

Partial revision of Federal Act on Insurance Contracts

September 27 2016 | Contributed by [BADERTSCHER Rechtsanwälte AG](#)

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Introduction

In 2013 the Federal Parliament rejected a bill for a total revision of the Federal Act on Insurance Contracts, with an order to the Federal Council to elaborate a partial revision on selected subjects. The Federal Council drafted an amended bill and recently initiated consultation proceedings on the proposals. Hence, this draft constitutes the council's second attempt to adapt the law to existing standards and the need of policyholders for reasonable and feasible insurance protection. The consultation proceedings will end on October 27 2016.

Draft proposal

With a view to balancing the obligations of policyholders on the one hand and insurers on the other, the suggested changes in the draft proposal include the following items:

- The introduction of an appropriate right of revocation (Articles 2a and 2b of the draft act):
 - A 14-day right of revocation has been proposed, during which the policyholder is entitled to revoke the offer to conclude an insurance contract or the acceptance of such offer made by the insurer. The provision is binding in the sense that it may not be altered to the disadvantage of the policyholder. Its purpose is to complement Article 40a(2) of the Code of Obligations, which expressly excludes insurance contracts from the provisions on revocation in door-to-door sales and similar contracts. The suggested right of revocation cancels the contract *ab initio* (*ex tunc*) and insurance benefits already received must be refunded.
- The regulation of provisional cover notes (Article 9):
 - This instrument allows the policyholder to obtain insurance cover before the actual insurance contract is concluded and therefore serves to overcome possible coverage gaps during the negotiation period. Such a provisional cover note will qualify as an independent insurance contract under the revised act.
- The admission of retroactive insurance cover subject to certain conditions (Article 10):
 - It is proposed that the parties to an insurance contract be free to determine whether to include loss events which occurred before the conclusion of the insurance contract. Bringing forward the inception date for insurance cover will also be permitted if the parties have knowledge of the earlier occurrence of the loss event and deliberately intend to set back the commencement of the effects of the contract. In contrast, such retroactive cover will be void if only the policyholder knew (or should have known) about the occurrence of the insured loss event before the conclusion of the insurance contract.
- The elimination of the assumption of approval regarding the content of the policy (Article 12):
 - Considering the comprehensive information duties of the insurer, it is deemed inappropriate by the prevailing doctrine to impose the risk of erroneous policy documentation solely on the policyholder. Instead, it is the insurer's duty to ensure that

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the policy documents correctly reflect the contractual agreements reached by the parties to an insurance contract. Consequently, Article 12 will be cancelled.

- The reasonable extension of the extremely short limitation period for claims under an insurance contract from two to five years (Article 46(1)).
- The regularisation of the termination of an insurance contract by introduction of an ordinary right of termination (Articles 35a, 35b, 36, 37 and 89):
 - The newly introduced right of termination will allow both parties to bring the insurance contract to an end after three years at the latest. In addition, an immediate right of termination will be introduced in case of important reasons (ie, good cause).
- The limitation of the protective scope of the act with regard to large risks or professional policyholders (Articles 97 to 98a):
 - Consumer contracts and contracts with small and medium-sized companies will be eligible for protection by the mandatory and semi-mandatory provisions of the act. Further improvement of this scope of protection will be achieved by conversion of certain dispositive provisions into at least semi-mandatory provisions. In contrast, large risks or professional policyholders will be excluded from this scope of protection, since they are deemed to normally have the adequate structures in order to allow them to sufficiently safeguard their own interests.

Greater account should be taken of electronic business transactions by allowing proof by text for certain notifications as an alternative to signed documents. From a formal and editorial viewpoint, the draft revised act includes section titles for a clearer structure and standardised terms for better readability.

Comment

According to the Federal Financial Department's explanatory report, the attractiveness of the insurance market in Switzerland will be bolstered by the draft proposal for a partially revised act. The draft is said to ensure greater legal certainty because it aligns the statutory basis with current practice. It is also considered to be more consumer friendly, which increases the attractiveness of insurance cover. This in turn is expected to lead to an increase in market volume due to a growing amount of insured risks. It remains to be seen whether this draft will be well received by the insurance market, trade associations, political parties and other insurance market participants.

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