Partial revision of the Insurance Contract Act – selected features

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On 1 January 2022, the revised Swiss Insurance Contract Act (ICA) (Swiss law SR 221.229.1) entered into force. The rights of insureds have been decisively strengthened and the Swiss law provisions governing insurance contracts adapted to the digital age.

Key changes

- **14□day right of withdrawal for new insurance contracts: Insureds may withdraw from an insurance contract within 14 days of application or acceptance without providing a reason.**
- **Right of termination for long-term insurance contracts: Long-term insurance contracts can be terminated at the end of the third year or each subsequent year, subject to a notice period of three months.**
- **Right of termination in case of double insurance/reduction of risk: Insureds may terminate insurance contracts in case of an unintentional double insurance or a significant reduction of risk.**
- **Direct right of action against insurers: Injured third persons or their legal successors now have a direct right of action against involved liability insurers.**
- **Extension of the statute of limitations to five years: Claims arising from insurance contracts are subject to a limitation period of five years after the claim.**
- **Recognition of electronic communication: Most declarations, including termination of insurance contracts, can now be made in mere text form and do not require a handwritten or a qualified electronic signature.**

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Additional information requirements

Insurers must comply with extended information obligations prior to concluding the insurance contract. Going forward they must additionally inform the insureds about the scope of the insurance coverage, whether it is a fixed sum or an indemnity insurance (Summen- oder Schadenversicherung), the insureds' 14-day right of withdrawal, and the temporal validity of the insurance cover, in particular with regard to damages that occur only after termination of the insurance contract but are caused by an event during the term of the insurance contract (Art. 3 ICA).

Provisional coverage

Despite its widespread use, provisional coverages (vorläufige Deckungszusage) were not codified in the old ICA. The new Art. 9 ICA changes this by stating that provisional coverage notes already constitute a performance obligation of the insurer, provided the insured risks and the scope of the coverage can be determined. If the provisional coverage is of unlimited duration, it may be terminated by either party at any time by giving 14 days' notice. In any case, it ends with the conclusion of a final insurance contract. Provisional coverages thus represent own insurance policies, whereby also the payment of a premium may be agreed.

Retroactive insurance

According to Art. 10 ICA, retroactive insurance (Rückwärtsversicherung) is permitted under the new ICA, provided there is an insurable interest. Hence, parties can enter into an insurance contract with effect from a point in time prior to its conclusion. However, retroactive insurance is void if only the insurer or the insured knew or should have known that a feared event has already occurred.

Introduction of a 14-day right of withdrawal

The revised ICA gives insureds the right to withdraw from insurance contracts without any obligations within 14 days (Art. 2a et seq. ICA). The respective withdrawal period begins upon application or acceptance by the insured and is met if the insured notifies the insurer of the withdrawal, or delivers the notice of withdrawal to a post office, on the last day of the withdrawal period. Insureds must note that this right of withdrawal does not apply to all types of contracts. Among others, short-term insurance contracts with a term of less than one month are excluded.

Right of termination for long-term insurance contracts

Subject to a notice period of three months, long term non-life insurance contracts can be terminated by either party at the end of the third year or each subsequent year, even if no early termination right has been agreed (Art. 35a ICA). In addition, all insurance contracts, regardless of their duration, may be terminated extraordinarily for good cause under certain circumstances such as, for example, an unforeseeable change in the legal framework that makes performance of the insurance agreement impossible (Art. 35b ICA).

Right of termination in case of double insurance/reduction of risk

In the event of double insurance (Mehrfachversicherung), insureds have a right to terminate the most recent insurance contract within four weeks after discovering that they have unintentionally entered into double insurance (Art. 46b ICA). Double insurance exists if the sums insured under the various insurance policies together exceed the insured value.

Similarly, in the event of a significant reduction of risks, the insured is entitled to terminate the insurance contract or to demand a premium reduction. If the insurer refuses to reduce the premium or if the insured does not agree with the reduction offered, the insured is entitled to terminate the insurance contract within four weeks (Art. 28a ICA).

Breach of obligations

Insurance contracts regularly provide a number of obligations (Obliegenheit), such as for example the obligation of the insured to immediately inform the insurer about a claim so that mitigating measures can be taken. Insureds who are in breach of such obligations can suffer legal disadvantage. Under the revised law, an insured will not suffer any disadvantage if the breach was caused without fault, or if the insured can prove that the breach had no impact on the occurrence of the claim and on the benefits to be paid by the insurer (Art. 45 ICA).

Payment on account

The revised ICA clarifies that in case the insurer disputes its obligation to pay claims, the person entitled to benefits may demand payments on account (Abschlagszahlung) from the insurer up to the undisputed amount after four weeks from the time the insurer received information based on which it can satisfy itself of the correctness of the claim (Art. 41 et seq. ICA).

Introduction of a general direct right of action against liability insurers

In the field of liability insurance (Haftpflichtversicherung), the injured (third) person respectively its legal successor now has a direct right of action against the third party insurer despite not being party to the respective insurance contract. The respective right is within the scope of the existing insurance coverage and the insurer can raise the same objections and defenses as against the insured on the basis of the law or the respective insurance contract (Art. 60 ICA).

Integral right of recourse for casualty insurers

In order to enforce claims for reimbursement, casualty insurers usually assume the rights of the insured with regards to claims they covered (so-called subrogation). In contrast to the old ICA, the subrogation now covers not only tort claims (Verschuldenshaftung), but also claims arising from breach of contract (Vertragsverletzung) and strict liability (Kausalhaftung) (Art. 95c ICA). With that, the case law of the Swiss Federal Supreme Court on this topic is now codified (BGE 144 III 209).

Extension of the statute of limitations to five years

Claims arising from insurance contracts are, with some exceptions, subject to a limitation period of five years instead of two years, as it was the case under the old ICA. Deviating contractual provisions subjecting the claim against the insurer to a shorter statute of limitations are void (Art. 46 ICA and Art. 98 ICA).

Professional insureds

As under the old ICA, various provisions of the new ICA are of a mandatory nature in order to protect customers (see exhaustive list in Art. 98 ICA). The parties to an insurance contract cannot enter into insurance agreements that deviate (to the disadvantage of the insured) from these rules. Based on Art. 98a ICA, this no longer applies to credit or surety insurance, insofar as it concerns insurance of professional or commercial risks, to transport insurance and – most importantly – insurance contracts with professional insureds. In this context, professional insureds are, among others, regulated companies such as banks or pension funds, companies and public corporations with a professional risk management, or companies that exceed at least two of the following three key figures: (i) balance sheet total of CHF 20 million, (ii) net revenues of CHF 40 million, or (iii) equity of CHF 2 million.

Bankruptcy of the insured

Under the old ICA, insurance contracts ended with the bankruptcy of the insured. This could lead to problems, especially if the insurance contract also affected rights of third parties. The revised ICA now provides that if bankruptcy proceedings are instituted against insureds, insurance contracts remain in force and the bankruptcy administration is obliged to perform them (Art. 46a ICA).

Compatibility with electronic commerce

The revised ICA creates the legal basis for valid paperless business transactions. Most declarations, including revocations and terminations of insurance contracts, can now be made in writing or in any other form that allows proof in text form. This includes most forms of electronic communication such as email, websites, and mobile apps. Written form (i.e. handwritten signature or qualified electronic signature) is still required for assignments and pledges of life insurance claims, among other things (Art. 73 ICA).

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No legal or tax advice

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