

Chapter XLV

Insurance

1. Common Provisions

Section 536

(1) By concluding insurance contracts, insurers shall be obliged to pay a certain amount of money or perform another service upon the occurrence of a specific future event (insurance event), and the insured or other contracting parties shall be obliged to pay an insurance premium therefor.

(2) An insurance event can be:

- a)* an event of loss defined in the contract;
- b)* death or attainment of a certain age;
- c)* an accident causing injury, disability, damage to health or death.

Section 537

(1) Insurance contracts shall come into being through a written agreement between the parties.

(2) A contract shall also be created if an insurer does not respond to an offer within fifteen days. In such a case, the contract shall be created retroactively as of the date on which the offer is conveyed to the insurer or its representative.

(3) If a contract that is concluded without the explicit statement of the insurer deviates from the insurance regulations, the insurer shall be entitled to make a written proposal within fifteen days to have the contract amended in accordance with the regulations. This period shall be calculated as of the day on which the proposal is conveyed to the insurer's office that is authorized to issue insurance policies. If the contracting party does not accept the offer or does not respond to it within fifteen days, he shall be entitled to terminate the contract in writing with thirty-days' notice within fifteen days of receiving the refusal or the proposal for amendment.

Section 538

(1) A written agreement or the insurer's statement of acceptance shall be replaced by the issuance of an insurance policy (certificate, insurance stamp). If the conditions of the policy differ from the party's offer and if this difference is not contested by the party within fifteen days, the contract shall be created in accordance with the contents of the policy. This provision can be applied to significant discrepancies only if the insurer expressly points out such discrepancies to the contracting party in writing at the time the policy is delivered. In the absence of a warning notice, a contract shall be created in accordance with the contents of the offer.

(2) Contracting parties shall be entitled to demand delivery of an insurance policy even if the contract has already come into existence in another manner.

Section 539

(1) Insurance coverage shall take effect on the day following the date on which the contracting party makes the first premium payment to the insurer by transfer or in cash, the date on which an agreement is reached on a premium payment deferment, or the date on which the insurer files for court action regarding premium payments.

(2) If a contracting party has made a premium payment to an insurer's representative, the premium shall be considered to be received by the insurer on or before the fourth day following the date of payment; however, a contracting party shall be entitled to prove that the premium had been received earlier.

Section 540

(1) For the purpose of an insurance contract, the insured must disclose all of the circumstances of which he was or must have been aware that are important in terms of providing insurance coverage. The party shall satisfy his disclosure obligation by truthfully filling out the questionnaire furnished by the insurer. Leaving the questions unanswered shall not in itself constitute a violation of the disclosure obligation.

(2) The parties shall be entitled to agree that the insured and the contracting party are obliged to promptly report any changes regarding any of the important conditions specified in the contract to the insurer in writing.

(3) In the event of a breach of the obligation to make disclosure and report changes, the obligation of the insurer shall not take effect, unless it is proved that the insurer was aware of the concealed or undisclosed circumstance at the time the contract was concluded or that such circumstance had no influence on the occurrence of the insurance event.

Section 541

(1) If an insurer becomes aware of any circumstance of significance regarding a contract only after the contract has been concluded and, furthermore, if the insurer is notified of changes in any of the important circumstances specified in the contract, the insurer shall be entitled to make a written proposal, within fifteen days, to amend the contract or, if it cannot undertake indemnification according to the regulations, terminate the contract with thirty days' notice.

(2) If the insured party does not accept the proposal for amendment or fails to respond to it within fifteen days, the contract shall be terminated on the thirtieth day following the day on which the proposal for amendment was communicated. The insured party shall be warned of this consequence when he submits the proposal for amendment.

(3) If an insurer does not exercise these rights, the contract shall remain in force with its original contents.

Section 542

(1) The first insurance premium shall be due at the time the contract is concluded, and all subsequent premiums shall be due on the first day of the period they cover.

(2) A one-time premium shall be paid at the time the contract is concluded.

(3) The parties shall be entitled to deviate from these provisions by an agreement.

Section 543

(1) A contract shall be extinguished on the thirty-first day following the premium payment due date if the overdue premium is not paid and the insured has not received a deferment, or if the insurer has not filed for court action regarding the premium payment.

(2) Insurers shall be entitled to postpone termination of a contract and the time limit for filing court action by an additional thirty days, if they issue the insured a written payment notice by communicating this circumstance within the aforementioned thirty-day period.

Section 544

(1) The occurrence of an insurance event must be reported to the insurer within the period specified in the regulations. The required information must be provided, and the contents of the report and the information shall be made available for inspection.

(2) The insurer's obligation shall not take effect if an insured party fails to perform the obligations prescribed in the previous subsection, and, as a consequence, important circumstances become undetectable.

Section 545

(1) If the insurance event occurs, its occurrence becomes impossible, or interest in insurance ceases before the insurance coverage becomes effective; the contract or the relevant part of it shall not become operative.

(2) If occurrence of an insurance event becomes impossible or interest in the insurance ceases during the term of the contract, the contract or the relevant part of it shall be extinguished on the last day of the month.

Section 546

(1) If an insurance event occurs, the insurer shall be entitled to demand payment of the premium for an entire year, unless the parties have agreed on a shorter period.

(2) In other cases of contract termination, insurers shall be entitled to claim payment of the premium until the last day of the last month in which it bears risks.

Section 547

(1) If a third person concludes an insurance contract on behalf of the insured, the contracting party shall bear the obligation to pay the premium, the third person must direct legal statements to the insured and he shall be obliged to make the appropriate legal statements up to the occurrence of an insurance event or the entry of the insured (Section 550).

(2) Both the contracting party and the insured shall be obliged to make disclosure and report any changes. Neither of them shall be entitled to plead ignorance of any circumstance or change that either one had neglected to disclose or report to the insurer though he must have known about it and should have disclosed or reported it.

2. Property Insurance

Section 548

Only persons who are interested in protecting a property or those who conclude contracts on behalf of an interested person shall be entitled to conclude property insurance contracts.

Section 549

(1) The coverage shall not exceed the true value of the insured property. Any agreement for coverage that is higher than the true value of the insured property shall be null and void, and the premium shall be reduced accordingly.

(2) These provisions notwithstanding, an insurance policy can include provisions for the estimated future value of a property, and/or for the value of restoration or replacement.

Section 550

If a contract was not concluded by the insured, the insured shall be entitled to supplant the contracting party at any time with a written statement addressed to the insurer. In this case the insured and the contracting party shall be subject to joint and several liability regarding the premiums due for the current insurance period.

Section 551

(1) The parties shall be entitled to cancel contracts concluded for an open term at any time.

(2) The parties shall be entitled to include a clause in contracts to exclude the right of termination for a maximum of three years.

(3) If a contract covers a period of over three years and the parties do not stipulate that it can be abrogated before the specified period lapses, either of the parties shall be entitled to abrogate the contract as of the fourth year. If the contract is canceled, the insurer shall, according to the regulations, be entitled to demand repayment of any premium discounts granted to the insured based on a commitment for an extended contract term (term discount).

(4) A contract must be terminated in writing at the end of the insurance period. The period of notice is thirty days.

Section 552

(1) If only a part of the due premium is paid, the contract shall remain in force, with the same amount of coverage, for a term that is prorated to the payment.

(2) If a contract is terminated for non-payment of the premium, the insurer shall, according to the regulations, be entitled to demand repayment of the term discount.

Section 553

(1) If an insurance event occurs, the insurer shall be obliged to settle within the period defined by the regulations.

(2) If the amount of coverage is less than the value of the property, the insurer shall be obliged to make compensation in such a manner that the amount of insurance is proportionate to the value of the property.

Section 554

Insurance coverage for the current insurance year shall be reduced by the amount of compensation that is paid, unless the contracting party supplements the annual premium accordingly. This provision shall not be applied to liability and accident insurance policies.

Section 555

(1) Insured parties shall be obliged to mitigate damages within their control. The parties shall be entitled to agree on what needs to be done to prevent and mitigate the damages to be covered by the insured.

(2) The cost of mitigating damages shall be borne by the insurer even if mitigation of damages has been unsuccessful.

(3) If the amount of coverage is lower than the value of the property, the insurer shall be obliged to reimburse the cost of mitigating damages in such a manner that the amount of insurance is proportionate to the value of the property.

Section 556

(1) An insurer shall be exempt from its payment obligation if it is able to prove that damages have been caused unlawfully, either willfully or by gross negligence, by

- a) the insured and/or the contracting party,
- b) a relative living in their household,
- c) employees and/or agents of the insured who are employed in the positions listed in the regulations,
- d) an artificial person, members or bodies of the insured listed in the regulations.

(2) Regulation can tie the exemption of the insurer only to the conduct of senior executives and employees, agents, members, or bodies working in positions that are involved in handling the insured property.

(3) These provisions must also be applied to any breach of the obligation to prevent and mitigate damages.

Section 557

(1) Following the occurrence of an insurance event, the insured shall be entitled to implement any changes regarding the condition of the insured property within a time limit stipulated by regulation only to the extent that is necessary for mitigating damages.

(2) If, as a consequence of any change greater than that which is permitted, it becomes impossible to clarify the basic circumstances from the point of view of assessing the payment obligation to the insurer, the insurer's obligation shall not be effective.

Section 558

(1) The insurer, upon payment of indemnification, shall become entitled to the rights of the insured with regard to the person responsible for damages, unless this person is a relative living in the same household as the insured.

(2) If the right to claim compensation for damages is only partially assigned to the insurer and the insurer files a lawsuit against the person responsible for damages, the insurer shall, at the request of the insured, proceed at the same time to enforce the claims of the insured as well. The

insurer shall be entitled to enforce the claims of the insured contingent upon an advance on expenses.

(3) If an insurer and an insured file for joint action to enforce their claims and the indemnification that is received does not cover both claims, the insured shall enjoy priority.

(4) If the insured property is recovered, the insured shall be entitled to make a claim on it; in this instance, however, the amount of compensation shall be repaid.

Liability Insurance

Section 559

(1) An insured party shall be entitled, on the basis of a liability insurance contract, to request the insurer to exempt him, up to the limit specified in the contract, from paying for damages for which he is legally liable.

(2) Insurers shall only be entitled to pay aggrieved persons the fixed amount of compensation; however, aggrieved persons shall not be entitled to enforce their claims directly against insurers. An insured shall only be entitled to request the insurer to pay him if he settles the aggrieved person's claim.

(3) The willful or grossly negligent conduct of insured parties shall not exempt insurers with regard to aggrieved persons. Insurers, however, shall be entitled to demand reimbursement from an insured for the amount paid in those cases of willful conduct or gross negligence defined in the contract that result in damage, unless the insured is able to prove that the conduct of the person who caused the damage was not unlawful.

(4) An agreement between an insured and an aggrieved person shall be operative with respect to the insurer only if the insurer has acknowledged it, while a court ruling against the insured shall be operative only if the insurer has participated in the lawsuit, provided for the insured's legal representation, or he has waived the above.

3. Life Insurance

Section 560

(1) The following can be named beneficiary of a life insurance contract:

a) a person named in the contract;
b) a holder of a bearer policy;
c) an heir of the insured if no beneficiary has been named in the contract and no bearer policy has been issued.

(2) A contracting party shall be entitled to replace the original beneficiary at any time by designating another in a written statement addressed to the insurer. If the contracting party is not the insured, the written consent of the insured shall be required for such action.

(3) Designation of a beneficiary shall become inoperative if the beneficiary dies before the occurrence of the insurance event.

Section 561

(1) The written consent of the insured shall be required for concluding or amending a life insurance contract if he himself does not conclude it. If the insured is a minor and the contract is not concluded by a parent exercising legal guardianship, the guardian's approval shall be required for the validity of the contract.

(2) If an insurance contract is concluded without the approval of the insured, the section in which the beneficiary is named shall be null and void; in such a case, the insured or his heir shall be construed as the beneficiary; he shall, however, reimburse the expenses of the contracting party, including premium payments, from the insurance money he receives on account of it.

(3) An insured shall be entitled to revoke the approval he gives for conclusion of a contract at any time in writing. If approval is revoked, the contract shall be terminated at the end of the insurance period, unless the insured enters into the contract based on the written approval of the contracting party.

Section 562

(1) An insured shall be entitled to enter into a contract based on the approval of the contracting party at any time; approval of the insurer is not required for such entry.

(2) An insured shall be entitled to replace the contracting party by issuing a statement to the insurer before the contract is terminated due to cancellation or default in premium payments.

(3) In such cases, the insured and the contracting party shall be subject to joint and several liability for premium payments due for the current insurance period.

Section 563

(1) The insurer, if it subsequently gains knowledge of any important circumstances that existed at the time the contract was concluded, shall be entitled to exercise the rights originating therefrom only during the first five years of the life of the contract.

(2) The insurer's obligation shall take effect notwithstanding an infringement of the disclosure obligation, if the insurance event occurs more than five years after the conclusion of the contract.

Section 564

(1) An insurer shall be entitled to file a lawsuit to enforce its claim for premium payments in the first year. It shall only be entitled to exercise this right after the first year if the insured makes any payment in that year, or if they agree on deferred payments.

(2) If an insurer has issued a policy, it shall be obliged to pay the insurance money only upon the return of the policy.

Section 565

(1) If a contract is terminated for any reason without payment of the insurance money, the insurer shall pay a part of the premiums paid in, as defined in regulation (repurchase value).

(2) In the event of nonpayment of a premium, a contract shall remain in force with the sum insured reduced accordingly; however, the insured shall be entitled to demand termination of the contract and payment of the repurchase value.

(3) An insurer shall be exempt from payment of the insurance money, if the insured dies due to the willful conduct of the beneficiary; in this case the repurchase value can be claimed by the heirs, and the beneficiary shall not have a share therefrom.

(4) A contract shall be terminated without payment of the insurance money and the insurer shall refund the premium reserves instead of the repurchase value if the insured dies

- a) during the act of, or in connection with, willfully committing a felony offense, or
- b) by the act of suicide committed within two years of the conclusion of the contract.

4. Accident Insurance

Section 566

(1) The regulations governing life insurance shall be applied to accident insurance policies with respect to

- a) the approval of the insured if he is not the contracting party [Subsection (1) of Section 561];
- b) the revocation of the insured's statement of approval and right of entry [Subsection (3) of Section 561];
- c) the designation and rights of the beneficiary [Section 560, Subsection (2) of Section 561];
- d) the exemption of the insurer if the death of the insured has been caused by the beneficiary of the insurance money [Subsection (3) of Section 565].

(2) The amount of coverage is not limited, and insurers shall not raise any claims against the persons liable for the damage.

(3) The parties shall be entitled to agree that the amount of coverage shall be modified upon a change in the profession of the insured, in accordance with the assumption of risk, even without an express agreement.

(4) The parties shall not be entitled to agree validly on limiting the right of cancellation.

(5) Concerning other issues, the regulations governing property insurance shall be applied to accident insurance.

5. Miscellaneous Provisions

Section 567

(1) The insurance regulations and the contract of the parties shall not deviate from the provisions of this Chapter to the disadvantage of the insured or the beneficiary unless expressly permitted by law. However, regulations can state that if an insurance event occurs in connection with specific extraordinary circumstances, the insurer shall not be obliged to perform.

(2) Different provisions can be established for carrier's insurance; the regulations governing property insurance shall be applied to reinsurance; however, parties can depart from these provisions.

(3) The regulations governing mandatory insurance and nonmarketable risk insurance policies can be prescribed by legal regulation in a manner differing from the provisions of this Act.