

Title 17 - Insurance

a. Section 1 - General Provisions

Article 925

1. 'Insurance' is a contract whereby one party, the insurer, undertakes towards the other party, the 'policyholder', in consideration of a premium to make one or more payments, when, at the time the contract is concluded, there is no certainty for the parties whether, when or up to what amount any payment must be made, or even how long payment of the agreed payment of premium will last. Insurance is either an indemnity insurance or a benefit insurance.
2. 'Personal insurance' is insurance concerning the life or health of a human being.

Article 926

1. 'Payment' includes payment in kind.
2. A 'person entitled to payment' in this Section means the person who, on materialization of the risk, is entitled to payment under the insurance or who, on acceptance of his designation, becomes entitled to payment.

Article 927

The provisions of this Title do not apply to reinsurance.

Article 928

1. Prior to concluding the contract the policyholder must disclose to the insurer all facts of which he is or ought to be aware and on which, as he knows or ought to understand, the decision of the insurer whether, and if so, on what terms, the latter is willing to conclude the insurance will or may depend.
2. Where the cover relates to interests of a third person whose identity is known when the insurance is entered into, the obligation referred to in paragraph 1 will include facts of which this person is or ought to be aware and on which he knows or ought to understand that the decision of the insurer will or may depend. The preceding sentence does not apply to personal insurance.
3. Where personal insurance concerns the risk of a third person whose identity is known and who has reached the age of sixteen years, the disclosure obligation will include facts in respect of such a person of which the latter is or ought to be aware and on which, as he knows or ought to understand, a decision of the insurer will or may depend.

4. The disclosure obligation does not extend to facts of which the insurer is already or ought to be aware, or to facts which would not have resulted in a less favourable decision for the policyholder. However, a policyholder or a third person referred to in paragraph 2 or paragraph 3, who has given an incorrect or incomplete answer to a specific question on the matter may not claim that the insurer was already or ought to have been aware of specific facts. The disclosure obligation shall also not extend to facts for which no medical examination may be performed and on which no questions may be raised pursuant to Articles 4 to 6, inclusive, of the *Wet op de medische keuringen* (Medical Examinations Act) in the instances mentioned therein.

5. The policyholder need only disclose facts concerning his criminal past or that of third persons, insofar as these occurred within eight years preceding conclusion of the insurance and insofar as the insurer has explicitly raised a question in respect of such past in unambiguous terms.

6. When the insurance is concluded on the basis of a questionnaire drafted by the insurer, the insurer may not rely on the fact that questions were not answered or that facts in respect of which no question was raised were not disclosed or that the answer to a question couched in general terms was incomplete, unless there was intent to mislead the insurer.

Article 929

1. On discovery of non-fulfilment of a disclosure obligation described in Article 928, the insurer may only invoke its consequences, if the insurer has drawn the attention of the policyholder to such non-fulfilment within two months from discovery of the non-fulfilment, pointing out its possible consequences.

2. On the insurer's discovery that the policyholder acted with intent to mislead the insurer or if the insurer would not have concluded the insurance had the insurer been aware of the true state of affairs, the insurer may terminate the contract with immediate effect within two months after such discovery.

3. A policyholder may terminate the contract with immediate effect within two months after the insurer has acted in accordance with paragraph 1 or has claimed that the disclosure obligation was not fulfilled on materialization of the risk. In the case of personal insurance, the policyholder may confine the termination to the person in respect of whose risk the claim of non-fulfilment is made.

Article 930

1. In the case of non-fulfilment of the disclosure obligation described in Article 928, there shall only be a right to payment in accordance with paragraphs 2 and 3.

2. The agreed payment must be made in full, if any facts not or incorrectly disclosed are immaterial for assessment of the risk as this materialized.

3. If, in the case of non-fulfilment of the provision of paragraph 2, the insurer would have stipulated a higher premium had he been aware of the true state of affairs or if he would otherwise have concluded the insurance for a lower insured sum, the payment shall be reduced in proportion to the amount the premium would have been more or the insured sum less. If the insurer would have stipulated other terms had he been aware of the true state of affairs, then payment will only be due as if such terms were included in the contract.

4. By derogation from paragraphs 2 and 3, no payment will be due, if the insurer would not have concluded an insurance had he been aware of the true state of affairs.

5. By derogation from paragraphs 2 and 3, no payment will be due to a policyholder or third person referred to in Article 928, paragraph 2 or paragraph 3 who acted with intent to mislead the insurer. Neither shall payment be due to the third person, if the policyholder did not comply with his disclosure obligation as regards the third person with intent to mislead the insurer.

Article 931

An insurer may not invoke the grounds for annulment referred to in Article 44, paragraph 3 of Book 3 and Article 228 of Book 6.

Article 932

1. As soon as possible the insurer shall issue a document, named a policy, in which the terms of the contract are confirmed. A policy drawn up in a manner referred to in Article 156a, paragraph 1 of the Code of Civil Procedure must be provided with an electronic signature which meets the requirements referred to in Article 15a, paragraph 2 of Book 3 of the Civil Code. An insurer is not obliged to issue a policy where the nature of the contract justifies a different practice and the policyholder has no interest in the issue of a policy.

2. Paragraph 1 shall apply, *mutatis mutandis*, to alterations in the contract.

3. Upon request and against reimbursement of the cost the insurer shall issue a new document, if an evidentiary document issued by an insurer is lost. If the document is made out to bearer or to order and in the case of insurance of things customarily traded by means of documents, the insurer may require, as a condition for making a payment to the holder of a new evidentiary document, that the holder provides security during the period in which the insurer can be compelled to pay. A consent as referred to in Article 156a, paragraph 2 of the Code of

Civil Procedure will, as long as it is not revoked, also extend to a new evidentiary document as referred to in the first sentence.

Article 933

1. Information which the insurer must give pursuant to the provisions of this Title or the contract shall be in written form. For such purpose the insurer may rely on the last address of the addressee known to the insurer.
2. By Regulation, rules derogating from paragraph 1 may be set with regard to the transmission of information by electronic means. These may include rules for the despatch of information to the insurer by electronic means to which the provisions of this Title or the contract give rise.
3. No proposal for a Regulation to be adopted pursuant to paragraph 2 shall be made within four weeks from the submission of the Bill to both Chambers of the States-General.

Article 934

Failure to pay renewal premiums may only give rise to termination or suspension of the insurance contract or the cover after the obligee is informed, after the due date, of the consequences of the non-payment and is warned to pay within fourteen days from the date of the warning. The first sentence does not apply to the case referred to in subparagraph c of Article 83 of Book 6.

Article 935

1. The insurer may set-off the premium due for the same insurance, any loss on account of its late payment and costs referred to in Article 96, paragraph 2, subparagraph c of Book 6 against whatever the insurer is liable to pay to a person entitled to payment even if such person is not a debtor by whom payment of the premium is due. The first sentence does not apply to any insurance made out to bearer or order.
2. In the case of insurance against liability and by way of derogation from Article 127, paragraph 2 of Book 6, the insurer may not set-off any premium, loss and costs as referred to in paragraph 1 against what the insurer is liable to pay to the person entitled to payment other than in respect of the same insurance.

Article 936

1. Where a person who acts as intermediary on the insurance contract undertakes towards the insurer to pay the premium and costs as if these are his own debt, the policyholder is discharged as regards the insurer to the extent the premium and costs are for the account of the intermediary or are paid to the latter. The policyholder is obliged to indemnify the inter-

mediary in respect of such premium and costs.

2. Where a payment has become due, the insurer must pay to the intermediary, upon request and regardless of any rights of third persons, the amount which the intermediary may claim from the policyholder pursuant to the provision in paragraph 1. Where it is the policyholder who is entitled to payment under the insurance contract, the insurer shall have the same obligation as regards any other insurance involving the same holder and the same intermediary.

3. An insurer who intends to pay a person other than the intermediary must request the latter to state, within ten days, the amount of his claim against the policyholder pursuant to paragraph 1. If the intermediary complies, the insurer must pay him the stated amount as far as possible. When the insurer has complied with this or if the intermediary failed to state any amount within the set period, the insurer is free to pay the amount still due to the other person.

4. Paragraphs 2 and 3 do not apply:

- a. in respect of an insurance made out to bearer or order, unless the policyholder is entitled to the payment;
- b. in respect of compulsory liability insurance.

5. The provisions in the second sentence of paragraph 2 shall, moreover, remain inapplicable:

- a.
 - if there is a right of pledge as referred to in Article 229 of Book 3 or a privilege as referred to in Article 283 of Book 3 in respect of the right to a payment;
- b.
 - in the case of non-compulsory insurance against liability.

6. When the intermediary takes receipt of the payment on behalf of the person entitled to payment, he may set off the payment referred to in the second sentence of paragraph 1 against what he is liable to pay to the person entitled to payment up to the amount of his entitlements under paragraphs 2, 4 and 5.

Article 937

By payment to the intermediary the insurer is discharged as regards the person entitled to payment to the extent the insurer has settled with the latter what is owed to the person entitled to payment, but in any case to the extent the person entitled to payment benefited by payment to the intermediary.

Article 938

1. Save where the policyholder or the person entitled to payment intended to mislead the insurer as referred to in Article 928, paragraph 2 or paragraph 3, no premium is due where no risk whatsoever is incurred. If no risk is incurred over a full insurance year, no premium will be due over such year. The insurer is entitled to a fair remuneration for any expenses which were for his account.
2. During one month from expiry of a full insurance year in which no risk was incurred, either party may terminate the contract with effect from the beginning of the new insurance year. Such a termination has no legal effect, if risk was incurred between the beginning of the new insurance year and the termination.
3. Where a risk is incurred only in respect of a smaller number of things or a smaller quantity than was insured, paragraphs 1 and 2 apply insofar as no risk was incurred.

Article 939

Except in the case of termination on account of intent to mislead the insurer, the current premium shall be fairly reduced if the insurance is terminated prematurely.

Article 940

1. For termination as of the end of an insurance period two months' notice must be given so as to prevent the renewal of the contract.
2. The policyholder and, unless personal insurance is involved, the insurer may terminate a contract entered into for a period of more than five years, or which was renewed for such a period, with effect from the end of each fifth year within that period. The notice period mentioned in paragraph 1 shall apply.
3. Where the insurer has reserved the right to terminate the contract prematurely, the policyholder shall have the same right. Except if there was an act with intent to mislead the insurer, the insurer or, as the case may be, the policyholder shall observe a two months' notice period.
By derogation from such two months' period, if insurance provides cover against loss caused by risks referred to in Article 3:38 of the *Wet op het financieel toezicht* (Financial Supervision Act), the insurer or the policyholder, as the case may be, may terminate the contract with seven days' notice if the risk materializes or on a threat of it being imminent. The insurer may only terminate the insurance prematurely on the grounds stated in the contract if these are of such a nature that the insurer can no longer be required to be bound by the contract.
4. Where the insurer alters the terms of the contract to the detriment of the policyholder or

the person entitled to payment, the policyholder may terminate the contract with effect from the date on which the alteration takes effect, and in any event within one month after having been notified of the alteration.

5. The insurer may not terminate or alter a personal insurance on the ground of an increased health risk, insofar as the increased risk is attributable to the person to whom the insurance relates.

6. The insurer may always terminate the contract by electronic means. By Regulation, rules may be set with regard to the despatch of a notice of termination by electronic means.

7. A proposal for a Regulation to be adopted pursuant to paragraph 6 shall not be made earlier than four weeks after submission of the draft text to both Chambers of the States-General.

Article 941

1. As soon as the policyholder or the person entitled to payment is or ought to be aware of the materialization of the risk, he must notify the insurer of such materialization. This must be done as soon as reasonably possible.

2. The policyholder and the person entitled to payment must provide the insurer within a reasonable period with all information and documents of importance for the insurer to be able to consider his payment obligation.

3. If the person entitled to payment fails to perform the obligation referred to in paragraph 1 or 2, the insurer may reduce the payment by the loss which he suffers as a result thereof.

4. The insurer may only stipulate that the right to payment will lapse on failure to perform the obligations referred to in paragraphs 1 and 2, if a reasonable interest is prejudiced.

5. The right to payment will lapse if the policyholder or the person entitled to payment did not perform an obligation referred to in paragraphs 1 and 2 with the intent to mislead the insurer, except to the extent the lapse of the right to payment is not justified.

Article 942

1. A right of action against the insurer for obtaining payment is prescribed on expiry of three years from commencement of the day following that on which the person entitled to payment became aware of its becoming due.

2. The prescription shall be interrupted by written notice of a claim for payment. A new three-

year prescription period will commence as from the beginning of the day on which the insurer either admits the claim or has given notice of its rejection in unambiguous terms.

3. In derogation of the first sentence of paragraph 2, in the case of insurance against liability the prescription shall be interrupted by each negotiation between the insurer and the person entitled to payment or the injured person. In that case a new three-year prescription period shall commence beginning from the day following that on which the insurer either acknowledges the claim or has given notice in unambiguous terms to the person with whom the insurer negotiates and, if the latter is someone else, to the person entitled to payment, that he is discontinuing the negotiations.

Article 943

1. There may be no derogation from Articles 931, 932, 935, paragraph 2, 936 and 939.

2. There may be no derogation to the detriment of the policyholder or of the person entitled to payment from Articles 933, first paragraph, first sentence, 937, 940, paragraphs 1, 3, 5 and 6 and 941, paragraphs 1, 2, 4 and 5 and 942.

3. There may be no derogation to the detriment of the policyholder or the person entitled to payment from Articles 928 to 930, inclusive, 934 and 940, paragraphs 2 and 4, if the policyholder is an individual who has taken out the insurance otherwise than in the conduct of a profession or business.

b. Section 2 - Indemnity Insurance

Article 944

Indemnity insurance is an insurance for compensation of loss of, or damage to, property which the insured could suffer.

Article 945

The 'insured' in this Section means the person entitled pursuant to the insurance to compensation for loss or damage suffered by him or who may, by accepting his designation, acquire a right to compensation.

Article 946

1. The contract covers only interests of the policyholder unless otherwise agreed.

2. If, as a result of a marriage or a registered partnership, a thing becomes part of a community and such a thing is insured, the partners shall be insured for their interest.

Article 947

A policyholder may only revoke the designation of such a third person to whom payment must be made in the event of a loss with the cooperation of the insurer or of the third person. As regards a loss that has already occurred, the policyholder and the insurer may not reverse the designation, not even when acting jointly.

Article 948

1. On a transfer of a thing or limited right thereto, any rights and obligations from an insurance covering the interest of the transferor in the preservation of the thing are transmitted together with the risk to the transferee, even if the risk was transmitted before the transfer. The same applies to any ancillary insurance effected by the same contract. There shall be no transmission if this follows from the legal act whereby the asset is transferred or from a declaration to the insurer by the new interested party.

2. The contract shall lapse one month after its transmission to the new insured unless the latter, within such a period, declares to the insurer his wish to continue the contract. In that case the insurer may terminate the contract with one month notice within two months from the declaration having been made.

3. Premiums falling due before the new insured declared his wish to continue the contract are exclusively due by the policyholder.

4. The provisions of paragraph 2 do not result in a prolongation of the duration of the contract nor in a limitation of the right of termination arising for other reasons.

5. Paragraphs 1 to 4, inclusive, do not apply if the insurance designates the transferee as third person referred to in Article 947.

Article 949

In the case of an insurance referred to in the second sentence of Article 932, paragraph 3, the holder of the policy or of another evidentiary document issued by the insurer is deemed to be the insured, provided the insured interest vests in him. In this case Articles 253, paragraph 2 of Book 6, 947, 948 and 950 do not apply.

Article 950

If the policyholder dies, his heirs and the insurer may terminate the contract with one month notice within nine months from having become aware of such death.

When the estate of a deceased policyholder is divided pursuant to Article 13 of Book 4, the right of the heirs referred to in the preceding sentence shall vest in his spouse or registered partner.

Article 951

The insurer shall not indemnify a loss of or damage caused to the insured thing when caused by the nature of, or by a defect in that thing.

Article 952

The insurer shall not indemnify the insured for a loss caused by him with intent or by recklessness.

Article 953

If an insurance against liability prohibits specific acknowledgements by the insured, a transgression of such a prohibition will not have any effect insofar as such acknowledgement is correct. A prohibition against the making any acknowledgment never has any effect.

Article 954

1. Where, in the case of an insurance against liability, the insurer is notified pursuant to Article 941 of the materialization of the risk, the injured party may demand, if the insurer is liable to make a payment, that the amount which the insured may claim on account of the loss of the injured person as a result of death or personal injury be paid to him.
2. The injured person may demand such a payment without notification, if the insured was a legal person which ceased to exist and the obligation to indemnify the loss of the injured person was not transmitted to another person.
3. As long as the injured person has not exercised the right referred to in paragraph 1, payment to the insured will discharge the insurer only if the insurer had requested the injured person in vain to inform the insurer within four weeks whether he exercises or waives such a right.
4. The insured may not dispose of his claim against the insurer to the detriment of the injured party to the extent such a claim relates to a loss resulting from death or injury, or if such a claim is capable of seizure by persons other than the injured person.
5. If and to the extent the insurer may pay less than the amount for which the insured is liable when such amount exceeds the insured sum, the payment due shall be prorated to the loss of each of the injured persons and, to the extent injured persons are involved whose loss both results from death or personal injury and any other loss, according to the respective type of loss. Nevertheless an insurer who, while unaware of the existence of claims of other injured persons, pays in good faith to one injured person or to the insured a sum in excess of the amount to which the latter is entitled will only be liable towards the other injured persons for the balance of the insured sum. Payment to the injured persons may be suspended to the

extent there may be reasonable grounds for doubt as to which amount should be paid in connection with the provisions of the first sentence.

6. An injured person who institutes an action against the insurer on account of his loss as a result of death or personal injury, may do so only if he ensures that the insured is summoned in time to appear in the proceedings. An exception is made in the case referred to in paragraph 2.

7. Paragraphs 1 to 6, inclusive, do not apply to the extent the injured person is indemnified or to the extent an independent right of indemnification for his loss against the insurer is vested in him by law.

Article 955

1. The sum insured is the highest amount of compensation which the insurer can be required to pay as a result of one and the same event, except for the provision of Article 959.

2. The sum insured is not reduced by a payment referred to in paragraph 1.

Article 956

A building is deemed to have been insured for its reconstruction value, and other things according to their replacement value. 'Replacement value' is the amount required to acquire things equivalent in kind, quality, quantity, condition and age.

Article 957

1. As soon as a policyholder or the insured is or ought to be aware of the materialization of the risk or it being imminent, each must take, within reasonable bounds and to the extent each is in a position to do so, such measures as may result in prevention or in minimizing the loss or damage.

2. The insurer shall reimburse the cost of taking measures as referred to in paragraph 1, and the loss of, or damage to things used in so doing.

3. If the insured fails to perform the obligation referred to in paragraph 1, the insurer may reduce the payment by the loss the insurer suffers as a result.

Article 958

1. There is 'total loss' when a thing:

- a. is destroyed,
- b. is damaged to such an extent that it ceases to be a thing of the insured kind, or
- c. has been placed beyond the control of the insured and no recovery is to be expected.

2. In the case of total loss the insurer shall compensate the value of the insured interest in the thing.
3. Where, in the case of subparagraph c of paragraph 1, the insurer has complied with the obligation of the insurer and it thereafter becomes possible to recover the thing, the insurer has the right, at the choice of the insured, to repayment of the compensation or to the transfer of the thing.
4. In the case of insurance for replacement, reconstruction or 'as new' value, the insurer shall, in the case of a partial loss, have the choice to compensate either the cost of repair and the reduction in market value notwithstanding repair or to compensate the insured value of the undamaged thing less the market value of the residue.
5. If the amount of the insured sum is less than the value on which the loss calculation is based, the compensation pursuant to paragraphs 2 and 4 shall be prorated to the amount by which that amount is lower than the value.

Article 959

1. The compensation referred to in Article 957 and the reasonable cost incurred in assessing the loss shall be for the account of the insurer even when, as a result thereof, this, aggregated with the amount of the compensation of the loss, would exceed the insured sum.
2. Where the value of the undamaged thing calculated on the basis of the insurance is not insured in full, the compensation referred to in Article 957 is for the insurer's account only with corresponding application of Article 958, paragraph 5.

Article 960

The insured shall not receive compensation under the insurance if this would result in his being placed in a clearly more advantageous position. The preceding sentence does not apply if the value of a thing is assessed beforehand pursuant to a decision to commission an expert or pursuant to a decision of the parties in accordance with the advice of an expert.

Article 961

1. Where the same loss is covered by more than one insurance, the insured may make a claim against each insurer, subject to Article 960. The insurer may then suspend performance of the insurer's obligation to pay compensation until the insured has named the other insurers.
2. For the purposes of paragraph 1, a loss covered by insurance shall be equated with a loss which is compensated by the insurer without obligation.

3. The insurers shall have mutual recourse so that each will bear its part in proportion to the amounts for which a claim can be made against each individually. The insurers have mutual recourse on the same footing for their reasonable costs in assessing the loss and their reasonable costs of defence at law and otherwise. The insured has a several obligation as regards the insurers to refrain from conduct which will impair their mutual recourse at their expense.

4. The liability of insurers involved in one and the same insurance shall not extend beyond their proportionate part of the amount which, in the aggregate, falls under such insurance.

Article 962

1. Where the insured has claims for compensation against third persons arising otherwise than from insurance on account of a loss suffered by him, those claims shall be transmitted to the insurer by way of subrogation insofar as the insurer indemnifies such loss, whether or not obliged to do so. The insured must refrain from conduct which will impair the right of the insurer against such third persons after such a risk has materialized.

2. The insurer may not exercise the claim to which the insurer is subrogated or which the insurer acquired by assignment to the detriment of the insured's right to compensation.

3. The insurer will not acquire a claim against the policyholder, a co-insured, the spouse from whom the insured is not judicially separated or the registered partner or other life companion of an insured, nor against blood relatives in the direct line of an insured nor against an employee or employer of the insured or against a person employed by the same employer as the insured. This rule does not apply insofar as such a person is liable towards the insured on account of a circumstance which, if attributable to the insured, would have impaired the former's right to payment under the insurance.

Article 963

1. There may be no derogation from Articles 960 and 962, paragraph 2 and paragraph 3, first sentence.

2. There may be no derogation from Article 953 to the detriment of the insured.

3. There may be no derogation from the second sentence of Article 947 to the detriment of the third person.

4. There may be no derogation from Article 954 to the detriment of the injured person;

5. There may be no derogation from Article 957, paragraph 2 to the detriment of the policyholder or the insured.

6. There may be no derogation from Article 959, paragraph 1 to the detriment of the policyholder or the insured, to the extent the costs referred to in that paragraph do not exceed an amount equal to the insured sum if the policyholder is an individual who has contracted the insurance otherwise than in the conduct of a profession or business.

c. Section 3 - Benefit Insurance

(i) §1 - General Provisions

Article 964

'Benefit insurance' is insurance for which it is irrelevant whether and to what extent the payment will compensate a loss. It is permitted only for insurance of a person and for insurance so designated by Regulation, where necessary within set limits.

Article 965

In this Section 'the insured' means the person to whose life or health the insurance relates; 'the beneficiary' means the person designated to receive payment. A 'payment' includes the amounts referred to in Articles 978, paragraph 2, 980, paragraph 2, 981 and 983.

Article 966

1. By a written communication to the insurer the policyholder may:

- a. designate himself or, whether or not in addition to himself, one or more third persons as a beneficiary, either as principal or as a limited beneficiary;
- b. place the right to payment under fiduciary administration;
- c. revoke or alter a disposition referred to in subparagraph *a* or *b*.

2. The insurer may reject a designation or an alteration thereof, if this would make it unreasonably difficult to fulfil the insurer's obligation to make a payment. The insurer shall exercise this right by notifying the policyholder of such a rejection within one month after the designation or the alteration.

3. The fiduciary administration of a right to payment has the same legal effects as a fiduciary administration instituted by last will, provided:

- a. the periods referred to in Articles 178, 179, paragraph 2 and 180, paragraph 2 of Book 4 will commence at the time when the payment or the first of a series of payments falls due, and

b. the fiduciary administration, insofar as it is not instituted in the interest of a person other than the beneficiary, will also end when the policyholder and the beneficiary inform the administrator in writing of a joint decision of its discontinuation.

3. A designation of a beneficiary as principal beneficiary by way of security is considered to be a designation as pledgee. The preceding sentence applies, *mutatis mutandis*, if the designation as principal beneficiary is made for redemption of a debt, unless the designation is limited to what is due to the beneficiary on account thereof.

Article 967

1. Unless it appears that there was a different intention, the designation of a beneficiary will lapse if he dies before:

- a. his acceptance of the designation, or
- b. a payment to which the designation relates has fallen due.

2. If the beneficiary is designated in a particular capacity, the designation is presumed made for the benefit of the person possessing that capacity at the time when the designation becomes irrevocable pursuant to Article 968, subparagraphs *b* to *d*, inclusive. If the beneficiary is mentioned both by name and by capacity, the designation is presumed to have been made for the benefit of the beneficiary designated by name.

3. By derogation from the provisions of paragraph 2, the beneficial entitlement shall always be for the benefit of the beneficiary whose designation has become irrevocable as a result of his acceptance while possessing the capacity specified in the designation.

4. If heirs of the policyholder or of the insured specified as such are designated as beneficiaries, this shall mean those entitled to inherit the deceased's estate, irrespective of whether they accepted it. They will be entitled to payment in the same proportion as their entitlement to the deceased's estate.

5. If the estate of the policyholder or of the insured is designated as beneficiary, the right to the payment shall vest in the heirs who accepted the deceased's estate. They shall be entitled to payment in the same proportion as in which they share in the estate.

6. If children specified as such are designated as beneficiaries, this shall include their descendants by representation.

7. Where a payment falls due on the death of the insured and he and a third person-beneficiary died at the same time or, if both died and it is impossible to establish who died

first, the payment will not vest in such a beneficiary unless it appears that there was a different intention.

8. As long as no third person is designated as beneficiary the right to payment shall vest in the policyholder. The policyholder shall further be considered to have designated himself as beneficiary, if no designation of a third person as beneficiary has effect.

Article 968

A. designation of a third person as beneficiary cannot be revoked:

- a. if such a third person has accepted it;
- b. if the death of the policyholder has terminated the risk;
- c. if a payment falls due;
- d. if this follows from the contract.

Article 969

1. A third person-beneficiary acquires his right to payment by acceptance of his designation. In derogation of Article 253, paragraphs 3 and 4 of Book 6, he may only accept by a declaration addressed to the insurer. Unless the designation is irrevocable as provided in Article 968, subparagraphs *b* to *d*, inclusive, the beneficiary may only accept in writing with the consent of the policyholder of which the insurer is notified in the same manner.

2. If a designation as provided in Article 968 subparagraphs *b* to *d*, inclusive, is irrevocable, the beneficiary-third person may reject his designation by a declaration addressed to the insurer.

3. A beneficiary third person may reverse the acceptance of the designation by waiving his right to payment.

Article 970

1. Save for the provisions in the second sentence, only the rights of the policyholder under a benefit insurance may be assigned jointly. Rights to claims arising from a benefit insurance may be assigned severally, to the extent the law or the contract does not otherwise provide.

2. The assignment of rights under an insurance requires an instrument drawn up for such purpose and written notification to the insurer by the assignor or the assignee.

Article 971

1. Article 239 of Book 3 does not apply to the establishment of a right of pledge in rights arising from a benefit insurance.

2. If the right of pledge vests in a right to payment, the principal beneficiary shall take the place of the pledgor for the purposes of Articles 246 and 253 of Book 3 and Article 490*b* of the Code of Civil Procedure. Where a third person designated as principal beneficiary has not yet accepted his designation, the pledgee shall give the third person an opportunity to do so.

3. By derogation from paragraph 2, the pledgee may also pay the insurer any balance referred to in Article 253, paragraph 1, second sentence, of Book 3. The insurer is liable to pay this sum to the principal beneficiary.

Article 972

1. The policyholder may only exercise his rights arising from the contract with the written consent of:

- a. the beneficiary if a designation as provided in Article 968 is irrevocable;
- b. the beneficiary with a limited right, if the limited right is established in the rights arising for the policyholder from the contract or in the entitlement to a payment.

2. Where the exercise of the rights referred to in paragraph 1 will not change the legal position of the beneficiary or of the person with the limited right, as the case may be, his consent will not be required for such purpose.

Article 973

No rights under the contract shall vest in a person who has been convicted without appeal of having deliberately caused the materialization of the risk or of having been a wilful accessory thereto.

Article 974

There may be no derogation from the requirements as to form in Articles 966, paragraph 1 and 969, paragraph 1, second sentence and from Articles 972 and 973.

(ii) §2 - Life Assurance

Article 975

Life assurance is the benefit insurance taken out in connection with life or death, on the understanding that accident insurance is not considered to be life assurance.

Article 976

Articles 978, paragraph 1, 980, paragraph 1 and 981, and Article 986 to the extent it pertains to these provisions, do not apply in respect of insurance covering funeral expenses. By Regulation further criteria may be set in respect hereof. The value of this type of insurance and

the rights arising thereunder shall not be capable of seizure and remain outside the bankruptcy of, or the application of a debt relief arrangement to the policyholder and the winding up of his estate upon his death.

Article 977

1. Save for the other provisions in this Title, the insurance may not be terminated or cancelled by the insurer nor may it lapse pursuant to any clause in the contract. The first sentence shall not prohibit a condition that the insurance will end or may be cancelled by the insurer, if it no longer has a paid-up value or surrender value as a result of the set-off of premium, stipulated interest and costs as provided in the contract.
2. Save as provided elsewhere in this Section, the insurer may cause surrender of the insurance or its continuation with no further payment of premiums with the cooperation of the policyholder if this is obtained after entry into the contract.

Article 978

1. The policyholder is entitled to surrender the insurance in full or in part to the extent it positively provides for one or more payments. The insurance ends as a result of its surrender, save to the extent further payments may arise under the insurance. The policyholder is entitled to the surrender value.
2. The policyholder is entitled to procure continuation without further payment of premiums of an insurance which has a paid-up value. This right may be excluded in the event that, if converted into a paid-up policy with reduced payment(s), the size of such reduced payment(s) would remain below a threshold set by Regulation.

Article 979

1. The policyholder is entitled to take out a loan from the insurer on its usual terms on the insurance referred to in Article 978, paragraph 1 up to the amount of the surrender value.
2. An insurer may set-off the amount paid on a loan taken out on the insurance, increased with interest and costs, to the extent it is not repaid to him, against the cash value of periodic payments and withhold it from payments arising out of, or chargeable to, the insurance.

Article 980

1. Non-payment of renewal premiums shall not have any effect until the insurer, after the due date, has notified and explained the consequences to the policyholder, the beneficiary, who has accepted his designation, the pledgee and the seizer and payment has not been made within a period stated in the notification of at least one month.

2. If payment has not been made, the insurance with a paid-up value will be continued without further payment of premiums or, if the contract so provides, it will be continued with set-off of the premium and the agreed interest and costs against the surrender value. If there is no right to continuation as referred to in the preceding sentence, the insurance will end, in which case the policyholder will be entitled to the surrender value, if the insurance has such value.

3. By derogation from paragraph 1, it may be agreed that interest and costs shall be due from the expiry date.

Article 981

If the insured dies as a result of a cause excluded from the risk and if the insurance has a surrender value, the insurer is liable to pay a sum equal to the surrender value calculated as at the day preceding the death. That amount shall vest in the beneficiary. If the insurance does not have a surrender value but does have a paid-up value, the policyholder will be deemed to have exercised the right referred to in Article 978, paragraph 2 on the day prior to the death and the insured is deemed to have died from a cause not excluded from the risk.

Article 982

1. Where the age or gender of the insured is stated incorrectly, the insurance is deemed to have been taken out for payment(s) of an amount adjusted to the correct age or the correct gender, while the agreed premium shall remain the same. To that extent Articles 929, 930 and 983 shall not apply.

2. Paragraph 1 does not apply if the insurer would not have contracted the insurance had he been aware of the correct age or the correct gender.

Article 983

1. If an insurance which the policyholder is entitled to surrender pursuant to the law or contract is terminated in accordance with Article 929, the policyholder acquires a right to the surrender value on the day prior to its termination.

2. A beneficiary acquires a right to a sum calculated in the same way, if the insurer invokes the consequences of non-compliance with Article 928, when the risk ends. If, however, application of Article 930, paragraph 2 or 3 will result in a higher payment, the beneficiary will be entitled thereto.

3. An insurer who, pursuant to Article 929, draws to the policyholder's attention the failure to comply with Article 928, while reserving his rights, or who invokes the consequences of such failure, must so notify a beneficiary who has accepted his designation and the pledgee. In the

case referred to in the first sentence, the insurer shall also notify the seizer, unless no declaration as referred to in Article 476a, paragraph 1 of the Code of Civil Procedure was made.

Article 984

1. If there is a right of pledge on the policyholder's rights, the pledgee may procure surrender of the insurance, unless the policyholder has no entitlement to cause its surrender. The pledgee may also alter the designation of a beneficiary in favour of the policyholder, provided the designation is not irrevocable. He may only cause surrender of the insurance, if the debtor is in default and if the policyholder is subsequently notified by him by registered letter or by bailiff's writ with no less than four weeks' prior notice of his intention to cause the surrender. The insurer is not required to investigate whether the debtor is in default. The pledgee shall send the insurer a copy of the letter or the writ referred to in the third sentence.

2. To be able to cause surrender of the insurance, the pledgee must also mention when notifying his intention to cause the surrender that the policyholder may, within the four week period referred to in paragraph 1, unless this right was excluded, use the insurance as collateral for a loan for the purpose of settling what is due to the pledgee, to the extent possible.

3. If the pledgee has caused surrender of the insurance or if the policyholder takes out a loan secured by the insurance as provided in paragraph 2, the right of pledge shall then only vest on the claim on account of such a surrender or secured loan.

4. The pledgee is not authorized to sell as provided in Article 248 of Book 3.

Article 985

A right of action against the insurer to enforce payment is prescribed by expiry of five years from the date on which the claim became due and payable unless a longer period was stipulated.

Article 986

1. There may be no derogation from Article 984.

2. There may be no derogation from Articles 977, 981 and 982 to the detriment of the policyholder, the beneficiary or the pledgee.

3. There may be no derogation from Articles 978, paragraph 2, 980 and 983 to the detriment of the policyholder, the beneficiary, the pledgee or the seizer, if the policyholder is an individual who took out the insurance otherwise than in connection with the conduct of a profession or business.

4. A restriction or exclusion of the right referred to in Article 978, paragraph 1 may not be raised against creditors of the policyholder, the curator in the bankruptcy of the policyholder, the latter's administrator in the case of a suspension of payments or application of a debt relief arrangement or against the liquidator of the estate of the policyholder on his death. Where the insurance gives an entitlement to periodic payments or benefits in kind, the first sentence shall not apply, to the extent the premiums paid in respect thereof may be taken into account for the purpose of assessing the taxable income due for income from labour and dwelling partly on the ground that the insurance provides that it may not be surrendered.

Articles 987-989

[Reserved]

1.1.2. Title 18 - Annuities

Article 990

An annuity is a right to a periodic payment in cash dependent on one or more persons being alive.

Article 991

1. If a payment is not made on the due date and it is still unpaid within one month after a written warning, the person entitled thereto may, by a written notification to the debtor, convert the annuity, insofar as it is still due, into a claim for compensation of the amount required to buy an identical annuity.

2. Nevertheless the person liable to pay the annuity may suspend performance of his obligation if he has reasonable grounds to doubt whether the person is still living.

Article 992

In respect of the period in which the person on whose life the annuity depends dies, the annuity will be due only in proportion to the number of days he lived during that period. Where interest must be paid in advance, it will remain due over the entire period.