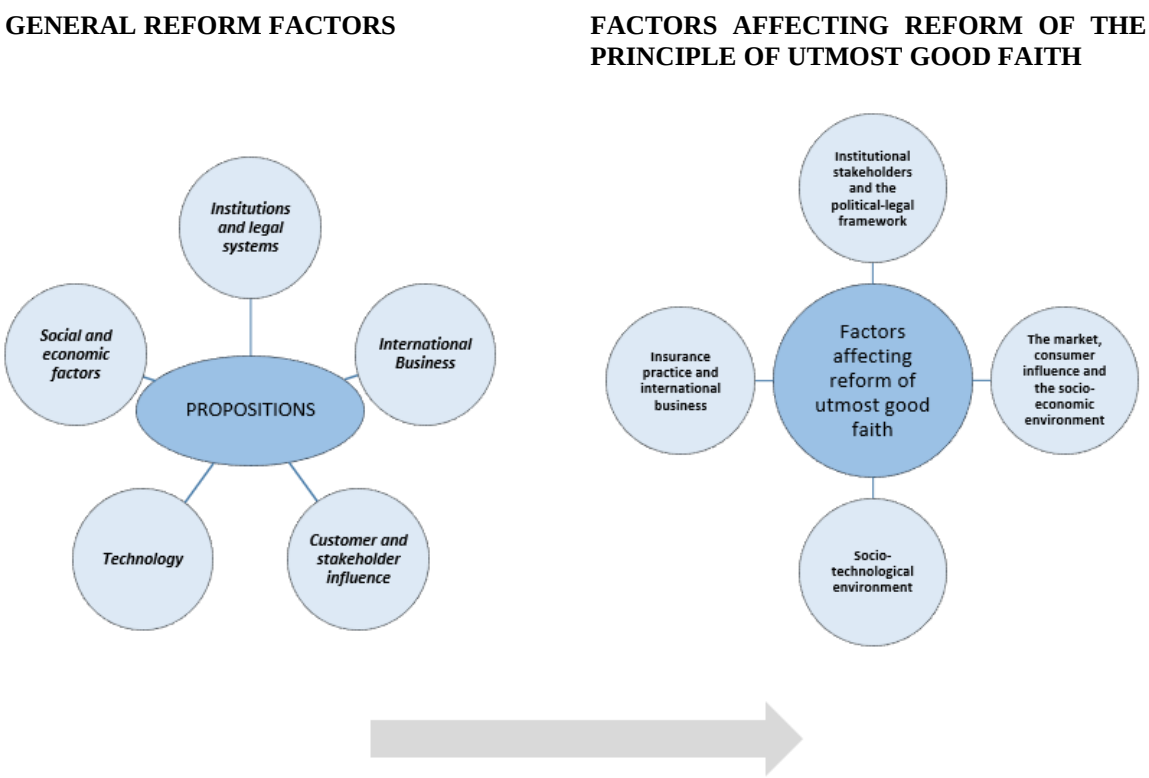


Figure 4.3 Redefinition of factors affecting reform as applied to utmost good faith

(Source: own compilation)

From Figure 4.3 it is apparent that reform factors affecting a jurisdiction in a general way are also reflective in the various industries and sectors. As a matter of fact, the first five factors derived from reform in the general sense when desk-based literature was examined, were more or less confirmed through the survey questionnaire specifically based on the insurance principle of utmost good faith save for a few distinct differences. In fact, one can conclude that the four factors that are perceived to have an effect on reform on the principle of utmost good faith in insurance are more or less a redefinition of the general factors rather than new found factors exclusive to the insurance industry.

Of notable difference is the factor on international business which was redefined to include the insurance industry after the results of the survey questionnaire were analysed. This is of no surprise, given that the survey was specifically related to the insurance environment. Moreover, a cluster of factors incorporating the socio-economic aspect specifically included

the market, consumer influence and the socio-economic factors that was deemed to be a redefinition of factors related specifically to the insurance sector. This was also expected as insurance is a very socially driven business and therefore the market is very sensitive to the social and economic aspects affecting the insurance consumers that are receiving a service in this regard. The factor previously identified as 'technology' was also further refined through the survey questionnaire findings and the resultant factor applicable to insurance was termed 'socio-technological environment' which compliments the trend in the insurance market today. This is due to the advent of modern technological devices, insurtech products, smart contracts and artificial intelligent systems that have changed the way insurance is conducted. Underwriting is different in the way information is gathered, monitored and processed, having the insurer no longer on the weaker side of the scale, but rather knowledgeable, sometimes to the point of being more informed than the insured himself via tech devices that are instantaneously able to record, process and provide an output swiftly. In this respect, this factor has been redefined to align with the current trends, which in itself, could change the traditional application of the principle of utmost good faith in its entirety.

The factor firstly identified as 'institutions and legal systems' was also slightly modified to include the law makers that seem to feature as being those that can induce reform since ultimately, they are the medium who will be responsible for the enactment of any reform, if at all. This depends on the political stance of the incumbent government and the agenda of the legislature. Needleless to say, the political-legal factor merits to be singled out as a factor as the incumbent country leaders would want to ensure that consumers are adequately protected and that businesses are able to run smoothly and effectively in the generation of their objectives.

In conclusion, the four factors identified as being those that lead to reform of the principle of utmost good faith confirm the general reform factors with specific redefinition related to the insurance business.

4.3.2 Demographics and Jurisdiction

When examining the characteristics of the survey respondents, albeit slightly, it was established that the older generation tend to believe less that 'institutional stakeholders and the political-legal framework', 'the socio-technological environment' and the 'insurance practice and international business', have a bearing on the initiation of reform of the insurance principle of utmost good faith.

Females tend to agree more than males that 'institutional stakeholders and the political-legal framework' and 'insurance practice and international business' have a bearing on the initiation of reform of the insurance principle of utmost good faith.

The more the occupation tends to be of a technical and professional nature (as opposed to manual and clerical) the more likely the respondents will agree that 'socio-technological environment' and 'insurance practice and international business' have an effect on the reform of utmost good faith.

The opinion of the respondents to whether the factor 'institutional stakeholders and the political-legal framework' and 'market, consumer influence and the 'socio-economic environment', 'socio-technological environment' and 'insurance practice and international business' has a bearing on the reform of the insurance principle of utmost good faith, has no relationship with level of education of the respondents at all.

		Institutional stakeholders and the Political-legal framework	Market, consumer influence and the Socio-economic environment	Socio-technological environment	Insurance practice and International business
Age	18-24 25-34 35-44 45-54 55-64 65-74 75+	↓	↔	↓	↓
Gender	Men Women Other	↓	↔	↔	↓
Education	EQF1/2/3 EQF4 EQF5 EQF6 EQF7 EQF8	↔	↔	↔	↔
Occupation	Manual Clerical Managerial Professional Other	↔	↔	↓	↓
Jurisdiction	Civil Law Common Law	↓	↔	↓	↓

LEGEND: ↓ INCREASING ↓ DECREASING ↔ NO CHANGE

Figure 4.4 The effect of demographics and jurisdiction on the factor variables affecting utmost good faith in insurance (Source: own compilation)

There is no difference in responses by those respondents hailing from a civil law jurisdiction and those hailing from common law jurisdictions to the questions on the 'market, consumer influence and the socio-economic environment'. However, those countries whose jurisdiction is based on common law tend to believe more than those hailing from a civil law jurisdiction that the 'institutional stakeholders and the political-legal framework', 'socio-technological environment' and 'insurance practice and international business', has an influence in the determination on reform of the principle of utmost good faith.

These findings are relevant and critical in the designing stages of the primary research, as researchers identify the type of sample through different demographics. The findings demonstrate a varying opinion in the responses (albeit slightly) depending on different ages, gender and occupation, whereas the level of education does not affect the results of the research and may be omitted. The findings show a very low level of correlation between the demographics and the opinion of the respondents on the factors that influence reform demonstrated by the R values and it is concluded that age, gender, level of education and occupation do not distort or contribute to any of the results as responses were not influenced by the demographics *per se*. It is being concluded that in view of the very low correlation, demographics did not have an effect on the type of responses received.

4.3.3 Factors most agreed upon by respondents

Moreover, the ensuing results placed the factor 'market, consumer influence and the socio-economic environment' as the most agreed factor affecting reform followed by 'socio-technological environment' tending towards a neutral position and least related being 'Insurance practice and international business' and 'Institutional stakeholders and the political-legal framework'.

Figure 4.5 Factors affecting reform of utmost good faith in order of agreement

(Source: own compilation)

4.3.4 The case of Malta

Finally, the application of the factors affecting reform were applied to Malta with the findings transcribed and analysed accordingly. The comments that were grouped together according to the matters they addressed, largely concluded that there is currently no incentive for Malta to reform the practice of utmost good faith in insurance the reasons being highlighted under Figure 4.6 below.

Figure 4.6 Outcomes of the need for reform in Malta

(Source: own compilation)

CHAPTER 5 - DISCUSSION

5.1 Introduction

In this chapter, the discussive aspects of this research are being fronted, focussing on providing concrete replies to the research questions, that were meant to achieve the research objectives and sought to establish conclusive remarks.

Specifically, this chapter presents the relevance behind the emergent results of the general reform factors zoning into the specific reform factors of the principle of utmost good faith in insurance. Moreover, further discussions are made on the effect of respondent variables namely age, gender, level of education, occupation and jurisdiction, as these might have inherently influenced the results, and on the ranking of the factors in order of perceived importance. Finally, the chapter discusses the conclusions of the effect of reform of utmost good faith on the practice of insurance in Malta, discussing the results emergent from interviews.

Conclusively, a commentary on the relevance of this work together with possible further scholarly research is suggested, making this research a platform for further study.

5.2 General reform factors – research question (a)

In response to the research question (a) namely "What are the factors that generally lead to reform and what are the consequences of ignoring the signs pointing to the need for reform?", the researcher performed a wide and far-reaching investigation into what leads a country in considering a change. The investigation was directed to what causes reform in general and to understand the root of the factors that cause such a measure in a typical jurisdiction. It was concluded that reform is not a result of one factor but invariably consists of several reasons which are dependent or independent of each other. What is sure is that the reasons collectively explain why a jurisdiction takes a certain line of action and how a situation is remedied as a result. Historical happenings and the resolution of certain circumstances

together with a host of variables all culminate to explain why certain reforms through legislation, rules and regulations were enacted in the past and how rules and regulations spearheaded new and fairer practices in the respective industries to which they apply.

Societies develop and change, and so do their corresponding demands and needs. Industries need to recognise this evolution and act to provide services and products to meet these surfacing challenges especially with changes in the socio-technological infrastructure. With this happening, regulators too have to respond to ensure that service providers are meeting the new expectations fairly and equitably. Modernisation of regulation along with changes in type and style of business puts pressure on reform stakeholders to ensure harmonisation in the market coupled with effective monitoring systems and structures (Vaughan, 2014). This research has determined and laid out the influencing variables in the carrying out of regulatory modernisation among other factors.

Concerns and pressure to reform tend to originate from stakeholders who voice their concerns in different ways. Groups tend to have a more profound effect and it is not uncommon to observe pressure emanating from associations, regulators, arbitrators and committees among others. The judiciary can also exert due influence through its interpretation of the law and through its *obiter dicta*. Ultimately, it is the legislature that needs to be convinced if ever statutory reform is to be enacted, as found by Williamson (1994). Delegating the function of looking into reform to the Law Reform Committees is a conduit to get such needed changes actioned, as the committees go through a thorough analysis prior to reporting their recommendations to the legislature (Merkin & Gurses, 2015).

Most concerns emanate from the public who, most of the time (especially in insurance), are voicing their concerns in their respective capacities as customers, proposers, policyholders or claimants. Dissatisfaction (especially financial), can be very easily recognised as this may manifest into protests, strikes, complaints, referenda, petitions and other means which are used by the public to make their position heard. In the business context, this is evident

through the various dispute resolution channels, negative reviews and official complaints following dissatisfaction of service, inequitable contracts and / or unfair dealings.

In the context of a globalised environment, one cannot ignore the strong influence of international business and global networking. This is by no means simple and the complexity brought by such cross-border business, was found to be a factor that urges regulators to set the rules of the game, avoiding expensive litigation and severance of business relationships. This has been corroborated by Abiad and Mody (2005) and Lowry & Rawlings (2012) in their research (among others).

That technology has changed the world, is an obvious statement. This was also found to be a strong reform factor in the light of the technological era that we are living in. New technologies mean novel ways of doing things, and modernisation has forced law makers to introduce new reforms to ensure the socio-technological environment is up to date and running smoothly, as reiterated by Braun and Schreiber (2017). Technology was found to be a source of reform and a case in point is the insurance industry, which uses AI and Insurtech to be able to secure dealings with the prospective policyholders. Nowadays, insurers enjoy sophisticated mechanisms to accept, evaluate and underwrite their risks profitably, exacerbating the need of having reform practices to ensure a level playing field for all contracting parties. This is corroborated by the findings of Silverberg (2016).

Finally, the other factor found to be contributory to the need of initiating reform is the socio-economic factor which again recognises the input of the society coupled with the economic and financial strain within a given economy. This has an effect of burdening the society bringing social problems of instability, recession, poverty and resistance among others. These findings are corroborated with the works of Walmsey (n.d.) and Traustadottir & Johnson (2005) among others.

The research concludes by finding that reform in general is caused by country institutions and legal systems, customer/stakeholder influence, international business, technology and socio-economic trends.

Moreover, from literature one can deduce the consequences of non-reform. A general failure to act on amending existing laws, rules and regulations may bring about social, economic and financial hardship on an economy and relevant to the study of utmost good faith, this manifests itself in social dissatisfaction, if insurance does not attain expectations. One can argue that social dissatisfaction might tantamount to bad image or poor reputation for the insurance industry with the consequence of financial repercussions to the economy at large. It is thus in the interests of all stakeholders to ensure insurance practice is up to date, meeting the expectations of its customers and seen by the society as an industry which is fulfilling its supportive role. It has also been discovered that non-reform could also result in loss of appeal by the industry on the international front. International competition on a national scale affects the economy and the finances of the country. It affects the attractiveness to transact insurance business, thus the importance for the insurance industry to remain abreast with the developments and moreover remain competitive (Farrugia & Grima, 2021a).

Non-reform has its own consequences and when instances showed lack of action or complacency by governments and policy makers, there were evident consequences sometimes even apparent on a national scale. A comparative cross-country analysis reveals that non-reform results in social and economic downfalls as well as losses in productivity, economic distortions and market fragmentation. This in turn, causes negative effects, and in some countries, brings about poverty, unemployment, inefficiencies, inequality and financial burdens (IMF, 2020). Non-reform can throw a jurisdiction in a state of uncompetitiveness as countries move forward, modernise and develop, leaving behind those stuck to traditional traits and practices. This is corroborated by the findings of Tamaga (1952) and Soo-Myung (2006). Such failure to recognise the need to reform by a jurisdiction will have a negative effect on companies that rely on cross-border transactions and distant business. This is especially the case when businesses do not keep up with the technological demands, rendering their operations uncompetitive, thereby losing appeal, efficiency and prosperity. Appeal is also lost if organisations do not respond to modern consumer needs and unless

they reform their practices, sooner than later, they will lose their market share, profit and clientele. This is a point made by Freedman (2001) and Seng-Ho (2019) in their respective findings.

Overall, lack of reform especially by governments brings political distrust which leads to societal pressures, disturbing the social, economic and financial stability of the country together with numerous other consequences and repercussions. Needless to say, this puts political pressure on incumbent governments to act before public distrust sets in and request a change in leadership in a forthcoming election. Governments therefore do have an interest to keep abreast of the potential reform areas to ensure stability and prosperity. This is corroborated with the works of Tan (2008) and Panteli (2017) among others.

In conclusion, the research finds that non-reform is presenting consequences of socio-economic losses and pressures, fragmentation of markets and economic distortions, lack of efficiency, social difficulties including but not exclusive to poverty, unemployment, inequality situations, environmental issues, housing problems and financial burdens. Moreover, non-reform makes a jurisdiction and the respective industries uncompetitive and presents a negative effect on cross border and international deals resulting in financial burdens on the society and thus societal dissatisfaction. Non-reform in information technology makes a country and/or the respective industries unappealing, burdening the consumer with outdated practices and products, at times causing contract uncertainties.

Finally, failure to bring on reform when due, will tend to result in socio-economic and financial consequences (Nugent & Campos, 2019) which in turn, might lead to unemployment, inequality, prejudice of the vulnerable, financial hardship on the majority of the citizens, employment disincentives, economic distortions, housing problems, environmental issues, poverty (Davis & Sanchez-Martinez, 2015), lack of competitiveness resulting from global competition challenges in the form of uncompetitive prices becoming unattractive to international deals and trades, lack of modernisation becoming uncompetitive in technology, lack of compatibility and harmonisation of business, and customer

dissatisfaction resulting from change in demography and consumer behaviour (Dachs, 2018). All of these factors require constant vigilance and reform where necessary, otherwise risk conflicting expectations and failure of government policies through socio-political complacency with the undesirable result manifested in public outcry, protests, strikes, civil unrest and demands threatening governments and their policies (Renn, et al., 2011).

5.3 Reform factors affecting utmost good faith in insurance – research question (b)

5.3.1 Introduction and general comments

In response to research question (b), that mainly seeks to determine the reform factors affecting the principle of utmost good faith, the researcher finds that such factors may be summed into four, namely: 'institutional stakeholders and the political-legal framework'; 'the market, consumer influence and the socio-economic environment'; 'socio-technological environment' and 'insurance practice and international business'.

These findings are in line with other conclusions by other scholars as in the case of Djankov, et al., (2017) who explored the influence of fiscal and economic pressures affecting regulatory reform and Krueger (1993) who identified economic factors as affecting government regulatory reform (Farrugia & Grima, 2021a).

Previously Williamson (1994) showed how the political factors had an influence on bringing on reform in a country and Allan (2003) also showed that reforms were the results of certain factors namely political, cultural, economic factors. Breen on the other hand argues that the advent of modernisation and technological advances have a bearing on change of practice and this is further discussed by Belanger and Satin (2017) and Silverberg (2016) who state that such technological developments invariably set a need for change in the insurance industry by way of reform. Moreover Cousy (2017) comments on how international harmonisation of business presents a need for the respective jurisdictions to harmonise their legislation namely contact laws and regulation namely industry specific rules and regulations.

These scholars compliment the findings of this research and reaffirm the factors of reform, particularly in the modern insurance industry (Farrugia & Grima, 2021a).

Taking utmost good faith as the main discussion point, it is worth noting that the context of reform of this insurance principle (and any other to this effect), must be considered in the light of the current environment, which in the context of today's scenario, is the ever-progressive technological infrastructure which has affected and changed businesses including that of insurance. Moreover, we have seen that utmost good faith has been considerably affected by technology in the way information is acquired, processed and used, which has not only become automated but also facilitated. This is mostly evident when it comes to decision-making, particularly when deciding whether to accept a risk, what terms to apply, premium to charge and any adjustments required based on the behaviour and performance of the proposed or insured risk (Farrugia & Grima, 2021a).

The factors affecting reform of utmost good faith in insurance are being discussed in the forthcoming sections.

5.3.2 Institutional stakeholders and the political-legal framework

Any change requires government and stakeholder support, and failure of governments to recognise the need to reform may bring several public protests, unrest and demands. In insurance, this translates to a lack of trust in the business, negatively affecting the insurance industry in the respective domicile (Farrugia & Grima, 2021a).

Lack of uniformity in insurance contracts and practices among insurance market players, may result in inconsistencies and unnecessary inefficiencies especially since the nature of insurance business is fundamentally based on risk sharing and risk spreading. It is challenging for such systems to achieve the optimal balance of uniformity, especially in the attainment of contract certainty and in the interpretation of the relevant technical wording.

If a jurisdiction decides not to decide, it would still have made a decision, a decision to remain complacent with the potential repercussion of having a regulatory system, or principle, that is doubtfully relevant for fear of modernisation. The uniformity of contract

wording and practices of information sharing in the international business world ensures efficient and effective dealings and when this is supported by common regulation, it would then bring stability and consistency in the insurance market (Farrugia & Grima, 2021a).

It may be concluded that any success to reform, which brings change in practice supported by statute law (as in the case of the UK for example), requires institutional and parliamentary motivation and commitment. This research has presented evidence that this is an influential factor in setting the scene for a change, especially since stakeholders need to bring matters to the attention of the legislators who in turn must be convinced that these matters deserve parliamentary consideration.

5.3.3 The market, consumer influence and the socio-economic environment

Any business, trade or activity requires parameters to be able to operate effectively and fairly. These parameters come in various shapes and forms, emergent from laws, regulations, rules, policies, standards practices, codes and principles. Insurance, being a long-standing practice, is by no means relieved from the complexities of the business especially the nature of which, presents a contractual relationship founded on a mere promise to pay in the event of a valid claim. The business of insurance has come a long way and through the years, insurance principles were developed to cement the position of certain situations which arise, given the nature of the agreement. It is not by chance that the principle of utmost good faith was developed and attached to the insurance contract levelling the playing field for both the insurer and the prospective insured. This principle has had its shortfalls and sometimes proved to be unfair and unjust on the affected party, usually being the insured policyholder or proposer. Some countries recognised the need to reform this principle and changed the practice to a more equitable one and also to one which is in sync with modern needs and the changing environment.

The forces of the market both from an economic and social perspective have a strong influence on setting things in motion and in any typical market, matters have always been

driven by the consumer, especially in insurance where the delicate nature of the business relies on customer needs and satisfaction.

5.3.4 Socio-technological environment

In a changing world that has been rapidly assisted by the advent of technology, business practices have changed considerably. Compared to a few decades ago, the way business is done today in terms of the number of processes such as financial transactions, marketing, distribution and communication (among others) has become unrecognisable, and this can be evidently witnessed in insurance where practices have changed considerably. Suffice to say, that the way material information was collected in the past was traditionally face to face, sometimes proving to be impossible due to the distant contracting parties. Technology has connected the world and augmented business opportunities making the collection of insurance information instantaneous and without the need of proximate interaction. Artificial intelligence and advances in automation have in fact given an edge to the insurer who has become more knowledgeable and able to take calculated decisions in a quick and efficient manner. This is evidenced by the finding that the socio-technological environment is a great influence in changing the ways material facts are gathered by insurers doing away with the traditional utmost good faith principle requirements in certain jurisdictions.

5.3.5 Insurance practice and international business

The insurance world is one large international community of risk security providers and the strength of this industry lies in the spread and sharing of risks around the globe. Co-operation through coinsurance and reinsurance is vital especially in the securing of large risks, catastrophic risks, new emergent risks and to protect a portfolio of risks. In this respect, communication among market players is key and specifically this implies the need for common wording and common practices as much as it is practical, in an attempt to harmonise their business. This research concludes that insurance practice and the international business is influential in bringing a need for reform practices especially to bring them in line with modern world practices enabling ease and readiness to do business.

Therefore, in conclusion, the research finds that the four variables that determine the need for reform of the insurance principle of utmost good faith are institutional stakeholders and the political-legal framework; the market, consumer influence and the socio-economic environment; socio-technological environment and insurance practice and international business.

5.4 Effect of demographics and jurisdiction – research questions (b) (i) and (ii)

It is vital to put the findings of this research into perspective as the results reflect the perception and opinions of experts who are subjective beings with their own different experiences and bias. The fact that demographics were explored, explains the context of the variety of answers shedding light onto any factors that might have played a part in the findings.

5.5 Demographics

5.5.1 Age

When studying the influence of demographics such as age, Meir (2005) discovered that the more senior a person is, the more resistant to change that person tends to be and inversely the more junior (junior in age and experience) the person is, the more willing to accept and implement change. Such a characteristic could *prima facie*, affect the responses of the survey questionnaire as the survey was based on the opinion of the respondent and how that respondent felt about potential reform. In fact, albeit very slightly, this research corroborates the works of Meir (2005) and answers the research question (b) to whether the variables are influenced by demographics. One can observe from the results of the survey questionnaire that age held an inversely significant influence on 'institutional stakeholders and the political-legal framework', 'socio-technological environment' and 'insurance practice and international business' respectively. The findings of this research conclude that the younger ages were more of the opinion that 'institutional stakeholders and the political-legal framework', 'socio-technological environment' and 'insurance practice and international

business' are influential factors and thus are more likely to reform the utmost good faith principle than the opinion of those more elderly (Farrugia & Grima, 2021a).

5.5.2 Gender

From previous studies such as those by Charness and Gneezy (2010), Bezzina and Grima (2011) and Langer and Weber (2004), it results that a relationship persists between judgements and gender difference. The scholars report that females, in general, tend to show more risk averse characteristics than males. This finding could have an influence on the responses of the survey questionnaire, as females might tend to be more cautious prior to affecting change and therefore could tend to shy away from change unless this unavoidable. This in turn, could be transmitted in the opinions of females responding to the survey. However, the findings of this research do not confirm this sentiment of aversity by females. Females who took this survey questionnaire had a marginally stronger opinion than males, to the need to change by indicating areas that require reform showing a positive significant relationship with the 'institutional stakeholders and the political-legal framework' and 'insurance practice and international business' respectively (the dependent variables) This meant that females had a marginally stronger opinion about the dependent variables than males.

5.5.3 Education

Haliassos and Bertaut (1995) found that different level of education could have an impact on survey responses since the outcome of their studies show that those holding higher levels of education tend to be more receptive to change and are more open to modernisation and reform than those holding a lower level of qualifications or no qualifications at all.

The finding of this research did not confirm the works of Haliassos and Bertaut (1995) as in this research it was discovered that the 'level of education' showed no relationship with any of the dependent variables (Farrugia & Grima, 2021a).

5.5.4 Occupation

Studies by Roszkowski, et al. (1993), Grey and Gordon, (1978), Wuang and Hanna, (1997)

show that those holding managerial and related senior positions are more risk-seeking persons and thus more receptive to change, modernisation and development, than those who are in the lower occupational ranks.

It results from the findings of this survey questionnaire that the more managerial and professional the occupation (as opposed to manual and clerical) of the participating respondents within this research, the more they have stated that in their opinion, the 'socio-technological environment' and 'insurance practice and international business' had an impact on reform. Prima facie, this finding albeit slightly, may be confirming that familiarity does play a part in the responses, again confirming the importance of having an appropriate occupational background distribution of respondents when conducting a survey questionnaire for more meaningful findings (Farrugia & Grima, 2021a).

5.5.5 All variables

Finally, the researcher concludes that whereas level of education showed no effect on the type of response in the survey questionnaire, the other variables such as age, gender and occupation had only a very slight significance on the responses and concludes that generally the demographics have had no considerable impact on the responses and thus were not affected by these characteristics. This is considered to be a positive aspect in itself as the responses were not biased or influence by demographics and therefore the answers revealed were genuine and reflective of the practitioners in the industry irrespective who these were and what background they held.

5.6 Jurisdiction - Legal system of the respondent's country

Those hailing from a jurisdiction which is common law based (as opposed to civil law based) have shown a varying tendency. Respondents from common law jurisdictions tend to agree more that 'institutional stakeholders and the political-legal framework', 'socio-technological environment' and 'insurance practice and international business' are factors that bring about reform showing a relatively stronger believe than those who hail from civil law countries.

There is no relationship of the jurisdiction from where the respondents hail when answering questions related to 'the market, consumer influence and socio-economic environment'.

5.7 Ranking reform factors – research question (c)

Perceptions vary and different people look at different factors in a different way. In response to research question (c) namely; "Which factor variables are the most agreed upon when assessing the need for reform of utmost good faith?", the research analysed the findings and on average attempted to rank the factors in order of agreement. This presents a conclusive result of the most important factors to consider once a jurisdiction is considering a revamp of the principle of utmost good faith in insurance. From the results, it transpires that factors most agreed upon as being influential were 'the market, consumer influence and the socio-economic environment' followed by the 'socio-technological environment'. These explain the relatively strong driving effect of the society, the economy and technology in the modern business world. This is corroborated with the IMF journal report written by Mühleisen (2018) in which the importance of such macro factors affecting the business world today, is stated. Muhleisen (2018) states that it would be the national or regional societies that will have to make technology effective to reflect the economic structures and social preferences (Muhleisen, 2018). The remaining two factors of 'insurance practice and international business' and 'institutional stakeholders and the political-legal framework' complete the rank respectively.

5.8 The case of Malta – research question (d)

To conclude on the findings and to address research question (d) namely; "Should Malta (as a case study) upkeep its current practice of the utmost good faith principle?" interviewees responded that customary, the insurance business practice in Malta predominantly follows that of the UK, judging from policy wording used and insurance practices that has been imported via insurance agents and branches that set up shop post-war. This influence is still very evident and has served the insurance industry for well over half a century

notwithstanding the corresponding problems that certain practices brought about such as breaches of utmost good faith (Farrugia & Grima, 2021b). It may be concluded that the practice of utmost good faith as it stands today, is very much favoured by the industry and the old UK principle will not be going anywhere anytime soon. The current cohort of industry practitioners seem to be content with the current state of affairs, especially since utmost good faith as originally exercised in the UK, is the practice they have been accustomed to, notwithstanding the problems that it brings about. More reasons supporting this *status quo* position is the fact that there seems to be unwillingness both from the industry and legislature to take any initiative in initiating reform discussions. This is further the case with the lack of media hype and willingness from the industry associations both of which are not considering this matter as a priority (Farrugia & Grima, 2021b).

Furthermore, the fact that for the time being no immediate need for reform is apparent in Malta, this situation in itself, does not mean Malta as an industry must remain complacent. The worth of this study is that, the identified factors influencing reform of the principle of utmost good faith, serve as a continuous checklist for stakeholders (including regulators) to constantly check upon and verify the most opportune moment if and when the need arises in the future (if at all).

One cannot ignore the fact that Malta is a full member of the EU which means that if there is going to be any change at EU level, this will inevitable find itself in the Maltese business fabric although conclusions from the interviews opined that there is apparent inaction by EU on the matter of utmost good faith (Farrugia & Grima, 2021b).

5.8.1 The case of Malta – the way forward

Although the business of insurance in Malta dates back to the days when marine activity was at its highest in the 15th and 16th century, the real practice and development of various classes of insurance and their respective policies flourished post second world war, at a time when insurance was sold *tramite* agents for foreign principals predominately British

insurance companies who set up a branch in the indigenous market. Needless to say, insurance practice, policy wording and claims dealing were religiously followed according to the standards, policies and procedures of the respective British firms based on British market practice and British case law for the settlement of disputed claims. The first qualified insurance practitioners in Malta were Associates or Fellows of the Chartered Insurance Institute – UK and all training was based on UK law, UK custom and UK practice even so after the formation of the first Maltese insurance company in 1981.

This background is being provided to establish the context of how insurance practice in Malta followed that of the UK. Specifically relevant to the context of this research, it is no surprise to note that underwriting of insurance risks was based on the concept of utmost good faith as practiced in the UK under the Marine Insurance Act 1906 and not only was this principle applied pre risk, but also post loss in case of an ensuing claim as expected from the strict intention of the principle. Those practitioners who were brought up adopting this principle and who had sought comfort in its application when defending a case before the courts, cannot but hail praise for this principle that has avoided the payment of fraud in several circumstances. On this basis and emergent from the current sentiment in the market, Malta should not reform the principle of utmost good faith and should keep on practicing this principle in its raw state albeit with all the difficulties it brings to the fore. The principle has deficiencies in deciphering the well-intended application, that to eliminate fraud, but on the other hand penalises harshly the innocent policyholder or claimant who could be at times oblivious of the real fact/s expected of him/her at proposal or during the currency of the policy. In the case of Malta, eliminating fraud is far too more important and thus the market is not yet ready to change the practice as this would leave insurers exposed to the malicious policyholders.

As markets develop and technologies move ahead, there could be a time when insurers could distinguish between the genuine and the fraudulent policyholder in which case, Malta could

then look at changing the way material facts are received and analysed. This will also require a change in mentality and a change in the way insurers do things today but with the incumbent generation devoted to the principle of utmost good faith reform is not on their immediate plans.

One also has to add that the only time that such a reform could take place on a non-voluntary basis is if the EU decides it is high time to lay the draconian principle to rest and only an EU regulation or directive will bring about a sudden change to the long-standing practice in Malta.

5.9 Concluding remark

In conclusion, the study has shed light onto how change is induced particularly via reforms which have, for centuries, altered the state of affairs in various jurisdictions moving on with times and aspiring to introduce better regulation, policies and processes to provide a better society.

This study has been both novel and contributory especially since it provided information that would aid stakeholders understand the signals required to effectively lobby with reformists for due change, particularly within the insurance sector. The emergent factors could provide justification for persuasion to instil reform, as these can be the basis of a fully-fledged framework for building a case for insurance reform. The emergent factors may also serve as the basis of an interview, survey, referendum or any other form of fact-finding medium to make a case for reform before the reformists and legislators. Any fact-finding, albeit sectorial (as in the case of insurance), will need to be sensitive to the demographics which need to be as varied as possible to obtain unbiased results, as has been crucial throughout the findings of this thesis. Applying such findings to Malta revealed that the time is not yet opportune to have a total reform of the principle of utmost good faith. That said, repeating the interviews in a few years from now, would provide an updated indicator to whether the position has changed or remained in a *status quo* position. This is of interest to all stakeholders especially

insurers who are constantly monitoring the external environment and responding to change as and when such change manifests itself.

Internationally, other countries especially those who have not yet reformed the original principle of utmost good faith, may wish to replicate this study as it presents grounds for lobbying for change in the respective countries (if at all).

CHAPTER 6 – CONCLUSION

6.1 Introduction

The insurance industry is a considerable contributor to any modern economy. It is essential that stakeholders understand and prepare for developments which have a bearing on such an active sector. Such rapid changes in the macro environment, may lead to consequent reform, changing the way insurance operates as a result. Unfortunately, there is little known literature on the subject, making it challenging to have a sound basis for any supporting knowledge on reforms in insurance. Therefore, this research in a broad sense, has brought to the fore**,** new knowledge on reform in insurance, focussing on the practice of utmost good faith. The results have derived a theoretical conjecture on what triggers a jurisdiction to reform, specifically in the insurance industry, and has found that the practice of utmost good faith is a key factor meriting further study. The findings of this research are significant, as they assist in understanding of the signs that indicate the possible need for reform in insurance.

The study sheds light on the specific factors within a given jurisdiction that can impact the insurance industry providing knowledge that can be useful for policymakers, reformists, legislators, and economists looking to identify areas of potential reform in the insurance industry.

Overall, this research can help fill a significant knowledge gap in the insurance reform literature and provide valuable insights into the factors that shape the industry's future. As such, the study can have a significant impact on insurance principles and practice, market knowledge, and insurance laws and regulations.

The conclusions of this research aim to expose the number and nature of gaps in the area of insurance from a regulatory reform perspective. The concluding comments in this chapter seek to reveal the findings and highlight the area of contribution made to literature by identifying the benefits to various stakeholders to which such findings are of use. The areas

of contribution include contribution to literature on insurance practice, insurance contract law, academia, insurance market and regulation.

The researcher claims that this write up is novel and contributory as no other such work has been written on the topic making this research not only an addition to academic literature but also provides grounds for further academic research by prospective academics as it lends a plethora of avenues that could be further researched in various other jurisdictions and industries and sectors. Moreover, the research is contributory in that it is presenting a model approach which can be used for further similar research, should scholars wish to explore different sectors and practices.

The researcher posits that the factors that affect reform of the principle of utmost good faith are the 'Institutional stakeholders and the political-legal framework'; the 'market, consumer influence and the socio-economic environment'; the 'socio-technological environment' and the 'Insurance practice and international business'.

This theoretical conjecture is being soundly presented after an international industry-wide survey and such factors are being proposed to stakeholders, including but not limited to reformists, policy makers, legislators, regulators and other related practitioners to be able to propose and provoke change in the modernisation of the insurance industry practice.

The salient conclusions being discussed in the following sections explain the relevant gaps in literature, the findings and originality of the work, the benefit of the findings, to whom the results may be applicable and the area of contribution made in this respect.

6.2 Summary of research gaps, findings and corresponding contribution

6.2.1 Influence of the market

The gap in literature regarding the influence of the market on insurance reform is significant as it limits the understanding of the dynamics between these two factors. This research has addressed this gap by providing a snapshot of how the market influences reform in the

insurance industry. The findings of this research are beneficial to scholars, researchers, economists, marketers, legislators, reformists, and policymakers as they provide a better understanding of specific factors in a given jurisdiction and how they affect the relevant market. The benefit of this study is that it highlights the importance of considering the market's influence when contemplating reform in the insurance industry. It provides insight into the factors that may affect the market and the industry and the relationship between them.

6.2.2 Consumer influence

The lack of understanding on how consumers influence the reform in the insurance industry has created a gap in knowledge that this research seeks to fill. Through this research, a snapshot of how the consumer influences the reform has been provided. The findings provide a comprehensive understanding of specific factors in a given jurisdiction and how these affect the business consumer. The benefit of this is that it provides marketers, scholars, researchers, economists, legislators, reformists, and policymakers with a sound understanding of the role of the consumer in shaping the insurance industry. This knowledge can be used to create policies and strategies that are consumer-centred, thereby increasing customer satisfaction and loyalty. Additionally, understanding how the consumer influences reform can help insurers to develop products that meet the needs of their target customers. This research has several applications in the insurance industry, including insurance principles and practice, market knowledge, and insurance laws and regulations. The results can help insurers to create more effective marketing strategies that take into account the needs and preferences of their target customers. It can also help policymakers and regulators to develop policies that are consumer-centred and create an environment that fosters innovation, competition, and fairness. Such, contributes to the understanding of the role of the consumer in shaping the insurance industry and provides valuable insights for practitioners, policymakers, and academics alike.

6.2.3 Socio-economic environment

The influence of the socio-economic environment on insurance reform has been studied through research in this area and a snapshot of how the socio-economic environment affects reform was provided. This research contributes to a greater understanding of the areas of business that interact with social and economic factors, thus providing insight into how reform can be most effectively implemented to meet the needs of both consumers and insurers. The benefits of this are significant, as it provides a better understanding of the complex relationships between the socio-economic environment and insurance reform. Policymakers and legislators can use the results of this research to develop policies that are better aligned with the needs and desires of consumers and insurers, leading to more effective and sustainable reforms. The research can also help insurers and marketers to better understand the behaviour of consumers in different socio-economic environments, allowing them to tailor their products and services to meet the specific needs of different demographics. The area of contribution for this research is broad, encompassing a range of fields including insurance principles and practice, market knowledge, and insurance laws and regulations. The research is relevant to scholars, researchers, economists, legislators, reformists, policymakers, and marketers, all of whom can benefit from a greater understanding of the impact of socio-economic factors on insurance reform. By identifying the most significant factors that influence reform in different socio-economic environments, this research can help shape the future of insurance reform in a more effective and sustainable manner.

6.2.4 Socio-technological environment

The socio-technological environment is an essential aspect of the contemporary world, and it is not surprising that it has a significant impact on the insurance industry. However, there is a lack of literature on how this environment may influence reform in the insurance sector. This research seeks to bridge this gap by providing a snapshot of how the socio-technological

environment influences reform. The findings of this research will provide a sound understanding of specific factors in a given jurisdiction and how these affect aspects related to technology. This information is particularly beneficial to marketers, scholars, researchers, economists, legislators, reformists, and policymakers who seek to gain insight into the impact of socio-technological factors on the insurance industry. The benefit of this is that it will enable stakeholders in the insurance industry to make informed decisions that are based on a deep understanding of the impact of socio-technological factors. This knowledge is valuable in identifying areas that need reform, as well as in developing strategies to take advantage of emerging technologies to enhance insurance practices. With respect to socio-technological factors, this research contributes to the development of policies that promote sustainable insurance practices in the face of a rapidly changing technological environment.

6.2.5 Insurance practice

The absence of literature on how insurance practice may influence reform in insurance is a significant gap in the field. The research provides a snapshot of how insurance practice influences reform and how the business of insurance may bring about a need for reform due to its change in operations. This research is highly beneficial as it provides a sound understanding of how insurance practices affect the market and how these practices need to be reformed to align with the changing needs of the consumers. The findings of this research are applicable to various professionals in the field, including marketers, scholars, researchers, economists, legislators, reformists, and policymakers. This study provides insight into the importance of insurance principles and practices, market knowledge, and insurance laws and regulations. The findings of this research can be used to inform and guide policymaking in the insurance industry, help reformists and legislators understand the need for changes in regulations, and provide marketers with insights on how to adjust their strategies in line with new industry practices by providing a better understanding of the impact of insurance practice on the market and how it can influence reform in insurance.

The research highlights the need for further exploration and analysis of the factors that influence reform in the insurance industry. Future research could build upon the findings of this study to examine the specific areas that need reform and how these reforms can be implemented to improve the insurance industry.

6.2.6 International Business

The insurance industry is a global business that transcends national boundaries, and it is increasingly becoming more interconnected. Despite this, there is little literature available on how international business may influence reform in insurance. The findings provide a snapshot of how the international business influences reform, highlighting the factors that shape and drive reform in different contexts. The originality of this research lies in providing a sound understanding of specific factors in a given jurisdiction and how these affect the international business of insurance. The results would offer policymakers, legislators, reformists, scholars, researchers, and marketers insight into how the international business of insurance may affect reform efforts in their respective countries or regions. For instance, this research could help identify potential areas of cooperation between countries or regions and inform the development of international regulations and standards for the insurance industry with respect to specific operational areas such as contract wording, contract certainty and reinsurance among others. Furthermore, this research contributes to the development of best practices for insurance companies operating in different jurisdictions. By analysing the factors that drive reform in different countries, insurers can identify areas where they can improve their operations to meet changing regulatory requirements and consumer demands. In terms of its applicability, this research would be of interest to stakeholders across the insurance industry, including scholars and researchers studying insurance principles and practices, marketers, economists, policymakers, reformists, and legislators. The insights generated by this research could help shape policy decisions and regulatory frameworks, ensuring that they are more responsive to the changing needs of the

international business of insurance. Exploring the gap in the literature on how international business may influence reform in insurance is crucial for developing a sound understanding of the global insurance industry. The findings of this research could offer valuable insights into the factors that shape and drive reform efforts in different jurisdictions and inform the development of best practices and regulations for insurers operating across borders.

6.2.7 Political and legal framework

The insurance industry is highly regulated, and the laws and regulations governing it vary from country to country. However, there is a gap in the literature on how the political legal framework may influence reform in insurance. This gap is critical as political and legal factors are major drivers of change in the insurance industry. In recent years, the insurance industry has witnessed significant changes, such as the adoption of new technologies, new distribution channels, and the emergence of new types of risks. These changes require a corresponding change in the legal and regulatory infrastructure in which insurance operates. Therefore, understanding how the political legal framework may influence reform in insurance is of utmost importance to insurers, regulators, policymakers, and academics. The findings from this research will provide a snapshot of how the political legal framework influences reform in insurance. The research will provide a sound understanding of how specific factors in a given jurisdiction may affect the relevant market highlighting how changes in the political legal framework may affect insurance practice, thereby influencing the need for reform in the industry. The originality of this research lies in the fact that no literature currently exists on this topic. The research will be of significant benefit to marketers, scholars, researchers, economists, legislators, reformists, and policymakers, as it will shed light on the relationship between the political legal framework and reform in insurance. This knowledge will enable these stakeholders to make informed decisions on insurance practice and reform. The research will be applicable to insurance principles and practice, market knowledge, and insurance laws and regulations. The research will

contribute to the existing body of knowledge on the factors that influence reform in the insurance industry, thereby enhancing the industry's growth and development.

6.2.8 Influence of institutions

The influence of institutions on the insurance business presents a gap in literature. This gap presents an opportunity for scholars and researchers to examine how institutions, such as regulatory bodies, professional associations, and industry groups, impact the reform of insurance practices.

By conducting research on this topic, a snapshot of how institutions influence reform in insurance was investigated, which can benefit various stakeholders, including marketers, policymakers, and reformists. The findings can help insurance companies better understand the role of institutions in the industry, and how to navigate the regulatory landscape. Furthermore, understanding the influence of institutions can benefit policymakers and reformists, who may seek to introduce reforms in the insurance sector. By identifying which institutions have the most significant impact on reform, policymakers can target their efforts more effectively. This research can also benefit those with market knowledge and those responsible for implementing insurance laws and regulations. Understanding the influence of institutions can help these stakeholders identify potential challenges and opportunities in the insurance market, and develop strategies to navigate them effectively. The results reveal how various institutions, including government bodies, regulatory agencies, and industry associations, can affect the reform process. For example, a government body may introduce legislation to enhance transparency and accountability in the insurance industry, while a regulatory agency may impose regulations to ensure the solvency of insurance providers. Meanwhile, industry associations may lobby for policies that benefit their members.

6.3 Avenues for further research

6.3.1 Research Framework – an approach model designed for future research

The methodology of this research is a model which can be replicated and used to identify areas of business using the approach being presented by the researcher through this study. The approach involves the generation of a set of themes, extracted from literature using the PRISMA systematic framework. These themes present a base upon which propositions are structured, necessary to build a meaningful and relevant questionnaire which serves as an instrument to study and test a particular issue, matter or situation. Once these propositions are tested, any changes, alteration or redefinitions were applied to derive factor variables specifically related to the area under study. The specific variables were then used to build interview questions to verify a practice in a particular country (in the case of this study – Malta).

The questionnaire distribution requires a balance and a mix of ages, gender, level of education and occupation, as it is vital in eliminating bias and balancing the results. Using a Likert scale enabled a quantitative assessment of the results and conclusions were determined statistically including findings of how the test results rank. Descriptive statistics presented the general findings of the survey questionnaire whereas multiple linear regression was used to determine the relations between the variables. Exploratory factor analysis revealed the specific factor variables clustering these into groups. Cronbach's Alpha tested the reliability and consistency of the questionnaire and the Friedman's test and Kendall's W were used to rank the findings.

The factor variables that emerged from the research have been tested on one location specifically to one industry which is the insurance industry in Malta. This leads to the generalisability of the results of using Malta as a case study and by no means reflects the reality of various other countries. Generalisability is an important aspect of this research as it determines the extent to which the research findings can be applied to other settings, populations, and situations beyond this study's specific context. Such generalisability was

achieved by the researcher selecting the interview audience via a purposive sampling strategy, which involves selecting participants who are representative of the target population (Creswell, 2014). By using different methods, future researchers can triangulate their findings and strengthen the validity and generalisability of their results (Bryman, 2016). Therefore, the results of the case study of Malta are to be read in the context of this limitation and future researchers must acknowledge this when studying other contexts and practices (Denzin & Lincoln, 2018).

Moreover, the theoretical conjecture was based on the carrying out of exploratory factor analysis for the reasons described earlier in Section 3.3.6.

Future scholars might wish to carry out an EFA in a few months' time to solidify the hypothesis and it is then that CFA could be applied to ground the theory (Hurley et al., 1997).

6.3.2 Uses of the findings for further research

This knowledge enables stakeholders to lobby with reformists and provide researched-based arguments on reform. The benefits of this research are numerous, including a better understanding of the insurance industry's legal and regulatory framework, which is essential for regulators, industry associations, policymakers, and reformists. The findings also provide insight into the various aspects of insurance regulation, insurance practice, contract law, academic literature, social dynamics and market knowledge, all of which are related and critical to the insurance industry.

The originality of the research lies in its empirical approach to examining the sentiment of the insurance industry regarding the practice of utmost good faith and how it relates to reform. Moreover, the research findings provide a sound understanding of the position of certain practices such as utmost good faith in the insurance industry, highlighting areas that may need reform. This information could assist industry players in adapting to changes in the regulatory environment and could also assist policy makers and regulators in developing appropriate policies that reflect the needs of the industry. In terms of its applicability, the

research is relevant to consumers, associations, reformists, policy makers, and regulators who are involved in the insurance industry. The study findings could help inform decisions on reform in the insurance sector and could be used to develop policies and regulations that reflect the needs of the industry.

The research also provides a comprehensive checklist that could be used to determine the need for reform and could be applied by stakeholders in the industry to inform their decisions on reform. Therefore, the findings could also inform policy makers and regulators in developing policies and regulations that reflect the needs of the insurance industry. There is often a gap between what regulators are aware of and what is happening in the industry. This is particularly true when it comes to potential changes in industry practices and how they might impact regulation. Therefore, the findings of this research provide regulators with a valuable tool to bridge this gap. By analysing potential changes in industry practice, regulators can better understand the impact of regulatory changes on the industry and vice versa. This knowledge can be used to create more effective and efficient regulatory policies that address the needs of both the industry and the public. In addition, the research provides regulators with a better understanding of the insurance industry and its practices. This can be used to guide supervision efforts, helping regulators to more effectively monitor the activities of the insurance market. By staying abreast of changes in the industry and ensuring compliance with regulations, regulators can help protect consumers and ensure the stability of the market. Furthermore, the findings provide regulators with a valuable tool for improving their oversight of the insurance industry.

The lack of a holistic approach model for determining reform factors in current literature presents a significant gap in research which highlights the need for a novel approach to studying reform factors across various industries, sectors, and practices. The research design and approach in this study provide a new model that can be replicated by future scholars to determine factors for reform in other areas. The novel model is not limited to the insurance industry but can be applied to other industries, sectors and practices. Scholars, researchers,

academics and strategists can use the approach, strategy, method choices, techniques, and procedures used in this research to determine any other reform factors in various fields. The benefit of this novel approach is that it provides a more comprehensive and inclusive understanding of the factors that contribute to reform in different fields. By applying this approach, researchers can replicate and expand the area of reform to advance the understanding of reform factors in different fields.

The research on the potential need for insurance reform in Malta provides valuable insights and benefits for various stakeholders, including regulators, industry associations, policymakers, and reformists. The gap in the current literature revealed that stakeholders were generally unaware of the potential need for reform in insurance in Malta and this was addressed through a formal enquiry resulting in the identification of factors affecting the insurance principle of utmost good faith. The findings provide a better understanding of the current position of business operations in insurance, specifically the practice of utmost good faith principle in Malta. Gap analysis is crucial in identifying areas that need improvement, and this is particularly true for industries and sectors that are regulated. In Malta, the insurance industry lacked a formal basis on which it could lobby for reform if it deemed it necessary. This gap prompted the research to apply the findings to Malta, which aimed to provide a model that could determine whether insurance reform was necessary.

The lack of a rank of factors that influence the need to reform can lead to a lack of clarity and prioritisation in decision-making for stakeholders in various industries, particularly in the insurance sector. This research brings to light the importance of such a rank, by providing a framework for the classification of factors that can influence the need for reform, ranked in order of their perceived importance by stakeholders. The benefit of this lies in its ability to aid regulators, the Malta Insurance Association, legislators, reformists, and researchers in understanding the relative importance of these factors in shaping their decisions and agenda. This can lead to a more efficient use of resources and time in addressing reform needs, with a focus on the most influential factors. Furthermore, this research can also be applicable

beyond the insurance industry, as the methodology used to rank factors can be replicated and applied to other sectors and industries, providing a universal framework for the classification and prioritisation of reform factors. The areas of contribution of this research include insurance law and regulations, insurance practices, and demographic literature and knowledge, ultimately leading to better outcomes for stakeholders and society as a whole.

In the area of insurance research, there was a lack of understanding of the factors that could influence the responses of stakeholders in surveys or questionnaires. This research identified that the characteristics of the respondents, such as age, gender, education, and occupation, had a negligible impact on their responses. This finding is important because it shows that the responses obtained from stakeholders can be generalised and used to make informed decisions regardless of their demographic characteristics. The benefit of this is that it provides valuable insights for future researchers and practitioners who are interested in conducting surveys or questionnaires in the insurance industry, by understanding that demographics have little impact on responses assisting researchers in designing questionnaires or surveys that are effective.

This research contributes to the field of insurance research by providing insight into the factors that could influence stakeholder responses. It also contributes to the broader field of research methodology by highlighting the importance of understanding the potential impact of demographic characteristics on survey responses. This research can serve as a foundation for future research in the insurance industry and other areas where surveys or questionnaires are used to collect data.

Few studies have explored the opinion of practitioners on the principle of utmost good faith, including those in the Maltese insurance industry. This research aims to bridge that gap by presenting a snapshot of the opinions of practitioners on utmost good faith, as well as the position of Malta with respect to the principle. The study provides an original contribution to the understanding of the opinion of practitioners and can inform future research, policymaking, and legislative initiatives related to the insurance industry, both in Malta and

beyond. The research provides a valuable contribution to the field of insurance law and practice, as well as to industry knowledge, by offering a snapshot of the position of Malta with respect to this evolving principle of utmost good faith in insurance. The findings of this study, namely the propositions that are being presupposed as consequences of non-reform, can be tested using the same case study approach used in this research. They may be challenged or corroborated according to findings. Scholars and researchers might wish to test these propositions by using a different industry or apply these to a particular jurisdiction. The findings related to the variables for the reform of the principle of utmost good faith can be used by stakeholders for the modernisation of regulations and practices, whereas scholars may use this research approach for other sectors and other regulatory frameworks in different jurisdictions (Farrugia & Grima, 2021a).

The framework used may be replicated to explore other insurance principles or other practices which could be up for change or reform. Specifically, future scholars may create and apply confirmatory factor analysis on this work as a separate research project to test and confirm (or otherwise) the results of this research.

Scholars in different countries might wish to use the framework to explore other industries and test whether any potential reform is due for certain practices in the respective countries. There is also scope for the creation of a reform index which will serve as a quantitative measure of whether a jurisdiction should consider reform judging from the score of such an index.

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'Mutual and Federal Insurance Company Ltd. v. Municipality of Oudtshoorn' (1985) All SA 324 (A).

'New Hampshire Insurance Co. v. MGN Ltd.' (1996) EWHC 398 (Comm) LR LR 24.

'Nima SARL v. The Deves Insurance Public Co., Ltd..' (The Prestrioka) (2003) 2 Lloyd's Rep. 327. Decision of Court of Appeal.

'Orakpo v. Barclays Insurance Services' (1995) LR LR 443.

'P and D v. General Accident Fire and Life Assurance corporation' (2003) Court of Appeal.

'Pan Atlantic Insurance Company Ltd. v. Pine Top Insurance co' (1995) 1 AC 501, HL 505.

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'Raymond Borg v. Fogg Ltd.' (2003) First Hall Civil Court.

'Rozanes v. Bowen' (1928) 32 Ll.L.Rep. 98. Court of Appeal.

'Salvu Briffa v. Walter Camilleri obo Formosa and Camilleri agents of Guardian Royal Exchange and Michael Attard on behalf of Michael Attard and Sons Limited' (2001) Court of Appeal.

'Salvu Sammut v. Middlesea Insurance' (2004) Court of Appeal.

'Schoolman v. Hall' (1951) 1 Lloyd's Rep. 139. Court of Appeal.

'St. Paul Fire & Marine Insurance Co. v. Abhe & Svoboda, Inc. '(2015) 8th Circuit.

'Stebbing v. Liverpool and London and Globe Insurance co Ltd.' (1917) All ER rep 248.

'Strive Shipping Corp v. Hellenic Mutual War Risks Association' (2002) EWHC 203 (Comm).

'Tat Hong Plant Leasing Pte Ltd. v. Asia Insurance Co Ltd.' (1993) SGCA 33 SLR (R) 728.

'The Star Sea' (2003) 1 AC 469 para 111 Lord Scott.

'Young v. Sun Alliance' and London Insurance Ltd. (1976) 3 All ER 561.

APPENDICES

Appendix 1: Questionnaire brief

Questionnaire on Insurance Reform

iQ Score: Great | Published

Demographics | Block Options

QUESTIONNAIRE

My name is Andre Farrugia and I am currently reading for a PhD with the University of Malta (UOM), focusing my research on the factors leading to reform of the "utmost good faith" principle in insurance. My primary research seeks information on factors that lead to changes (if at all) in insurance practice specifically those related to the traditional strict practice of material facts disclosures (in utmost good faith) expected by the insuring party. The findings of the survey are beneficial to the industry in the development of clearer and fairer insurance contracts.

I would be grateful if you could complete this questionnaire which will take approximately 10 minutes. The questionnaire is anonymous and all data collected will be solely used for the purpose of this study. No personal or sensitive data will be collected and the questions have been reviewed and cleared by the Faculty Research Ethics Committee (UOM) for data protection and ethical issues. The answers will be processed and reported in strict confidence and no name or other identification will be disclosed or published.

Your right to refuse to take the questionnaire in whole or in part is respected and any questions related to the collection, processing and reporting of your submission may be directly addressed to me on andre.farrugia@um.edu.mt

Appendix 2: Screenshot of Qualtrics XM questionnaire

Q1 Age of Respondent

- 18-24 years
- 25-34 years
- 35-44 years
- 45-54 years
- 55-64 years
- 65-74 years
- 75+ years

Q2 Gender

- Male
- Female
- Other

Q3 What is your current level of Education?

- School leaving / SEC / Ordinary level (EQF level 1/2/3)
- Advanced / Matriculation / Intermediate (EQF level 4)
- Undergraduate / First degree (EQF level 5)
- Bachelors / Hons (EQF level 6)
- Masters / Post graduate (EQF level 7)
- Doctorate (EQF level 8)

Q4 Describe your current occupation

- Manual
- Clerical
- Managerial
- Professional
- Other

Q5 Which of the following describes your relationship with the business of insurance? - You may select more than one, as applicable

- [ ] Insurance policyholder
- [ ] Insurance consultant
- [ ] Insurance policymaker
- [ ] Insurance academic
- [ ] Employed in the insurance industry
- [ ] Employed with the regulator
- [ ] Professional in the Insurance field
- [ ] Professional in the legal field
- [ ] Professional in any another field (other than insurance and legal)
- [ ] Other, not mentioned above

Q6 What is your (a) Nationality and (b) the Country you work in?

Import Questions From... | Create a New Question

What is your opinion on the following? Block Options

WHAT IS YOUR OPINION

In insurance, the utmost good faith principle expects the proposer/insured to disclose all material facts connected to the risk being insured, even if not asked for by the insurer. If this requirement is breached, even innocently, the contract of insurance is rendered void. Some countries have reformed/changed this principle to smoothen its effect and now only expect the proposer/insured to answer questions truthfully when prompted.

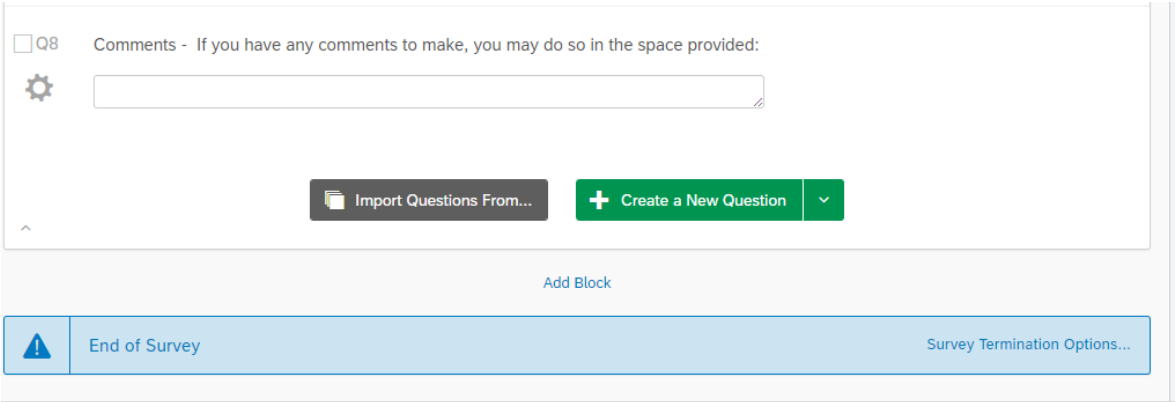
In your opinion how, if at all, do you think the following influence/lead to reform, thereby changing the approach of the strict application of utmost good faith in insurance as explained above?

There are 22 rows in all. DO YOU AGREE WITH THE FOLLOWING STATEMENTS? PLEASE SELECT ONE OPTION

	Strongly disagree	Somewhat disagree	Neither agree nor disagree	Somewhat agree	Strongly agree
The political climate and influence by governments is a strong factor in bringing about reform in insurance	○	○	○	○	○
Insurance policymakers push for insurance reforms especially to improve practices like the duty of disclosure	○	○	○	○	○
Through their decisions or comments, the Judiciary (judges, magistrates, adjudicators etc) and the Law Reform Committees influence the need to change insurance practice particularly following disputed cases	○	○	○	○	○
The type of legal system (common law or civil law) has a bearing on the application of utmost good faith in insurance	○	○	○	○	○
Lack of satisfaction of Judiciary decisions and delays in settling insurance matters call for insurance reforms by the litigants	○	○	○	○	○
Industry market players, (like insurance associations) press for reforms to bring equity and fairness in insurance practice	○	○	○	○	○

The Regulator has a stronghold in insurance practice and controls this by introducing new regulation to bring fairness and transparency to a contract of insurance and which might lead to reform	○	○	○	○	○
When placing the responsibility of utmost good faith on to the customer, the insurers are not achieving contract equity increasing the possibility of litigation	○	○	○	○	○
The media plays an influential role in bringing changes in insurance practice especially since it usually voices consumer concerns as in the case of the strict application of the duty of disclosure and the consequences thereof	○	○	○	○	○
Consumers today have more rights and thus make more claims, increasing litigation, consequently increasing the need to change certain insurance practices like utmost good faith	○	○	○	○	○
Insurers would consider to alter the practice of utmost good faith if, statistically, court cases on utmost good faith disputes increase	○	○	○	○	○
Different practices of utmost good faith in different countries restricts cross border insurance business due to incompatibility of policies and practices	○	○	○	○	○
International competition and dependency on certain countries for insurance business will force the dependent domicile to reform, to bring practices in line (an example of this are countries that traditionally do insurance business with the UK, the latter have recently reformed the principle of utmost good faith and may force dependent countries to follow such reform)	○	○	○	○	○
EU harmonisation exerts pressure to initiate reform in insurance (e.g. through GDPR and IDD for example)	○	○	○	○	○

Reinsurers influence the insurance market and thus any change in the practice of utmost good faith in insurance would be influenced by them	○	○	○	○	○
The need for modernisation in the insurance industry will initiate the need to reform in insurance	○	○	○	○	○
In view of the increased use of technology and modern social media sources, collecting information by the underwriter has taken a different approach and so the old practice of utmost good faith should be reformed ceasing the placing of obligation of disclosure on to the proposer/insured	○	○	○	○	○
Electronic processes and technological systems such as Insurtech have rendered the utmost good faith principle obsolete	○	○	○	○	○
In a soft market, insurers tend to accommodate and compromise to attract more business and they are likely to reform insurance practices and/or adopt a softer utmost good faith application in such economic times	○	○	○	○	○
Fragmentation of market players (unlike co-operation) brings disparity in the application of utmost good faith and thus reform is necessary to uniform this practice	○	○	○	○	○
Competition might entice insurers to cut corners and adopt a soft approach on the application of utmost good faith	○	○	○	○	○
Changing demographics and socio-cultural trends are triggering the need to modernise the practice of utmost good faith	○	○	○	○	○


Q8
Comments - If you have any comments to make, you may do so in the space provided:
Import Questions From...
Create a New Question
Add Block
End of Survey
Survey Termination Options...

Appendix 3: Summary of findings affecting reform by country

CONCLUSION AUSTRALIA

1. In conclusion, the reform factors have stemmed from a gap in expectations between the consumer and the insurer and public outcry highlighting unfairness exposed shortcomings of an insurance contract. Pressure and assistance by parliament the media and also regulators have pushed towards addressing the issues in this regard.
2. Difficulty in placing insurance overseas or placing with adverse terms
3. Increase in premium to cater for uncertainty
4. Loss of trust by policyholders due to uncertainty
5. Fairness and contract certainty
6. Good public opinion
7. Addressing anomalies and uncertainties. The structure of the market being too comfortable with an old system and resisting change
8. The changing market through the years with new products new demands, technology and legal issues.
9. The persuasion and influence of the LRC associations and he market in general pushing reforms for a fast-track endorsement by parliament.
10. Judge influence and statements calling for reform
11. Bringing together the Marine Insurance Act 1906 AUS and the ICA 1984
12. Technical defects of the contract

CONCLUSION CANADA

1. social and economic developments and also assisted by increasing costs due to technology, aging population and global competition
2. was held reform back were "professional and corporate interests; institutional complexity, path dependency and the resulting inertia that comes with such complexity"
3. type of discourses: augmentative discourses that seek to frame an existing position or situation and/or transformative discourses
4. the adverse nature of the insurance contract
5. public spending and public outcry
6. political power of insurance companies and their associations
7. outcry to reduce costs and litigation
8. influence of statute
9. currently experiencing emergent trends in digitisation, expansion of Fintech activities, big data analytics necessitating change

CONCLUSIONS CYPRUS

1. public outcry coupled with the financial strain presented to the system and to the private market purchasers
2. fragmentation of practices, thus reform would achieve consistency addressing market distortion and the threat to fail to achieve market participants' expectation
3. slow dispute resolution processes
4. other factors in other areas like bank reforms pointed at the economic climate, the legal resolution procedures, bad practice, market conditions and poor risk management
5. reform achieves minimization the time and cost and efficiency of the judicial system

6. disparity between the insurance contracting parties necessitates reform
7. to initiate reform following a number of issues namely financial strains, pressure to achieve solidarity and cohesive conditions to the (healthcare) system and the achievement of efficiency achieving equal access, financial viability and quality in the process
8. initiative by associations

CONCLUSIONS HONG KONG

1. non-reform in Hong Kong might leave the consumer in a prejudiced situation which could impact negatively on the insurance industry
2. influenced by the UK
3. reforms triggered by demographics and financial constraints
4. reform may adversely affect international business
5. policyholders don't seem to understand the technical literature and language
6. restriction of consumer choice
7. public outcry

CONCLUSIONS SINGAPORE

1. reform in business insurance will present public policy debate as well as presenting challenges in the form of competition in the global insurance market and meeting the needs of the market players.
2. Reform based on public debates on the Singapore current insurance market, insurance disputes, market developments and future implications on the industry
3. Reform following demographic challenges and ageing population and a high rise in government funding costs for the service
4. very efficient decision maker, thus very flexible to embark on structural reforms
5. driven by political consideration, to be effective any reform must content businesses and the public receiving the service
6. globalisation

CONCLUSIONS MALTA

1. Follows UK practice
2. Public outcry of unfair positions judging from court cases
3. Judges' opinion on the matter of utmost good faith

CONCLUSIONS US

1. influenced by economic and financial drivers
2. inconsistent court decisions
3. inclined to follow UK practice
4. Demographics
5. Social inequality
6. Public outcry

CONCLUSIONS CHINA

1. inconsistent with other common law jurisdictions
2. lack of contract compatibility affects international trade
3. socio-economic, cultural and financial reasons

4. public outcry

CONCLUSIONS FRANCE

1. aged code not in sync with modern society and technology (society and tech)
2. mis aligned with international contract law (international factors)
3. complex and judge decisions influence in the application (influence of the court)
4. effects trade dealings internationally (international factors)
5. case law decisions which were subjective (public outcry)
6. law better understood, less complex and more efficient (economic
7. socio-economic political and demographic reasons

CONCLUSIONS GERMANY

1. Economic factors
2. Financial factors
3. Demographics
4. Public outcry
5. Nature of contract – technical complexities
6. Modernisation
7. Consumer protection

CONCLUSIONS ITALY

1. economic situation
2. international business relations
3. court influence
4. influence of the EU
5. political readiness
6. social pressure

CONCLUSIONS JAPAN

1. Economic reform in Japan serves to adapt to the changing international environment affecting the political, social and economic and technological frameworks of societies.
2. Business convergence with the west particularly the Anglo– American economies (Freedman, 2001).
3. Judicial, economic, governmental and parliamentary structure can change the way a country is perceived by foreign investors.
4. Institutional reforms are a determinant for the economy and have an effect on growth and creditworthiness in Japan (Sussman & Yafeh, 2000).
5. Institutional features of the employment protection system have an influential impact on reform
6. Institutional configurations were a large influence on employment reform
7. Educational systems, achieve economic benefits such as stronger competition and internationalization and efficiency of educational spending per student through reform.
8. Reform responding to the demographic needs of the country.
9. In line with technological advances that spearheaded the need to modernize the educational system.
10. International business
11. UK influence

CONCLUSIONS SOUTH KOREA

1. Financial strain on the health system
2. Demographic issues
3. Need to have quality system which brings equality between the social strata
4. Need for transparency
5. Economic viability
6. Economic effects of inflation
7. Financial and social stability
8. Stakeholder pressure
9. International pressure
10. Modernisation

CONCLUSIONS UK

1. Public Outcry
2. Court decisions and *obiter dicta*
3. Need for transparency
4. Consumer legislation
5. Stakeholder lobby such as the FOS

Appendix 4: Preparation for thematic analysis of findings affecting reform by country

Australia	Canada	Cyprus	Hong Kong	Singapore	Malta	US
1. In conclusion, the reform factors have stemmed from a gap in expectations between the consumer and the insurer and public outcry highlighting unfairness exposed shortcomings of an insurance contract. Pressure and assistance by parliament the media and also regulators have pushed towards addressing the issues in this regard.	1 social and economic developments and also assisted by increasing costs due to technology, aging population and global competition	1. public outcry coupled with the financial strain presented to the system and to the private market purchasers	1. non-reform in Hong Kong might leave the consumer in a prejudiced situation which could impact negatively on the insurance industry	1. reform in business insurance will present public policy debate as well as presenting challenges in the form of competition in the global insurance market and meeting the needs of the market players.	Follows UK practice	1. influe nced by economic and financial drivers
2. Difficulty in placing insurance overseas or placing with adverse terms	2 was held reform back were "professional and corporate interests; institutional complexity, path dependency and the resulting inertia that comes with such complexity"	2. fragmentatio n of practices, thus reform would achieve consistency addressing market distortion and the threat to fail to achieve market participants' expectation	2. influenced by the UK	2. Reform based on public debates on the Singapore current insurance market, insurance disputes, market developments and future implications on the industry	Public outcry of unfair positions judging from court cases	2. incons istent court decisions
3. Increase in premium to cater for uncertainty	3 type of discourses: augmentative discourses that seek to frame an existing position or situation and/or transformative discourses	3. slow dispute resolution processes	3. reforms triggered by demographics and financial constraints	3. Reform following demographic challenges and ageing population and a high rise in government funding costs for the service	Judges' opinion on the matter of utmost good faith	3. incline d to follow UK practice
4. Loss of trust by policyholders due to uncertainty	4 the adverse nature of the insurance contract	4. other factors in other areas like bank reforms pointed at the economic climate, the legal resolution procedures, bad practice, market conditions and poor risk management	4. reform may adversely affect international business	4. very efficient decision maker, thus very flexible to embark on structural reforms		4.Demographics
5. Fairness and contract certainty	5 public spending and public outcry	5. reform achieves minimization the time and cost and efficiency of the judicial system	5. policyholder s don't seem to understand the technical literature and language	5. driven by political consideration, to be effective any reform must content businesses and the public receiving the service		5. Social inequality
6. Good public opinion	6 political power of insurance companies and their associations	6. disparity between the insurance contracting parties necessitates	6. restriction of consumer choice	6. globalisation		6.Public outcry

		reform				
7. Addressing anomalies and uncertainties. The structure of the market being too comfortable with an old system and resisting change	7 outcry to reduce costs and litigation	7. to initiate reform following a number of issues namely financial strains, pressure to achieve solidarity and cohesive conditions to the (healthcare) system and the achievement of efficiency achieving equal access, financial viability and quality in the process	7. public outcry			
8. The changing market through the years with new products new demands, technology and legal issues.	8 influence of statute	8. initiative by associations				
9. The persuasion and influence of the LRC associations and he market in general pushing reforms for a fast-track endorsement by parliament.	currently experiencing emergent trends in digitisation, expansion of Fintech activities, big data analytics necessitating change					
10. Judge influence and statements calling for reform						
11. Bringing together the Marine Insurance Act 1906 AUS and the ICA 1984						
12. Technical defects of the contract						

France	Germany	Italy	Japan	South Korea	UK	China
1.aged code not in sync with modern society and technology (society and tech)	1. Economic factors	1. economic situation	1. Economic reform in Japan serves to adapt to the changing international environment affecting the political, social and economic and technological frameworks of societies.	1. Financial strain on the health system	1. Public Outcry	1. incons istent with other common law jurisdictions
2.mis aligned with international contract law (international factors)	2. Financial factors	2. internationa l business relations	2. Business convergence with the west particularly the Anglo– American economies (Freedman, 2001).	2. Demogra phic issues	2. Court decisions and *obiter dicta*	2. lack of contract compatibility affects international trade
3. complex and judge decisions influence in the application (influence of the court)	3. Demographi cs	3. court influence	3. Judicial, economic, governmental and parliamentary structure can change the way a country is perceived by foreign investors.	3. Need to have quality system which brings equality between the social strata	3. Need for transparency	3. socio-economic, cultural and financial reasons
4.effects trade dealings internationally (international factors)	4. Public outcry	4. influence of the EU	4. Institutional reforms are a determinant for the economy and have an effect on growth and creditworthiness in Japan (Sussman & Yafeh, 2000).	4. Need for transparency	4. Consumer legislation	4. public outcry
5.case law decisions which were subjective (public outcry)	5. Nature of contract – technical complexities	5. political readiness	5. Institutional features of the employment protection system have an influential impact on reform	5. Economi c viability	5. Stakeholder lobby such as the FOS	
6.law better understood, less complex and more efficient (economic	6. Modernisati on	6. social pressure	6. Institutional configurations were a large influence on employment reform	6. Economi c effects of inflation		
7. socio-economic political and demographic reasons	7. Consumer protection		7. Educational systems, achieve economic benefits such as stronger competition and internationalization and efficiency of educational spending per student through reform.	7. Financial and social stability		
			8. Reform responding to the demographic needs of the country.	8. Stakehol der pressure		
			9. In line with technological advances that spearheaded the need to modernize the educational system.	9. International pressure		
			10.International business	10. Modernisatio n		
			11.UK influence			

Appendix 5: Colour coded thematic analysis of findings affecting reform by country

Australia	Canada	Cyprus	Hong Kong	Singapore	Malta	USA	China	France	Germany	Italy	Japan	South Korea	UK
PRESSURE BY PUBLIC, MEDIA AND REGULATORS	SOCIAL AND ECONOMIC	PUBLIC OUTCRY	UNFAIRNESS ON CONSUMER	INTERNATIONAL COMPETITION	UK BUSINESS DEPENDENCY	ECONOMIC AND FINANCIAL	INTERNATIONAL BISINESS HARMONISATION	MODERNISATION	ECONOMIC	ECONOMIC SITUATION	ECONOMIC REFORM	FINANCIAL STRAIN	PUBLIC OUTCRY
INTERNATIONAL BUSINESS	COMPETITION	FRAGMENTATION OF PRACTICES	UK INFLUENCE	PUBLIC DEBATES	PUBLIC OUTCRY	INCOSISTENT COURT DECSIONS	CONTARCT INCOMPATABILITY	INTERNATIONAL HARMONISATION	FINANCIAL	INTERNATIONAL BUSINESS	BUSINESS COVERGENCE WITH THE WEST	DEMOGRAPHIC	COURT INFLUENCE
CONTRACT UNCERTAINTY	PUBLIC DISCOURSES	SLOW DISPUTE RESOLUTION	DEMOGRAPHIC FINANCIAL STRAIN	DEMOGRAPHICS	COURT PRESSURE	FOLLOW UK PRACTICE	SOCIAL AND ECONOMIC	INFLUENCE BY THE COURTS	DEMOGRAPHIC	INFLUENCE BY COURTS	ATTARCT FOREIGN INVESTMENT	EQUALITY	TRANSPARENCY
LOSS OF PUBLIC TRUST	CONTRACT UNCERTAINTY	ECONOMIC CLIMATE	INTERNATIONAL BUSINESS	EFFICIENCY		PUBLIC OUTCRY	PUBLIC OUTCRY	SOCIAL AND ECONOMIC	PUBLIC OUTCRY	EU INFLUENCE	INSTITUTIONAL INFLUENCE	TRANSPARENCY	CONSUMER RIGHTS
LEGAL ISSUES	PUBLIC OUTCRY	JUDICIAL EFFICIENCY	EQUITY TO CONTRACTING PARTIES	POLITICAL		SOCIAL AND ECONOMIC	ECONOMIC AND FINANCIAL	PUBLIC OUTCRY	CONTRACT COMPLEXITY	POLITICAL	ECONOMIC BENEFITS	ECONOMIC	STAKEHOLDER PRESSURE
RESISTANCE TO CHANGE	POWER OF INSURANCE INDUSTRY	EQUITY TO CONTRACTING PARTIES	CONSUMER RIGHTS	GLOBALISATION		DEMOGRAPHICS		POLITICAL	MODERNISATION	PUBLIC OUTCRY	DEMOGRAPHIC	SOCIAL STABILITY	
TECHNOLOGICAL ISSUES	REDUCTION IN LITIGATION	QUALITY IN THE PROCESS	PUBLIC OUTCRY						CONSUMER PROTECTION RIGHT		MODERNISATION	STAKEHOLDER PRESSURE	
PRESSURE BY LAW REFORM COMMSSIONS	INFLUENCE OF STATUTE	FINANCIAL STRAINS									INTERNATIONAL BISINESS HARMONISATION	MODERNISATION	
COURT INFLUENCE	TECHNOLOGY	SOLIDARITY									UK BUSINESS DEPENDENCY	INTERNATIONAL BISINESS HARMONISATION	
LAW HARMONISATION INTERNTIONALLY	SOCIAL AND ECONOMIC	EQUALITY											
	DEMOGRAPHIC	STAKEHOLDER PRESSURE											
		INFLUENCE BY ASSOCIATIONS											

Appendix 6: Potential propositions emergent from thematic analysis

SOCIAL AND ECONOMIC	19
CONTRACT UNCERTAINTY AND CONSUMER FAIRNESS/RIGHTS	15
JUDICIAL EFFICIENCY AND TRANSPARENCY AND COURT INFLUENCE	14
INTERNATIONAL BUSINESS	16
PUBLIC AND STAKEHOLDER OUTCRY	18
DEMOGRAPHIC	7
TECHNOLOGY AND THE NEED TO MODERNISE	6
INSTITUTIONAL INFLUENCE	5

Appendix 7: Propositions with corresponding themes

	International business			UK influence and dependency on UK practice International competition Influence of Statute law Law harmonisation EU influence Convergence with the West Foreign investment
	Technology			Technology issues Modernisation
	Social and economic factors			Demographics Economic benefits Social stability Financial strain Resistance to change Economic climate Competition
	Customer and stakeholder influence			Contract uncertainty Contract Incomparability Contract complexity Fragmentation of practices Equity and fairness Quality and solidarity Consumer rights and consumer protection Public outcry Pressure by media and stakeholders
	Institutions and legal systems			Legal issues Pressure by the LRC Court influence and pressure Judicial efficiency Slow dispute resolution Inconsistent decisions Transparency Power of insurance industry Political influence Institutional power

Appendix 8: Interview questions related to the case of Malta

1. Is the application of the insurance principle of utmost good faith in Malta fair and effective? If so, how?
2. Is there consumer / market pressure (including the media) to introduce utmost good faith reforms? If so, how?
3. Is there any dissatisfaction on the application of the principle and if so, how has this effected the indigenous socio-economic environment?
4. Does Malta have a sound socio-technological infrastructure to be able to effect changes in the application of the principle of utmost good faith? If so, how?
5. How important is reform in the insurance principle of utmost good faith in the context of international business? Explain why.
6. How do you see the involvement of institutions (e.g. courts, regulators, associations, reinsurers, reformists and other stakeholders) in potentially reforming utmost good faith?
7. Do you think there is political-legal willingness to reform utmost good faith practice? If so, why?
8. Since Malta is dependent on the UK practice, should it now follow the UK in reforming the principle of utmost good faith? If so, why?
9. How important is UK practice to the practice in insurance in Malta?
10. Should Malta wait for the EU to take the initiative to release its own laws, rules regulation or guidelines on this matter of utmost good faith and why?
11. How prepared is the insurance industry in Malta to reform the practice of the principle of utmost good faith?
12. Should Malta reform its current practice of utmost good faith? If so, why?

Appendix 9: Summary of research gaps and corresponding contributions

Gap	Findings / Originality	Benefit	Applicable to	Area of Contribution
No known literature on what leads to reform in insurance	This research brought to light, new knowledge on reform in insurance It has also derived a theoretical conjecture on what triggers a jurisdiction to reform, specifically reform in insurance, singling out utmost good faith as the practice under study	The findings assist in the understanding of the signs that indicate the possible need for reform in insurance to enable stakeholders lobby with reformists by having researched basis on the matter	Reformists Regulators Industry associations Policy makers	Insurance regulation Insurance practice Contract law Academic literature Market knowledge
There is no study on the specific factors that need to be looked at by the insurance industry which serve as a checklist to determine where a jurisdiction stands from a reform standpoint	The findings provide a number of studied factors that could be considered, acting as determinants of insurance reform of the principle of utmost good faith	The research provides outcomes that are backed with empirical results and which reflect the sentiment of the industry at large, stock-taking the position of certain practices such as utmost good faith	Consumers Associations Reformists Policy makers Regulators	Insurance principles Insurance practice Academic literature Market knowledge

Gap	Findings / Originality	Benefit	Applicable to	Area of Contribution
Regulators are not in possession of a studied analysis of the potential changes in practice of the industry with respect to relevant regulation	The findings of this research are novel and regulators might use the results as part of their supervision when monitoring the activities of the insurance market	The results provide sound knowledge which can be incorporated in the guidelines for supervision of the indigenous regulator	Regulators	Insurance supervision and regulation
Current literature falls short in presenting a holistic approach model of how reform factors are determined	The research design and approach present a novel model which can be replicated for other industries, sectors and practices.	Therefore, apart from the novel findings, the approach, strategy, method choices and techniques, and procedures, used in this research may be used by future scholars to determine any other factors	Scholars Researchers Academics Strategists	Research methodology Academic literature
In Malta, stakeholders were generally unaware of the potential reform in insurance in the absence of understanding the signs that lead to such	Malta, as a jurisdiction, was never tested in a formal way as to whether it should change its current practice of utmost good faith in the insurance industry, if at all This research therefore brings to the fore, the comments of stakeholders after a formal	Knowledge in the understanding of the current position of certain business operations in insurance, specifically the position of the Maltese insurance practice of the utmost good faith principle to benefit the industry and legislators in understanding the	MFSA Malta Insurance Association Legislators Reformists	Insurance law and practice Contract law Market knowledge

Gap	Findings / Originality	Benefit	Applicable to	Area of Contribution
	enquiry was executed based on researched factors found to affect the insurance principle of utmost good faith	potential need for reform		
Malta lacked research basis with which it could lobby for reform if it so deemed opportune	Through this research, an approach model was constructed and the works presented a method of determining whether reform is due	This novel model can be replicated to determine the level of preparedness, or otherwise, of various other industries or sectors in Malta and beyond	MFSA Malta Insurance Association Legislators Reformists Scholars Researchers Policy makers	Research methodology Domestic law and regulations Literature on domestic reform
No previous study determined a rank of factors, classified in order, of how important they are perceived by stakeholders	Factors that influence the need to reform may not all be equal in their potential to bring about change and this research has come up with a rank to highlight which factors, based on expert opinion, are perceived to be more influential than others by having these factors ranked in order of influence	Benefits legislators in understanding how insurance reform would feature in their agenda and legislative priorities	Regulators Malta Insurance Association Legislators Reformists Researchers	Insurance law and regulations Insurance practice Demographic literature and knowledge

Gap	Findings / Originality	Benefit	Applicable to	Area of Contribution
In the area of insurance there was no literature that assessed the influence of different demographics on responses	This research studied and determined whether the different characteristics of the respondents have an influence on the responses The conclusions of this factor determined that the different demographics of age, gender, education and occupation have had only a negligible bearing on the responses	The benefit of this finding is to determine how demographics affect the responses as these might have an influence of the results It also serves as information to future researchers when designing questionnaires or research questions	Researchers Scholars Academics	Academic literature Research methodology
There is no literature on the opinions of practitioners on utmost good faith including the opinion of such practitioners in Malta	A snapshot of the opinion of practitioners on utmost good faith and the position of Malta with respect to utmost good faith is being provided through this work	The findings present a studied position which researchers and strategists might wish to conduct periodically to determine trends and tendencies of the insurance market and use the respective results as a barometer	Researchers Scholars Reformists Policymakers Legislators	Insurance principles Insurance practice Industry knowledge

Gap	Findings / Originality	Benefit	Applicable to	Area of Contribution
No literature exists on how the market may influence reform in insurance	The results provide a snapshot of how the market influences reform	The results provide a sound understanding of specific factors in a given jurisdiction and how these affect the relevant market	Marketeers Scholars Researchers Economists Legislators Reformists Policymakers	Insurance principles and practice Market Knowledge Insurance laws and regulations
No literature exists on how the consumer may influence reform in insurance	The results provide a snapshot of how the consumer influences reform	The results provide a sound understanding of specific factors in a given jurisdiction and how these affect the business consumer	Marketeers Scholars Researchers Economists Legislators Reformists Policymakers	Insurance principles and practice Market Knowledge Insurance laws and regulations
No literature exists on how the socio-economic environment may influence reform in insurance	The results provide a snapshot of how the socio-economic environment influences reform	The results provide an understanding of areas of business that interact with the social aspects and economic state	Marketeers Scholars Researchers Economists Legislators Reformists Policymakers	Insurance principles and practice Market Knowledge Insurance laws and regulations
No literature exists on how the socio-technological environment may influence reform in insurance	The results provide a snapshot of how the socio-technological environment influences reform	The results provide a sound understanding of specific factors in a given jurisdiction and how these affect aspects related to technology	Marketeers Scholars Researchers Economists Legislators Reformists Policymakers	Insurance principles and practice Market Knowledge Insurance laws and regulations

Gap	Findings / Originality	Benefit	Applicable to	Area of Contribution
No literature exists on how the insurance practice may influence reform in insurance	The results provide a snapshot of how the insurance practice influences reform	The results provide a sound understanding of how the business of insurance may bring about a need for reform due to its change in operations	Marketeers Scholars Researchers Economists Legislators Reformists Policymakers	Insurance principles and practice Market Knowledge Insurance laws and regulations
No literature exists on how the international business may influence reform in insurance	The results provide a snapshot of how the international business influences reform	The results provide insight to how the business in insurance internationally may affect reform	Marketeers Scholars Researchers Economists Legislators Reformists Policymakers	Insurance principles and practice Market Knowledge Insurance laws and regulations
No literature exists on how the political legal framework may influence reform in insurance	The results provide a snapshot of how the political legal framework influences reform	The results provide a sound understanding of how the political and legal aspects may affect and influence the need to reform insurance business	Marketeers Scholars Researchers Economists Legislators Reformists Policymakers	Insurance principles and practice Market Knowledge Insurance laws and regulations
No literature exists on how institutions may influence reform in insurance	The results provide a snapshot of how the institutions influences reform	The results provide a sound understanding of how various institutions may affect reform of insurance business	Marketeers Scholars Researchers Economists Legislators Reformists Policymakers	Insurance principles and practice Market Knowledge Insurance laws and regulations

(Source: own compilation)