



Basic information

Date: 7 September 2011

Dispatch on amending the Insurance Policies Act (IPA)

Background

With the revision of the Insurance Oversight Act (IOA) on 1 January 2006, Swiss oversight law in the area of insurance was fundamentally restructured. Although at the same time some important and urgent concerns regarding private insurance policies law were implemented in a partial revision of the IPA, politicians and the general public continued to insist in recent years on a comprehensive revision of the obsolete IPA. The bill presented here takes these concerns into account. It eliminates the deficiencies identified and results in a modern structure for private insurance law.

Basic features of the bill

Structure of the act

The act is divided into four titles and two appendices.

- Title 1 (General provisions) is subdivided into ten chapters and applies to all insurance contracts. It governs the scope and semi-mandatory law, the conclusion and binding nature of contracts, premiums (payment by the policyholder), occurrence of an insured event (benefit provided by the insurer), contract amendment, contract termination, enforcement proceedings, statute of limitations, insurance mediation and data protection.
- Title 2 (Special provisions) is divided into three chapters. Chapters 1 and 2 set out for all insurance branches the fundamental distinction between indemnity insurance and fixed sum insurance, which replaces the former, frequently criticised, distinction between indemnity insurance and personal insurance. Chapter 3 provides for special regulations for specific insurance branches, whereby a distinction is made between property, liability, legal expenses, life, health and accident insurance, in line with the customary terminology used at present.

- Finally, titles 3 and 4 contain rules for international relations as well as the final and transitional provisions.
- Appendix 1 lists the IPA standards, which constitute semi-mandatory law. Appendix 2 indicates the amendments to be made to other federal acts as a result of the revision of the IPA.

Content changes

Compared with currently applicable law, the following content changes or additions are worth highlighting:

- Introduction of a general right of revocation: Article 7 introduces a 14-day right of revocation for all policyholders (consumers and corporate clients). This right of revocation is excluded only for collective personal insurance, memorandums of insurance and insurance contracts with a term of less than one month.
- Possibility of concluding retroactive insurance contracts (Article 24): The bill gives the contracting parties the possibility, in certain cases, to take out insurance coverage for the past.
- Extension of the period of limitation (Article 64): The period of limitation for insurance benefits is extended to ten years, while that for premium receivables is extended to five years.
- Premium adjustment clause (unilateral right to amend the contract; Article 48): The premium adjustment clause (PAC) authorises premium increases during the contract term under certain conditions. The currently applicable act does not contain any regulation, except for life insurance.
- Introduction of a general termination right (Article 52): A routine termination right is introduced after a contract duration of three years. The parties may also mutually agree to shorter periods of notice. In the case of life insurance, a shorter period of notice applies after one year.
- Waiver of the termination right in the event of a claim: With the introduction of a general termination right after three years, the current right to terminate a contract in the event of a claim is no longer absolutely essential.
- Rules on liability after contract expiry and liability for pending insurance cases (Articles 55 and 56): It is possible for the insured risk (e.g. an accident) to take place during the contract's term and for the damages (e.g. medical expenses, loss of income) to arise only after the insurance contract has been terminated. The insurer's obligation to provide indemnification generally assumes the occurrence of both the insured risk and the insured damages during the duration of the contract. The bill now provides for liability for ten years after contract expiry for cases where the damages occur after termination of the contract, provided the insured risk took place during the term of the contract. Furthermore, the currently valid clauses that limit or remove the obligation to provide indemnification after termination of the contract should be null and void in the future (pending insurance cases).
- Regulation of insurance mediation (Article 65ff.): Obligations to provide information are introduced for insurance intermediaries, as well as remuneration disclosure obligations for insurance brokers.
- Introduction of a direct right to make a claim in liability insurance (Article 91): The injured party's direct right to make a claim against the liability insurance of the injuring party, instead of the former right of lien of the injured party on the insurance benefits, ensures that insurance benefits are actually paid out to the injured party and cannot be diverted to another purpose by the liable party.

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- Partial adoption of the system of independent medical examiners for supplementary health insurance and daily allowance insurance, insofar as this is necessary for protection of the insured person's data (Article 72).

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