

The Insurance Contract Act and its revision

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The Insurance Contract Act of 1908, whose origins were described in Part D, governs the contractual relationship between the insurer and the policyholder. It remained in force largely unchanged for more than a century, although partial amendments were made in 1992 and 2006. A comprehensive revision failed in 2013 when Parliament referred the draft back to the Federal Council, which presented a narrower proposal in 2017.¹ The partial revision was adopted on 19 June 2020 and entered into force on 1 January 2022.

The revision introduced several important changes for policyholders. They now have a right of revocation of fourteen days after concluding the contract, comparable to the right of withdrawal in European consumer law. The insurer's duty of information before conclusion of the contract was extended. In addition, the policyholder can terminate any contract with a duration of more than three years at the end of the third year.² Retroactive cover, previously prohibited, is now permitted within limits, while provisional cover received its own regulation. In liability insurance, the injured third party now has a direct claim against the liability insurer, which strengthens the position of victims considerably.³ The limitation period for claims under the contract was extended from two to five years.

The revision also differentiates between consumers and professional policyholders. Many of its protective provisions are mandatory only for contracts with consumers, while contracts with professional policyholders, such as large companies, can derogate from them.⁴ This parallels the differentiation in the VAG and reflects the reality of the industrial insurance market in Basel. Large companies, often advised by international brokers, negotiate their insurance programmes on a basis that frequently involves English-language wordings, international reinsurance and captive participation. Such clients have little need for the protective rules designed for private households.

1 Notes

1. Federal Council dispatch of 28 June 2017 on the partial revision of the Insurance Contract Act (BBl 2017 5089); the earlier total revision (dispatch of 7 September 2011) was referred back by Parliament in 2013. To be verified. ↩
2. Revised Arts. 2a–2c VVG (right of revocation, 14 days), Art. 3 VVG (pre-contractual information), Art. 35a VVG (ordinary termination after three years). Article numbers to be verified. ↩
3. Revised Art. 60 para. 1bis VVG (direct claim of the injured party against the liability insurer, direktes Forderungsrecht); Art. 10 VVG (retroactive cover). To be verified. ↩
4. Revised Art. 98a VVG (contracts with professional policyholders; partial derogation from semi-mandatory provisions). To be verified. ↩

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