

## **Insurance Contract Act 2008**

### **Part 1      General part**

#### **Chapter 1   Provisions applying to all classes of insurance**

##### **Division 1   General provisions**

###### **Section 1    Typical obligations**

By making a contract of insurance the insurer undertakes to cover a certain risk of the policyholder or a third party by paying a benefit upon occurrence of the agreed insured event. The policyholder is obligated to pay the agreed contribution (insurance premium) to the insurer.

###### **Section 2    Retroactive insurance**

(1) The contract of insurance may provide for the insurance cover to commence prior to the date on which it was concluded (retroactive insurance).

(2) If the insurer knows when submitting his contractual acceptance that the occurrence of the insured event is impossible, he shall not be entitled to an insurance premium. If the policyholder knows when submitting his contractual acceptance that an insured event has already occurred, the insurer shall not be obligated to effect payment.

(3) If the contract is concluded by a representative, in the cases referred to in subsection (2) account shall be taken of both the knowledge of the representative and that of the person he is representing.

(4) Section 37 (2) shall not apply to retroactive insurance.

###### **Section 3    Insurance policy**

(1) The insurer shall provide the policyholder with an insurance policy in writing, upon his request as a document.

(2) If the contract is not concluded through one of the insurer's domestic branch offices, the insurance policy must quote the insurer's address and that of the branch office through which the contract was made.

(3) If an insurance policy has been lost or destroyed, the policyholder may demand that the insurer issue a new insurance policy. If the insurance policy is subject to invalidation, the insurer shall only be obligated to issue the new insurance policy after the invalidation.

(4) The policyholder may demand at any time that the insurer provide him with copies of the declarations made in relation to the contract of insurance. If the policyholder requires the copies in order to undertake actions against the insurer which are bound by a specified time limit and the insurer had not previously supplied them, the time limit shall be suspended from the time when the insurer receives the request until such time as the policyholder receives the copies.

(5) The costs of issuing a new insurance policy in accordance with subsection (3) and the copies in accordance with subsection (4) shall be borne by the policyholder and must be paid in advance upon request.

#### **Section 4 Insurance policy issued in the name of the holder**

(1) Section 808 of the German Civil Code shall apply to an insurance policy issued as a document in the name of the bearer.

(2) If the contract provides for the insurer's liability only upon the return of an insurance policy issued as a document and if the policyholder declares that he is unable to return the insurance policy, the publicly certified acknowledgement that the obligation has lapsed shall suffice. The first sentence shall not apply if the insurance policy is subject to invalidation.

#### **Section 5 Deviating insurance policy**

(1) If the content of the insurance policy deviates from the application made by the policyholder or the agreements made, the deviation shall be deemed to be approved if the preconditions under subsection (2) are met and the policyholder does not object in writing within one month of receipt of the insurance policy.

(2) The insurer shall be obligated to indicate to the policyholder when sending the insurance policy that deviations shall be deemed to have been approved if the policyholder does not object in writing within one month of receipt of the insurance policy. The policyholder's attention must be drawn to any deviation and to the associated legal consequences by means of conspicuous notes in the insurance policy.

(3) If the insurer has not fulfilled the obligations under subsection (2), the contract shall be deemed to have been concluded as per the content of the policyholder's application.

(4) An agreement by which the policyholder waives the right to avoid the contract on account of a mistake shall be void.

#### **Section 6 Advising the policyholder**

(1) If the difficulty in assessing the insurance being offered or the policyholder himself and his situation gives occasion thereto, the insurer must ask him about his wishes and needs and, also bearing in mind an appropriate relation between the time and effort spent in providing this advice and the insurance premiums to be paid by the policyholder, the insurer shall advise the policyholder and state reasons for each of the pieces of advice in respect of a particular insurance. He shall document this, taking into account the complexity of the contract of insurance being offered.

(2) Before the contract is concluded, the insurer shall provide the policyholder with the advice in writing, clearly and comprehensibly stating reasons. This information may be provided verbally if the policyholder so wishes or if and insofar as the insurer guarantees provisional cover. In such cases the information shall be provided in writing to the policyholder without undue

delay as soon as the contract has been made; this shall not apply where a contract is not made and to contracts in respect of provisional cover in the case of compulsory insurances.

(3) The policyholder may waive the right to advice and documentation thereof in accordance with subsections (1) and (2) by a separate written declaration in which the insurer explicitly indicates that such waiving may have an unfavourable effect on his option for asserting a claim for damages against the insurer in accordance with subsection (5).

(4) The obligation under subsection (1), first sentence, shall also apply after the contract has been made for the entire term of the insurance agreement insofar as it is clear that the insurer recognises that the policyholder requires information and advice. The policyholder may in individual cases waive the right to advice by written declaration.

(5) If the insurer breaches an obligation under subsections (1), (2) or (4), he shall be liable to indemnify the policyholder for any loss or damage resulting therefrom. This shall not apply if the insurer is not responsible for the breach of obligation.

(6) Subsections (1) to (5) shall not apply to contracts of insurance covering a jumbo risk within the meaning of Article 10 para. 1, second sentence, of the Introductory Act to the Insurance Contract Act or if the contract is negotiated with the policyholder by an insurance broker or if it is a distance contract within the meaning of section 312b (1) and (2) of the German Civil Code.

## **Section 7 Information provided to the policyholder**

(1) The insurer shall inform the policyholder in writing of his terms of contract, including the general terms and conditions of insurance, as well as the information set out in a statutory ordinance referred to in subsection (2), in good time before the policyholder submits his contractual acceptance. This information shall be provided clearly and comprehensibly in keeping with the means of communication employed. If, upon the request of the policyholder, the contract is concluded by telephone or using another means of communication which does not permit the information to be provided in writing prior to the policyholder's contractual acceptance, that information must be provided without undue delay after the contract is made; this shall also apply if the policyholder explicitly waives the right to information by a separate written declaration prior to submitting his contractual acceptance.

(2) The Federal Ministry of Justice shall be authorised, with the consent of the Federal Ministry of Finance and in consultation with the Federal Ministry for Food, Agriculture and Consumer Protection, to determine the following by statutory ordinance without the consent of the *Bundesrat* for the purposes of providing comprehensive information to the policyholder:

1. which details of the contract, in particular in respect of the insurer, the benefit offered, the general terms and conditions of insurance and the right of revocation shall be provided to the policyholder,

2. which other information shall be provided to the policyholder in respect of life insurance, in particular regarding the expected benefits, their determination and calculation, regarding a model calculation, and acquisition and distribution costs, insofar as these are set off against insurance premiums, and regarding other costs,
3. which other information shall be provided in respect of health insurance, in particular regarding the development and form of insurance premiums, and the acquisition and distribution costs,
4. what information shall be provided to the policyholder if the insurer has contacted him by telephone, and
5. in what manner this information is to be provided.

When determining the notifications in accordance with the first sentence, the information required in accordance with Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life insurance and amending Directives 73/239/EEC and 88/357/EEC (OJ EC L 228 p. 1), Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (OJ EC L 271 p. 16), as well as Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life insurance (OJ EC L 345 p. 1), shall be observed.

(3) The statutory ordinance referred to in subsection (2) shall, furthermore, specify what information the insurer must communicate in writing throughout the policy period; this shall in particular apply in the case of changes to information previously supplied, further in respect of health insurance in the event of increases in insurance premiums and regarding the possibility of changing tariffs, as well as in respect of life insurance with surplus sharing regarding the development of the policyholder's entitlements.

(4) The policyholder may at any time throughout the policy period demand that the insurer send him the terms of contract, including the general terms and conditions of insurance, in the form of a document; the costs of the first dispatch shall be borne by the insurer.

(5) Subsections (1) to (4) shall not apply to insurance contracts covering a jumbo risk within the meaning of Article 10 para. 1, second sentence, of the Introductory Act to the Insurance Contract Act. If under such a contract the policyholder is a natural person, the insurer shall inform him in writing prior to the conclusion of the contract of applicable law and the competent supervisory body.

### **Section 8 Policyholder's right of revocation**

(1) The policyholder may revoke his contractual agreement within 14 days. The policyholder shall declare his revocation to the insurer in writing, but need not state any reason; timely dispatch shall suffice for compliance with the time limit.

(2) The revocation period shall begin at such time as the policyholder receives the following documents in writing:

1. the insurance policy and the terms of contract, including the general terms and conditions of insurance, as well as the other information in accordance with section 7 (1) and (2), and
2. a clearly worded instruction regarding the right of revocation and the legal consequences of the revocation which makes clear to the policyholder his rights commensurate with the requirements of the means of communication employed, and the names of the person to whom the revocation is to be declared, with an address at which documents may be served, as well as a note making reference to the commencement of the revocation period and to the rules set out in subsection (1), second sentence.

*(repealed)* (3) The right of revocation shall not apply

1. to contracts of insurance with a term of less than one month,
2. to contracts of insurance for provisional cover, unless they are distance contracts within the meaning of section 312b (1) and (2) of the German Civil Code,
3. to contracts of insurance with pension funds based on the provisions set out in a contract of employment, unless they are distance contracts within the meaning of section 312b (1) and (2) of the German Civil Code,
4. to contracts of insurance covering a jumbo risk within the meaning of Article 10 para. 1, second sentence, of the Introductory Act to the Insurance Contract Act.

The right of revocation shall cease to apply if the contract has been wholly fulfilled by both sides at the explicit request of the policyholder before the policyholder has exercised his right of revocation.

(4) Notwithstanding subsection (2), first sentence, the revocation period in e-commerce shall not commence until the obligations set out in section 312e (1), first sentence, of the German Civil Code have also been fulfilled.

(5) The instruction to be given in accordance with subsection (2), first sentence, no. 2. shall be deemed to meet the requirements stipulated therein if the model of the Annex to the present Act is used in text form. The insurer may deviate from the model in terms of format and font size, subject to subsection (2), first sentence, no. 2, and may insert addenda such as the firm name or a mark of the insurer.

## **Section 9 Legal consequences of revocation**

If the policyholder exercises his right of revocation in accordance with section 8 (1), the insurer shall only be obligated to repay that share of the premiums paid for the period after receipt of the revocation if the policyholder has been instructed in accordance with section 8 (2), first sentence, no. 2 about his right of revocation, the legal consequences of revocation and the contribution to be paid, and he has agreed that the insurance cover

commences prior to the end of the revocation period; the duty to reimburse shall be fulfilled without undue delay, at the latest 30 days after receipt of the revocation. If no note was provided as required under the first sentence, the insurer shall in addition reimburse the insurance premiums paid for the first year of insurance cover; this shall not apply if the policyholder has claimed benefits on the basis of the insurance policy.

### **Section 10 Commencement and expiry of insurance**

If the length of the insurance cover is determined according to days, weeks, months or a period of several months, the insurance cover shall commence at the start of the day on which the contract is concluded; it shall expire at the end of the last day of the policy period.

### **Section 11 Renewal, termination of the contract**

(1) If, in the case of an insurance agreement for a fixed period, the possibility of renewal is agreed in advance in case the insurance agreement is not terminated prior to the end of the policy period, the renewal shall be void insofar as it refers to a period of more than one year.

(2) Where an insurance agreement is concluded for an unlimited period, both contracting parties may only terminate the agreement to the end of the current period of insurance. They may agree to waive the right of termination for no more than two years.

(3) The period of notice must be the same for both contracting parties; it may not be less than one month and no more than three months.

(4) A policyholder may terminate a contract of insurance concluded for a period of more than three years to the end of the third or each successive year, subject to a notice period of three months.

### **Section 12 Period of insurance**

The period of insurance shall be one year unless the insurance premium is determined for shorter periods.

### **Section 13 Change of address and name**

(1) If the policyholder has not informed the insurer of a change of address, the dispatch of a letter sent recorded delivery to the policyholder's last known address shall suffice in respect of a declaration of intention to be made to the policyholder. The declaration shall be deemed to have been received three days after the letter was dispatched. The first and second sentences shall apply mutatis mutandis in respect of a change of the policyholder's name.

(2) If the policyholder has taken out the insurance in his business enterprise, subsection (1), first and second sentences, shall apply mutatis mutandis in the event of his business establishment relocating.

### **Section 14 Due date of cash benefit**

(1) The insurer shall be liable to pay a cash benefit when enquiries necessary to establish the occurrence of the insured event and the extent of the insurer's liability have been concluded.

(2) If these enquiries have not been concluded one month after notification has been given of the occurrence of the insured event, the policyholder may demand part payment in the amount which the insurer will at least be expected to pay. The time limit shall be suspended for as long as the enquiries cannot be concluded on account of the fault of the policyholder.

(3) An agreement on account of which the insurer is released from the obligation to pay interest on arrears shall be void.

### **Section 15 Suspension of limitation period**

Where a claim arising from a contract of insurance has been registered with the insurer, the period of limitation shall be suspended until such time as the applicant has received the insurer's decision in writing.

### **Section 16 Insurer's insolvency**

(1) If insolvency proceedings have been opened against the assets of the insurer, the insurance agreement shall end one month after proceedings are opened; until such time it shall remain effective against the insolvency estate.

(2) The provisions of the Insurance Supervision Act in respect of the effects of the opening of insolvency proceedings shall remain unaffected.

### **Section 17 Prohibition of assignment of things exempt from seizure**

Where the insurance cover relates to things exempt from seizure, a claim arising from the contract of insurance may only be assigned to those of the policyholder's creditors who have provided him with other things to replace the destroyed or damaged things.

### **Section 18 Deviating agreements**

Agreements deviating from section 3 (1) to (4), section 5 (1) to (3), sections 6 to 9, section 11 (2) to (4), section 14 (2), first sentence, and section 15 to the detriment of the policyholder shall not be permitted.

## **Division 2 Duty of disclosure, aggravation of risk, other incidental obligations**

### **Section 19 Duty of disclosure**

(1) The policyholder shall disclose to the insurer before making his contractual acceptance the risk factors known to him which are relevant to the insurer's decision to conclude the contract with the agreed content and which the insurer has requested in writing. If, after receiving the policyholder's contractual acceptance and before accepting the contract, the insurer asks such questions as are referred to in the first sentence, the

policyholder shall also be under the duty of disclosure as regards these questions.

(2) If the policyholder breaches his duty of disclosure under subsection (1), the insurer may withdraw from the contract.

(3) The insurer's right to withdraw from the contract shall be ruled out if the policyholder breached his duty of disclosure neither intentionally nor by acting with gross negligence. In such cases the insurer shall have the right to terminate the contract subject to a notice period of one month.

(4) The insurer's right to withdraw from the contract on account of grossly negligent breach of the duty of disclosure and his right to terminate the contract in accordance with subsection (3), second sentence, shall be ruled out if he would also have concluded the contract in the knowledge of the facts which were not disclosed, albeit with other conditions. The other conditions shall become an integral part of the contract with retroactive effect upon the request of the insurer; in the case of a breach of duty for which the policyholder does not bear responsibility they shall become an integral part of the contract as of the current period of insurance.

(5) The insurer shall only be entitled to the rights under subsections (2) to (4) if he has instructed the policyholder in writing in separate correspondence of the consequences of any breach of the duty of disclosure. These rights shall not exist if the insurer was aware of the disclosed risk factors or the incorrectness of the disclosure.

(6) In the case of subsection (4), second sentence, leading to an increase in the insurance premium of more than 10 per cent on account of an alteration of the contract, or if the insurer refuses to cover the risk for the undisclosed circumstance, the policyholder may terminate the contract without prior notice within one month of receipt of the insurer's communication. The insurer shall notify the policyholder of this right in the communication.

### **Section 20 Policyholder's representative**

If the contract is concluded by a person representing the policyholder, both the representative's knowledge and fraudulent conduct as well as the policyholder's knowledge and fraudulent conduct shall be taken into account in the application of section 19 (1) to (4) and section 21 (2), second sentence, and subsection (3), second sentence. The policyholder may only invoke the duty of disclosure not having been breached intentionally or with gross negligence if neither the representative nor the policyholder has incurred responsibility for intent or gross negligence.

### **Section 21 Exercising of the insurer's rights**

(1) The insurer must assert the rights afforded him in accordance with section 19 (2) to (4) in writing within one month. The period shall commence at such time as the insurer learns of the breach of the duty of disclosure on which the right he is asserting is founded. When exercising his rights, the insurer shall disclose the circumstances on which his declaration is based; he may



subsequently disclose further circumstances as grounds for his declaration if the time limit in accordance with the first sentence has not yet expired.

(2) In the event of a withdrawal in accordance with section 19 (2) after the occurrence of the insured event, the insurer shall not be obligated to effect payment, unless the breach of the duty of disclosure refers to a circumstance which is neither responsible for the occurrence or for the establishment of the occurrence of the insured event nor for the establishment or the extent of the insurer's liability. If the policyholder has fraudulently breached the duty of disclosure, the insurer shall not be obligated to effect payment.

(3) The rights of the insurer in accordance with section 19 (2) to (4) shall lapse five years after the contract expires; this shall not apply to insured events which occurred prior to the expiry of this time limit. If the policyholder has breached the duty of disclosure intentionally or by acting fraudulently, this period shall be ten years.

#### **Section 22 Fraudulent misrepresentation**

The right of the insurer to avoid the contract on account of fraudulent misrepresentation shall remain unaffected.

#### **Section 23 Aggravation of risk**

(1) After submitting his contractual acceptance the policyholder may not aggravate the risk insured or permit its aggravation by a third party without the consent of the insurer.

(2) If the policyholder recognises after the fact that he has aggravated or permitted an aggravation of the risk insured without the consent of the insurer, he must disclose the aggravation of the risk insured to the insurer without undue delay.

(3) If, after the policyholder has submitted his contractual acceptance, an aggravation of the risk insured occurs notwithstanding his intention, he must disclose the aggravation to the insurer without undue delay as soon as he has learned thereof.

#### **Section 24 Termination of the contract due to aggravation of the risk insured**

(1) If the policyholder breaches his duty under section 23 (1), the insurer may terminate the contract of insurance without prior notice, unless the insurer has breached the duty neither intentionally nor by acting with gross negligence. If the breach is based on ordinary negligence, the insurer may terminate the contract subject to a notice period of one month.

(2) If an aggravation of the risk insured in accordance with section 23 (2) and (3) occurs, the insurer may terminate the contract subject to a notice period of one month.

(3) The right of termination in accordance with subsections (1) and (2) shall lapse if it is not exercised within one month after the insurer learns of the

aggravation of the risk insured or if the state of affairs which existed prior to the aggravation is re-established.

**Section 25 Increase in insurance premium due to aggravation of risk**

(1) Rather than terminating the contract of insurance the insurer may, from such time as the aggravation of the risk insured occurred, demand an insurance premium commensurate with the aggravation of the risk insured in accordance with his business principles, or may exclude insurance cover for the aggravated risk. Section 24 (3) shall apply mutatis mutandis in respect of the lapse of this right.

(2) If the insurance premium increases by more than 10 per cent in consequence of an aggravation of the risk insured or the insurer excludes insurance cover for the aggravated risk, the policyholder may terminate the contract without prior notice within one month of receipt of the communication from the insurer. The insurer must inform the policyholder of this right in his communication.

**Section 26 Release from liability due to aggravation of risk**

(1) If the insured event occurs after an aggravation of the risk insured, the insurer shall not be liable if the policyholder intentionally breached his duty under section 23 (1). In the event of a grossly negligent breach, the insurer shall be entitled to reduce his benefits payable commensurate with the severity of the policyholder's fault; the burden of proof that there was no gross negligence is on the policyholder.

(2) In the cases of aggravation of insured risk in accordance with section 23 (2) and (3), the insurer shall not be obligated to effect payment if the insured event occurs later than one month after the time when the insurer should have received notification, unless the insurer was aware of the aggravation of the risk insured at that point in time. He shall be liable if the breach of the duty of disclosure in accordance with section 23 (2) and (3) was not intentional; in the event of a grossly negligent breach, subsection (1), second sentence, shall apply.

(3) Notwithstanding subsections (1) and (2), first sentence, the insurer shall be obligated to effect payment

1. if the aggravation of the risk insured was not the cause of the occurrence of the insured event or of the extent of the liability, or
2. if at the time of the occurrence of the insured event the insurer's termination period had expired and the contract was not terminated.

**Section 27 Immaterial aggravation of risk**

Sections 23 to 26 shall not apply if the aggravation of the risk insured is only immaterial or if, based on the circumstances, it can be deemed to have been agreed that the aggravation is also to be covered.

**Section 28 Non-observance of an incidental obligation**

(1) In the event of the non-observance of an incidental obligation which the policyholder must fulfil vis-à-vis the insurer prior to the occurrence of an insured event, the insurer may terminate the contract without prior notice within one month after learning of the non-observance, unless the non-observance was not intentional or based on gross negligence.

(2) Where the contract provides that the insurer is not obligated to effect payment in the event of the non-observance of an incidental obligation on the part of the policyholder, he shall be released from the liability if the policyholder intentionally breached the obligation. In the case of grossly negligent non-observance of the obligation, the insurer shall be entitled to reduce any benefits payable commensurate with the severity of the policyholder's fault; the burden of proof that there was no gross negligence shall be on the policyholder.

(3) Notwithstanding subsection (2), the insurer shall be liable insofar as the non-observance of the obligation neither caused the occurrence or the establishment of the insured event nor the establishment or the extent of the insurer's obligation to effect payment. The first sentence shall not apply if the policyholder fraudulently breached the obligation.

(4) The condition on which the insurer's entire or partial release from liability in accordance with subsection (2) is based shall, in the event of a violation of an existing duty to provide information or duty of disclosure after the occurrence of an insured event, be the fact that the insurer instructed the policyholder in separate correspondence and in writing of this legal consequence.

(5) An agreement based on which the insurer is entitled to withdraw from the contract in the event of the non-observance of an incidental obligation shall be void.

### **Section 29 Partial withdrawal, partial termination, partial release from liability**

(1) If the conditions according to which the insurer is entitled, in line with the provisions set out in this Division, to withdraw from or to terminate the contract are only met with regard to a part of the objects or persons to which the contract refers, the insurer shall only have the right to withdraw from or to terminate the contract for the remainder if it is to be assumed that the insurer would not have concluded the contract for this part alone with the same conditions.

(2) If the insurer exercises his right to withdraw from or to terminate the contract in respect of a part of the objects or persons, the policyholder shall be entitled to terminate the insurance agreement regarding the remainder. The termination must be declared at the latest at the end of the period of insurance in which the insurer's withdrawal or termination becomes effective.

(3) If the conditions under which the insurer is partially or wholly released from liability due to a breach of the provisions regarding aggravation of the risk insured are only met regarding a part of the objects or persons to which

the insurance refers, subsection (1) shall apply mutatis mutandis to the release from liability.

### **Section 30 Notification of the occurrence of the insured event**

(1) The policyholder shall notify the insurer of the occurrence of the insured event without undue delay after he has learned thereof. If a third party is entitled to the right to the insurer's benefit, the third party shall also be obligated to notify the insurer.

(2) An insurer may not invoke an agreement according to which the insurer is not obligated to effect payment in the event of the breach of the duty of notification in accordance with subsection (1), first sentence, if he learns about the occurrence of an insured event in good time by other means.

### **Section 31 Policyholder's duty to disclose information**

(1) After the occurrence of an insured event, the insurer may demand that the policyholder disclose to him all the information necessary to establish the occurrence of the insured event or the extent of the insurer's liability. The insurer may demand proof to the extent that the policyholder may be reasonably expected to obtain such proof.

(2) If a third party has the right to receive benefits from the insurer, he must also fulfil the obligations under subsection (1).

### **Section 32 Deviating agreements**

Agreements deviating from sections 19 to 28 (4) and section 31 (1), second sentence, to the detriment of the policyholder shall not be permitted.

However, agreement may be reached to the effect that any notification to which the policyholder is obligated in accordance with the provisions of this Division must be made in writing.

## **Division 3 Premium**

### **Section 33 Due date**

(1) The policyholder must pay a single premium or, where payment of recurrent premiums has been agreed, must pay the first premium without delay 14 days after receipt of the insurance policy.

(2) If the insurer previously collected the premium, the policyholder shall not be obligated to transfer the premium until requested to do so in writing by the insurer.

### **Section 34 Payment by a third party**

(1) The insurer must accept insurance premiums due to him or other payments to which he is entitled from the insured person on the basis of the contract if the insurance is taken for the account of a third party from a beneficiary who has acquired the right to the insurer's benefits, as well as

from a lien creditor even if he could refuse to accept the payment in accordance with the provisions of the German Civil Code.

(2) A right of lien on the insurance claim can also be asserted on the basis of the contributions including all interest payments which the lien creditor has used to pay premiums or other payments to which the insurer is entitled on the basis of the contract.

### **Section 35 Offsetting by the insurer**

The insurer may offset a due insurance premium or any other due claim under the contract against a claim arising on the basis of the insurance even if a third party and not the policyholder is entitled to the claim.

### **Section 36 Place of performance**

(1) The place of performance for payment of the insurance premium shall be the policyholder's respective place of residence. However, the policyholder must transfer the insurance premium to the insurer at his own risk and at his own cost.

(2) If the policyholder has taken out the insurance in his business enterprise and his business establishment is located elsewhere, the place of performance shall be the place of the business establishment, and not his place of residence.

### **Section 37 Delayed payment of first insurance premium**

(1) If the single premium or the first premium is not paid in good time, the insurer shall be entitled to withdraw from the contract as long as the payment has not been made, unless the policyholder is not responsible for the non-payment.

(2) If the single premium or first premium has not been paid when the insured event occurs, the insurer shall not be obligated to effect payment, unless the policyholder is not responsible for the non-payment. The insurer shall only be released from liability if he had informed the policyholder of the legal consequence of non-payment of the premium in writing in a separate communication or by means of a conspicuous note in the insurance policy.

### **Section 38 Delayed payment of subsequent premium**

(1) If a subsequent premium is not paid in good time, the insurer may set the policyholder a payment deadline of no less than two weeks at his expense and in writing. The setting of the deadline shall only be effective if it details the individual amounts of the premium which are in arrears, the interest and costs, as well as quoting the legal consequences associated in accordance with subsections (2) and (3) with expiry of the time limit; in the case of consolidated contracts, the amounts must be quoted separately.

(2) If the insured event occurs after the deadline expires, and if the policyholder is in arrears as regards the payment of the premium or of the interest or costs, the insurer shall not be obligated to effect payment.

(3) The insurer may, after the deadline expires, terminate the contract without prior notice insofar as the policyholder is in arrears as regards the payment of the due amounts. The termination can be linked to the setting of the payment deadline in such a way that it becomes effective once the deadline expires if the policyholder is in arrears as regards the payment at that point in time; the policyholder must be explicitly informed of this in the termination. The termination shall become void if the policyholder makes the payment within one month after the contract has been terminated or, if it has been linked to the setting of a deadline, within one month after the deadline expires; subsection (2) shall remain unaffected.

### **Section 39 Termination of the contract before the agreed date**

(1) In the event of the termination of the insurance agreement before the end of the period of insurance, the insurer shall be entitled only to that share of the premium for that period of insurance which corresponds to the period in which the insurance cover existed. If the insurance agreement is terminated on account of withdrawal in accordance with section 19 (2) or on account of avoidance by the insurer due to fraudulent misrepresentation, the insurer shall be entitled to the insurance premium up until such time as the declaration of withdrawal or avoidance becomes effective. If the insurer withdraws on the basis of section 37 (1), he may demand an appropriate fee.

(2) If the insurance agreement ends in accordance with section 16, the policyholder may demand the repayment of that share of the premium which corresponds to the period following the termination of the insurance agreement, minus the costs arising for that period.

### **Section 40 Termination on account of increase in premium**

(1) If the insurer increases the premium on the basis of an adjustment clause without the scope of the insurance cover changing in relation thereto, the policyholder may terminate the contract with immediate effect within one month of receipt of the communication from the insurer, at the earliest however at such time as the increase in the insurance premium becomes effective. The insurer must inform the policyholder of his right to terminate the contract in the communication. The policyholder must receive the communication at the latest one month before the increase in the insurance premium becomes effective.

(2) Subsection (1) shall apply mutatis mutandis if the insurer reduces the scope of the insurance cover on the basis of an adjustment clause without reducing the premium accordingly.

### **Section 41 Reduction of the premium**

If a higher premium has been agreed on account of certain risk-aggravating circumstances and these circumstances have ceased to exist or become immaterial after the policyholder has submitted an application or after the contract has been made, the policyholder may demand that the premium be

reduced commensurately from such time as the insurer is in receipt of the demand. This shall also apply if the assessment of the higher insurance premium was occasioned by incorrect statements made on the basis of a mistake on the part of the policyholder concerning such a circumstance.

#### **Section 42 Deviating agreements**

Agreements deviating from section 33 (2) and sections 37 to 41 to the detriment of the policyholder shall not be permitted.

### **Division 4 Insurance for the account of a third party**

#### **Section 43 Definitions**

- (1) The policyholder may make the contract of insurance in his own name for the account of another with or without naming the insured third party (insurance for the account of a third party).
- (2) If the contract of insurance is made for another, it is assumed in cases of doubt, even if the third party is named, that the policyholder is not acting as his agent but in his own name for the account of a third party.
- (3) If the circumstances do not indicate that the contract of insurance is to be concluded for another, it is deemed to have been made for the policyholder's own account.

#### **Section 44 Rights of the insured person**

- (1) In the case of insurance for the account of a third party, the insured person holds the rights resulting from the contract of insurance. However, only the policyholder may demand that the insurance policy be sent to him.
- (2) The insured person may only lay claim to his rights without the agreement of the policyholder and assert these rights in court if he is in possession of the insurance policy.

#### **Section 45 Rights of the policyholder**

- (1) The policyholder may dispose of the rights to which the insured person is entitled on the basis of the contract of insurance in his own name.
- (2) If an insurance policy has been issued, the policyholder shall only be authorised to receive benefits from the insurer and to assign the rights of the insured person without the agreement of the insured person if he is in possession of the insurance policy.
- (3) The insurer shall only be liable towards the policyholder if the insured person has given his consent to the insurance.

#### **Section 46 Rights between the policyholder and the insured person**

The policyholder shall not be obligated to hand over the insurance policy to the insured person or, in the event of insolvency proceedings having been opened with regard to his assets, to the insolvency estate, until his claims against the insured person have been satisfied with regard to the insured

thing. He may satisfy these claims from the claim for compensation against the insurer and, after it has been collected, from the compensation paid before the insured person and the latter's creditors.

#### **Section 47 Knowledge and conduct of the insured person**

(1) Insofar as the knowledge and conduct of the policyholder are of legal significance, in the case of insurance for the account of a third party account shall also be taken of the knowledge and conduct of the insured person.

(2) Account shall not be taken of the knowledge of the insured person if the contract was made without his knowledge or it was impossible or unreasonable for him to inform the policyholder in good time. The insurer need not accept the objection cited against him that the contract was made without the knowledge of the insured person if the policyholder made the contract without being instructed to do so by the insured person and did not indicate to the insurer at the time the contract was made that he was concluding the contract without having being instructed to do so by the insured person.

#### **Section 48 Insurance for the account of "whom it may concern"**

If the insurance is taken out for the account of "whom it may concern" or if the contract provides in another manner that it is to remain unspecified whether an own interest or the interest of another is to be insured, sections 43 to 46 shall apply if it can be concluded from the circumstances that the interest of another is insured.

### **Division 5 Provisional cover**

#### **Section 49 Content of the contract**

(1) If the essential content of a contract of insurance refers to the insurer granting provisional cover, the contracting parties may agree that the insurer shall only send the policyholder the terms of contract and the information in accordance with section 7 (1) in conjunction with the statutory ordinance referred to in section 7 (2) upon request and at the latest with the insurance policy. The first sentence shall not apply to a distance contract within the meaning of section 312b (1) and (2) of the German Civil Code.

(2) If the general terms and conditions of insurance are not sent to the policyholder when the contract is made, the conditions normally applied by the insurer at that point in time shall become an integral part of the contract for provisional cover, in the absence of such conditions those conditions applied by the insurer to the main contract even without an explicit note to that effect. In cases of doubt regarding which conditions apply to the contract, the conditions applied by the insurer which are the most favourable for the policyholder at the time of the conclusion of the contract shall become an integral part of the contract.



### **Section 50 Non-formation of the main contract**

If, in the event of the non-formation of the main contract, the policyholder is compelled to pay an premium for provisional cover, the insurer shall be entitled to that share of the premium commensurate with the period of the provisional cover which would be payable in the event of the main contract being formed.

### **Section 51 Payment of the premium**

(1) The commencement of the insurance cover may be made dependent on the payment of the premium insofar as the insurer has drawn the policyholder's attention to this condition in writing in a separate communication or by means of a conspicuous note in the insurance policy.

(2) Agreements deviating from subsection (1) to the detriment of the policyholder shall not be permitted.

### **Section 52 Termination of the contract**

(1) The contract for provisional cover shall expire at the latest at such time as a similar insurance cover begins based on a main contract made by the policyholder or another contract for provisional cover. If the commencement of the insurance cover under the main contract or the other contract for provisional cover is made dependent on the payment of the premium by the policyholder, the contract for provisional cover shall expire in the event of non-payment or delayed payment of the premium notwithstanding the first sentence at the latest at such time as the policyholder is in arrears as regards the payment of the insurance premium, provided that the insurer informed the policyholder of this legal consequence in writing in a separate communication or by means of a conspicuous note in the insurance policy.

(2) Subsection (1) shall not apply if the policyholder concludes the main contract or the other contract for provisional cover with another insurer. The policyholder must inform the previous insurer, without undue delay, of the fact that the contract has been concluded.

(3) If the main contract is not concluded with the insurer with whom the contract for provisional cover is made because the policyholder withdraws his contractual acceptance in accordance with section 8 or submits an objection in accordance with section 5 (1) and (2), the contract for provisional cover shall expire at the latest when the insurer receives the withdrawal or objection.

(4) If the insurance agreement was entered into for an indefinite period, each of the contracting parties may terminate the contract without prior notice. However, the insurer's termination shall not become effective until two weeks after receipt.

(5) Agreements deviating from subsections (1) to (4) to the detriment of the policyholder shall not be permitted.

## **Division 6 Open policy**

### **Section 53 Duty to give notice**

If a contract is made in such a manner that, at the time when the contract is concluded, only the class of insured interest is designated and it is only specified to the insurer in detail once the contract has been concluded (open policy), the policyholder shall be obligated either to give notice without undue delay of the individual insured risks or, if the insurer has waived that right, of the agreed basis on which the insurance premium is to be calculated or, if this has been agreed, to apply for a cover note in each respective case.

### **Section 54 Breach of the duty to give notice**

(1) If the policyholder has failed to give notice of an insured risk or of the agreed basis on which the premium is to be calculated, or to apply for the cover note or has made a mistake in so doing, the insurer shall not be obligated to effect payment. This shall not apply if the policyholder has neither violated the duty to give notice and file an application intentionally or by acting with gross negligence and the notice given or the application submitted or the mistake is corrected without undue delay after he learns of the mistake.

(2) If the policyholder intentionally violates the duty to give notice and file an application, the insurer may terminate the contract without notice. The insurance of individual risks for which the insurance cover has commenced shall continue if no other agreements have been reached which extend beyond the end of the open policy until such time as the agreed term of the insurance of these individual risks ends. The insurer may, further, demand payment of the insurance premium which would have had been payable up until the termination becomes effective if the policyholder had met the duty to give notice.

### **Section 55 Individual policy**

(1) If in the case of an open policy an insurance policy has been issued for an individual risk (individual policy) or a certificate of insurance has been issued, the insurer shall only be liable upon presentation of the document. He is released from obligation by performance to the bearer of the document.

(2) If the document has been lost or destroyed, the insurer shall not be liable until the document has been declared invalid or a security has been paid; no security payment by guarantors shall be permitted. This shall also apply to the insurer's obligation to issue a replacement certificate.

(3) The content of the individual policy or a certificate of insurance shall be deemed to have been approved by the policyholder notwithstanding section 5 if the policyholder does not revoke it without undue delay after receipt of the certificate. The right of the policyholder to avoid the approval on account of a mistake shall remain unaffected.

### **Section 56 Breach of the duty of disclosure**

(1) Notwithstanding section 19 (2), the insurer shall not be permitted to rescind in the event of a breach of the duty of disclosure; the insurer may terminate the contract within one month after learning of the non-disclosure or incorrect disclosure of the circumstance, and may refuse performance. The insurer shall remain obligated to effect payment if the non-disclosure or incorrect disclosure of the circumstance was not the cause of the occurrence of the insured event or of the extent of the obligation to effect payment.

(2) If the insurer refuses performance, the policyholder may terminate the contract. The right to terminate the contract lapses if it is not exercised within one month of the time when the policyholder receives the insurer's decision to refuse performance.

### **Section 57 Change in risk insured**

(1) The policyholder shall inform the insurer without delay of any change in the risk insured.

(2) Where the policyholder has not informed the insurer of an aggravation of the risk insured, the insurer shall not be liable if the insured event occurs after the time when the insurer should have received the notification. He shall only be obligated to effect payment

1. if he knew about the aggravation of the risk insured at such time as he should have been notified thereof,
2. if the duty of disclosure was breached neither intentionally nor by acting with gross negligence, or
3. insofar as the aggravation of the risk insured was not the cause of the occurrence of the insured event or the extent of the liability.

(3) Notwithstanding section 24, the insurer shall not be entitled to terminate the contract on account of an aggravation of the risk insured.

### **Section 58 Non-observance of an incidental obligation**

(1) In the case of an open policy, where the policyholder culpably fails to fulfil an incidental obligation to be fulfilled prior to the occurrence of an insured event, the insurer shall not be liable in respect of an insured individual risk to which the breached incidental obligation applies.

(2) In the case of culpable non-observance of an incidental obligation, the insurer may terminate the contract within one month of learning of the non-observance, subject to a notice period of one month.

## **Division 7 Insurance intermediaries, insurance advisers**

### **Subdivision 1 Duties to notify and advise**

#### **Section 59 Definitions**

(1) 'Insurance intermediary' within the meaning of this Act shall be insurance agents and insurance brokers.

(2) 'Insurance agent' within the meaning of this Act shall be anyone contracted by an insurer or insurance agent to arrange or conclude contracts of insurance on a commercial basis.

(3) 'Insurance broker' within the meaning of this Act shall be anyone who contracts to arrange or conclude contracts of insurance for a client on a commercial basis without having being contracted to do so by an insurer or an insurance agent. An insurance broker shall be deemed to be anyone giving the person wishing to take out insurance the impression that he is providing the services of an insurance broker within the meaning of the first sentence above.

(4) 'Insurance adviser' within the meaning of this Act shall be anyone advising third parties on a commercial basis in respect of agreeing, amending or examining contracts of insurance or in respect of making claims arising under contracts of insurance upon the occurrence of an insured event or anyone representing the policyholder out of court vis-à-vis the insurer without receiving an economic benefit from an insurer or without being dependent on him in any other manner.

### **Section 60 Basis on which insurance intermediary provides advice**

(1) The insurance broker shall be obligated to base his advice on a sufficient number of contracts of insurance and insurers available on the market so that he is in a position to make his recommendation, based on professional criteria, regarding which contract of insurance is suited to meeting the needs of the person wishing to take out insurance. This shall not apply if he explicitly informs the person wishing to take out insurance in individual cases prior to contractual acceptance of the limited selection of insurers and contracts.

(2) An insurance broker who informs a person wishing to take out insurance of the limited selection in accordance with subsection (1), second sentence, and an insurance agent must inform the person wishing to take out insurance on which market and information basis they are providing their services, and must state the names of the insurers on the basis of which they are giving advice. The insurance agent must also name the insurer on behalf of whom he is working and whether he is working exclusively for him.

(3) The person wishing to take out insurance may waive the right to the notifications and information in accordance with subsection (2) by separate written declaration.

### **Section 61 Insurance intermediary's duties of advice and documentation**

(1) If the difficulty of assessing the insurance being offered or the person wishing to take out insurance himself and his situation gives occasion thereto, the insurance intermediary must ask the person wishing to take out insurance about his wishes and needs and, also bearing in mind the relations between the time and effort spent providing the advice and the premium to

be paid by the policyholder, must advise the person wishing to take out insurance and state reasons for each piece of advice given in respect of a particular insurance. He must document this in accordance with section 62, taking account of the complexity of the contract of insurance being offered.

(2) The person wishing to take out insurance may waive the right to the advice or documentation in accordance with subsection (1) by separate written declaration in which he is explicitly informed by the insurance intermediary of the fact that a waiver of the right may have a unfavourable effect on the option the person wishing to take out insurance has of asserting a claim for damages against the insurance intermediary in accordance with section 63.

### **Section 62 Time and form of the information**

(1) The policyholder shall be provided, in a clear and comprehensible written form, with the information in accordance with section 60 (2) before submitting his contractual acceptance, and the information in accordance with section 61 (1) before the contract is concluded.

(2) The information in accordance with subsection (1) may be given orally if the person wishing to take out insurance so wishes, or if and insofar as the insurer grants provisional cover. In such cases the information must be provided to the person wishing to take out insurance in writing without undue delay after the contract has been made, at the latest together with the insurance policy; this shall not apply to contracts for provisional cover for compulsory insurances.

### **Section 63 Obligation to pay damages**

The insurance intermediary shall be obligated to compensate for loss incurred by the person wishing to take out insurance on account of a breach of one of the duties under section 60 or section 61. This shall not apply if the insurance intermediary is not responsible for the breach of duty.

### **Section 64 Securing payment to the policyholder's benefit**

The person wishing to take out insurance must authorise the insurance intermediary in writing by separate declaration to accept benefits from the insurer which the latter must pay to the policyholder on the basis of a contract of insurance.

### **Section 65 Jumbo risk**

Sections 60 to 63 shall not apply to the arranging of contracts of insurance for jumbo risks within the meaning of Article 10 para. 1, second sentence, of the Introductory Act to the Insurance Contract Act.

### **Section 66 Other exceptions**

Sections 60 to 64, section 69 (2) and section 214 shall not apply to insurance intermediaries within the meaning of section 34d (9) no. 1 of the Trade Regulation Act.

### **Section 67 Deviating agreements**

Agreements deviating from sections 60 to 66 to the detriment of the policyholder shall not be permitted.

### **Section 68 Insurance advisers**

The provisions set out in section 60 (1), first sentence, section 61 (1) and sections 62 to 65 and section 67 applicable to insurance brokers shall apply mutatis mutandis to insurance advisers. Further duties of the insurance adviser resulting from the contractual relationship shall remain unaffected.

## **Subdivision 2 Power of agency**

### **Section 69 Statutory power of attorney**

(1) The insurance agent shall be deemed to have power of attorney in respect of

1. taking receipt of applications for the purposes of concluding a contract of insurance and its revocation, as well as declarations made prior to the making of a contract and other declarations made by the policyholder,
2. taking receipt of applications for the renewal of or amendment to a contract of insurance and its revocation, termination, rescission and other declarations relating to the insurance agreement, as well as any information to be provided by the policyholder throughout the policy period, and
3. passing on to the policyholder any insurance policies or renewal policies drawn up by the insurer.

(2) The insurance agent shall be deemed to have power of attorney to accept payments which the policyholder makes in connection with the arranging or conclusion of a contract of insurance. The policyholder shall only accept a restriction to this power of attorney to his detriment if he was aware of the restriction when making the payment or was not aware of it as a consequence of gross negligence.

(3) The burden of proof regarding the submission or the content of the application or another declaration of intent in accordance with subsection (1) nos. 1, 2 shall be on the policyholder. The burden of proof regarding any breach of the duty of disclosure or a duty on the part of the policyholder shall be on the insurer.

### **Section 70 Knowledge of the insurance agent**

If the knowledge of the insurer is of relevance in accordance with this Act, the knowledge of the insurance agent shall be equivalent to the knowledge of the

insurer. This shall not apply to the knowledge of the insurance agent gained when not engaged in his activity as agent and not connected in any manner to the contract of insurance in question.

### **Section 71 Authorisation to acquire contracts**

If the insurance agent is authorised to acquire contracts of insurance, he shall also be authorised to agree amendments or extensions to such contracts and to make declarations of termination and withdrawal.

### **Section 72 Restriction of the power of agency**

Any restriction of the power of agency to which the insurance agent is entitled in accordance with section 69 and section 71 based on the general terms and conditions of insurance shall be void vis-à-vis the policyholder and third parties.

### **Section 73 Employees and intermediaries not working on a commercial basis**

Sections 69 to 72 shall apply mutatis mutandis to an insurer's employees who are contracted to arrange or conclude contracts of insurance and to persons working independently as agents in the arranging or concluding contracts of insurance but not on a commercial basis.

## **Chapter 2 Indemnity insurance**

### **Division 1 General provisions**

#### **Section 74 Overinsurance**

(1) If the sum insured considerably exceeds the value of the insured interest (insurable value), each contracting party may request that the sum insured be reduced with immediate effect in order to eliminate the overinsurance, thereby also reducing the premium proportionally.

(2) If the policyholder concludes the contract with the intention of gaining an illegal pecuniary benefit on account of the overinsurance, the contract shall be void; the insurer shall be entitled to the premium up until such time as he learned of the circumstances establishing nullity.

#### **Section 75 Underinsurance**

If the sum insured is considerably less than the insurable value upon the occurrence of the insured event, the insurer shall only be liable in the proportion that the sum insured bears to this value.

#### **Section 76 Agreed value**

The insurable value may be determined by agreeing a certain amount (agreed value). The agreed value shall also be deemed to be the value of the insured interest upon occurrence of the insured event, unless it considerably

exceeds the actual insurable value at that point in time. If the sum insured is less than the agreed value, the insurer shall only be liable to compensate the loss in the proportion that the insurable value bears to the agreed value, even if the agreed value is considerably overstated.

### **Section 77 Several insurers**

(1) Anyone who insures the same interest against the same risk with several insurers shall be obligated to inform each insurer about the other insurances without undue delay. In his communication he shall name the other insurers and the sum insured.

(2) If the profit lost in respect of the same interest is insured with one insurer but other loss is insured with another insurer, subsection (1) shall apply *mutatis mutandis*.

### **Section 78 Liability in the case of multiple insurance**

(1) If one interest is insured against the same risk with several insurers and the sums insured exceed the insurable value or for other reasons the sum of damages which would have to be paid by the insurer if the other insurance did not exist exceeds the total loss (multiple insurance), the insurers are liable as joint and several debtors in such a manner that each insurer must pay the sum in accordance with his contract, but the policyholder cannot demand more than the total amount of the loss.

(2) As regards the insurers, they shall be liable to pay in proportion to the amounts for which they are liable in accordance with each respective contract. If foreign law is applicable to one of the insurances, the insurer to whom foreign law applies may only assert a claim for compensation against the other insurer if he himself is liable to pay compensation under the relevant law.

(3) If the policyholder has taken out multiple insurance with the intention of thereby gaining an illegal pecuniary benefit, each contract made with that intention shall be void; the insurer shall be entitled to the insurance premium up until such time as he learned of the circumstances establishing the nullity.

### **Section 79 Elimination of the multiple insurance**

(1) If the policyholder has made the contract on account of which the multiple insurance arose without knowing that the multiple insurance arose thereby, he may demand that the contract made at a later date be rescinded or the sum insured be reduced, also reducing the insurance premium proportionally to that share not covered by the earlier insurance.

(2) Subsection (1) shall also apply if the multiple insurance arose on account of the fact that the insurable value decreased after the conclusion of several contracts of insurance. If in such cases several contracts of insurance were made at the same time or with the consent of the insurers, the policyholder may only demand the proportional reduction of the sums insured and of the premiums.



**Section 80 Lack of insured interest**

(1) The policyholder shall not be obligated to pay the insurance premium if no insured interest exists when the insurance cover commences; this shall also apply if the interest does not arise in the case of an insurance taken out for a future enterprise or for another future interest. However, the insurer may demand an appropriate fee.

(2) If the insured interest ceases to exist once the insurance cover commences, the insurer shall be entitled to the premium to which he would have been entitled if the insurance had only been applied for up until the time when the insurer learned of the cessation of the interest.

(3) If the policyholder has insured a non-existent interest with the intention of thereby gaining an illegal pecuniary benefit, the contract shall be void; the insurer shall be entitled to the premium paid up until the time when he learns of the circumstances establishing the nullity.

**Section 81 Causing the insured event**

(1) The insurer shall not be obligated to effect payment if the policyholder intentionally causes the insured event.

(2) If the policyholder causes the insured event by gross negligence, the insurer shall be entitled to reduce the benefits payable commensurate with the severity of the fault of the policyholder.

**Section 82 Loss avoidance and minimisation**

(1) The policyholder must, upon the occurrence of the insured event, ensure that the loss is avoided or minimised wherever possible.

(2) The policyholder must follow the instructions of the insurer, where reasonable, and obtain instructions, circumstances permitting. If several insurers involved in the contract of insurance issue different instructions, the policyholder must act at his own proper discretion.

(3) In the event of the breach of an incidental obligation under subsections (1) and (2), the insurer shall not be obligated to effect payment if the policyholder intentionally breached the incidental obligation. In the event of a grossly negligent breach, the insurer shall be entitled to reduce the benefits payable commensurate with the severity of the policyholder's fault; the burden of proof that there was no gross negligence is on the policyholder.

(4) Notwithstanding subsection (3), the insurer shall be liable insofar as the breach of the incidental obligation is the cause neither of the establishment of the occurrence of the insured event, nor of the establishment of the extent of the liability. The first sentence shall not apply if the policyholder has fraudulently breached the obligation.

**Section 83 Reimbursement of expenses**

(1) The insurer shall reimburse the policyholder's expenses in accordance with section 82 (1) and (2), even if they remain unsuccessful, to the extent

that the policyholder could deem them necessary based on the circumstances. Upon the request of the policyholder the insurer shall advance the amount of the necessary expenses.

(2) If the insurer is entitled to reduce the benefits payable, he may also reduce the amount of the expenses reimbursed in accordance with subsection (1) accordingly.

(3) Expenses incurred by the policyholder on account of his following the insurer's instructions shall also be reimbursed to the extent that they exceed the sum insured, taken together with the other compensation.

(4) In the case of livestock insurance, the costs of feeding and keeping the livestock, as well as the costs of veterinary examinations and treatment are not classed as expenses to be reimbursed by the insurer in accordance with subsections (1) to (3).

#### **Section 84 Drawing on an expert**

(1) If the contract provides for experts to establish the individual prerequisites for the claim arising under the insurance or the amount of the loss, the establishment shall not be binding if it obviously deviates considerably from the facts and circumstances. In such cases the prerequisites shall be established by a judicial decision. This shall also apply if the experts are unable or unwilling to carry out the establishment or delay the establishment.

(2) If the contract provides for the experts to be appointed by the court, that local court shall be responsible for appointing the experts in whose district the loss occurred. The competence can be transferred to another local court by explicit agreement between the contracting parties. The order on account of which the application for the appointment of experts is granted shall not be contestable.

#### **Section 85 Costs of establishing the loss**

(1) The insurer shall reimburse the policyholder those costs arising in the establishment and determination of the loss to be compensated to the extent that the expenses were necessary in view of the circumstances. These costs shall also be reimbursed to the extent that they exceed the sum insured, taken together with the other compensation.

(2) The insurer shall not reimburse costs incurred by the policyholder on account of drawing on the services of an expert or counsel, unless the policyholder is contractually obligated to do so or was requested to do so by the insurer.

(3) If the insurer is entitled to reduce the benefits payable, he may also reduce the costs reimbursed accordingly.

**Section 86 Assignment of claims**

(1) If the policyholder is entitled to claim damages from a third party, this claim shall be assigned to the insurer insofar as the insurer compensates for the loss. The claim may not be assigned to the detriment of the policyholder.

(2) The policyholder shall safeguard his claim for damages or a right serving to safeguard this claim in accordance with the applicable form and time requirements, and shall assist the insurer wherever necessary in asserting them. If the policyholder intentionally breaches this obligation, the insurer shall not be obligated to effect payment insofar as he cannot as a result claim compensation for it from a third party. In the event of a grossly negligent breach of the obligation, the insurer shall be entitled to reduce the benefits payable commensurate with the severity of the policyholder's fault; the burden of proof that there was no gross negligence is on the policyholder.

(3) If the policyholder claims compensation from a person with whom he is sharing a common household when the loss occurs, assignment in accordance with subsection (1) cannot be asserted, unless that person intentionally caused the loss.

**Section 87 Deviating agreements**

Agreements deviating from sections 74, 78 (3), sections 80, 82 to 84 (1), first sentence, and section 86 to the detriment of the policyholder shall not be permitted.

**Division 2 Property insurance****Section 88 Insurable value**

Unless otherwise agreed, the insurable value - where the insurance refers to an item or an aggregate of items - shall be deemed to be the amount which the policyholder must spend upon occurrence of the insured event to replace or to restore the insured property to mint condition, minus the reduced market value resulting from the difference between old and new.

**Section 89 Insurance for an aggregate of things**

(1) Insurance taken out for an aggregate of items covers each individual item belonging to the aggregate of items.

(2) If the insurance is taken out for an aggregate of items, it covers the items belonging to those persons with whom the policyholder is sharing a common household upon occurrence of the insured event or who are employed by the policyholder at that time and are working at a location covered by the insurance. The insurance shall thus be deemed to have been taken out for the account of a third party.

**Section 90 Extended reimbursement of expenses**

If the policyholder pays expenses in order to avoid an immediately imminent insured event or to minimise its impacts, section 83 (1), first sentence, subsections (2) and (3) shall apply *mutatis mutandis*.

### **Section 91 Interest on compensation**

One month after notification is given of the insured event, four per cent interest shall be added to the compensation to be paid by the insurer, unless other higher interest rates can be demanded on other legal grounds. The time limit shall be suspended for as long as the loss or damage cannot be established as a result of the policyholder's fault.

### **Section 92 Termination of the contract after an insured event**

(1) After the occurrence of the insured event each party may terminate the insurance agreement.

(2) The termination shall only be permissible up until the end of one month after the conclusion of negotiations in respect of the compensation. The insurer shall keep a one month period of notice. The policyholder may not terminate the contract for a later point in time than the end of the current period of insurance.

(3) In the case of hail insurance, the insurer may only terminate the contract to the end of the period of insurance in which the insured event occurred. If the policyholder terminates the contract to an earlier point in time than the end of that period of insurance, the insurer is nevertheless entitled to the premium for the current period of insurance.

### **Section 93 Replacement clause**

If the insurer is obligated under the contract only to pay a share of the compensation in the case of replacement or repair of the insured object, the policyholder may not demand payment of an amount in excess of the insurable value until replacement or repair is guaranteed. The policyholder shall be obligated to repay any compensation to the insurer, minus the insurable value of the object, if the object was not replaced or repaired within an appropriate period as a result of the policyholder's fault.

### **Section 94 Effectiveness of payment vis-à-vis mortgage creditors**

(1) In the case of section 93, first sentence, a payment made without the guarantee of replacement or repair shall only be effective vis-à-vis a mortgage creditor if the insurer or the policyholder has informed him that the payment is to be made without the guarantee and no less than one month has elapsed since receipt of the communication.

(2) If the amount of compensation is not to be utilised to restore or replace the property in accordance with the terms of the contract, the insurer shall be permitted not to pay with effect vis-à-vis a mortgage creditor until he or the policyholder has notified the mortgagee of that intention and no less than one month has elapsed since receipt of the communication.

(3) The mortgage creditor may object to payment vis-à-vis the insurer for a period of one month only. The communications referred to under subsections (1) and (2) may be omitted if they would necessitate an unreasonable amount of time and effort; in such cases the time limit begins on the due date for payment of the amount of compensation.

(4) If the mortgage creditor has notified the insurer of his mortgage, a payment made without the guarantee of restoration or replacement only becomes effective vis-à-vis the mortgage creditor if the latter has agreed in writing to effect payment.

(5) Subsections (1) to (4) shall apply mutatis mutandis if the property is burdened with a land charge, annuity land charge or other charges on land.

### **Section 95 Sale of the insured object**

(1) If the policyholder sells the insured object, the policyholder shall assign to the buyer the rights and obligations resulting throughout the period of his ownership.

(2) The seller and the buyer shall be liable as joint and several debtors for the premium payable during the current period of insurance at such time as the seller assigns the rights to the buyer.

(3) The insurer must not accept the assignment against him until he has learned thereof.

### **Section 96 Termination of the contract after a sale**

(1) The insurer shall be entitled to terminate the insurance agreement vis-à-vis the buyer of an insured object subject to a notice period of one month. The right to terminate the contract shall lapse if it is not exercised within one month of the insurer learning of the sale.

(2) The buyer shall be entitled to terminate the insurance agreement with immediate effect or to the end of the current period of insurance. The right to terminate the contract shall lapse if it is not exercised within one month of the purchase, in the case of a lack of the buyer's knowledge of the existence of an insurance within one month after he learns thereof.

(3) In the event that the insurance agreement is terminated in accordance with subsections (1) or (2), the seller shall be obligated to pay the premium; the buyer shall not be liable to pay the premium.

### **Section 97 Disclosure of the sale**

(1) The seller or the buyer must disclose the sale to the insurer without undue delay. Where disclosure has not been made, the insurer shall not be obligated to effect payment if the insured event occurs later than one month after the time when the insurer should have received the disclosure, and the insurer would not have made the contract with the buyer which existed with the seller.

(2) Notwithstanding subsection (1), second sentence, the insurer shall be obligated to effect payment if he knew of the sale at such time as he should

have received the disclosure, or if at the time of the occurrence of the insured event the time limit for the insurer to terminate the contract had expired and he did not terminate the contract.

### **Section 98 Protection afforded the buyer**

The insurer may not refer to any provision of the contract of insurance which derogates from sections 95 to 97 to the detriment of the buyer. However, the contract may provide that the termination of the contract by the buyer in accordance with section 96 (2) and the disclosure of the sale must be made in writing.

### **Section 99 Foreclosure, acquisition of the right of use**

Where ownership of an insured object is assigned on the basis of foreclosure or a third party acquires the entitlement to insured produce of the soil on the basis of usufruct, a lease contract or a similar agreement, sections 95 to 98 shall apply mutatis mutandis.

## **Part 2 Individual classes of insurance**

### **Chapter 1 Liability insurance**

#### **Division 1 General provisions**

#### **Section 100 Insurer's liability**

In the case of liability insurance, the insurer shall be obligated to release the policyholder from any claims asserted by a third party on the basis of the policyholder's responsibility for a fact arising during the period of insurance, and to avoid unfounded claims.

#### **Section 101 Legal protection costs**

(1) The insurance shall also cover the judicial and extra-judicial costs arising from claims asserted by a third party insofar as the circumstances necessitate the expenditure. Further, the insurance covers expenses incurred on the instruction of the insurer by defence counsel in criminal proceedings initiated on the basis of an act which could result in the policyholder becoming liable vis-à-vis a third party. At the policyholder's request the insurer shall advance the costs.

(2) If a sum insured has been determined, the insurer shall also reimburse the costs of a legal dispute conducted at his instigation and the costs for defence counsel in accordance with subsection (1), second sentence, insofar as they exceed the sum insured plus the insurer's expenses for indemnifying the policyholder. This shall also apply to interest payments which the policyholder owes the third party as a result of a delay in satisfying the third party occasioned by the insurer.

(3) If the policyholder is released from the obligation of avoiding the execution of a judicial decision by furnishing security or a deposit, the insurer shall effect the payment of the security or deposit. This obligation shall only apply up to the amount of the sum insured; if the insurer is obligated in accordance with subsection (2) over and above that amount, the surplus amount shall be added to the sum insured. The insurer shall be released from the obligation under the first sentence if he acknowledges that the third party's claim vis-à-vis the policyholder is well-founded.

### **Section 102 Employer's liability insurance**

(1) If the insurance has been taken out for a business enterprise, it shall cover liability insurance for those persons authorised to represent the enterprise as well as those persons employed by the enterprise. The insurance shall thus be deemed to be taken out for the account of a third party.

(2) Should the business enterprise be sold to a third party or taken over by a third party on account of usufruct, a lease contract or a similar agreement, the policyholder shall assign to the third party the rights and obligations resulting from the insurance agreement throughout the period of his entitlement. Section 95 (2) and (3), as well as section 96 and section 97 shall apply mutatis mutandis.

### **Section 103 Causing the insured event**

The insurer shall not be obligated to effect payment if the policyholder has intentionally and unlawfully caused the loss suffered by the third party.

### **Section 104 Policyholder's duty of disclosure**

(1) The policyholder shall be obligated to disclose to the insurer within one week those facts which could give rise to his responsibility vis-à-vis a third party. If the third party asserts a claim against the policyholder, the policyholder shall be obligated to disclose that fact to the insurer within one week after the claim is asserted.

(2) Where a claim is asserted against the policyholder in court, legal aid is applied for or a third-party complaint is filed against him in court, he shall be obligated to disclose that fact to the insurer without undue delay. This shall also apply when investigative proceedings have been initiated against the policyholder on account of the occurrence of the loss giving rise to the claim.

(3) Timely dispatch of the notice of disclosure shall suffice for compliance with the time limits under subsections (1) and (2). Section 30 (2) shall apply mutatis mutandis.

### **Section 105 Acknowledgement by the policyholder**

Agreements in accordance with which the insurer shall not be obligated to effect payment if the policyholder satisfies the third party or acknowledges his entitlement without the insurer's consent shall be void.

**Section 106 Due date for performance**

The insurer shall be obligated to release the policyholder from the third party's claim within two weeks, beginning at the time when the third party's claim is established with binding effect for the insurer by final judgement, acknowledgement or settlement. If the third party has been satisfied by the policyholder with binding effect for the insurer, the insurer shall be obligated to pay the compensation to the policyholder within two weeks after the third party has been satisfied. The insurer shall be obligated to pay any costs to be reimbursed in accordance with section 101 within two weeks after communication of the calculation.

**Section 107 Entitlement to a pension**

(1) Where the policyholder is obligated to pay the third party a pension, the insurer shall only be liable to pay a pro-rata share of the pension if the sum insured is not equal to the capital value of the pension.

(2) If the policyholder is obligated, by operation of law, to pay the third party a security for the pension he is liable to pay, the insurer's obligation shall cover the payment of the security. Subsection (1) shall apply *mutatis mutandis*.

**Section 108 Right of recourse provision**

(1) The policyholder's right of recourse against the insurer shall be ineffective *vis-à-vis* the third party. A legal act of disposal shall be equal to an act of disposal based on execution or attachment execution.

(2) Assignment of the right of recourse to the third party may not be ruled out by the general terms and conditions of insurance.

**Section 109 Several injured parties**

If the policyholder bears responsibility towards several third parties and their claims are in excess of the sum insured, the insurer shall pay these claims in proportion to their amounts. If the sum insured is thereby exhausted, a third party not taken into consideration during the allocation may not subsequently invoke section 108 (1) if the insurer had not expected and should not have expected that these claims would be asserted.

**Section 110 Policyholder's insolvency**

In the event of insolvency proceedings being opened in respect of the assets of the policyholder, the third party may request separate satisfaction from the policyholder's right of recourse on account of the claim due him against the policyholder.

**Section 111 Termination of the contract after an insured event**

(1) If, after the occurrence of the insured event, the insurer has acknowledged or wrongly rejected the policyholder's recourse, each party may terminate the insurance agreement. This shall also apply if the insurer



instructs the policyholder to allow a legal dispute in respect of the third party's claim.

(2) The contract may only be terminated within one month after the acknowledgement or rejection of the right of recourse or after the judgement in the legal dispute with the third party became final. Section 92 (2), second sentence, and subsection (3) shall apply.

### **Section 112 Deviating agreements**

Agreements deviating from section 104 and section 106 to the detriment of the policyholder shall not be permitted.

## **Division 2 Compulsory insurance**

### **Section 113 Compulsory insurance**

(1) Liability insurance which a policyholder is obligated by legal provision to take out (compulsory insurance) must be concluded with an insurance company authorised to do business in Germany.

(2) The insurer shall confirm in writing to the policyholder, quoting the sum insured, that he is obligated to take out the compulsory insurance in accordance with a legal provision, to which reference must be made.

(3) The provisions of this Division shall also apply insofar as the contract of insurance grants cover in excess of the prescribed minimum requirements.

### **Section 114 Scope of the insurance cover**

(1) In the case of compulsory insurance, the minimum sum insured shall be 250,000 euros per claim and one million euros for all claims per insurance year, unless otherwise provided by legal provision.

(2) The contract of insurance may specify the content and scope of the compulsory insurance in more detail insofar as this does not endanger the fulfilment of the respective objective of the compulsory insurance and unless explicitly otherwise provided by legal provision. Any excess on the part of the policyholder cannot be cited against the third party, and cannot be asserted against a co-insured person.

### **Section 115 Direct claim**

(1) The third party may also assert his claim for compensation against the insurer

1. in the case of liability insurance, for the fulfilment of a duty to take out insurance in accordance with the Compulsory Insurance Act, or
2. where insolvency proceedings have been opened in respect of the assets of the policyholder or an application for such opening has been dismissed on account of a lack of insolvency estate or a provisional insolvency administrator has been appointed, or
3. if the policyholder's whereabouts are unknown.

The entitlement to a claim shall exist within the framework of the insurer's liability under the insurance agreement and, insofar as no liability exists, within the framework of section 117 (1) to (4). The insurer shall pay the compensation in money. The insurer and the policyholder liable to pay compensation shall be liable as joint and several debtors.

(2) The claim under subsection (1) shall be subject to the same limitation period as the claim for compensation against the policyholder liable to pay compensation. The limitation shall commence at the time when the limitation period on the claim for compensation against the policyholder liable to pay compensation commences; however, it shall end at the latest after ten years, beginning when the loss is incurred. Where notice of the third party's claim has been given to the insurer, limitation shall be suspended up until the time when the claimant receives the insurer's decision in writing. The suspension, the end of the suspension and the re-commencement of the limitation on the claim against the insurer shall also be effective against the policyholder liable to pay compensation and vice versa.

#### **Section 116 Joint and several debtors**

(1) As regards the relationship between the joint and several debtors under section 115 (1), fourth sentence, the insurer shall be solely liable insofar as he is obligated to indemnify the policyholder based on the insurance agreement. If no such obligation exists the policyholder shall be solely liable in respect of the relationship between them. The insurer may request compensation for expenses which it was permissible for him to deem necessary given the circumstances.

(2) The limitation on claims resulting from subsection (1) shall commence at the end of the year in which the third party's claim is satisfied.

#### **Section 117 Liability towards third parties**

(1) If the insurer is wholly or partially released from liability to the policyholder, his liability to the third party shall nevertheless remain.

(2) A circumstance which results in the non-existence or the termination of the insurance agreement shall only be effective in consideration of the third party one month after the insurer has notified the competent agency of this circumstance. This shall also apply if the insurance agreement ends on account of time lapsed. The time limit does not commence before the insurance agreement has ended. A circumstance as described in the first and second sentences may also be cited against the third party if before the point in time at which the loss arose the competent agency had received confirmation of a new insurance taken out based on a relevant law. The above provisions of this Division shall not apply if no competent agency has been appointed to receive the notification in accordance with the first sentence.

(3) In the cases described in subsections (1) and (2), the insurer shall only be liable within the framework of the prescribed minimum sum insured and the

risk assumed by him. He shall not be obligated to effect payment insofar as the third party may receive compensation for his loss from another indemnity insurer or from a social insurance agency.

(4) If the insurer's obligation to effect payment in accordance with subsection (1) or (2) coincides with a liability to pay compensation on the basis of negligent breach of official duty, the liability to pay compensation in accordance with section 839 (1) of the German Civil Code shall not be ruled out in the relationship with the insurer on account of the fact that the preconditions for the insurer's liability are met. The first sentence shall not apply if the public official is personally liable in accordance with section 839 of the German Civil Code.

(5) Insofar as the insurer satisfies the third party in accordance with subsections (1) to (4) and no case as described in section 116 exists, the third party's claim against the policyholder shall be assigned to him. The assignment may not be asserted to the detriment of the third party.

(6) Where insolvency proceedings are opened against the assets of the insurer, the insurance agreement shall not end, notwithstanding section 16, until one month after the insolvency administrator has notified the competent agency of this circumstance; up until such time it shall remain effective against the insolvency estate. If no competent agency has been appointed to take receipt of the notification in accordance with the first sentence, the insurance agreement shall end one month after the policyholder has been notified of the opening of insolvency proceedings; the notification must be made in writing.

### **Section 118 Order of precedence of several claims**

(1) If the claims for compensation to be paid on the basis of the same occurrence of loss are in excess of the sum insured, the sum insured shall be paid out to those entitled to compensation according to the following order of precedence, in the event of equal precedence commensurate with their amounts:

1. claims arising from personal injury insofar as the injured persons cannot receive compensation for their injuries from the injuring party, from another insurer as their liability insurer, a social insurance agency or another third party;
2. claims arising from other injuries to natural or legal persons under private law insofar as the injured parties cannot receive compensation from the injuring party, another insurer as their liability insurer or a third party;
3. claims arising from personal injury or other injuries assigned to insurers or other third parties under private law;
4. claims assigned to social insurance agencies;
5. all other claims.

(2) If the sum insured is exhausted taking account of subordinate claims, a rightful claimant who should be afforded precedence and who has not been

taken into consideration during the allocation may not subsequently invoke subsection (1) if the insurer did not expect and also need not have expected that this claim would be asserted.

### **Section 119 Third party's incidental obligations**

(1) The third party shall notify the insurer in writing of the loss occurrence from which he wishes to derive a claim against the policyholder or against the insurer in accordance with section 115 (1) within two weeks after he has learned of the loss occurrence; timely dispatch shall suffice for compliance with the time limit.

(2) If the third party asserts the claim against the policyholder in court, he must notify the insurer in writing of that fact without undue delay.

(3) The insurer may demand information from the third party insofar as it is necessary for the establishment of the loss occurrence and of the amount of the loss. The insurer may also request that proof be furnished insofar as the third party can be reasonably expected to obtain such proof.

### **Section 120 Non-observance of an incidental obligation by the third party**

Where the third party culpably breaches the incidental obligation under section 119 (2) or (3), the insurer's liability in accordance with section 115 and section 117 shall be limited to that amount which he would also have had to pay had the obligation been duly fulfilled, insofar as the third party had previously been informed explicitly and in writing of the consequences of non-observance.

### **Section 121 Offsetting against third parties**

Section 35 shall not apply vis-à-vis third parties.

### **Section 122 Sale of the insured object**

Sections 95 to 98 concerning the sale of insured object shall be applied mutatis mutandis.

### **Section 123 Recourse in the case of several insured parties**

(1) If, in the case of an insurance taken out for the account of a third party, the insurer is not liable to the policyholder, he may only cite this against an insured party authorised to independently assert his rights arising from the contract of insurance if the circumstances on which the exemption from obligation to effect payment are based on the insured person himself or if these circumstances were known to the insurer or not known to the insurer on account of gross negligence.

(2) The extent of the obligation to effect payment under subsection (1) shall be determined in accordance with section 117 (3), first sentence; section 117 (3), second sentence, shall not apply. Section 117 (4) shall apply mutatis mutandis.

(3) Insofar as the insurer pays the claim in accordance with subsection (1), he may have recourse to the policyholder.

(4) Subsections (1) to (3) shall apply mutatis mutandis if the time limit under section 117 (2), first and second sentences, has not yet expired or the insurer has not notified the competent agency that the insurance agreement has ended.

### **Section 124 Extent of legal force**

(1) Where it has been established by final judgement that the third party has no right to claim compensation, the judgement, if issued between the third party and the insurer, shall also be effective to the advantage of the policyholder, if it is issued between the third party and the policyholder, it shall also be effective to the advantage of the insurer.

(2) If the third party's claim against the insurer has been established by final judgement, acknowledgement or settlement, the policyholder against whom claims have been asserted by the insurer on the basis of section 116 (1), second sentence, must accept this establishment unless the insurer has culpably violated the obligation to avoid unfounded claims for compensation and to minimise or duly establish the loss.

(3) Subsections (1) and (2) shall not apply insofar as the third party may not assert his claim for damages against the insurer in accordance with section 115 (1).

## **Chapter 2 Legal expenses insurance**

### **Section 125 Insurer's liability**

In the case of legal expenses insurance, the insurer shall be liable to the extent necessary to look after the legal interests of the policyholder or of the insured person as per the agreement.

### **Section 126 Claims processing company**

(1) Where risks in the sphere of legal expenses insurance are insured along with other risks, the insurance policy must separately quote the scope of the legal expenses insurance cover and the premium payable therefor. If the insurer hires an independent claims processing company to handle these claims, the name of this company must be quoted on the insurance policy.

(2) If an independent claims processing company is hired to deal with these claims, claims arising under a legal expenses insurance contract may only be asserted against that company. The title shall be effective for and against the legal expenses insurer. Section 727 of the Code of Civil Procedure shall be applied mutatis mutandis.

### **Section 127 Freedom of choice of lawyer**

(1) The policyholder shall be entitled freely to choose a lawyer to represent his interests in court and administrative proceedings from among the circle of

lawyers whose fees the insurer will cover in accordance with the contract of insurance. This provision shall also apply if the policyholder is entitled to claim legal expenses for the representation of other legal interests.

(2) A lawyer shall also be anyone authorised to exercise the profession in accordance with the designations set out in the Annex to section 1 of the Act Regulating the Activity of European lawyers in Germany of 9 March 2000 (Federal Law Gazette I, p. 182, p. 1349), as last amended by Article 1 of the Act of 26 October 2003 (Federal Law Gazette I, p. 2074), as amended.

### **Section 128 Procedure for calling in expert opinion**

In the event that the insurer denies his liability because looking after the legal interests does not have sufficient prospects of success or is wanton, the contract of insurance must provide for a procedure to call in expert opinion or another procedure with comparable guarantees of impartiality in which a decision can be taken regarding the differences of opinion between the parties concerning the prospects of success or the wantonness of prosecution. The insurer shall draw the policyholder's attention to this fact when denying his obligation to effect payment. If the contract of insurance does not provide for any such procedure or the insurer fails to provide this information, the policyholder's need for legal protection shall be deemed to have been acknowledged in individual cases.

### **Section 129 Deviating agreements**

Agreements deviating from sections 126 to 128 to the detriment of the policyholder shall not be permitted.

## **Chapter 3 Transport insurance**

### **Section 130 Extent of risk accepted**

(1) In the case of the insurance of goods against the risks of transportation by land or inland waterways as well as the concomitant storage, the insurer shall bear all the risks to which the goods are exposed throughout the period of cover.

(2) If a ship is insured against the risks of inland waterway transportation, the insurer shall bear all the risks to which the ship is exposed throughout the period of cover. The insurer shall also be liable for that loss incurred by the policyholder as a result of a collision between ships or a collision with fixed or floating objects on account of having to replace loss incurred by a third party.

(3) The insurance against the risks of inland waterway transportation covers contributions to gross average insofar as the average measure serves the avoidance of loss to be compensated by the insurer.

### **Section 131 Breach of the duty of disclosure**

(1) Notwithstanding section 19 (2), in the event of a breach of the duty of disclosure, the insurer's rescission shall be ruled out; the insurer may

terminate the contract and refuse performance within one month from the time when he learns that the circumstance was not disclosed or not disclosed correctly. The insurer shall remain liable insofar as the circumstance which was not disclosed or not disclosed correctly was not the cause of the occurrence of the insured event or of the extent of the liability.

(2) If the insurer refuses performance, the policyholder may terminate the contract. The right to terminate the contract shall lapse if it is not exercised within one month after the time when the policyholder receives the insurer's decision to refuse performance.

### **Section 132 Change of risk insured**

(1) Notwithstanding section 23, the policyholder may aggravate the risk insured or change it in another manner and permit changes by a third party. He must disclose the change to the insurer without undue delay.

(2) If the policyholder has not provided notification of an aggravation of the risk insured, the insurer shall not be obligated to effect payment if the insured event occurs after such time as the insurer should have received the notification. He shall be obligated to effect payment

1. if he was aware of the aggravation of the risk insured at the time when he should have received the notification,
2. if the duty of disclosure was breached neither intentionally nor by acting with gross negligence, or
3. insofar as the aggravation of the risk insured was not the cause of the occurrence of the insured event or of the extent of the liability.

(3) Notwithstanding section 24, the insurer shall not be entitled to terminate the contract on account of an aggravation of the risk insured.

### **Section 133 Transportation in breach of contract**

(1) If the goods are transported by a means of transport other than that agreed or are reloaded although direct transportation was agreed, the insurer shall not be obligated to effect payment. This provision shall also apply if only a specific means of transport or a specific transport route was agreed.

(2) The insurer shall be obligated to effect payment if, after the commencement of the insurance, the transportation was changed or relinquished without the consent of the policyholder or as the result of an insured event. Section 132 shall apply.

(3) In those cases described under subsection (2), the insurance shall cover the costs of the reloading or the temporary storage as well as the additional costs of the reforwarding.

**Section 134 Unsuitable means of transport**

(1) If no specific means of transport has been agreed for the forwarding of the goods, the policyholder, insofar as he has any influence thereupon, shall be obligated to use a means of transport which is suited to taking on board and transporting the goods.

(2) If the policyholder breaches this incidental obligation intentionally or by acting with gross negligence, the insurer shall not be liable, unless the breach was not the cause of the occurrence of the insured event or the extent of the liability.

(3) If the policyholder learns of the unsuitability of the means of transport, he must notify the insurer of that fact without undue delay. Section 132 shall apply.

**Section 135 Reimbursement of expenses**

(1) Expenses incurred by the policyholder in loss avoidance or minimisation, as well as the costs of the ascertainment and establishment of the loss, shall also be reimbursed by the insurer insofar as they do not exceed the sum insured when added to the remaining compensation.

(2) If expenses have been incurred in loss avoidance or minimisation or in the ascertainment and establishment of the loss or to restore or improve the property damaged by the insured event or contributions have been made to gross average, or if the policyholder has become personally liable to pay such contributions, the insurer shall reimburse the loss caused by the subsequent occurrence of the insured event without consideration for the earlier expenses and amounts to be reimbursed by him.

**Section 136 Insurable value**

(1) The insurable value of the goods shall be deemed to be the common market value and, for lack of that value, the common value of the goods at the place of shipping at the commencement of the insurance, plus insurance costs, costs arising up until the time when the transporter takes receipt of the goods and the final amount of freightage paid.

(2) The value determined in accordance with subsection (1) shall also be deemed to be the insurable value upon occurrence of the insured event.

(3) Where goods are damaged upon arrival at their place of delivery, their value at that place in their damaged state shall be deducted from the value which they would have at that place in an undamaged state. The fraction of the insurable value corresponding to the ratio between the reduction in value and their value in their undamaged state shall be deemed to be the amount of damage.

**Section 137 Causing an insured event**

(1) The insurer shall not be obligated to effect payment if the policyholder causes the insured event intentionally or by acting with gross negligence.



(2) The policyholder shall not be responsible for the conduct of the ship's crew when navigating the ship.

### **Section 138 Exclusion of liability for ships**

In the case of insurance of a ship, the insurer shall not be obligated to pay compensation for loss arising on account of the fact that the ship was not in a fit state to sail or not sufficiently equipped or not sufficiently manned when it set sail. This provision shall also apply to loss only arising as a result of the wear and tear onboard a ship in normal use.

### **Section 139 Sale of the insured object or goods**

(1) In the case of the sale of an insured object for which an individual policy or a certificate of insurance has been issued, the buyer shall, notwithstanding section 95, not be liable to pay the premium. The insurer may not refer to his not being obligated to effect payment against the buyer on account of non-payment of the insurance premium or on account of the non-payment of a security, unless the buyer knew the grounds for the non-obligation to effect payment or should have known thereof.

(2) Notwithstanding section 96, the insurer shall not be entitled to terminate the contract on account of the sale of the insured goods.

(3) Notwithstanding section 97, the policyholder shall not be obligated to notify the insurer of the sale.

### **Section 140 Sale of the insured ship**

In the case of the sale of an insured ship, the insurance shall end, notwithstanding section 95, when the ship is transferred to the buyer, in the case of ships en route when the ship is transferred to the buyer at the port of destination.

### **Section 141 Release following payment of the sum insured**

(1) After the occurrence of the insured event, the insurer shall be entitled to release himself from all further liabilities by paying the sum insured. The insurer shall remain liable to reimburse those expenses which arose in loss avoidance or minimisation or to replace or repair the insured object before the policyholder received his declaration of intent to release himself by paying the sum insured.

(2) The right of the insurer to release himself by paying the sum insured shall lapse if the policyholder does not receive the declaration within one week after the time when the insurer learned of the occurrence of the insured event and of its immediate consequences.

## **Chapter 4 Building fire insurance**

### **Section 142 Disclosures to mortgage creditors**

(1) In the case of building fire insurance, the insurer must disclose, in writing and without undue delay, to a mortgage creditor who has declared his mortgage in the event that the single or first premium is not paid in good time or the policyholder is given a deadline by when he must pay a subsequent premium. This shall also apply if the insurance agreement is terminated once the deadline expires on account of the non-payment of the subsequent premium.

(2) The insurer shall inform a mortgage creditor who has declared his mortgage in writing of the occurrence of the insured event within one week after he has learned thereof, unless the loss or damage is immaterial.

### **Section 143 Continuation of liability towards mortgage creditors**

(1) In the event of a subsequent premium not being paid in good time, the insurer shall remain obligated to effect payment to a mortgage creditor who has declared his mortgage up until one month after the time when the mortgage creditor was informed of the setting of the deadline for payment or, if this information was not communicated, notification has been given of the termination of the contract.

(2) The termination of the insurance agreement shall not become effective against a mortgage creditor who has declared his mortgage until two months after the time when the insurer informed him of the termination and, insofar as this had not occurred, such time as the contract was terminated or he learned thereof in another manner. The first sentence shall not apply if the insurance agreement is terminated on account of the non-payment of the insurance premium by means of the insurer's rescission or termination of the contract or the policyholder's termination of the contract to which the mortgage creditor agreed.

(3) Subsection (2), first sentence, shall apply mutatis mutandis to the effectiveness of an agreement between the insurer and the policyholder on account of which the scope of the insurance cover is reduced or in accordance with which the insurer is only obligated to effect payment in respect of compensation to restore the insured building.

(4) The nullity of the contract of insurance cannot be asserted against a mortgage creditor who has declared his mortgage. However, the insurance agreement against him shall expire two months after the time when he has been informed of the nullity by the insurer or he has learned of the nullity by another means.

### **Section 144 Termination of the contract by the policyholder**

Where a mortgage creditor has declared his mortgage, a termination of the insurance agreement by the policyholder shall, notwithstanding section 92 (1) and section 96 (2), only be effective if the policyholder has provided proof no less than one month before the end of the contract of insurance that at the time when the termination was permissible at the latest there was no mortgage on the property or that the mortgage creditor had agreed to the

contract being terminated. The agreement may not be refused without sufficient grounds.

#### **Section 145 Assignment of the mortgage**

Insofar as the insurer satisfies the mortgage creditor in accordance with section 143, the mortgage shall be assigned to him. The assignment may not be asserted to the detriment of an equal or subordinate mortgage creditor towards whom the insurer remained liable.

#### **Section 146 Duty of the insurer to provide confirmation and disclose information**

The insurer shall be obligated to provide confirmation of declaration to a mortgage creditor who has declared his mortgage and, upon request, to disclose information regarding the existence of insurance cover and regarding the amount of the sum insured.

#### **Section 147 Change of mortgage creditor's address and name**

If the mortgage creditor has not disclosed a change in his address or name to the insurer, section 13 (1) shall apply mutatis mutandis to the insurer's notifications and communications in accordance with section 142 and section 143.

#### **Section 148 Other charges on real property**

If land charges, annuity rent charges and other charges on land have been taken out on the real property, sections 142 to 147 shall apply mutatis mutandis.

#### **Section 149 Owner's charges on real property**

The rights under sections 142 to 148 may not be asserted to the advantage of mortgages, land charges or annuity rent charges to which the policyholder is entitled.

### **Chapter 5 Life insurance**

#### **Section 150 Insured person**

(1) Life insurance may be taken out for the policyholder or for another person.

(2) Where the life insurance is taken out against the death of another person and the agreed benefit exceeds normal funeral costs, the written agreement of the other person shall be necessary for the contract to be effective; this shall not apply in the case of collective life insurances in company pension schemes. If the other person has no legal capacity to act or only limited capacity to act, or if a custodian has been appointed and the policyholder is entitled to represent that person's interests, he may not represent the other person when giving his consent thereto.

(3) If one parent takes out the insurance for an under-age child, the child's consent shall only be required if in accordance with the contract the insurer is to be liable even in the event of the child dying before reaching the age of seven and the benefit agreed for this event exceeds normal funeral costs.

(4) Insofar as the supervisory body has determined a specific maximum amount for normal funeral costs, this amount shall prevail.

### **Section 151 Medical examination**

Agreeing that the insured person shall undergo a medical examination shall not establish the insurer's right to conduct that examination.

### **Section 152 Revocation by the policyholder**

(1) Notwithstanding section 8 (1), first sentence, the time limit on revocation shall be 30 days.

(2) Notwithstanding section 9, first sentence, the insurer shall also pay the surrender value, plus surplus sharing, in accordance with section 169. In the case of section 9, second sentence, the insurer shall reimburse the surrender value, plus surplus sharing, or, if this is more favourable for the policyholder, the insurance premiums paid for the first year.

(3) Notwithstanding section 33 (1), the single or first premium shall be payable without undue delay 30 days after receipt of the insurance policy.

### **Section 153 Surplus sharing**

(1) The policyholder shall be entitled to a share of the profit and valuation reserves (surplus sharing), unless surplus sharing is ruled out by explicit agreement; surplus sharing may only be wholly ruled out.

(2) The insurer shall apply a causation-based procedure to the surplus sharing; other comparable, suitable principles of distribution may be agreed. The amounts within the meaning of section 268 (8) of the Commercial Code shall not be taken into account.

(3) The insurer shall determine the valuation reserves annually and assign them by calculation according to a causation-oriented procedure. When the contract expires the amount to be determined for that point in time shall be halved and half paid to the policyholder; earlier payment may be agreed. Supervisory regulations regarding capital resources shall remain unaffected.

(4) In the case of pension insurances, the end of the savings accumulation period shall be the relevant time point in accordance with subsection (3), second sentence.

### **Section 154 Model calculation**

(1) If the insurer quotes in figures the amount of the possible benefits over and above the contractually guaranteed payments in connection with the offer or the conclusion of a life insurance, he shall be obligated to provide the policyholder with a model calculation which states the possible maturity benefit based on the actuarial principles for premium calculation with three

different rates of interest. This provision shall not apply to risk insurances and contracts which provide for benefits of the type described in section 54b (1) and (2) of the Insurance Supervision Act.

(2) The insurer shall clearly and comprehensibly indicate to the policyholder that the model calculation only represents a model based on fictitious assumptions and that the policyholder cannot derive any contractual claims against the insurer from the model calculation.

### **Section 155 Annual information**

In the case of insurances with surplus sharing, the insurer shall inform the policyholder annually in writing of the development of his claims, including surplus sharing. Further, the insurer, if he has provided figures regarding the possible future progression of the surplus sharing, must indicate to the policyholder how the actual development deviates from the figures quoted initially.

### **Section 156 Knowledge and conduct of the insured person**

Insofar as the knowledge and conduct of the policyholder is of any legal significance under this Act, in the case of insurance taken out for another person, account shall also be taken of that other person's knowledge and conduct.

### **Section 157 Declaring incorrect age**

Where the insured person's age has been declared incorrectly, the insurer's liability shall change in the proportion that the insurance premium commensurate with his actual age bears to the agreed insurance premium. The insurer shall, notwithstanding section 19 (2), only have the right to withdraw from the contract on account of the breach of the duty of disclosure if he would not have concluded the contract had the age been declared correctly.

### **Section 158 Change in risk**

(1) An aggravation of the risk insured shall only be deemed to be such change in the risk factors deemed to constitute an aggravation of the risk insured by explicit agreement; the agreement must be made in writing.

(2) An insurer may no longer assert an aggravation of the risk insured once five years have elapsed since the increase. If the policyholder has intentionally or fraudulently breached his obligation under section 23, this time limit shall be ten years.

(3) Section 41 shall apply with the proviso that a reduction of the premium may only be demanded on account of such a reduction of risk factors deemed to be so by explicit agreement.

### **Section 159 Appointment of beneficiary**

(1) In cases of doubt, the policyholder shall be entitled, without the consent of the insurer, to appoint a third party as beneficiary and to replace the thus appointed third party with the name of another.

(2) A third party beneficiary by revocable designation shall not acquire the right to payment of the insurer's benefit until the insured event occurs.

(3) A third party beneficiary by irrevocable designation shall acquire the right to payment of the insurer's benefit at the time when he is designated as beneficiary.

### **Section 160 Interpretation of the appointment of beneficiary**

(1) If several persons are appointed as beneficiaries without determining their shares, they shall be entitled to benefit in equal share. The share not acquired by any one beneficiary shall accrue to the remaining beneficiaries.

(2) If the insurer's benefit is to be paid to the policyholder's heirs upon his death, in cases of doubt those appointed as heirs upon his death shall be entitled to benefit in relation to their shares in the inheritance. A waiving of the right to the inheritance shall have no influence on the entitlement.

(3) Where the right to the insurer's benefit is not acquired by the third party beneficiary, it shall be due to the policyholder.

(4) Where the tax authorities are appointed as heir, they shall not be entitled to benefit within the meaning of subsection (2), first sentence.

### **Section 161 Suicide**

(1) In the case of a whole life insurance, the insurer shall not be obligated to effect payment if the insured person intentionally commits suicide before three years have elapsed since the conclusion of the contract of insurance. This shall not apply if the act was committed while a person was in a state of morbid disturbance of mind precluding their ability to freely determine their intent.

(2) The time limit under subsection (1), first sentence, may be increased by individual agreement.

(3) Where the insurer is not obligated to effect payment, he must pay the surrender value plus surplus sharing in accordance with section 169.

### **Section 162 Killing by the beneficiary**

(1) If the insurance has been taken out against the death of a person other than the policyholder, the insurer shall not be obligated to effect payment if the policyholder intentionally causes the death of the other by an unlawful act.

(2) If a third party has been appointed beneficiary, the appointment shall be deemed not to have occurred if the third party intentionally causes the death of the insured person by an unlawful act.

### **Section 163 Change in premium and benefits payable**

(1) The insurer shall be entitled to re-determine the agreed premium if

1. the need for benefits has changed not only temporarily and unforeseeably in respect of the bases for calculating the agreed premium,
2. the re-determined premium is appropriate and necessary in accordance with the amended bases of calculation in order to guarantee the continuous satisfiability of the insurance benefit, and
3. an independent trustee has examined and confirmed the bases of calculation and the conditions under nos. 1 and 2.

Any re-determination of the premium shall be ruled out insofar as the insurance benefits payable at the time of the first and renewed determination were insufficiently calculated and a prudent and conscientious actuary should have recognised that fact in particular based on the statistical bases of calculation available at that point in time.

(2) The policyholder may request that instead of an increase in the premium in accordance with subsection (1), the insurance benefit be reduced accordingly. In the case of an insurance free of premium (fully paid-up insurance), the insurer shall be entitled to reduce the insurance benefit under the conditions set out in subsection (1).

(3) The re-determination of the insurance premium and the reduction of the insurance benefit shall become effective at the start of the second month after the policyholder has been informed about the re-determination or the reduction and the relevant reasons.

(4) The trustee shall not become involved in accordance with subsection (1), first sentence, no. 3 if the re-determination or the reduction of the insurance benefit requires the authorisation of the supervisory body.

#### **Section 164 Adjustment of the terms**

(1) If a provision of the insurer's general terms and conditions of insurance has been declared void by a decision of one of the highest courts or by a final administrative act, the insurer may replace it with a new rule if this is necessary to continue the contract or if continuing the contract without the new rule would represent undue hardship for either party, even taking into account the interests of the other party. The new rule shall only be effective if it takes appropriate account of the concerns of the policyholder and is in keeping with the objective of the contract.

(2) The new rule in accordance with subsection (1) shall become an integral part of the contract two weeks after the policyholder has been informed of the new rule and of the relevant grounds.

#### **Section 165 Fully paid-up insurance**

(1) The policyholder may, at any time from the end of the current period of insurance, demand that the insurance be converted into a fully paid-up insurance, insofar as the agreed minimum insurance cover is achieved. If that is not the case, the insurer must pay the applicable surrender value plus surplus sharing in accordance with section 169.

(2) Fully paid-up insurance benefits shall be calculated in accordance with the accepted actuarial rules using the bases for calculating the insurance premium based on the surrender value in accordance with section 169 (3) to (5) and shall be quoted in the contract for each insurance year.

(3) Fully paid-up insurance benefits shall be calculated for the end of the current period of insurance, taking into account any premium payments in arrears. The policyholder's claims arising from surplus sharing shall remain unaffected.

### **Section 166 Termination of the contract by the insurer**

(1) If the insurer terminates the contract of insurance, the insurance shall be converted into a fully paid-up insurance upon termination. Section 165 shall apply to the conversion.

(2) In the case of section 38 (2), the insurer shall be liable to that extent to which he would have been liable if the insurance had been converted into a fully paid-up insurance upon occurrence of the insured event.

(3) When setting a deadline for payment in accordance with section 38 (1), the insurer must indicate that the insurance is being converted.

(4) In the case of a life insurance concluded by the employer for the benefit of this employees, the insurer shall inform the insured person in writing of the setting of the payment deadline in accordance with section 38 (1) and of the fact that the insurance is being converted, and he shall grant to them a payment period of no less than two months.

### **Section 167 Conversion to qualify for exemption from attachment**

The life insurance policyholder may at any time demand that the insurance be converted, to the end of the current period of insurance, into an insurance which meets the requirements of section 851c (1) of the Code of Civil Procedure. The costs of the conversion shall be borne by the policyholder.

### **Section 168 Termination of the contract by the policyholder**

(1) Where continuous insurance premiums are payable, the policyholder may terminate the insurance policy at any time to the end of the current period of insurance.

(2) If an insurance covers a risk for which the insurer is certain to be liable, the policyholder's right to terminate the contract shall also apply if the premium consists of a single payment.

(3) Subsections (1) and (2) shall not apply to a contract of insurance which is to serve as retirement provisions in which the policyholder has reached agreement with the insurer that the policy cannot be cashed in before he reaches the age of retirement; the value of the claims which may not be cashed in at such time may not exceed the amounts set out in section 12 (2) no. 3 of Social Code Book II. The same applies mutatis mutandis insofar as the claims in accordance with section 851c or 851d of the Code of Civil Procedure may not be attached.



### **Section 169 Surrender value**

- (1) If an insurance offers insurance cover for a risk for which the insurer is certain to be liable and the insurance agreement is rescinded because the policyholder terminates the contract or because the insurer rescinds or avoids the policy, the insurer shall pay the surrender value.
- (2) The surrender value shall only be paid insofar as this value does not exceed the payment made upon occurrence of the insured event when the contract is terminated. The share of the surrender value not paid after that time shall be used for the fully paid-up insurance. In the case of rescission or avoidance of the contract the full surrender value shall be paid.
- (3) The surrender value is the insurance's premium reserve calculated with effect to the end of the current insurance period according to the accepted actuarial rules using the bases of premium calculation, in the case of the termination of the insurance agreement the amount of the premium reserve resulting from a symmetrical allocation of the calculated acquisition and distribution costs for the first five insurance years; the regulations stipulated by the supervisory authorities in respect of maximum zillmerising rates shall remain unaffected. The policyholder is to be informed of the surrender value and the extent to which it is guaranteed before he submits his contractual acceptance; the statutory ordinance referred to in section 7 (2) specifies further particulars. If the insurer's headquarters are located in another Member State of the European Union or in another state party to the Agreement on the European Economic Area, he may base his calculation of the surrender value on another reference value comparable in that state rather than on the premium reserve.
- (4) In the case of fund-based insurances and other insurances which provide for benefits of the type described in section 54b of the Insurance Supervision Act, the surrender value shall be calculated based on the accepted actuarial rules as an end value of the insurance, insofar as the insurer does not guarantee payment of a certain benefit; subsection (3) shall apply in other respects. The principles on which the calculation is based shall be cited in the contract.
- (5) The insurer shall only be entitled to deduct the amount calculated in accordance with subsection (3) or (4) if it has been agreed, put in figures and is appropriate. An agreement regarding a deduction for as yet unsettled acquisition and distribution costs shall be void.
- (6) The insurer may reduce the amount calculated in accordance with subsection (3) by an appropriate amount insofar as this is necessary to rule out a risk to the policyholder's concerns, especially a risk to the continuous satisfiability of the obligations arising from the contracts of insurance. The reduction shall be limited to one year in each instance.
- (7) In addition to the amount calculated on the basis of subsections (3) to (6), the insurer shall pay the policyholder the surplus sharing already assigned to him, insofar as this has not already been added to the amount calculated in

accordance with subsections (3) to (6), as well as the final surplus sharing provided for in accordance with the relevant general terms and conditions of insurance in the event of the termination of the contract; section 153 (3), second sentence, shall remain unaffected.

### **Section 170 Right of subrogation**

(1) If attachment is executed on the insurance claim or compulsory execution has been carried out or insolvency proceedings are opened against the assets of the policyholder, the designated beneficiary may, with the consent of the policyholder, subrogate to the contract of insurance. Where the beneficiary subrogates, he must satisfy the demands of the creditor initiating the proceedings or of the insolvency estate up to the amount of the payment which the policyholder could demand from the insurer in the event of the termination of the contract of insurance.

(2) Where no beneficiary is designated or named, the policyholder's spouse or life partner or children shall be entitled to the same right.

(3) The subrogation is effected by giving notice thereof to the insurer. The notification may only be made within one month after the time when the person entitled to subrogate learns of the attachment or after the insolvency proceedings have been opened.

### **Section 171 Deviating agreements**

Agreements deviating from section 152 (1), (2) and sections 153 to 155, sections 157, 158, 161 and sections 163 to 170 to the detriment of the policyholder, the insured person or the person entitled to subrogation shall not be permitted. Agreement may be reached to the effect that the policyholder's request for conversion in accordance with section 165 and his termination of the contract in accordance with section 168 must be made in writing.

## **Chapter 6 Occupational disability insurance**

### **Section 172 Insurer's liability**

(1) In the case of occupational disability insurance, the insurer shall be liable to pay the agreed benefits for any occupational disability arising after the commencement of the insurance.

(2) 'Occupational disability' shall refer to anyone who, in consequence of sickness, physical injury or loss of strength over and above what is normal for their age, can probably no longer wholly or partially exercise their most recently exercised profession in the long run to the same extent as when they had no health impairments.

(3) The insurer may agree as a further precondition for his liability that the insured person does not or cannot exercise another profession which he is in a position to take on based on his training and skills and which corresponds to his previous position in life.

**Section 173 Acknowledgement**

- (1) After a claim has been filed, the insurer shall declare in writing when due whether he acknowledges his obligation to effect payment.
- (2) The acknowledgement may only be time-barred once. It shall be binding up to the end of the time limit.

**Section 174 Release from liability**

- (1) Where the insurer establishes that the preconditions for his liability are no longer met, he shall only be released from his liability if he has indicated this change to the policyholder in writing.
- (2) The insurer shall only be released from liability three months after receipt of the declaration under subsection (1) at the earliest.

**Section 175 Deviating agreements**

Agreements deviating from section 173 and section 174 to the detriment of the policyholder shall not be permitted.

**Section 176 Applicable provisions**

Sections 150 to 170 shall apply mutatis mutandis to occupational disability insurance insofar as this does not conflict with the specific nature of this insurance.

**Section 177 Similar contracts of insurance**

- (1) Sections 173 to 176 shall apply mutatis mutandis to all contracts of insurance in which the insurer promises to pay claims arising on account of a permanent impairment of the policyholder's capacity to work.
- (2) Subsection (1) shall not apply to accident insurance nor to health insurance contracts whose subject matter is the risk of an impairment of the policyholder's capacity to work.

**Chapter 7 Accident insurance****Section 178 Insurer's liability**

- (1) In the case of accident insurance, the insurer shall be liable following an accident involving the insured person or an event contractually deemed equivalent to an accident.
- (2) An accident shall be deemed to have occurred where the insured person involuntarily suffers a health impairment on account of a sudden event having an external impact on his body. Involuntariness shall be assumed until such time as the opposite is proven.

**Section 179 Insured person**

- (1) The accident insurance may be taken out against the occurrence of an accident involving the policyholder or another person. An insurance against

accidents involving another person shall, in cases of doubt, be deemed to have been taken out for the account of a third person.

(2) If the insurance against accidents involving another person is taken out by the policyholder for his own account, the written agreement of the other person shall be required for the contract to become effective. If the other person has no legal capacity to act or only limited legal capacity to act, or a custodian has been appointed to him and the policyholder is entitled to represent the person's interests, he may not represent the other person when giving his consent thereto.

(3) Insofar as in the case under subsection (2) the knowledge and conduct of the policyholder is of legal significance under this Act, account shall also be taken of the knowledge and conduct of the other person.

### **Section 180 Invalidity**

The insurer shall owe the promised payments to the agreed extent in the case of invalidity if the insured person's physical or mental capacity is permanently impaired on account of the accident. Such an impairment shall be deemed permanent if it is expected to last for more than three years and no change in the situation is to be expected.

### **Section 181 Aggravation of risk**

(1) An aggravation of the risk insured shall only be deemed to be such change in the circumstances which is to be classed as an aggravation of the risk insured by explicit agreement; the agreement must be made in writing.

(2) If, in the event of an aggravation of risk insured, lower insurance benefits are payable in accordance with the insurer's applicable tariff if the premium does not change, these shall be deemed to have been agreed one month after the aggravation of the risk insured begins. The insurer may only assert more comprehensive rights if the policyholder fraudulently did not disclose the aggravation of the risk insured.

### **Section 182 Contributory causes**

Where it has been agreed that the right to the agreed payment lapses or is reduced if illness or ailments have contributed to the health impairments or their consequences following an insured event, the insurer shall provide proof that the conditions for the lapse or reduction of the claim exist.

### **Section 183 Causing the insured event**

(1) The insurer shall not be liable if in the case of section 179 (2) the policyholder intentionally caused the insured event through an unlawful act.

(2) If a third party has been designated as a beneficiary, the appointment shall be deemed not to have occurred if the third party intentionally caused the insured event through an unlawful act.

### **Section 184 Loss avoidance and minimisation**

Section 82 and section 83 shall not apply to accident insurance.

### **Section 185 Appointment of beneficiary**

Where it has been agreed that the insurer is to pay out a capital sum, section 159 and section 160 shall apply mutatis mutandis.

### **Section 186 Insurer's duty to provide information**

If the policyholder gives notice of the occurrence of an insured event, the insurer shall provide him with information in writing regarding the contractual preconditions for a claim and due dates, as well as deadlines which must be adhered to. Should this information not be provided, the insurer may not refer to any failure to meet a deadline.

### **Section 187 Acknowledgement**

(1) After an application for a claim has been filed, the insurer shall declare in writing within one month after submission of the documents necessary for its assessment whether and to what extent he acknowledges his liability. If the application is for payment of an invalidity benefit, the time limit shall be three months.

(2) If the insurer acknowledges the claim or the policyholder and insurer have agreed the reason for and the amount of the claim, the payment shall be due within two weeks. If the liability has been established on the merits only, the insurer shall pay an appropriate advance upon the policyholder's request.

### **Section 188 Re-assessment of invalidity**

(1) Where the payment of benefits has been agreed in the event of invalidity, each contracting party shall be entitled to have the degree of invalidity re-assessed annually, no more than three years after the accident occurred at the latest. In the case of child accident insurance, the time limit within which a re-assessment may be requested may be extended.

(2) Once the insurer declares that he is liable, the policyholder must be instructed about his right to have the degree of invalidity re-assessed. If such instruction is not given, the insurer may not refer to any delay in the policyholder's request to have the degree of invalidity re-assessed.

### **Section 189 Drawing on an expert, costs of ascertaining the loss**

Section 84 and section 85 (1) and (3) shall apply mutatis mutandis.

### **Section 190 Compulsory insurance**

If the taking out of accident insurance is compulsory under a legal provision, the insurer shall certify to the policyholder, quoting the sum insured, that an accident insurance exists in accordance with the legal provision, to which reference must be made.

### **Section 191 Deviating agreements**

Agreements deviating from section 178 (2), second sentence, and section 181, as well as sections 186 to 188 to the detriment of the policyholder or the insured person shall not be permitted.

## **Chapter 8 Health insurance**

### **Section 192 Typical obligations incumbent on the insurer**

(1) In the case of cost-of-illness insurance, the insurer shall be obligated to reimburse any expenses for medically necessary treatment due to sickness or in consequence of an accident and for other agreed services to the agreed extent, including those expenses associated with pregnancy and childbirth, as well as outpatient medical check-ups for the early diagnosis of diseases in accordance with statutory programmes.

(2) The insurer shall not be liable to pay claims in accordance with subsection (1) insofar as the expenses for treatment or other services are obviously disproportionate to the services performed.

(3) The contracting parties may agree that the content of the cost-of-illness contract of insurance covers additional services directly linked to those referred to in subsection (1), especially

1. the providing of advice regarding the services referred to in subsection (1), as well as regarding the providers of such services;
2. the providing of advice regarding the entitlement to remuneration of those providing the services referred to in subsection (1);
3. the avoidance of unauthorised entitlements to remuneration of those providing the services referred to in subsection (1);
4. the providing of support to insured persons when asserting claims on account of the incorrect provision of the services referred to in subsection (1) and the consequences resulting therefrom;
5. the direct settling of accounts for services referred to in subsection (1) with the providers thereof.

(4) In the case of daily hospital allowance insurance, the insurer shall be obligated to pay the agreed daily hospital allowance for medically necessary inpatient treatment.

(5) In the case of daily sickness allowance insurance, the insurer shall be obligated to reimburse the loss of earnings resulting from the illness or accident due to the incapacity to work by paying the agreed daily sickness allowance.

(6) In the case of long-term nursing care insurance, the insurer shall be obligated, in the event of the need for long-term nursing care, to reimburse to the agreed extent the expenses for caring for the insured person (long-term nursing care costs insurance) or to pay the agreed daily allowance (daily long-term nursing allowance insurance). Subsection (2) shall apply mutatis mutandis to long-term nursing care costs insurance. The provisions of Social Code Book XI concerning private long-term nursing care insurance shall remain unaffected.

(7) In the case of cost-of-illness insurance in the basic tariff in accordance with section 12 of the Insurance Supervision Act, the service-provider may also assert his claim to remuneration for services provided against the insurer insofar as the insurer is obligated by the insurance agreement to effect payment. The insurer and the policyholder shall be liable as joint and several debtors as concerns the obligation incumbent on the insurer to effect payment emanating from the insurance agreement.

### **Section 193 Insured person; obligatory insurance**

(1) The health insurance may be taken out for the policyholder or for another person. The insured person shall be that person for whom the insurance is taken out.

(2) Where the knowledge and the conduct of the policyholder are of legal significance under this Act, in the case of insurance for another person, account shall also be taken of the knowledge and conduct of that person.

(3) Each person with a place of residence in Germany shall be obligated to conclude and maintain with an insurance company licensed to operate in Germany for himself and for the persons legally represented by him, insofar as they are not themselves able to conclude contracts, a cost-of-illness insurance which comprises at least a cost refund for outpatient and inpatient treatment and in which the absolute and percentage excesses for outpatient and inpatient treatment which have been agreed for services covered by the respective tariff for each person to be insured are limited to an amount of Euro 5,000 per calendar year; for persons entitled to medical expenses assistance, the possible excesses emerge through the analogous application of the percentage not covered by the rate of medical expenses assistance to the maximum amount of Euro 5,000. The obligation in accordance with the first sentence shall not apply to persons who

1. are insured or subject to obligatory insurance in statutory health insurance, or
2. have a right to free treatment, to medical expenses assistance or to comparable rights to the extent of the respective entitlement, or
3. have a right to benefits in accordance with section 2 of the Asylum-Seekers Benefits Act, or
4. are recipients of recurrent benefits in accordance with the Third, Fourth, Sixth, and Seventh Chapters of Social Code Book XII for the duration of the receipt of such benefits and during periods of an interruption of the receipt of benefits of less than one month if the receipt of benefits commenced prior to 1 January 2009.

A cost-of-illness insurance contract agreed prior to 1 April 2007 shall be deemed to meet the requirements of the first sentence.

(4) If conclusion of contract is applied for later than one month after emergence of the obligation in accordance with subsection (3), first sentence, a premium supplement shall be payable. This shall be one month's contribution for each further month of non-insurance commenced, from the

sixth month of non-insurance one-sixth of a month's contribution for each further month of non-insurance commenced. If it is impossible to ascertain the duration of non-insurance, it shall be presumed that the insured party was not insured for at least five years. The premium supplement shall be payable once in addition to the recurrent premium. The policyholder may demand respite from the insurer in respect of the premium supplement if immediate payment would have an unusually serious effect on him and the insurer's interests can be satisfied by agreeing an appropriate payment by instalments. Interest shall be applied to the amount to which the respite relates.

(5) The insurer shall be obligated to grant insurance in the basic tariff in accordance with section 12 (1a) of the Insurance Supervision Act

1. to all persons voluntarily insured in statutory health insurance
  - a) within six months after the introduction of the basic tariff,
  - b) within six months of commencement of the possibility to change envisioned in Social Code Book V in the context of their voluntary insurance agreement,
2. to all persons with a place of residence in Germany who are not subject to obligatory insurance in statutory health insurance, do not belong to the group of individuals in accordance with no. 1 or subsection (3), second sentence, nos. 3 and 4, and have not already agreed private cost-of-illness insurance with an insurance company licensed to operate in Germany satisfying the obligation in accordance with subsection (3),
3. to persons who are entitled to medical expenses assistance or who have comparable entitlements, insofar as they require supplementary insurance protection to meet the obligation in accordance with subsection (3), first sentence,
4. to all persons with a place of residence in Germany who have agreed private cost-of-illness insurance within the meaning of subsection (3) with an insurance company licensed to operate in Germany and whose contract is concluded subsequent to 31 December 2008.

If the private cost-of-illness insurance contract was concluded prior to 1 January 2009, on change or termination of the contract, the conclusion of a contract in the basic tariff can be demanded with the policyholder's own or with another insurance company, old age reserves being carried forward in accordance with section 204 (1) only until 30 June 2009. The application must already be accepted if in case of termination of a contract with another insurer termination in accordance with section 205 (1), first sentence, did not yet take effect. The application may only be rejected if the applicant was already insured by the insurer and the insurer

1. has contested the contract of insurance because of threat or fraudulent misrepresentation,

or



2. has rescinded the contract of insurance because of an intentional breach of the obligation to provide information prior to conclusion of contract.

(6) If the policyholder is in arrears in respect of an insurance satisfying the obligation in accordance with subsection (3) with payment in the amount of premium shares for two months, the insurer shall issue him with a reminder. If after two weeks after receipt of the reprimand the arrears are still higher than the premium share for one month, the insurer shall determine suspension of the benefits. Suspension shall come into effect three days after receipt of this notification by the insured party. This shall be conditional on the policyholder having been informed of this consequence in the reprimand in accordance with the first sentence. Suspension shall be terminated when all and any arrears and premium shares incurred for the time of suspension have been paid or if the policyholder or the insured person become in need of assistance within the meaning of Social Code Books II or XII; need of assistance shall be certified on request of the entitled person by the competent funding organisation in accordance with Social Code Books II or XII. During the period of suspension, the insurer shall be liable exclusively for expenses necessary to treat acute illness and pain, as well as in case of pregnancy and maternity. The insurer may note information regarding the suspension of the entitlement on an electronic health card in accordance with section 291a (1a) of Social Code Book V. Over and above this, the policyholder shall pay a late payment charge of one percent of the contribution arrears for each month of arrears commenced in place of interest on arrears. If the outstanding contribution shares, late payment charges and collection costs have not been paid in full within one year of commencement of suspension, insurance in the basic tariff shall be continued. The sixth sentence shall remain unaffected.

(7) In case of insurance in the basic tariff in accordance with section 12 of the Insurance Supervision Act, the insurance company may demand additional insurances to be suspended if and for as long as an insured person is dependent on halving the contribution in accordance with section 12 (1c) of the Insurance Supervision Act.

### **Section 194 Applicable provisions**

(1) Insofar as the insurance cover is granted in accordance with the principles of indemnity insurance, sections 74 to 80 and sections 82 to 87 shall apply. Sections 23 to 27 and section 29 shall not apply to health insurance. Section 19 (4) shall not apply to health insurance if the policyholder is not responsible for the breach of the duty of disclosure. Notwithstanding section 21 (3), first sentence, the time limit for asserting the insurer's rights shall be three years.

(2) If the policyholder or an insured person is entitled to the repayment of remuneration paid without legal basis to the provider of services for which the

insurer has paid compensation on the basis of the contract of insurance, section 86 (1) and (2) shall apply mutatis mutandis.

(3) Sections 43 to 48 shall apply to health insurance with the proviso that only the insured person may demand payment of the insurance benefit if the policyholder has designated him in writing to the insurer as the beneficiary of the insurance benefit; such designation may be revocable or irrevocable. Where this condition is not met, only the policyholder may demand payment of the insurance benefit. The insurance policy need not be presented.

### **Section 195 Period of insurance**

(1) Health insurance which may wholly or partially substitute for health and long-term nursing care insurance cover provided for in the statutory social insurance system (substitutive health insurance) shall be for an indefinite period, unless subsections (2) and (3) and sections 196 to 199 provide otherwise. Where the non-substitutive health insurance cover is provided in the manner of life insurance, the first sentence shall apply mutatis mutandis.

(2) In the case of vocational training, overseas, travel and residual debt health insurance, a period of contract may be agreed.

(3) In the case of health insurance for a person with a temporary residence permit for Germany, agreement may be reached to the effect that the insurance will expire after five years at the latest. If a shorter term has been agreed, a similar new contract may only be concluded with a maximum term that does not exceed five years when added to the term of the expired contract; this shall also apply if the new contract is concluded with another insurer.

### **Section 196 Time limit on daily sickness allowance insurance**

(1) In the case of daily sickness allowance insurance, it may be agreed that the insurance expires when the insured person reaches the age of 65. The policyholder may in such cases demand that the insurer accept an application to take out a new daily sickness allowance to commence after he reaches the age of 65 and to expire when he reaches the age of 70 at the latest. The insurer shall notify the policyholder of this right in writing six months at the earliest before the insurance expires, enclosing the text of this provision. If the application is made before two months have elapsed after the policyholder reaches the age of 65, the insurer shall grant the insurance cover without risk assessment or qualifying periods insofar as the insurance cover is not higher or more comprehensive than under the previous tariff.

(2) If the insurer has not informed the policyholder that the insurance will expire in accordance with subsection (1), third sentence, and the application is made before the policyholder reaches the age of 66, subsection (1), fourth sentence, shall apply mutatis mutandis, whereby the insurance shall commence when the insurer receives the application. If the insured event has already occurred before the insurer receives the application, the insurer shall not be obligated to effect payment.

(3) Subsection (1), second and fourth sentences, shall apply mutatis mutandis if immediately after an insurance is taken out in accordance with subsection (1), fourth sentence, or subsection (2), first sentence, an application for a new daily sickness allowance insurance is made which expires when the policyholder reaches the age of 75 at the latest.

(4) The contracting parties may agree a later birthday than that set out in the subsections above.

### **Section 197 Qualifying periods**

(1) If qualifying periods are agreed, these may not exceed three months as general qualifying periods in respect of cost of illness, daily hospital allowance insurance and daily sickness allowance insurance and eight months as special qualifying periods in respect of childbirth, psychotherapy, dental treatment, dental prostheses and orthodontics. In the case of long-term nursing care insurance, the qualifying period may not exceed three years.

(2) As regards persons leaving the statutory health insurance system or who have left another contract relating to cost-of-illness insurance, account shall be taken of their uninterrupted period of insurance when calculating the qualifying period, insofar as the application for the insurance is made two months at the latest after the end of the previous insurance to commence immediately thereafter. This shall also apply to persons leaving the public sector with an entitlement to the health care allowance for public servants.

### **Section 198 Supplementary insurance for children**

(1) If at least one parent has health insurance cover on the day on which their child is born, the insurer shall be obligated to insure this person's new-born from the completion of the birth without a risk premiums and qualifying periods if the application for the insurance is made retroactively two months at the latest after the day on which the child was born. This obligation shall only exist insofar as the insurance cover applied for in respect of the new-born is not higher and not more comprehensive than that of the insured parent.

(2) Adoption shall be equivalent to the birth of a child insofar as the child is still under age at the time of the adoption. Where a greater risk exists, the agreement of a risk premium shall be permissible up to once the amount of the premium.

(3) A minimum period of insurance for the parent may be agreed as the precondition for the insurance cover for the new-born or the adopted child. This must not exceed three months.

(4) Subsections (1) to (3) shall not apply to overseas and travel health insurance insofar as other private or statutory health insurance cover is available in Germany or overseas for the new-born or for the adopted child.

### **Section 199 Public servants entitled to sickness allowance**

(1) In the case of cost-of-illness insurance of an insured person entitled to a sickness allowance in accordance with the principles of the public service, the contracting parties may agree that the insurance will expire to the extent of the increase of the allowance assessment rate when the insured person retires.

(2) If, in the case of an insured person entitled to a sickness allowance in accordance with the principles of the public service, the allowance assessment rate changes or the entitlement to a sickness allowance lapses, the policyholder shall be entitled to demand that the insurer adjust the insurance cover within the framework of the existing cost of illness insurance tariffs so as to balance out the amended allowance assessment rate or the discontinued entitlement to allowance. If the application is made within six months after the change, the insurer shall grant the amended insurance cover without a risk assessment or qualifying periods.

(3) Subsection (2) shall not apply to granting insurance at the basic tariff.

#### **Section 200 Prohibition of enrichment**

If the insured person has the right to assert a claim against several parties obligated to effect payment on account of the same insured event, the total compensation may not exceed the total expenses.

#### **Section 201 Causing an insured event**

The insurer shall not be obligated to effect payment if the policyholder or the insured person intentionally causes his own illness or his own accident.

#### **Section 202 Insurer's duty to provide information; costs of ascertaining the loss**

The insurer shall be obligated, at the request of the policyholder or of the insured person, to give a physician or lawyer designated by him any information about and the right to inspect expert opinions or statements which he has obtained in examining his liability in respect of the need for a medical treatment. The right to information may only be asserted by the person affected in each instance or by his legal representative. If the policyholder has obtained the expert opinion or the statement at the insurer's instigation, the insurer shall reimburse the costs arising.

#### **Section 203 Adjustment of premium and conditions**

(1) In the case of a health insurance where the premium is calculated in the manner of a life insurance, the insurer may only demand payment of a premium calculated in accordance with the technical bases of calculation under section 12, section 12a and section 12e in conjunction with section 12c of the Insurance Supervision Act. Other than with contracts in the basic tariff in accordance with section 12 of the Insurance Supervision Act, the insurer may agree an appropriate risk premium or release from obligation to effect payment, taking account of an aggravation of the risk insured. A risk

assessment shall only be permissible in the basic tariff insofar as it is necessary for purposes of equalisation in accordance with section 12g of the Insurance Supervision Act or for subsequent tariff changes.

(2) If, in the case of health insurance, the insurer's statutory right of termination is ruled out by law or contract, the insurer shall be entitled, in the event of a not only temporary change to one of the bases of calculation necessary for calculating the premium, to also re-determine the premium in accordance with the adjusted bases of calculation for existing insurance agreements insofar as an independent trustee has reviewed the technical bases of calculation and has agreed to the adjustment of the insurance premium. The amount of an excess may also be adjusted and an agreed risk premium amended accordingly insofar as this has been agreed. The relevant bases of calculation within the meaning of the first and second sentences shall be the insurance benefits and the probabilities of death. As regards the adjustment of insurance premiums, additional premiums and excesses, as well as their review and approval by the trustee, section 12b (1) to (2a) of the Insurance Supervision Act in conjunction with a statutory ordinance enacted on the basis of section 12c of the Insurance Supervision Act shall apply.

(3) If, in the case of health insurance, the insurer's statutory right of termination is ruled out by law or contract within the meaning of subsection (1), first sentence, the insurer shall be entitled to adjust the general terms and conditions of insurance and the conditions of the tariff to the new conditions in the case of a non-temporary change in the conditions in the health system if the changes appear necessary to sufficiently safeguard the policyholders' concerns and an independent trustee has reviewed the conditions on which the change is based and has confirmed their appropriateness.

(4) If a provision in the insurer's general terms and conditions of insurance has been declared void by a decision of one of the highest courts or by a final administrative act, section 164 shall apply.

(5) The re-assessment of the premium and the changes in accordance with subsections (2), (3) shall become effective from the start of the second month after the policyholder has been informed of the re-assessment or the changes and of the relevant grounds.

### **Section 204 Change of tariff**

(1) In the case of an existing insurance agreement, the policyholder may demand that the insurer

1. accept applications to change to other tariffs with equivalent insurance cover, taking into account the rights acquired under the contract and old age reserves; insofar as the benefits payable according to the tariff to which the policyholder wishes to change are higher or more comprehensive than those in the previous tariff, the insurer may demand to be released from obligation to effect payment for the additional benefit or may demand an appropriate risk premium and,

thus, a qualifying period; the policyholder may avoid the agreement of a risk premium and a qualifying period by agreeing release from obligation to effect payment in respect of the additional benefits; in case of a change from the basic tariff into another tariff, the insurer may also demand the risk premium which was calculated on conclusion of contract; the change to the basic tariff of the insurer allowing for the rights acquired from the contract and of the old age reserve shall only be possible if

- a) the existing cost-of-illness insurance was concluded subsequent to 1 January 2009, or
  - b) the policyholder has reached the age of 55 or has not yet reached the age of 55, but meets the prerequisites for a claim to a pension from the statutory pensions insurance and has applied for this pension or draws a pension in accordance with civil service law or comparable regulations, or is in need of assistance in accordance with Social Code Books II or XII, or
  - c) the existing cost-of-illness insurance was concluded subsequent to 1 January 2009 and the change into the basic tariff was applied for prior to 1 July 2009;
2. in case of termination of the contract and simultaneous conclusion of a new contract which can completely or partly replace the health insurance protection provided for in the statutory social insurance system, with another health insurer
- a) assign the calculated old age reserve of the part of the insurance the benefits of which correspond to the basic tariff to the new insurer insofar as the terminated cost-of-illness insurance was concluded subsequent to 1 January 2009;
  - b) in case of conclusion of a contract in the basic tariff assign the old age reserve calculated of the part of the insurance the benefits of which correspond to the basic tariff to the new insurer insofar as the terminated cost-of-illness insurance was concluded prior to 1 January 2009 and termination took place prior to 1 July 2009.

Insofar as the benefits according to the tariff from which the policyholder wishes to change are higher or more comprehensive than those in the basic tariff, the policyholder may require the previous insurer to agree an additional tariff in which the old age reserve extending beyond the basic tariff is to be accounted for. It shall not be possible to waive the entitlements in accordance with the first and second sentences.

(2) In the case of termination of the contract on private compulsory long-term care insurance and simultaneous conclusion of a new contract with another insurer, the policyholder may require the previous insurer to transfer the old age reserve as calculated for him to the new insurer. It shall not be possible to waive this entitlement.

(3) Subsection (1) shall not apply to time-limited insurance agreements.

(4) Insofar as the health insurance is calculated in the form of a life insurance, the policyholders and the insured person shall have the right to continue a terminated insurance contract in the form of a coverage-retention policy.

### **Section 205 Termination of the contract by the policyholder**

(1) Unless a minimum period of insurance has been agreed for the cost-of-illness and daily hospital allowance insurance, the policyholder may terminate a health insurance agreement which has been concluded for a period of more than one year to the end of the first year or each subsequent year, subject to a notice period of three months. The termination may be limited to individual insured persons or tariffs.

(2) If an insured person is obligated by operation of law to take out health or long-term nursing care insurance, the policyholder may terminate a cost-of-illness, daily sickness allowance insurance and long-term nursing care insurance as well as the prospective entitlement insurance which exists for these insurances retroactively within three months of the day on which the obligation to take out the insurance arose. The termination of the contract shall be void if the policyholder does not provide proof to the insurer within two months of the obligation to take out insurance after the insurer has asked him to do so in writing, unless the policyholder is not responsible for missing this deadline. If the policyholder avails himself of the right to terminate the contract, the insurer shall only be entitled to the premium up until that point in time. Subsequently, the policyholder may terminate the insurance agreement to the end of that month in which he provides proof of his obligation to take out the insurance. The statutory right to family insurance or the non-temporary right to a health care allowance for public servants resulting from a public service contract or similar employment status shall be equivalent to the obligation to take out insurance.

(3) If the contract of insurance provides that when the policyholder reaches a certain age or when other preconditions referred to therein are met the premium for another age or another age group applies or the premium is calculated taking old age reserves into account, the policyholder may terminate the insurance agreement with regard to the affected insured person within two months after the change with effect from the time it became effective if the premium increases as a result.

(4) If the insurer increases the insurance premium or reduces a benefit on account of an adjustment clause, the policyholder may terminate the insurance policy with regard to the affected insured person within one month after receipt of the communication of the change with effect from such time as the increase in the premium or the reduction of the benefits is to take effect.

(5) If the insurer has reserved the right to limit the termination of a contract to individual insured persons or tariffs and he avails himself of this possibility, the policyholder may demand that the remaining share of the insurance be

rescinded within two weeks after receipt of the termination to such time as the termination takes effect. The first sentence shall apply mutatis mutandis if the insurer declares the avoidance or rescission of the policy possible only for individual insured persons or tariffs. In such cases the policyholder may demand that the contract be rescinded to the end of the month in which he receives the insurer's declaration.

(6) Notwithstanding subsections (1) to (5), the policyholder may only terminate an insurance which complies with an obligation under section 193 (3), first sentence, if he concludes a new contract with another insurer for the insured person which complies with this obligation. Termination shall not become effective until the policy holder proves that the insured person is insured by a new insurer without interruption.

### **Section 206 Termination by the insurer**

(1) Any termination of a cost-of-illness insurance which complies with an obligation under section 193 (3), first sentence, shall be ruled out by the insurer. Over and above this, the insurer may not give statutory notice of termination on cost-of-illness, daily sickness allowance insurance and long-term nursing care insurance if the insurance can completely or partly replace the health insurance protection or long-term nursing care insurance provided for in the statutory social insurance system. It shall also be ruled out for daily hospital allowance insurance taken out alongside a full cost of illness insurance. Notwithstanding the second sentence, the insurer may terminate a daily sickness allowance insurance for which there is no statutory right to an allowance towards contributions from an employer to the end of each insured year in the first three years, subject to a notice period of three months.

(2) If, in the case of daily hospital allowance insurance or partial cost-of-illness insurance, the preconditions under subsection (1) are not met, the insurer may only terminate the insurance agreement to the end of the insurance year within the first three insurance years. The notice of termination shall be three months.

(3) Where a cost-of-illness insurance or a long-term nursing care insurance is effectively terminated by the insurer on account of delayed payment by the policyholder, the insured persons shall be entitled to declare that the insurance agreement will continue, and name the future policyholder; the premium shall be payable from such time as the insurance agreement continues. The insurer shall inform the insured persons in writing about the termination and the right under the first sentence. This right shall lapse two months after the time when the insured person learns of this right.

(4) The statutory notice of termination of a group contract of insurance which covers the risk of illness by the insurer shall be permissible if the insured persons can continue the health insurance taking into account the rights acquired under the contract and the old age reserve, insofar as it has been set aside, at the terms and conditions of the individual insurance. Subsection (3), second and third sentences, shall apply mutatis mutandis.



**Section 207 Continuation of the insurance agreement**

(1) If the insurance agreement ends upon the death of the policyholder, the insured persons shall be entitled to declare the continuation of the insurance agreement by appointing the future policyholder within two months following the death of the policyholder.

(2) If the policyholder terminates the insurance agreement overall or for individual insured persons, subsection (1) shall apply mutatis mutandis. The termination shall only be effective if the insured person has learned of the declaration of termination. If the terminated contract is a group contract of insurance and no new policyholder is designated, the insured persons shall be entitled to continue the insurance agreement taking account of the rights acquired under the contract and the old age reserves, insofar as they have been set aside, at the same terms and conditions as the individual contract. The right under the third sentence shall lapse two months after the time when the insured persons learn of this right.

(3) If an insured person moves his habitual place of residence to another Member State of the European Union or to another state party to the Agreement on the European Economic Area, the insurance agreement shall continue, with the proviso that the insurer shall only remain liable up to the maximum benefits which he would have to have paid were his place of residence still in Germany.

**Section 208 Deviating agreements**

Agreements deviating from sections 194 to 199 and sections 201 to 207 to the detriment of the policyholder or the insured person shall not be permitted. As regards the termination of the contract by the policyholder in accordance with section 205, the contracting parties may agree that this must be made in writing.

**Part 3 Concluding provisions****Section 209 Reinsurance, maritime insurance**

The provisions of this Act shall not apply to reinsurance and insurance against risks in shipping (maritime insurance).

**Section 210 Jumbo risks, open policy**

The restrictions on the freedom of contract under this Act shall not apply to those jumbo risks listed in Article 10 para. 1, second sentence, of the Introductory Act to the Insurance Contract Act nor to open policies.

**Section 211 Pension funds, small insurance associations, insurances with small contributions**

(1) Insofar as other provisions have been agreed in the general terms and conditions of insurance with the consent of the supervisory authority, sections 37, 38, 165, 166, 168 and 169 shall not apply to

1. insurances with pension funds within the meaning of section 118b (3) and (4) of the Insurance Supervision Act,
2. insurances taken out with an association recognised as a small association within the meaning of the Insurance Supervision Act,
3. life insurances with small contributions, and
4. accident insurances with small contributions.

(2) Further, the following shall not apply to pension funds referred to in subsection (1):

1. sections 6 to 9, 11, 150 (2) to (4) and section 152 (1) and (2); with regard to distance contracts within the meaning of section 312b (1) and (2) of the German Civil Code this shall not apply to sections 7 to 9 and section 152 (1) and (2);
2. section 153, insofar as other provisions have been agreed in the general terms and conditions of insurance with the consent of the supervisory authority; section 153 (3), first sentence, shall not apply to funds paying funeral benefits.

(3) Where other provisions have been agreed for insurances with small contributions within the meaning of subsection (1) nos. 3, 4, their effectiveness cannot be challenged by invoking the fact that they are not insurances with small contributions.

### **Section 212 Continuation of life insurance after parental leave**

If an employment relationship continues during parental leave without payment in accordance with section 1a (4) of the Company Pensions Act and a life insurance policy taken out by the employer for the benefit of the employee is converted into a fully paid-up insurance on account of the non-payment of insurance premiums due during parental leave, the employee may demand within three months of the end of parental leave that the insurance be continued at the terms and conditions agreed before the conversion.

### **Section 213 Acquiring personal health-related data from third parties**

(1) The insurer may only acquire personal health-related data from doctors, hospitals and other health institutions, care homes and nursing staff, other insurers of persons and statutory health insurers as well as social insurances for occupational accidents and public authorities; this shall only be permissible insofar as the knowledge of the data is necessary to assess the risk to be insured or the liability, and the affected person has given his consent.

(2) The consent required in accordance with subsection (1) may be given prior to the submission of the contractual acceptance. The affected person

shall be informed prior to the data referred to in subsection (1) being acquired; he may object to the data being acquired.

(3) The affected person may demand at any time that the data only be acquired if his consent has been given in each individual case.

(4) The affected person shall be notified of these rights and shall be notified of the right to object in accordance with subsection (2) when being instructed.

### **Section 214 Conciliation board**

(1) The Federal Ministry of Justice may, in consultation with the Federal Ministry of Finance, the Federal Ministry of Economics and Technology and the Federal Ministry of Food, Agriculture and Consumer Protection, authorise private-law institutions to act as conciliation boards for the extra-judicial settlement of disputes

1. in the case of contracts of insurance with consumers within the meaning of section 13 of the German Civil Code,
2. between insurance intermediaries or insurance advisers and policyholders in connection with the mediation of contracts of insurance.

This authorisation shall be announced in the Federal Gazette or in the E-Federal Gazette. Those concerned may apply to these conciliation boards; the right to appeal to the courts shall remain unaffected.

(2) Private-law institutions may be authorised to act as a conciliation board if it is independent in respect of providing its answers and suggestions or making decisions and is not bound by any instructions and can fulfil its tasks from an organisational and professional point of view.

(3) The authorised arbitration boards shall be obligated to respond to each complaint regarding an insurer or insurance intermediary, an intermediary in accordance with section 66 and insurance adviser.

(4) The authorised arbitration boards may levy a fee from the insurance intermediary, intermediary in accordance with section 66 or insurance adviser. In the case of obviously improper complaints, a fee may also be levied from the policyholder. The amount of the fee must be proportionate to the recognised conciliation board's expenses.

(5) Insofar as no private-law institution has been authorised to act as a conciliation board, the Federal Ministry of Justice, in consultation with the Federal Ministry of Finance, the Federal Ministry of Economics and Technology and the Federal Ministry of Food, Agriculture and Consumer Protection, may assign the tasks of the arbitration board to one of the higher federal authorities or to a federal institute by statutory ordinance without the consent of the *Bundesrat*, and may regulate its procedures and the levying of fees and expenses.

### **Section 215 Place of jurisdiction**

(1) In respect of actions brought on the basis of the contract of insurance or the mediation of a contract of insurance, that local court in whose district the

policyholder has his place of residence at the time of the filing of the action shall also have jurisdiction, failing that, his habitual place of residence. In respect of actions brought against the policyholder, only this court shall have jurisdiction.

(2) Section 33 (2) of the Code of Civil Procedure shall not apply to cross-actions brought by the other party.

(3) An agreement deviating from subsection (1) shall be permitted in the event that the policyholder moves his domicile or habitual place of residence outside of the scope of this Act after signing the contract or his domicile or habitual place of residence is unknown at such time as the action is filed.