

INFORMATION ABOUT MANDATORY PROVISIONS IN AUSTRIAN LAW

Within this framework, only particularly important provisions can be mentioned; in each case the competent court shall decide which provisions shall in fact be applied.

1. Choice of Law

In principle, there is free choice of law for contracts on risks located in Austria (*section 5 Act on International Insurance Contract Law for the EEA*).

However, the choice of law is limited within the meaning of the Austrian *Konsumentenschutzgesetz* (KSchG; Consumer Protection Law) if the contract has at least been initiated in Austria and the policyholder has not entered into the contract in the capacity of an entrepreneur. In this case the mandatory domestic law provisions shall apply, unless the chosen law is more favourable to the policyholder (*section 9 Act on International Insurance Contract Law for the EEA*).

2. Disclosure Requirements

Prior to the contract declaration, the policyholder shall be informed of any significant contract details in writing. The policyholder shall be notified of any subsequent amendments to these details. The information shall be written in the German language unless the policyholder has expressly agreed to the use of another language or has chosen the law of another country.

The following information is required:

- Company name, address and legal form of the insurer and its branch office, if relevant;
- The applicable (or, in case of a choice of law, the proposed) law;
- The supervisory body or other body to which complaints can be addressed;
- The term of the contract;
- The method of payment of the premiums as well as the duration of the premium payments;
- The circumstances under which the policyholder can revoke or cancel the conclusion of the contract.

In addition, in the case of life insurance and accident insurance with return of premium, the insurer is required to inform the policyholder of the following:

- The insurer's benefits and the options available to the policyholder;
- The prerequisites for the termination of the contract;
- The basis for the calculation of the profit-sharing arrangement;
- The cash surrender values as well as the non-contributory insurance benefits;
- The premium shares for the main and additional benefits;
- The relevant provisions concerning taxes;
- The investment funds as well as the kind of assets contained in the unit-linked life insurance

(*Sections 9a, 18b, 18c, 18e of the Austrian Versicherungsaufsichtsgesetz (VAG; Insurance Supervision Act)*).

3. Right of Withdrawal

The policyholder shall have the right to withdraw from the contract in writing within two weeks if s/he has not received the insurance terms and conditions prior to the contract declaration (personal application), the insurer has failed to meet the disclosure requirements or if the policyholder has not received a copy of the application. The termination period shall start only after the insurer has met the disclosure requirements, the policyholder has received the insurance policy as well as the insurance terms and conditions and s/he has been advised about his/her right to terminate the contract (*section 5b of the Austrian Versicherungsvertragsgesetz (VersVG; Insurance Policy Act)*).

If the policyholder has entered into the contract in the capacity of a consumer, s/he shall be entitled to withdraw from the contract in writing until it enters into force or afterwards within a week if s/he has made his/her contract declaration outside the business premises of the entrepreneur (insurer) and if s/he has not initiated the conclusion of the contract him/herself (*section 3 KSchG*).

Moreover, the consumer can also withdraw from the contract if – without his/her instigation – significant circumstances which the entrepreneur (insurer) has described as likely do not, or to a considerably lower extent, occur.

The right to withdraw from the contract expires one month after the conclusion of the insurance contract at the latest (*section 3a KSchG*).

Policyholders have a special right to withdraw from life insurance contracts (except group insurance contracts and contracts with a term of up to 6 months). In such a case, the policyholder can terminate the contract within 30 days after its conclusion.

The period for withdrawal, however, starts only after the insurer has provided his/her address (*section 165a VersVG*).

4. Contract Documents

The insurer shall undertake to hand over a signed certificate to the policyholder (reproduction of personal signature is sufficient) about the insurance contract (insurance policy). Upon surrender of the insurance policy to the policyholder, the insurer shall point out that the policyholder can request copies of the declarations s/he has made with regard to the contract at any time (*section 3 Verve*).

5. Data Protection

The general provisions on data protection are laid down in the *Austrian Datenschutzgesetz (DSG; Federal Act Concerning the Protection of Personal Data) 2000*.

In addition, extensive special provisions on the collection and handling of personal health-related data shall apply to the field of contractual insurance as of 1 January 2000 pursuant to *section 11a VersVG*. The insurer undertakes, upon request of the policyholder or any other insured, to share information about and allow access to expert opinions that were drawn up on the basis of a medical examination of an insured, provided that the person examined agrees to sharing the information or allowing access thereto, respectively.

Pursuant to *section 67 of the Austrian Gentechnikgesetz (GTG; Law on Genetic Engineering)*, analytical genetic data must not be collected.

6. Inadmissible Parts of the Contract

If the policyholder has consumer status, special protection provisions with regard to the contract terms shall apply pursuant to the Consumer Protection Act. Next to the general rule that a contract term contained in the General Terms and Conditions or in contract forms shall remain invalid if it has been phrased in an unclear or inexplicable manner, the Act stipulates specific terms that shall not be binding upon the consumer.

These terms take advantage of the naturally weaker position of the consumer and favour the entrepreneur.

As an example, a few provisions of *section 6 KSchG* are mentioned below:

Inappropriately long obligation periods for the consumer shall be invalid.

Premium adjustment clauses shall, if the agreed prerequisites for a premium adjustment are met, also provide for a premium reduction and specifically stipulate the circumstances relevant to the premium adjustment. The relevant circumstances must be objectively justified and out of the entrepreneur's sphere of influence.

The contract must not impose an onus of proof upon the consumer that has not been provided for in the legal provisions.

In addition, it shall not be possible to exclude or limit the right to assert a consumer's error, or the absence of the inherent basis of a contract or the frustration of contract in advance.

A provision contained in the General Terms and Conditions or contract forms shall be invalid if it the phrasing is ambiguous or incomprehensible.

7. Differences of the Insurance Policy from the Application

If the contents of the insurance policy differ from the application or the agreements made, the insurer shall expressly draw the policy holder's attention to differences and make him/her aware that the differences shall be regarded as approved unless s/he objects in writing within one month after receipt of the insurance policy. If the insurer fails to do so, the differences shall be invalid and the provisions of the application shall apply (*section 5 VersVG*).

8. Term of Insurance Contracts

A provision according to which an insurance relationship is regarded as tacitly extended unless it is cancelled before maturity is admissible only if the extension does not amount to more than one year. If the policyholder has consumer status, the tacit extension takes effect only if s/he has been expressly informed of it before the beginning of the period of notice (*section 8 VersVG in conjunction with section 6 KSchG*).

If the policyholder has concluded the contract as consumer, s/he shall be entitled to cancel the contract at the end of the third year (or any subsequent year), regardless of the agreed contract term. The contract must be cancelled in writing within one month (*section 8 VersVG*).

9. Consequences of Breach of Obediential Obligations

Section 6 VersVG limits the options of the insurer to refuse the payment of insurance benefits in case of breach of the contractually agreed obediential obligation by the policyholder. In principle, breach of obediential obligations releases the insurer from paying the benefits only in case of a fault attributable to the policyholder (or insured, respectively).

The insurer can assert a merely negligent breach of obediential obligations only if the policyholder has been handed over the insurance terms and conditions (or a specific note) in advance.

10. Maturity of Insurance Claims

Cash benefits by the insurer shall be due upon completion of the necessary investigations. Regardless thereof, the benefits shall be due at all events if two months after the request for cash benefits, the policyholder demands an explanation of the insurer as to the reasons why the investigations have not been completed and the insurer does not meet this demand within one month. A provision which releases the insurer from the obligation to pay default interest shall be invalid (*section 11 VersVG*).

11. Special Provisions for Life Insurance Contracts

The additional disclosure requirements for the insurer, the special right of the policyholder to withdraw from the contract, and the minimum requirements regarding the contract terms have already been covered in the general section. Moreover, the following provisions seem particularly noteworthy:

11.1. Insurance on Death of another Person

If an insurance contract is concluded on the death of a person other than the policyholder, this person has to give his/her written consent for the contract to be valid if the insurance sum exceeds the amount of customary funeral costs (*section 159 VersVG*).

11.2. Withdrawal by the Insurer

The insurer shall be entitled to withdraw from the contract only within three years (except in the case of fraudulent behaviour of the policyholder) if the policyholder violates a notification obligation upon conclusion of the contract or if biometric risk has increased (*sections 163 and 164 VersVG*).

11.3. Premium Exemption

The policyholder can request the conversion into a premium-free insurance policy at any time for the end of the year of coverage. In such a case, the agreed cash amount or annuity will be replaced by the amount that results from the premium calculation basis according to the accepted principles of actuarial mathematics. The premium-free insurance benefit shall be calculated for the end of the running year of coverage (with overdue premiums being taken into account). The insurer shall be entitled to deduct a certain amount only if this has been agreed upon and is appropriate.

Instead of the conversion into a premium-free insurance, the pay-out of the cash surrender value can also be contractually agreed.

If the insurer cancels the contract because of a delay in premium payments by the policyholder, the insurance shall be converted into a premium-free insurance (*sections 173 and 174 VersVG*).

11.4. Cash Surrender Value

If pure endowment insurance on death is rescinded by cancellation, withdrawal or contest, the insurer shall refund the cash surrender value. This shall also apply if the insurer is released from the obligation to pay the agreed amount of capital after the event insured against has occurred (except the insured was murdered by the policyholder).

The cash surrender value shall be calculated in line with the basis of calculation for premium computation in accordance with the accepted principles of actuarial mathematics on the basis of the premium calculation basics for the end of the running insurance period as present value of the insurance. Overdue premiums shall be deducted from the surrender value. The insurer shall be entitled to deduction only if this has been agreed upon and is appropriate (*section 176 VersVG*).

If capital-forming life assurance is terminated before expiry of a five-year period or an agreed shorter maturity, when calculating the cash surrender value, the technically one-off acquisition costs may only

be considered to the extent that corresponds to the ratio of the actual maturity to the five-year period or the agreed shorter maturity at most. Likewise, when converting insurance into paid-up insurance, these costs are to be considered according to the ratio of the actual duration of the premium payments to the five-year period or an agreed shorter premium payment period at most for calculating the basis of the premium-free insurance benefit.

The intermediary shall be entitled to that part of the commission including extra charges that corresponds to the ratio of the actual maturity (duration of the premium payments) to the five-year period or the agreed shorter maturity (duration of the premium payments). An agreement according to which the intermediary would be entitled to a higher claim for commission shall be ineffective. The intermediary shall be obliged to repay a commission to the insurer to the extent it exceeds the pro-rated claim for commission. (*Sections 176 paras 5 and 6 VersVG*).

Section 176 paras 5 and 6 shall be applied to insurance contracts concluded after 31 December 2006.

11.5. Protection Provisions

Provided that the policyholders bear the investment risk, the following additional protection provisions shall apply to domestic unit-linked life insurance contracts:

- Prior to the conclusion of the insurance contract, insurance undertakings shall request information from the policyholders about their experience or know-how in security investment and about their financial standings, as far as this information is necessary to safeguard the interests of the policyholders with regard to the investment risk they bear.
- Prior to the conclusion of the insurance contract, the insurance undertakings shall provide the policyholders with all relevant information necessary to safeguard the interests of the policyholders with regard to the investment risk they bear.
- The insurance undertakings must not recommend the choice of investment provided for in the insurance contract unless this recommendation is in line with the interests of the policyholders.
- Insurance undertakings must not recommend the choice of investment provided for in the insurance contract to the policyholders for the purpose of influencing the issue prices of investment fund shares in their own interest or in the interest of an affiliated undertaking.
- The prohibition pursuant to no. 4 shall also apply to all employees and other people working for the insurance undertakings.
- If other legislation requires prospectuses or reports on activities concerning investment funds, the insurance undertakings shall point this out to the policyholders and, upon request, provide them with free copies of these documents.
- In the case of a violation of the obligations pursuant to nos. 1 to 5, damages can be claimed. A contract provision that deviates from mentioned provision to the disadvantage of a consumer within the meaning of section 1 para 1 no. 2 KSchG as amended, is, notwithstanding section 6 para 1 no. 9 KSchG as amended, only binding if it has been clearly highlighted against the remaining text in the General Insurance Terms and Conditions that are to be provided to the consumer.
- Telephone consumer advertising for the purpose of concluding an insurance contract shall be prohibited unless the consumer has agreed beforehand to receive such a call or a business relationship with the consumer exists already and s/he has not rejected telephone advertising.

11.6. Minimum Standards for Life assurance

Regarding disclosure requirements as per sections 9a, 18b and 75 VAG, the “FMA Minimum Standards for Information Requirements in the Life Assurance Sector” should be observed by insurance companies operating on a freedom of services basis or through a branch in Austria. The Minimum Standards are published on the FMA website:

<http://www.fma.gv.at/cms/site/EN/einzel.html?channel=CH0154>

12. Pensionskassen (Pension Funds)

According to section 43 of the Austrian *Pensionskassengesetz (Pension Fund Act) 1990*, only *Pensionskassen* shall be allowed to use the term *Pensionskasse* or word combinations containing this term. Misleading Advertisements that create the impression of the operation of a *Pensionskasse* shall be prohibited.

13. Taxation on Insurance Contracts

Foreign insurers must appoint a fiscal representative, who is responsible for the payment of taxes in Austria.

Only trustees, lawyers, notary publics or insurance undertakings with residence or head office in Austria can be appointed as fiscal representatives.

The relevant legal basis shall be the Austrian *Versicherungssteuergesetz (VersStG; Insurance Tax Act) 1953* as amended.

In principle, taxes are assessed in percent of the premium:

- In case of health insurance 1 %;
- In case of life and disability insurance 4 %;
- In case of single-premium life insurance with a term of less than ten years 11 %;
- In case of all other kinds of insurance 11 %.

(Section 6 VersStG.)