

The Insurance Contract Act of 1908

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Supervision of undertakings and the law of the insurance contract were separate matters in Swiss legal thinking from the beginning. The Act of 1885 governed the relationship between the state and the insurer. It said nothing about the rights and duties of the parties to the contract, which remained subject to the general law of obligations and to the general conditions drafted by the insurers themselves. Art. 896 of the federal Code of Obligations of 1881 left existing special provisions of cantonal law on the insurance contract in force until a federal act on the insurance contract was passed.¹ Policyholders therefore found themselves bound by conditions that often contained harsh forfeiture clauses, short limitation periods and far-reaching duties of disclosure whose breach allowed the insurer to refuse any payment.

The Federal Act on the Insurance Contract (Versicherungsvertragsgesetz, VVG) of 2 April 1908 filled this gap. It carries the systematic number SR 221.229.1 and remains in force today, although it has been amended many times. Drafted by Hans Roelli, the statute entered into force on 1 January 1910. It thus predates both the Civil Code of 1907, which entered into force in 1912, and the revised Code of Obligations of 1911. In its message the Federal Council observed that insurance had long outgrown the role of an auxiliary transaction of commercial life: “Die Versicherung ist längst über den Rahmen eines Hülfsgeschäftes des Handelsverkehrs hinausgewachsen.”²

The VVG was a modern statute for its time. It distinguished between indemnity insurance and personal insurance, regulated the duty of pre-contractual disclosure and its consequences, protected the insured against forfeiture for minor breaches and laid down mandatory and semi-mandatory provisions that the insurer could not alter to the detriment of the policyholder. Swiss insurers operating abroad and foreign legislators consulted it as a model. It also shaped the division of labour between courts

and supervisor that persists to this day. Civil courts decide disputes about the interpretation and performance of individual contracts, whereas the supervisory authority protects policyholders collectively by examining solvency, organisation and, where the law so provides, products and conduct.

The age of the statute became a subject of criticism in the second half of the twentieth century. Peter Gauch wrote in 1990 that the VVG was “ein altes Gesetz; es wurde ausgedacht und redigiert in einer Zeit, die sich von der heutigen Zeit in manchem unterschied”. He regarded the rule that allowed an insurer to withdraw from the contract for any breach of the disclosure duty, even without a causal link to the loss, as indefensible: “Eine solche Ordnung lässt sich durch nichts rechtfertigen.” A partial revision in 2004 corrected some of the harshest rules. A total revision proposed by the Federal Council in 2011 failed when Parliament sent the draft back in 2013. A further partial revision, adopted in 2020, entered into force on 1 January 2022.³

The revision of 2020 introduced a general right of revocation within fourteen days, extended the limitation period for claims to five years, allowed a direct claim of the injured party against the liability insurer and created a category of professional policyholders for whom many of the protective rules of the statute do not apply.⁴ The last point is important for supervisory law. The Insurance Supervision Act of 2024 links its own distinction between professional and non-professional policyholders to the definition in Article 98a VVG, so that contract law and supervisory law now operate with the same customer categories.⁵ For a statute of 1908, that is a remarkable instance of continuity.

1 Notes

1. BGE 29 II 133, judgment of the Federal Supreme Court of 6 March 1903, https://entscheidsuche.ch/docs/CH_UNIBE/CH_BGB_004_BGE-29-II-133.pdf, which quotes Art. 896 OR and holds that the insurance contract was in principle governed by federal contract law, cantonal law remaining applicable only insofar as special provisions existed. ↩
2. Bundesgesetz vom 2. April 1908 über den Versicherungsvertrag (Versicherungsvertragsgesetz, VVG), SR 221.229.1, bilingual edition at [droit-bilingue.ch](https://www.droit-bilingue.ch/de-fr/2/22/221.229.1-index.html), <https://www.droit-bilingue.ch/de-fr/2/22/221.229.1-index.html>. Peter Gauch, “Das Versicherungsvertragsgesetz: Alt und revisionsbedürftig!”, recht 1990, pp. 65 ff.,

https://www.petergauch.ch/wp-content/uploads/2020/10/Das_Versicherungsvertragsgesetz_Alt_und_Revisionsbeduerftig.pdf. SVV, “Rückblick auf 140 Jahre Versicherungsregulierung” (cited above), quoting the Federal Council’s message on the VVG. ↩

3. Gauch, “Das Versicherungsvertragsgesetz: Alt und revisionsbedürftig!” (cited above). Gauch also criticised the all-or-nothing principle applied to breaches by the policyholder and the scattered treatment of foreign insurance. The online edition of Gauch’s article, republished in 2020 (cited above), records the failed total revision of 2011 and 2013 and the subsequent partial revision. Swiss Federal Council, press release “Bundesrat setzt revidiertes Versicherungsvertragsgesetz in Kraft”, 11 November 2020, <https://www.admin.ch/de/nsb?id=81093>, which announces the entry into force of the revised VVG on 1 January 2022. ↩
4. Schweizerischer Versicherungsverband, synopsis of the partial revision of the VVG (“Änderung vom 19. Juni 2020”), https://svv.ch/sites/default/files/media/documents/2020-06/20200619_Synopse%20Teilrevision%20VVG%20Schlussabstimmung_de.pdf: Art. 2a para. 2 (“Die Widerrufsfrist beträgt 14 Tage”), Art. 46 para. 1 (limitation period of five years in place of two) and Art. 60 para. 1bis (direct claim of the injured third party against the insurer). Art. 98a VVG on professional policyholders, text as in force 2024, is reproduced at <https://www.swissrights.ch/gesetze/Artikel-98a-VVG-2024-DE.php>. The Federal Council put the revision into force on 1 January 2022: media release “Bundesrat setzt revidiertes Versicherungsvertragsgesetz in Kraft”, 11 November 2020, <https://www.admin.ch/de/nsb?id=81093>. ↩
5. FINMA, “Business with professional policyholders – regulations from 1 January 2024”, <https://www.finma.ch/en/supervision/insurers/professionelle-versicherungsnehmer/>. FINMA explains that professional policyholders are defined by reference to Art. 98a para. 2 let. b–g VVG, excluding occupational pension schemes. ↩

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