

Insurance Contract Act (ICA)

No. 2496/97

Article

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PART ONE THE INSURANCE CONTRACT

SECTION ONE General Provisions

Article 1

The Insurance Contract - Definition and Elements

- 1) Insurance is a contract by which, an insurance company (“the insurer”) undertakes to make payments or, if specifically agreed,

make provision in kind¹ to the other party ("**the policyholder**") or to a third party, in return for a premium, on the occurrence of the event on which it has been agreed that the insurer's obligation depends ("**the insured event**").

- 2) **The insurance contract shall specify** at least the particulars of the contracting parties and the name of the person entitled to the insurance money, should that person not be the policyholder. It should also contain: the time-span of cover ; the subject matter of the insurance and the risks covered ("**insured risks**"); any limit of the insurers liability ("**insured sum**"); any exceptions to cover; the premium; and the applicable law, if not Greek.
- 3) The insurer, before the acceptance of the application for insurance, may grant preliminary insurance cover. The preliminary cover is converted to a definitive if the insurance contract is concluded during the time-span of the preliminary cover.

Article 2

The Insurance Policy

- 1) The insurance contract is **evidenced** by a signed document (the "insurance policy") issued by the insurer. The insurer may sign it by mechanical means. The insurance policy may also be issued either to order or to bearer.
- 2) The insurer **shall provide** the policyholder with the insurance policy or, if preliminary cover has been agreed, a **preliminary cover note in writing**.
- 3) The insurance policy and the preliminary cover note **shall include** the elements of the insurance contract, as well as the place and date of issue. The policyholder is entitled at any time to request a **copy** of any explanations or details which he may have given to the insurer upon conclusion of the contract, as well as a copy of the insurance policy, if the original is lost.

1. The law includes in the definition of insurance contract the provision of assistance, which is commonly in kind. It also gives a definition of "risk" (i.e. an event the occurrence of which has been agreed to trigger performance by the insurer), as this is the meaning of "risk" in private insurance: an event defined in the insurance contract which, in indemnity insurance, is linked with the actual financial need resulting from its occurrence.

- 4) Whenever the contract is governed by general or special **insurance terms and conditions**, the insurer shall note this in the section of the insurance policy where the individual elements of the contract appear, and provide the aforesaid terms and conditions to the policyholder together with the insurance policy.
- 5) In the event that the **contents of the insurance policy differ from the contents of the application for insurance**, such inconsistencies shall be deemed to have been approved from the commencement of the contract provided that the policyholder does not **object** in writing thereto within one month following the receipt of the insurance policy and that the insurer has duly informed the policyholder of such inconsistencies, as well as of the policyholder's right to object². This should be done by the insurer in writing, or **by a notice situated on the first page of the insurance policy** written in such a way as to make the notice readily distinguishable from the other parts of the document, thus enabling it to be easily noted by the reader. The insurer must also supply the policyholder a separate **printed specimen of the notice of objection**.³ If the insurer fails to inform the policyholder of his rights under this paragraph, or to provide him with the above mentioned specimen notice, the inconsistencies shall not be binding on the policyholder, and the

2. The law implies that the insurer has to inform the policyholder "about his right to object in case of inconsistencies between the cover required and the cover offered".

3. The inconsistencies refer to the content of the application for insurance (nature of risk, extent of cover, amount of premium, etc.) and not in the insurance terms that are not individually negotiated, unless and to the extent that those terms were in the application. Thus the inconsistencies of Art.2. par. 5 ICA refer to the elements of the insurance policy (as provided in Art. 2 par. 3 ICA) as these commonly constitute the content of the application. If for example, as is usually the case, the application for insurance does not make explicit reference to the extent of exceptions acceptable by the applicant, then the existence of exceptions in the terms does not constitute inconsistency to the application. The policyholder is adequately protected from undesirable exceptions, as on the one hand the insurance policy shall include a notice (situated on the first page and in bold letters) referring to their existence in the terms (and the relevant Article of the terms), allowing the policyholder to easily trace them and deny acceptance of the insurance contract or on the other hand the exclusions have to be reasonable, as provided in Art. 13 par. 3 (see however Supreme Court 846/2003, Commercial Law Review 2003, 839 note I Rokas).

contract shall be deemed to have been agreed in accordance with the contents of the application⁴.

- 6) If the insurer fails to supply to the policyholder any of the information provided in Article 4 paragraph 2, item «H»⁵ and paragraph 3 item «D»⁶ of Legislative Decree 400/1970 as in force at

4. The exercise of this right by the policyholder can be considered as abusive, if an insurance broker has intermediated, especially when the policyholder is a commercial or industrial undertaking and not a consumer or a small undertaking.
5. According to L.D. 400/1970 Art. 4.2.H, "Every insurance undertaking is obliged to do the following in relation to all risks situated in Greece:
- i) To notify to the insured - before the conclusion of the contract of the law applicable to the insurance relation, in cases where the insured has the right to choose the law applicable to the contract. If the insured has the right to choose, it must inform the insured of the law proposed by the insurance undertaking, as well as the method and time in which demands and complaints concerning contracts by insureds, without prejudice regarding the right to take legal proceedings;
 - ii) In relation to risks other than those specified in Article 13.3 herein, to notify to the insured before the conclusion of the contract, the name of the Member State in which the head office, or, as the case maybe, the agency or branch which will issue the policy, is situated;
 - iii) The insurance policy and the insurance application must mention the address of the head office, or, as the case maybe, the agency or branch which will issue the policy, as well as the name and address of the special representative of any insurance undertaking which conducts Class 10 "Civil liability arising out of motor vehicles operating on the land" (except for carrier's liability) under the free provision of services regime;
 - iv) All necessary information to be notified to the insured before the conclusion of the contract - including the insurance policy itself - must be written in the Greek language if the insurance is compulsory, or if the following applies:
the law applicable to the contract is Greek;
the risks covered under the policy are not those referred to in Article 13.3 herein."
6. According to L.D. 400/1970 Art. 4.3.D, "If the Member State of the insurance obligation (for life insurance) is Greece, the insurance undertaking is obliged to provide to the policyholder a document with the following information, which along with the related contracts must be given in the Greek language, provided that the policyholder is a Greek national or is a resident of Greece and the applicable law of the Contract is Greek.
- i) The name of the undertaking, its object and its legal form;
 - ii) The name of the Member State in which the head office, or the agency, or branch concluding the contract, is located;
 - iii) The address of the head office, or of the agency, or branch that concludes the contract;

the time when the application for insurance is submitted⁷, or if the insurer **fails to communicate the insurance terms and conditions** in accordance with paragraph 4 of the present Article, the contract shall be deemed to have been concluded on the basis of the policy, the insurance terms and conditions and the additional information, if any, which determine the individual contract, provided that the policyholder does not **object** in writ-

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- iv) The definition of each main or supplementary benefit and each option available to the policyholder;
 - v) The term of the contract, for both main and supplementary;
 - vi) The way to terminate the contract;
 - vii) Details concerning the payment of premiums for both main and supplementary benefits;
 - viii) The means of calculation and distribution of bonuses from participation in the insurance undertaking's profits or excess returns made on mathematical reserves;
 - ix) Indication of surrender values with the relevant table and the extent to which they are guaranteed;
 - x) Information on the premiums for each benefit, both main benefits and supplementary benefits, for which similar information must be given;
 - xi) For unit-linked policies, further information concerning the definition of the units to which the benefits are linked;
 - xii) If these units are based on a combination of "internal convertible capital" information concerning the nature of the underlying assets on which the "internal convertible capital" is based on;
- If the units are linked to funds not licensed to sell in Greece, information on the units is given as well as their net price and surrender value;
- xiii) Means of exercising the right to revoke the contract;
 - xiv) General information on the tax arrangements applicable to the type of policy; and
 - xv) Law applicable to the contract where the parties do not have a free choice or, if they do, the law the insurer proposes;
 - xvi) The way and time for handling written complaints by policyholders or beneficiaries without prejudice to the right to take legal proceedings;
 - xvii) Information concerning the commencement of cover for each benefit, both main and supplementary."

The above information must be provided in a clear and accurate manner in writing (see Annex to the Recast Life Directive 02/83).

7. Therefore depending on whether it is a life or indemnity insurance, the insurer provides the policyholder with the relevant information already mentioned in footnotes 5 and 6.

ing within fourteen days of the policy being delivered. Should the aforesaid time limit expire without any action being taken, the contract shall be deemed to have come into effect from the date on which it was concluded. The aforesaid time-limit shall not commence should the insurer fail to inform the policyholder of his right to object to the contract in the absence of the aforesaid information. The insurer must notify the policyholder of the above right in writing, or by an easily legible notice appearing on the first page of the policy, and supply the policyholder with a separate **printed specimen of the notice of objection**.⁸ The policyholder's right to object shall expire after the lapse of ten months from the date on which the first premium was paid. If the policyholder makes an objection, the contract shall be avoided. The burden of proving that the appropriate documents were delivered lies with the insurer. The provisions set out in paragraph 5 of this Article are not prejudiced hereby.

- 7) If, at the request of the policyholder, **insurance cover is provided immediately**, it may be agreed, when the contract is concluded, that the policyholder shall **waive the right to be supplied with the information** provided for in paragraph 6 of this Article, until such time as the insurer supplies the insurance policy.
- 8) All the terms contained in the insurance policy should take into consideration the **policyholder's reasonable interests** as well as those of the insured; they should also be **clearly expressed and written in understandable language**. Any agreement purporting to **waive the right to avoid the insurance contract on grounds of error** shall not be binding on the policyholder.

Article 3

Duty of the Insured to Disclose Information on the Risk

- 1) The policyholder shall disclose to the insurer before the conclusion of the contract any and all **information or circumstances**

8. The exercise of the right arising from this provision by the policyholder can be considered as abusive, if an insurance broker has intermediated, especially when the policyholder is a commercial-industrial undertaking and not a consumer or a small undertaking.

of which he is aware, and which are objectively **material** for the assessment of the risk. He shall also answer every relevant **question** posed by the insurer. It shall be presumed that the information and circumstances in relation to which the insurer has set clear **written questions** constitute the sole grounds on which the insurer based its assessment and acceptance of such risk.

If the insurer concludes the contract upon **written questions**, the insurer cannot later rely on the fact that:

- a) some questions remained unanswered;
 - b) circumstances which were not the subject matter of a question have not been disclosed; or
 - c) an obviously incomplete answer was given to a general question, unless the applicant has acted with intention to deceive the insurer.
- 2) The insurer cannot rely upon **inadequate or defective answers to the questionnaire** unless they were supplied deliberately by the policyholder.
 - 3) If, for any reason whatsoever **beyond the control of the insurer or the policyholder**, information or circumstances which are objectively material for the assessment⁹ of risk **did not become known to the insurer**, the insurer shall be **entitled to terminate the insurance contract**, or to request its variation, within a period of one month following the insurer's discovery of such information or circumstances.
 - 4) The insurance contract's **variation proposal of the insurer** shall be deemed to constitute a **termination of the contract** if, within one month from receipt thereof, such proposal is not accepted by the policyholder. This presumption must be clearly stated in the proposal document.
 - 5) **Negligent breach of the duty** set out in paragraph 1¹⁰ of this Article shall entitle the insurer to all rights referred to in paragraph 3 hereof. Furthermore, if the insured risk occurs prior to the variation of the insurance contract pursuant to paragraph 3, or before the termination takes effect, the insurance money

9. The provision refers only to the assessment of risk (pricing, terms of cover) and not to "acceptance" which can be regulated in the contract.

10. This provision refers to art. 3 par. 1 of ICA

shall be reduced in proportion to the difference between the premium payable and the premium which would have been demanded if the breach of duty to disclose had not occurred.

- 6) **Intentional breach of the duty** set out paragraph 1 of this Article, shall entitle the insurer to terminate the contract within one month from the date on which the insurer acquired knowledge of the breach. If the insured event occurs within the above-mentioned period, the insurer shall be released from the obligation to pay the insurance money. The policyholder shall in addition be liable in damages for any loss suffered by the insurer.
- 7) **Termination** of the insurance contract by the insurer under paragraphs 3 and 5 of this Article **shall take effect** following the lapse of fifteen days from the date when the relevant notice reaches the policyholder, or following the lapse of one month from the receipt of the variation proposal as provided by paragraph 4 of this Article. Termination under paragraph 6 of this Article shall take immediate effect. If the insurer's liability under the policy is limited or the insurer is discharged of its liability, the insurer shall still be entitled to the premiums due at the date when the termination of the contract takes effect, or at the time when the insured event occurred.
- 8) Without prejudice to Article 29 paragraph 2, the provisions set out in paragraphs 3 to 5 of this Article shall not apply to life insurance. Also, the provisions of paragraphs 3 to 5 of this Article shall not apply to health insurance.

Article 4

Aggravation of Risk

- 1) Throughout the contract period, the policyholder shall be obliged to give notice to the insurer, within fourteen days after acquiring knowledge, of any information or circumstances liable to entail¹¹ a **significant aggravation of risk**, such that had the insurer been aware, it would not have concluded the insur-

11. Under effective judgement.

ance contract, or would not have concluded it under the same terms.

- 2) As soon as the insurer is informed¹² about the aggravation of risk, it shall be entitled to **terminate the contract or to request its variation**. The provisions of paragraphs 3, 4, 5, 6 and 7 of Article 3 herein shall also apply in the event of aggravation of risk throughout the contract period.¹³
- 3) The provisions of this Article shall not apply to life insurance and health insurance.

Article 5

Reduction of Risk, Lack of Risk

- 1) If there is a **material reduction of risk**, the policyholder shall be entitled to request a proportionate **reduction of the premium**. If the insurer refuses to make the reduction, or fails to answer the relevant request for a period in excess of one month following its submission, the policyholder shall be entitled to **terminate the contract** for the remaining contract period. In the case of life and health insurance policy, any change in the health of the insured shall not give rise to the right to reduce the premium.

12. The insurer can be informed about the aggravation of risk by any means and not necessarily by the policyholder.

13. In case the notification is given within the time span of fourteen days from the time when the policyholder was aware of the circumstances aggravating the risk, or in case of undue delay to give such notification, art.3 par. 3 and 4 ICA shall apply. In case of negligent delay, art. 3 par. 5 ICA shall apply and in case of intentional delay art. 3 par. 6 and 7 ICA shall apply. Therefore, **the law only regulates the issue of the notification of the aggravation of risk** to the insurer, but not the issue as to whether such aggravation is due to the policyholder's liability, or to the breach of his contractual duty and the consequences thereof. Accordingly, the individual contract shall regulate, without breaching the protective provisions of art.3 par. 3-7 ICA, the conditions under which the cover shall continue and to what extent, if the policyholder has caused the aggravation of risk, and/or the policyholder's duty not to aggravate the risk as well as the consequences of breach.

- 2) If the insurer, upon concluding the contract, was aware that **the occurrence of the insured event¹⁴ was impossible**, the policyholder shall not be obliged to pay the premium. Should the policyholder, or the insured, or the beneficiary, **be aware, upon concluding the insurance contract, that the insured event has already occurred¹⁵**, the insurer shall not be obliged to pay and shall also be entitled, provided that the insurer itself was not aware of the occurrence of the event, to the premium until the end of the insurance period.¹⁶

Article 6

Insurance Premium

- 1) The policyholder shall be obliged to pay the premium **in cash, either by lump sum or in instalments**. The cover shall not begin prior to the payment of the single or first premium, except as otherwise agreed or if the circumstances of the conclusion of the contract indicate otherwise.
- 2) **Failure to pay a subsequent premium due** gives the insurer the right to **terminate the contract**. The termination notice shall be sent to the policyholder, whereby the latter shall be informed that any further delay in the payment of premium shall result, on the expiry of one month from receipt of the notice, in the termination of the insurance contract.

14. Either because the risk had already occurred or because the occurrence of the risk was made impossible.

15. In case of general liability insurance (in which case the insured event occurs at a time following the occurrence of the risk, i.e. after the time that the third party has suffered loss due to an act or omission of the insured and in particular after the time that the third party has brought its claim against the insured), the knowledge refers to the occurrence of the insured risk and not to the claim of the third party having been brought against the insured.

16. It is a reasonable sanction against the policyholder and not an expression of the **principle of indivisibility of the premium**, as the ICA does not provide for such a principle.

Article 7

Occurrence of an Insured Event - Payment of the Insurance Money

- 1) The policyholder **shall notify the insurer** of the materialisation of the risk within eight days as from the date on which the policyholder acquired knowledge thereof. The policyholder shall be obliged at the insurer's request to supply **all necessary information, details and documents** relating to the circumstances and the consequences of the occurrence of the insured event. The policyholder cannot rely on his ignorance of the occurrence of the insured event, should the ignorance be imputable to the policyholder's gross negligence.
- 2) The **negligent breach by the policyholder of the duties** set out in paragraph 1 of this Article shall grant the insurer the right to claim damages.
- 3) The policyholder shall be obliged to take all necessary measures to **avoid or mitigate the insured loss** and to comply with the **insurer's instructions**. Expenses resulting from such actions will be borne by the insurer, provided that they are reasonable under the circumstances, even if such expenses exceed the insured sum.¹⁷ **An agreement to the contrary** shall be acceptable if the policyholder or the insured has concluded the insurance contract for purposes relating to its trade, business or profession. Should the insurance money cover only a certain part of the loss, the insurer shall be obliged to refund only a proportional part of the expenses, **unless the expenses were incurred solely on the insurer's instructions**.
- 4) In the event of negligent breach of the provisions set out in paragraph 3 of this Article, the policyholder shall be obliged to indemnify the insurer.
- 5) The insurer shall not be obliged to pay the insurance money if the insured event, in case of indemnity insurance, **occurred due**

17. These expenses do not constitute insurance money (also see art.1 par.1 ICA). Thus the persons entitled to insurance money do not have any privileged benefit on the insurance deposits in return for their expenses.

to an intentional act or omission or due to gross negligence¹⁸ on the part of the policyholder or the insured or the persons dwelling with any of them, or their legal or other representatives¹⁹, or third parties entrusted professionally to safeguard the insured interest. The insurer shall be released from its obligations, in case of personal insurances, if the insured risk occurred due to an intentional act or omission on the part of the persons listed above. The insurer shall only be entitled to the premiums accrued.

- 6) The terms of the policy may provide for an **increased number of cases in which the insurer's liability shall be excluded**, if the policyholder or the insured concludes the policy **with a view to covering professional risks**. Also, it may be agreed that the premium shall be payable until the end of the time-span of cover even if, following the occurrence of the insured event, the contract is terminated.
- 7) On the occurrence of the insured event, **the insurer must pay the insurance money promptly**. If a longer period is required for the assessment of the full extent of the loss, the insurer shall be obliged to **pay the undisputed amount without undue delay**.²⁰

"Occurrence of the insured event shall also be deemed the surrender of the investment life policies which are forming surrender values, pursuant to the provisions of the present law. In this case, the insurer shall pay the amount of the surrender values and the potential profit coming out of the results as set out in the provisions of the Legislative Decree 400/1970 within thirty days

18. The intention or gross negligence must not necessarily be attributed personally to the policyholder.
19. This provision also includes the case in which the legal representative intentionally acting, but for his own benefit and not for the benefit or by order of the natural person or legal entity that it represents, has caused the occurrence of the insurance risk. Accordingly, special arrangement shall be made to cover the general third party liability of the legal entity, due to acts or omissions of its representative, which have resulted in the occurrence of the risk.
20. The new German VVG provides that the insurer is obliged to pay the insurance money at the time when the circumstances of the occurrence of the insured event and the extent of the loss are established. If this procedure exceeds one month, the policyholder can claim an advanced payment of the minimum sum which is not disputed.

from the date of submission of the application by the beneficiary. If the period mentioned in the preceding paragraph lapses, the Minister of Development imposes to the insurer a fine between three thousand and sixty thousand euros. The fine set out in the preceding paragraph constitutes a public revenue and is registered under the code number of revenue".²¹

- 8) The provisions of paragraphs 2 to 4 of this Article shall not apply to personal insurances.

Article 8

Duration and Termination of the Contract

- 1) If the insurance contract is of **finite duration**, it shall be terminated following the lapse of the term specified, unless it has been agreed that it can be prolonged. Such prolongation may not be agreed for a period of more than one year.
- 2) If the contract is of **indefinite duration**, the contract shall be terminated by notice²² at the end of the insurance period. The time limit set for the exercise of the right of termination may be neither less than one month, nor more than three months.
- 3) In indemnity insurances with a contract period in excess of one year and in personal insurances, the policyholder shall be **entitled to rescind from the contract within fourteen days** from the date when the policy was delivered to the policyholder. "*In non-group life insurances²³ the policyholder is entitled to rescind from the contract within thirty days from the moment he was informed about its conclusion*"²⁴. The **cooling period** shall not commence if the policyholder has not been informed by the insurer of his right in this regard, which must be confirmed by means of a document. If the insurer fails to inform the policy-

21. The text in italics has been inserted to ICA by Law 3377/05 art.34

22. The termination does not have to mention its cause.

23. According to ICA, the insurances can be either indemnity insurances or personal insurances. The latter are referred to as life insurances in the inserted text.

24. The text in italics has been inserted by the Art. 5 par. 2 of the Ministerial Decision Z1-629/10.05.05 (harmonisation with Directive 02/65 concerning distance marketing of consumer financial services).

holder of his right to rescind, **it shall lapse** two months following the payment of the first premium.²⁵

The right to rescind does not apply to indemnity insurances where, on the particular request of the policyholder, cover is provided immediately. **The time limit set for the exercise of the right to rescind shall be suspended** for the period during which the policyholder is entitled to raise an objection pursuant to Article 2 paragraph 6 of this Law.²⁶

- 4) The insurance contract **shall be terminated by notice**, in accordance with the provisions of Articles 3 and 4, Article 5 paragraph 1, Articles 6 and 12 of this Law, as well as those set out in paragraph 2 of this Article. In addition the policyholder shall be enti-

25. The rescission may be irrespective of cause unless otherwise provided in the insurance policy, which may also provide for private sanctions in case of breach (however these sanctions cannot prevent the rescission from taking effect). In distance insurance contracts such provisions are not allowed (Art. 8 Directive 02/65). This limitation for distance contracts is not affected by the duration of the contract or by its nature as indemnity or personal insurance.

26. In life insurances the provision of Art. 4 par. 3 indent C of L.D. 400/70 is applied: "In non-group life insurance contracts with duration exceeding 6 months and if Greek law is applied to the contract, the policyholder is entitled to rescind within thirty days from the day he was informed of the conclusion of the contract. The rescission entails the expiry of the policyholder's duties arising from the insurance contract.

The insurer is entitled to withhold, for the principal insurance, a monthly premium plus ½ of the annual premium for the supplementary cover falling under the insurance class. This provision shall not be applied when the contract duration is equal to or less than 6 months. In particular, in life insurance linked to investments, the provision of the present Law shall apply".

The content of Art. 13c indent A (ih) L.D. 400/70 is as follows: "In the event of rescission, if the insurance contract has an investment chapter only, it is presumed that the total premium has been linked to investment units. The insurer returns the amount corresponding to the liquidation value of these units. As liquidation value is considered that one published one day following the notification of the rescission to the insurer.

If the contract includes a guarantee cover (insurance element), in addition to the investment, the premium corresponding to the guarantee cover, from which a monthly commercial premium may be withheld, is deducted from the total premium. The remaining of the total premium is presumed to have been connected to the investment units. The insurer returns the amount corresponding to the liquidation value of these units. As liquidation value it is considered that one published one day following the notification of the rescission to the insurer».

tled to terminate the insurance contract by notice if the insurer is declared insolvent, or if it is deprived of the free disposal of part or of all its property. The insurer shall be entitled to terminate the insurance contract by notice if the policyholder is declared insolvent or if its business becomes by any other means subject to compulsory administration.

- 5) In the insurance policy may also be provided further reasons for the termination of the insurance contract. In the event that the insurer maintains the right to terminate the contract after the insured event has occurred, the policyholder shall have a corresponding right. Without prejudice to Article 3 paragraph 7, Article 4 paragraph 4 and Article 12 of this Law, **the termination, whenever initiated by the insurer, shall not come into effect until** the lapse of thirty days from the date on which such notice of termination was communicated to the policyholder.²⁷
- 6) **"Insurance period"** shall mean a time-span of one year, unless the computation of premiums has been made for a shorter time-span, in which case the insurance period shall be construed accordingly.

Article 9

Insurance on the account of a third party

- 1) The policyholder may conclude an insurance contract acting either on his own account, or on the account of a third party. Such third party's name need not be mentioned in the policy (**insurance to whom it may concern**). In case of doubt, the contract shall be deemed to have been concluded on the account of the policyholder.
- 2) The policyholder shall bear all the obligations arising from the insurance contract, except for those which must be fulfilled by the insured due to their personal nature. The insured shall have the same obligations as the policyholder, provided that the in-

27. In non-group life insurances, the right to rescind can be exercised within thirty days from the "date" on which the "policyholder" "was informed" about the conclusion of the contract which himself concluded with the policyholder and irrespective to its duration.

sured has acquired knowledge of the contract and is able to fulfil the relevant obligations.²⁸

Article 10

Prescription

Claims arising out of an insurance contract shall be prescribed after a period of four years in the case of indemnity insurance and after a period of five years in the case of personal insurance, from the end of the calendar year in which the claim arose.

SECTION TWO INDEMNITY INSURANCE

CHAPTER A GENERAL PROVISIONS

Article 11

The Indemnity Insurance Contract

- 1) In indemnity insurance, **the insurance money** consists of the **indemnification for damage to, or loss of, the property** agreed to be covered on the occurrence of the insured event (**the “insured loss”**).
- 2) **The loss of, or damage to, the property insured** may comprise damage to or loss of goods, claims²⁹ and profits, as well as sums expended in the defence and compensation of claims brought by third parties.³⁰

28. The provision refers to obligations of the policyholder that do not entail right to legal action, to the “Obliegenheiten” of the German law.

29. All kinds of property rights are included herein.

30. This provision refers to classes 1 to 17 of Art. 13 par. 1 indent A of l.d. 400/1970, but not to the last class 18 (Assistance) in which the insurance money constitutes a provision in kind. Whereas in tort law the compensation consists of the indemnification of the total damage for which the generally liable person is considered liable, in indemnity insurance law the insurer is not liable to

- 3) The **insurance money** may not exceed the amount of the insured loss, nor the total sum insured.
- 4) The policyholder may conclude insurance over any property at risk, in relation to which the holder has a **legal interest** in its maintenance.

Article 12

Transfer of the Insured Interest

- 1) The indemnity insurance contract **shall not come to an end**, if the policyholder or the insured is succeeded by another party.
- 2) With the exception of insurance policies issued to order or to bearer, the insurer, the policyholder or the insured shall be entitled to **terminate** the contract within thirty days from the date on which such succession becomes known. The termination initiated by the insurer comes into effect following the lapse of fifteen days from the date on which the relevant notice was communicated to the policyholder or the insured.
- 3) **The insurer shall be discharged of its liability** if the insured risk occurs prior to the lapse of the aforesaid thirty-day time limit, or prior to the effective date of any termination initiated by the insurer within the time limit provided that it proves that it would not have covered the risk at all or under the same terms if it had been aware of the succession. The unearned premiums shall be refunded. This provision shall not be applicable if the risk occurs within thirty days following the succession.

indemnify under civil law, but to pay the insurance money which consists of the compensation for the loss or damage of the property insured caused by the occurrence of the insured risk. This is the difference between the civil law loss and the insurance loss.

Article 13

Exceptions

- 1) No insurance cover is to be provided if the occurrence of the insured risk results from war, civil war, rebellion, or civil commotion.³¹
- 2) No insurance cover shall be provided for losses arising from **natural deterioration of the insured items**.
- 3) The insurance policy³² may provide for further exceptions to cover provided that such exceptions are dictated by the insurer's technical requirements.

Article 14

Subrogation

- 1) If the policyholder has a claim for the compensation of loss or damage against a third party, the insurer shall be subrogated to that claim up to the amount of the insurance indemnity (money) paid.
- 2) If the policyholder's claims are brought against the insured, or against the beneficiary, or against their direct relatives or spouse, or other persons dwelling with the said insured or with the beneficiary of the policy, as well as against the legal representatives or agents of the insured, the insurer shall not be subrogated to the claim unless such persons acted intentionally.
- 3) The policyholder and, in the event of insurance on the account of a third party, the insured and the beneficiary, if any, shall be obliged to safeguard their rights to bring a legal action against any third party to which the insurer may become subrogated. In case of breach of such obligation, the party liable shall compensate the insurer for any loss or damage sustained thereby.

31. It is implied that provision of cover of the above exceptions by law is allowed.

32. Exceptions can be agreed by notice in the standard insurance terms and conditions, but such agreement must be mentioned in the individual terms of the policy.

- 4) If the policyholder or the insured concludes insurance for purposes relating to its trade, business or profession, it may be agreed that the insurer shall be discharged of its liability to pay the insurance indemnity (money) to the insured under the policy, to the extent that the insurer was deprived of the right to claim damages for reasons for which the policyholder or insured is liable.
- 5) If the insurer is subrogated to the claim of the policyholder, the claims of the latter against the third party shall not be subject to prescription before the lapse of six months from the date of subrogation, provided that the subrogation took place before the prescription or the expiry of such claims.

Article 15

Multiple Insurance

- 1) In the event that the insured property has been covered against the same risk by several insurers ("**multiple insurance**") the policyholder, or the insured, should notify without undue delay each insurer of the conclusion of the further contract and of the insured sum.
- 2) Multiple insurance contracts are valid up to the total value of the insured loss.
- 3) In the absence of agreement to the contrary, the insurers **shall bear joint and several liability** up to the insured sum stipulated in their contracts. It may be agreed that if the existence of other insurance contracts is not notified to the insurer upon the conclusion of the contract, the insurance money shall be limited to the sums exceeding the insured sums under any previous insurance policy. Should the policyholder or the insured intentionally fail to make the said notifications, Article 3, paragraphs 6 and 7 of the present Law shall apply.
- 4) In the event that the insurance contracts were concluded by joint agreement, with or without a common insurance co-ordinator (leader), each of the insurers concerned shall be proportionally liable for the insured amount ("**co-insurance**").

Article 16

Assessment of the Insurance money

- 1) In the absence of an agreement to the contrary, the assessment of the insurance money for property insurance shall be based on the **current value** of the insured items or, in the absence of such a value, on the **usual value** of said items at the time when the risk occurred.
- 2) The insurance money shall be based on the **difference** of the value of the item **before and after the materialisation of the risk**.
- 3) The insurer may make a **valuation of the insured property** by separate agreement evidenced in writing. In such a case, the insurance money shall be assessed on the valuation indicated. The valuation may be challenged exclusively and solely on grounds of error, fraud, threat, or as fictitious simulation.

Article 17

Under-insurance / Over-insurance

- 1) If, for property insurance, the declared value of the item or items insured at the conclusion of the insurance contract was less than the current value or, in the absence of a current value, **less than** the usual value of such item or items **at the time when the insured risk occurred**, the insurer's liability shall be limited to the indemnification of the proportionate part of the loss suffered.
- 2) If the declared value of the items insured at the time of the conclusion of the insurance policy **exceeded** their current value or, if such value does not exist, the usual value of such items **at the time when the risk occurred**, any of the contracting parties may request the reduction of the insured value and the corresponding premium for the remaining contract period. Should the insured risk occur, the insurer shall not be liable for the excess.
- 3) **If over-insurance has been arranged deliberately** on the part of the policyholder or the insured, or of the beneficiary, the in-

urance shall be null and void. The insurer who has acted in good faith shall be entitled to the premiums earned.

Article 18

Open Cover

- 1) If at the time of the conclusion of the insurance contract the insured property was described only in general terms and concerns items which will only be subject to the insured risk in the future, the policyholder or the insured **shall be obliged to declare to the insurer** as soon as they acquire knowledge thereof concerning the nature of the items and their insured value, as well as any other detail defining the contract, in accordance with the terms and conditions open cover policy.
- 2) **The premium shall be calculated** based on the declarations made on each occasion.
- 3) **In the event of breach of the duty set out in paragraph 1** of this Article, the policyholder shall be liable to indemnify any loss and damage suffered by the insurer by reason thereof. In case of intentional breach, the provisions of Article 3, paragraphs 6 and 7 of this Law shall apply.
- 4) If the policyholder or the insured concludes the policy **with a view to covering professional risks**, the parties may reach an agreement in terms contrary to the stipulations of this Article.

CHAPTER B

SPECIFIC BRANCHES OF INDEMNITY INSURANCE

Article 19

Insurance against the Risk of Fire ("Fire Insurance")

- 1) Fire insurance **includes** losses caused by risk of **fire** and **lightning**. In the absence of agreement to the contrary, fire insurance also covers losses caused by **explosion** and other similar events, even if no fire occurred thereafter. **The insurance money shall cover** the reduction in the value of items damaged, as well

as expenses incurred arising from measures taken to ascertain, avert, or mitigate the damage caused, such as the expenses of extinguishing the fire or demolishing property.

- 2) In the absence of agreement to the contrary, the insurance shall also include losses arising from **theft or losses** sustained at the time of the occurrence of the risk or immediately thereafter, or those arising from the emergency measures mentioned in the paragraph 1 of this Article.
- 3) **No cover shall be provided** for cases in which:
 - (a) The fire occurs due to intentional act or omission or gross negligence imputable personally to the policyholder³³, or the intentional act or omission of the persons mentioned in Article 7 paragraph 5 of this Law; or
 - (b) The cause of fire is included among the exceptions to cover as provided by Article 13 of this Law.
- 4) **The cover shall take effect** from noon time of the day following the day of the issue of the policy, unless otherwise agreed.
- 5) If the policyholder or the insured conclude the contract **for purposes relating to its trade, business or profession**, an agreement containing terms contrary to the provisions of this Article may be agreed.

Article 20

Insurance for the Carriage of Goods

- 1) Insurance for the carriage of goods includes losses arising from **all risks³⁴** to which the goods are at risk, other than those expressly excluded, throughout the period in which **the goods are at the carrier's disposal right for transportation thereof** until such time as **the carrier loses its disposal right due to the termination of the carriage for any reason.**

33. In legal entities, the intentional act or omission, or the gross negligence must be personally attributed to a member of the board of directors, and/or to a person binding the company in relation to the specific act due to his/her powers and position held.

34. This constitutes the "all risks" cover which applies in marine insurance and in non-marine insurances for the carriage of goods.

- 2) The insurer shall be held liable even if the loss was **due to the intentional act or omission or gross negligence of the carrier** or its servants.
- 3) **Deviations, interruptions and other changes relating to the itinerary** and to the means of transport shall not affect the insurer's liability, unless made on the instructions or approval of the policyholder or the insured, despite not being necessary. In the latter case Article 4 of this Law (*Aggravation of Risk*) shall apply.
- 4) **The assessment the insurance money shall be based** upon the value of the goods in accordance with Art. 16 of this Law, which shall correspond to the value the goods had at the time and place they were received for carriage. This value may be increased by the addition of the freight costs, customs duties and miscellaneous charges as well as the anticipated profit.

Article 21

Crop Insurance

In the absence of agreement to the contrary, **the insurance money for crop insurance shall be assessed upon** the value which the agricultural products would have achieved upon ripening or harvest if the risk had not occurred.

Article 22

Credit Insurance and Guarantee Insurance

- 1) If the insurer has agreed to cover the risk of the insured's debtor being unable to pay a sum owed to the insured by way of credit as a result of insolvency ("**credit insurance**"), the insurer shall not, in the absence of contrary agreement, be entitled to require the insured to take legal action against the debtor for recovery of such sums before paying compensation.
- 2) If the insurer provides a guarantee to the insured, in favour of the person indicated by the insured ("**guarantee insurance**"), the insurer, unless there is agreement to the contrary, shall be entitled to recover against the insured for the amount guaran-

teed and paid by the insurer in accordance with the terms and conditions of the insurance contract.

Article 23

Pollution Insurance

- 1) In the absence of agreement to the contrary, pollution insurance shall **include** the expenses incurred in the restoration of the natural environment; those expenses shall also include those relating to the removal of waste and debris resulting from the occurrence of the insured risk.
- 2) **The insurance money shall be payable** only in relation to sums actually paid for expenses, and only to the extent that the loss was the result of a sudden and unexpected event.

Article 24

Business Interruption Insurance

In the absence of agreement to the contrary, business interruption insurance shall **include loss of profits, general expenses and expenses** arising directly from the occurrence of the risk which the business concerned incurred due to partial or complete interruption of its operation on the occurrence of the insured risk during the time-span provided by the policy.

Article 25

Liability Insurance

Liability insurance includes **expenses** directly resulting from the **defence and settlement of claims** brought by third parties against the policyholder and which result from acts or omissions of the policyholder, for which cover had been agreed.³⁵ No cover shall be pro-

35. Accordingly, on the one hand the insured event occurs after the occurrence of the insured risk (i.e. at a later time), on the other hand the loss suffered from the occurrence of the risk consists of the expenses mentioned in the provision.

vided if the acts or omissions arise from intentional act or omission³⁶ on the part of the policyholder or the insured.

Article 26

Compulsory General Third Party Liability Insurance

- 1) Whenever third party insurance is compulsory by law, the third party shall have a **direct claim** even for sums exceeding the insured sum, up to the limit for which insurance is compulsory.
- 2) The insurer **may not raise objections** arising from the insurance contract against the third party which has suffered loss, unless that party is the policyholder or a person other than the policyholder covered under the policy or, provided that they cohabit, the spouse and relatives up to the second degree, whether by direct relationship or marriage, of either the policyholder or of the insured. If the insurer makes a payment to a third party, although not obliged to do so pursuant to the provisions herein, the insurer **shall be subrogated to the third party's claim against the insured**, up to the amount paid. Prescription shall not accrue prior to the lapse of six months following the subrogation.
- 3) Grounds justifying the **termination or expiry of the insurance contract** may not be invoked against the third party suffering loss or damage until the lapse of one month from the date on which the insurer notifies the termination to the authority or legal entity designated for such a purpose. In such instances, the insurer shall not be held liable to the extent that the third party is able to obtain indemnity from another insurer for his losses, or from a social insurer.
- 4) **If more than one third party has suffered loss or damage**, each shall be indemnified proportionately. If the insurance money paid to one of the claimants exceeds his proportion of the insured sum, the insurer shall be released from its obligation towards the others for proportionate claims in excess of the insured sum, unless the insurer made the above payment whilst

³⁶. This special provision constitutes a deviation from the rule of Art. 332 of Civil Code.

aware of the existence of the other claims. The remaining claimants shall, however, have a claim against the indemnified third party for the refund of the sums received in excess of the allotted proportion.³⁷

- 5) The authorities or corporations authorised to receive insurers' notices, the procedure to be followed in order to certify **compliance with the requirements of compulsory insurance**, as well as the necessary details pertaining to the operation of compulsory third party insurance shall be specified by decision of the Minister of Development and the competent Minister in each case and published in the Government Gazette. The provisions of this Article shall not apply in the event that the department or the legal entity has not been specified.
- 6) The provisions of this Article shall not apply to Motor Insurance.

SECTION THREE PERSONAL INSURANCES

CHAPTER A GENERAL PROVISIONS³⁸

Article 27

Insurance of fixed sums - the Contract - the Policy

- 1) Concerning the personal insurance, **the insurance money consists** in either the payment of a fixed sums, whether by lump

37. The supplementary nature of the insurer's liability against third parties, is hereby established, when the insurer's liability is not based on the contract. This shall not apply to Motor Third Party Liability Insurance.

38. In accordance with the international legislative practice, the ICA uses the terms "indemnity insurances and personal insurances", contrary to the law of insurance undertakings and state supervision which respectively uses the terms "indemnity insurances and life insurances". From the point of view of the operational rules of the contract, it is more reasonable to distinguish between indemnity insurance and insurance of fixed sums. However, it is important that the ICA introduces and explains the meaning of "insurance of fixed sums".

sum or in instalments (**insurance of fixed sums**), or in the indemnification of actual financial loss occurred to the insured arising from illness or accident.

- 2) In the absence of agreement to the contrary, the insurance shall not cover insured risks arising directly from **acts of war or ionizing radiation**.
- 3) **The insurance policy shall bear the name of the insured**; it may not be issued to order or to bearer.
- 4) **In insurance on the account of a third party**, the name of the insured may be omitted from the insurance policy.
- 5) Where personal insurances have been agreed as a **fixed sum insurance**, the insurance money shall be payable irrespective of whether the occurrence of the insured risk has caused loss or damage to the insured, or to the beneficiary, and irrespective of the loss or damage suffered.

CHAPTER B LIFE INSURANCE

Article 28

Designation of the Beneficiary

- 1) Insurance may be agreed to cover the **risk of death or of survival** beyond a certain age, or both, of the policyholder or a third party.
- 2) Life insurance concluded against the risk of death of a third party shall be null and void, unless the third party gives his **consent in writing**. Written consent is also required in the event that a third party is designated as the beneficiary, as well as for the assignment or pledge of right to the insurance money. If the third party lacks the capacity to enter into juridical acts, consent shall be given by his/her legal representative. If the legal representative is also the policyholder or the beneficiary of the policy, the written consent shall be given by a specially-appointed guardian of the third party.

- 3) In life insurance against the risk of death, **the beneficiary shall be designated** by means of a written statement issued by the policyholder. The statement is freely revocable.
- 4) **If no beneficiary has been designated**, or if the beneficiary refuses to accept the insurance money, the policyholder shall be deemed to be the beneficiary and upon his death the insurance money shall form part of his estate for inheritance.
- 5) The beneficiary cannot **assign or pledge** the insurance money without obtaining the written consent of the policyholder, or in the event of third party life insurance, the written consent of such third party, provided that the policyholder is entitled to appoint a beneficiary.

Article 29

Information to the Insurer. Surrender

- 1) **The age of the individual** for whom the insurance against the risk of death or survival is concluded ("person at risk") shall constitute an essential element for assessing the risk pursuant to Article 3 of this Law. A false statement as to age shall be deemed to have affected the assessment of risk, if it lies outside the limits provided by the relevant insurer's price schedule at the commencement of insurance cover.
- 2) In case of **intentional breach of Article 3 paragraph 1** of this Law, the policyholder shall be entitled only to the surrender value of the policy.
- 3) In **personal insurances**, the policyholder shall be entitled to request the **surrender** of the insurance policy after the lapse of the period provided in the policy, which may not be stipulated for more than three years. In respect of **group insurances**, an agreement may be reached on differing terms.
- 4) The insurer shall refund to the policyholder the agreed **surrender value**. Calculation of the surrender value shall take into consideration the insurer's expenses in relation to the actual contract and the accrued premiums paid. The insurer shall have the same obligation to refund in any case of termination of the insurance contract.

Article 30

Suicide or Homicide

- 1) If the person insured against the risk of death commits suicide the insurer shall be obliged to pay the fixed sum (insurance money), provided that at least two years have elapsed since the date of the conclusion of the policy. The same period applies to any subsequent agreement pursuant to which the fixed sum is increased.
- 2) The beneficiary shall be deprived of his right to claim the insurance money in the event that **he intentionally caused or attempted to cause the insured's death**.
- 3) Without prejudice to paragraph 2 of this Article, the fact that the death of the insured was **caused by the persons mentioned in Article 7 paragraph 5** shall not discharge the insurer from liability.

CHAPTER C

Accident and Health Insurance

Article 31

Accident Insurance

- 1) In the absence of agreement to the contrary, accident insurance shall **include** bodily injuries arising from external, violent and sudden causes for which the insured is not liable, if such injuries cause temporary or permanent handicap, whether partial or total, or death or the need for hospitalisation.
- 2) The policyholder shall be obliged to notify the insurer if he holds **another accident insurance policy**. Failure to comply with the aforesaid obligation entitles the insurer to terminate the contract within one month after the date on which the insurer becomes aware of the failure to notify.
- 3) It may be agreed that payment of the insurance money, corresponding either to the actual direct losses suffered by the insured or to an agreed fixed sum, as the case may be, shall be

effected either in cash or in instalments or by the provision of medical and surgical services. If the payment of actual direct losses has been agreed, Articles 14 and 15 of the present Law shall apply.³⁹

Article 32

Health Insurance

- 1) In the absence of contrary agreement, health insurance shall include illnesses arising from causes which did not exist, or existed but the insured was reasonably unaware of their existence, on the date on which the contract was concluded.
- 2) The provisions of Article 31 of this Law apply to Health insurance analogously.

SECTION FOUR

FINAL PROVISIONS

Article 33

- 1) Any and all acts which are to the detriment of the policyholder, the insured or the beneficiary shall be null and void, unless otherwise specifically stipulated in this Law. This shall not apply to insurance for the carriage of goods, credit insurance or guarantee insurance⁴⁰, or marine or air insurance.
- 2) The provisions of Section Nine of the Royal Degree of 14/5/1835 "On the Law on Commerce", as currently in force, are hereby repealed.
- 3) Article 33, paragraph 1 of Legislative Decree 400/1970, «On the Private Insurance Enterprise» as currently in force, is hereby repealed.
- 4) All insurance contracts existing on the date of entry into force of this Law will be governed hereinafter by this Law.

39. A similar provision is introduced for the German law by the new VVG, in force from 01.01.2008.

40. The Law refers to commercial guarantees. Accordingly, the consumer guarantee insurances are not included in the exceptions of Art. 33 par.1 ICA.

Article 34

Articles 1 to 33 enter into force six months after this Law is published in the Government Gazette.