

# **New Turkish Insurance Contract Law**

**Free Translation of the Provisions of the Turkish Commercial Code  
Regarding Insurance Contracts**

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**SİGORTA HUKUKU TÜRK DERNEĞİ**  
TURKISH CHAPTER OF AIDA





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# Introduction: The New Turkish Law of Insurance Contracts

Dr. Kerim Atamer<sup>1</sup>

- I -

On 1 July 2012, the new "Turkish Commercial Code"<sup>2</sup> ("N-TCC") has finally come into force. The provisions of the N-TCC are divided into six books. The sixth book sets out the principal rules applicable to insurance contracts in Articles 1401 through to 1520. Additional provisions on particular classes (such as Marine Insurance) or aspects (such as electronic policies) are to be found elsewhere in the N-TCC, as well as in supplementary legislation. In this booklet, a free translation is provided of Articles 1401 to 1520 of the N-TCC. The first draft of the translation has been very ably prepared by Ms. Handan Cacina, Ms. Seçil Erbay and Ms. Mehpare Yücel, all inhouse lawyers of Anadolu Anonim Türk Sigorta Şirketi, one of the leading Turkish insurance companies. That draft has then been carefully reviewed and brought into conformity with English legal terminology by Prof. Dr. Ahmet Samim Ünan and this writer. Thereby, consideration has been given to the terminology and wording as adopted in the "Principles of European Contract Law (2009) - PEICL"<sup>3</sup>, which had previously been translated into

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<sup>1</sup> Dr. *iur.* (Hamburg, 1999), Associate Professor (*Doçent*) in Maritime Law; Lecturer in Maritime and Insurance law at the University of Istanbul, School of Law. The author of this introduction is a member of the Committee that has drafted the new Turkish Commercial Code and the Code no. 6103, and has in this capacity participated also in the following: the Sub-Committees on Maritime, Insurance and Transport Law; the Sub-Committees for the preparation of the drafting reasons, and for the final drafting; the Sub-Committee that has attended all preparatory discussions in Parliament and was involved in all changes that have taken place during this process; the Sub-Committee preparing the secondary legislation and Turkey's accession to International Conventions on Maritime Law as adopted in the new Code. (email: kerimatamer@yahoo.com)

<sup>2</sup> "Türk Ticaret Kanunu", Date: 13.1.2011, No.: 6102, Resmî Gazete [Official Reporter] Date: 14.2.2011, No.: 27846.

<sup>3</sup> As to which see Principles of European Insurance Contract Law (PEICL), Prepared by the Project Group "Restatement of European Insurance Contract Law", (Sellier) Munich 2009.

Turkish also by Prof. Ünan and the present writer<sup>4</sup>. Prof. Ünan has then reconsidered the second draft in its entirety to remove any inconsistencies and achieve uniformity in terminology and language. It is intended to provide in due course a second installment to this translation covering all further insurance-related provisions of the N-TCC and supplementary legislation on insurance issues.

Traditionally in English writing, the pronouns he, him, and his are being used as generic or gender-neutral singular pronouns. Throughout this translation, however, the authors have preferred to use "it" as the gender-neutral singular pronoun for both persons and things, so as to avoid discrimination.

## - II -

**1.** The drafting preparations<sup>5</sup> for the N-TCC commenced in late 1999 when the Ministry of Justice appointed a Committee with the task to prepare a new Commercial Code that would comply with Turkey's commitments towards the EU, so as to bring into harmony domestic law with the *acquis communautaire*. The Committee was split into six sub-committees. Each sub-committee was assigned a different branch of Commercial law. One of these sub-committees has been in charge of Insurance Contract law. This sub-committee prepared a first draft. The draft was extensively discussed in the Committee, sitting as a whole. Some of the principles and provisions proved extremely controversial, and were hotly debated. Thereby, three different tendencies could be identified in the discussions. Some members preferred strict compliance with the latest version of the German Insurance Contracts Act. Other members leaned towards preservation of the previous law in conjunction with French-Belgian Insurance law and practice. A third group, finally, pressed hard for harmony with international reinsurance practices in order to enable the Turkish market a better integration with the international markets. Ultimately, none of these directions were followed orthodoxly. Instead, a mixture of sources and principles was adopted that

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4 Samim Ünan / Kerim Atamer, Principles of European Insurance Contract Law (PEICL), İngilizce Metin ve Türkçe Çeviri [*English Text and Turkish Translation*], Sigorta Hukuku Türk Derneği (Yayımlayan) [Ed. by Turkish Insurance Law Association - Turkish Chapter of AIDA], İstanbul 2011.

5 Detailed information regarding the drafting preparations in respect of Insurance law may be found in Turkish in Kerim Atamer, Yeni Türk Ticaret Kanunu Uyarınca "Zarar Sigortaları"na Giriş [*Introduction to "Property and Liability Insurance" According to the New Turkish Commercial Code*], Banka ve Ticaret Hukuku Dergisi [*Banking and Commercial Law Journal*, Ankara, cited in the Index to Foreign Legal Periodicals] 2011, Volume: XXVII, Issue: 1, pp. 21-106

was believed to be the best solution in the circumstances. This mixture is composed of the following elements:

**2.** It was noted that the provisions in the previous legislation had been applied for over 80 years in Turkey, and that most of these provisions were adopted from European codifications of the 19th Century. As such, it was agreed that the law was in need of modernisation. Therefore, the first task was identified as drafting a modern Insurance Contract law. It was felt that such a legal framework must strengthen the insurance industry. On the other hand, however, it was felt that principles and rules, which had proven unproblematic in practice and were supported by insurers, should not be changed radically. Finally, new rules had to be drafted in respect of issues that had been particularly controversial in practice.

**3.** In order to achieve these tasks, several sources were consulted, as follows:

**a)** It was noted that the major part of the *acquis* is on insurance supervision. This area is not covered by the N-TCC. Therefore, such provisions were not incorporated. However, in accordance with the *acquis*, tontines have now been admitted (Art. 1488). On the other hand, pre-contractual information duties of the insurer have been introduced (Art. 1423), which issue had, however, since been covered also by Insurance Supervision legislation.

**b)** Despite opposition in the Committee, the principle source of law has been chosen as the German Insurance Contracts Act<sup>6</sup> of 1908, as amended several times. The Committee considered the version that was in force as at 1 January 2001. Indeed, at the time of the respective preparations (2001-2004) of the Committee, the Act of 1908 was still in force in Germany. It was later replaced by a new Act. However, by that time the draft of the N-TCC had already made its way into Parliament, which is why the new German Act could not be taken into consideration. Throughout its discussions, the Committee has consulted several leading works on German law<sup>7</sup> to identify the details and authorities on the

<sup>6</sup> "Gesetz über den Versicherungsvertrag" (30.5.1908), Reichsgesetzblatt 1908, 263 (as amended several times).

<sup>7</sup> In particular the following: H. Honsell (Herausgeber), Berliner Kommentar zum Versicherungsvertragsgesetz, Heidelberg 1999; E. R. Prölss / A. Martin, Versicherungsvertragsgesetz, 27. Auflage, München 2004; R. M. Beckmann / A. Matusche-Beckmann (Herausgeber), Versicherungsrechts-Handbuch, München 2004; E. Bruck, / H. Möller, Kommentar zum Versicherungsvertragsgesetz, 8. Auflage, Berlin, Band 1: §§ 1-48 VVG und Versicherungsvermittlerrecht, 1961, Band 2: §§ 49 - 80 VVG, 1980, Band 3: Feuerversicherung, 2002, Band 4: Allgemeine Haftpflichtversicherung (§§ 149 - 158a VVG), 1970, Band 5 Halbband 1: Kraftfahrversicherung (Pflichtversicherungsgesetz und §§ 158 b-k VVG), 1994, Band 5 Halbband 2: Lebensversicherung (§§ 159 - 178 VVG), 1988, Band 6 Halbband 1: Unfallversicherung (§§ 179 - 185 VVG), 1978, Band 6 Halbband

respective provisions.

**c)** Another source brought forward repeatedly were the standard reinsurance clauses widely adopted in international reinsurance agreements of Turkish insurers. Among such clauses that made it into the N-TCC might be cited the "claims control clause" (Art. 1476), or the admittance of "claims made" contracts (Art. 1473 in conjunction with Art. 1486).

**d)** Provisions of the previous Turkish Commercial Code<sup>8</sup> have been maintained to the extent that they were not challenged by the industry or the Courts. Thereby, a rather smooth transfer from the old law to the new could be achieved.

**e)** Notwithstanding that the N-TCC covers insurance contracts, some rules of Insurance Supervision law were considered so important that it was felt necessary to repeat these also among the rules on contracts. Accordingly, the conclusion of the contract where the insurer remained silent (Art. 1405), or the insurer's duty to conclude a contract (Art. 1483) were moved to the N-TCC.

**4.** As a matter of systematic, a clear new distinction was adopted. The provisions are divided into "general provisions" (Art. 1401 - 1452), which govern all classes of insurance contracts, and "special provisions on particular insurance classes" (Art. 1453 - 1520). The "special provisions" fall into two categories: "indemnity insurances" (Art. 1453 - 1486) and "personal insurances" (Art. 1487 - 1520). The provisions on "indemnity insurances" are sub-divided into "property insurance" (Art. 1453 - 1472) and "liability insurance" (Art. 1473 - 1485). On the other hand, "personal insurances" include "life insurance" (Art. 1487 - 1506), "accident insurance" (Art. 1507 - 1510) and "sickness insurance and health insurance" (Art. 1511 - 1519). The final provisions in each category (Art. 1452, 1486 and 1520) give a list of the rules that are fully or partly mandatory. This systematic is in line with the basic distinction adopted under the *acquis*<sup>9</sup>.

**5.** The new terminology adopted by the N-TCC distinguishes clearly as between the various players involved in the insurance business.

**a)** The provider of insurance services is referred to as the "insurer". As a matter of Supervision law, this may only be a joint-stock company

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2: Krankenversicherung, 1990.

<sup>8</sup> "Türk Ticaret Kanunu", Date: 29.6.1956, No.: 6762, Resmî Gazete [Official Reporter] Date: 9.7.1956, No.: 9353.

<sup>9</sup> First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance, Annex A.



or a mutual with at least 200 members. Foreign insurers may set up a branch in Turkey or incorporate an independent joint-stock company with foreign capital. Currently, the share of foreign insurers in the Turkish market is already in excess of 65% with further investments being expected.

**b)** The party that concludes the insurance contract with the insurer, and thereby undertakes to pay the premium, is defined as the “policyholder”. This term has been lifted from the PEICL (Art. 1:201(1) and elsewhere). Turkish Civil law is in line with, among others, German and Swiss Civil Law in that a contract may be concluded by one person for the exclusive benefit of a third person. This principle is recognised also in Insurance law, where it has a broad range of application, particularly in life insurance contracts. In order to distinguish clearly as between the party that concludes the insurance contract with the insurer and assumes liability for payment of the premium, on one side, and a possible third party whose interest, life or health might be insured, on the other side, the N-TCC uses the term “policyholder” throughout to describe the former.

**c)** Under a property insurance contract, the “insured” describes the person, whose interest is insured, and who ought to receive the indemnity in case the risk is materialised.

**d)** The liability insurance contract has been covered with entirely new provisions in the N-TCC. Accordingly, the “insured” here is understood to be the person who may incur liability as against another party. In a radical move, the N-TCC has set aside the principle of “pay to be paid”. Accordingly, the party that sustained the loss or damage is declared as the person, who is entitled directly to payment from the insurer (Art. 1473). Correspondingly, the insurer is released of its obligation only to the extent that it indemnifies the person that is entitled to indemnity. This person is now granted direct action against the insurer (Art. 1478) under all types of liability insurances.

**e)** Under all classes of personal insurances, the “insured” describes the person whose life, health, sickness or exposure to accidents is the subject-matter of the insurance contract. However, the person that is entitled to the fixed sum or other payments of the insurer is referred to as the “beneficiary”. As such, the “beneficiary” of a life insurance contract might loosely be compared to the person entitled to indemnity from the liability insurer. However, whereas the beneficiary would be nominated in the contract or by law, a liability insurance contract works ultimately for the benefit of any person that might be harmed by the insured under that contract.

**- III -**

The general opinion regarding the provisions of the N-TCC on insurance contracts has been rather mixed. Leaving aside rather radical views dismissing the new provisions in their entirety or accepting some unreservedly, it would appear that several new provisions have been welcomed by the industry and legal scholars, alike. The systematic and terminology of the new provisions has met with general approval. Some of the new provisions protecting consumer-policyholders and persons entitled to indemnity from liability insurers have, for obvious reasons, not been well received by insurers, notwithstanding that the opposite view prevails in the opposite camp. Ultimately, it would appear that many rules will be judged differently depending on the angle of approach. In any event, it cannot be denied that the provisions are a huge step forward towards a modern Insurance Contract law. Ultimately, the market players and the Courts will identify any points that might need improvement or legislative changes.

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# Turkish Commercial Code

## Sixth Book

# Insurance Law

## PART ONE

### General Provisions

#### A) Insurance Contract

##### I) Fundamental Notions

###### 1. Definition

**Article 1401-** (1) An insurance contract means a contract under which the insurer promises, in exchange for a premium, to indemnify a loss caused by the materialisation of the danger (risk) having the consequence of harming the interest, measurable by money, of the concerned person or to effect payment or to fulfil other performances based on the lifetime or upon the occurrence of certain events in the course of the lifetime of one or several persons.

(2) Articles 604 and 605 of the Turkish Code of Obligations shall apply to insurance contracts concluded with an unlicensed company in the knowledge of this deficiency. However, this provision shall not apply to insurance contracts concluded with insurance companies that are non-resident in Turkey.

###### 2. Mutual Insurance

**Article 1402-** (1) Under mutual insurance, several persons mutually undertake to compensate the loss sustained by one of them as a result of the materialisation of a defined risk. Only cooperative companies are entitled to carry on mutual insurance.

### 3. Reinsurance

**Article 1403-** (1) The insurer can take out reinsurance, under conditions as it thinks appropriate, in respect of the interest it has covered.

(2) Reinsurance does not affect the insurers' debts and liabilities as against the policyholder, nor does it grant the policyholder the right to claim from or sue directly the reinsurer.

### 4. Invalid Insurance

**Article 1404-** (1) Insurance taken out to cover a loss resulting from an act of the policyholder or insured in breach of the mandatory rules, moral values, public order or rights of personality shall be null and void.

## II) General Rules

### 1. Silence at the Conclusion of the Contract

**Article-1405-** (1) If the written application submitted by the person who wishes to conclude an insurance contract with the insurer is not rejected by the insurer within thirty days to count from the date of the application, the insurance contract shall be deemed to have been concluded.

(2) Payments effected at the time when the written application was made shall be deemed as premium or the first instalment thereof, as the case may be, after the conclusion of the contract. These payments shall be reimbursed without any deduction together with accrued interest if the contract were not concluded.

(3) Article 1483 is reserved.

### 2. Representation

#### a) In General

**Article-1406-** (1) A person is entitled to conclude an insurance contract on behalf of another person by way of representation; if the representative is unauthorized, it will be responsible for the premium of the first period of insurance.

(2) A person may give its approval to a contract concluded on its behalf before the materialisation of the risk or, subject to Article 1458, after the materialisation of the risk.

(3) A contract, which cannot be regarded as concluded on behalf of someone else or which is entered into by an unauthorized representative, shall be deemed as having been concluded with this representative provided that it has an insurable interest.

**b) Lack of Instructions**

**Article 1407-** (1) In case the policyholder does not give any instructions regarding the terms of the insurance contract, the representative shall conclude the insurance contract under standard terms prevailing at the place where the contract is entered into.

**3. Lack of Insurable Interest**

**Article 1408-** (1) The insurance contract shall be null and void if no insurable interest existed at the time when the contract was concluded. If the interest, which existed at the time of conclusion, ceased to exist within the contract period, the insurance contract becomes promptly null and void thereupon.

(2) Article 1470 is reserved.

**4. Scope of the Insurance Cover**

**Article 1409-** (1) The insurer shall be liable to indemnify the loss caused by, or pay the insurance sum upon the materialisation of, the risk specified in the insurance contract.

(2) The burden of proving that any of the risks specified in the insurance contract fell outside of the insurance cover shall lie with the insurer.

**5. Duration of the insurance cover**

**Article 1410-** (1) Unless specified in the contract, the duration of the insurance cover shall be determined by the court having regard to the parties' intentions, local practice and relevant circumstances.

**6. Premium Period**

**Article 1411-** (1) Unless the premium is calculated on the basis of shorter periods of time, the duration of the premium period shall be one year under this Code.

**7. Behaviour and Knowledge of Persons other than the Policyholder**

**Article 1412-** (1) Where this Code attaches any legal consequence to the policyholder's behaviour or knowledge, the same consequence shall attach also to the behaviour or knowledge of the insured, of the representative or in cases of personal insurances of the beneficiary, provided that they were aware of the insurance contract.

## **8. Termination and Avoidance of the Contract**

### **a) Termination In Exceptional Cases**

**Article 1413-** (1) In cases such as the insurer being declared bankrupt, its license in the relevant insurance class being revoked or its power to conclude contracts being abrogated, the policyholder shall be entitled to terminate the contract within one month from the date it became aware of these facts.

(2) If the policyholder declares moratorium before paying the entire premium, the insurer shall be entitled to terminate the contract within one month from the date it became aware of the moratorium.

(3) Paragraph two of this provision shall not apply to compulsory insurances and to personal insurance contracts exempted from premium payment.

### **b) Termination in Case of Increase of the Insurance Premium**

**Article 1414-** (1) If the insurer increases the premium pursuant to an adjustment clause without altering the scope of the insurance cover, the policyholder shall have the right to terminate the contract within one month from the date of receipt of the insurer's notification.

### **c) Partial Termination or Partial Avoidance of the Contract**

**Article 1415-** (1) In case the insurer is entitled to terminate or avoid the insurance contract partially for good reason and it is determined with regard to the circumstances that the insurer would not have concluded the contract on the basis of the remaining terms, it shall be entitled to terminate or avoid the contract entirely.

(2) If the insurer terminated or avoided the contract partially, the policyholder shall have the right to terminate or avoid the contract entirely.

## **9. Services And Notifications**

**Article 1416-**(1) Services and notifications by the policyholder shall be made to the insurer or to its agent, which concluded the contract on its behalf or facilitated conclusion of the contract. Services and notifications by the insurer shall be made to policyholder's and where necessary to the insured's or beneficiary's last address communicated to the insurer.

## **10. Exceptional Circumstances**

### **a) Insolvency of the Parties, Enforcement without result**

**Article 1417-** (1) If the insurer became insolvent or enforcement against the insurer proved without result, the policyholder is entitled to request security from the insurer that it will fulfil its undertaking. The policyholder shall be entitled to terminate the insurance contract if such security is not given within one week from the request.

(2) Upon request of the insurer, paragraph one of this Article shall apply also vis-à-vis the policyholder, which is declared insolvent or bankrupt before the payment of premium or against which enforcement proved without result.

### **b) Bankruptcy of the Insurer**

**Article 1418-** (1) In the case of bankruptcy of the insurer the insurance contract shall terminate. Subject to special provisions, payments not effected by the insurer prior to bankruptcy shall be paid out, first, from the securities compulsorily constituted by the insurer under the Insurance Activities Act no. 5684 dated 03.06.2007, and thereafter from the bankruptcy proceeds.

(2) In the bankruptcy proceedings, the persons entitled to such payments shall rank in the third place of the list of priorities to be prepared in accordance with Article 206 paragraph 4 of the Code of Enforcement and Bankruptcy.

## **11. Refund of Premium**

**Article 1419-** (1) Upon discontinuance of the insurance contract, premiums paid in advance for any period that has not run yet shall be refunded to the policyholder on a daily basis, unless otherwise provided by law.

## **12. Prescription**

**Article 1420-** (1) All claims arising from insurance contracts shall be prescribed after a period of two years as of the date when payment falls due. In any event, however, and subject to Article 1482, all claims relating to an insurance indemnity or insurance sum shall be prescribed after a period of six years as of the date of materialisation of the risk.

(2) Provisions in other legislation are reserved.

### **III) Obligations and Duties of The Parties**

#### **1. Obligations and Duties of The Insurer**

##### **a) Obligation to carry the Risk**

###### **aa) In General**

**Article 1421-** (1) Unless otherwise agreed, the liability of the insurer shall attach upon payment of the premium or the first instalment thereof, provided however that liability for insurance against risks related to goods carried by sea or land shall attach upon conclusion of the contract

(2) Article 1430 is reserved.

###### **bb) Impossibility**

**Article 1422-** (1) The insurer shall not be entitled to the premium if the materialisation of the risk had become impossible before its liability had attached, unless such impossibility was caused by the acts or omissions of the policyholder, the insured or in the case of personal insurances the beneficiary.

##### **b) Pre-contractual information duty**

**Article 1423-** (1) Before the conclusion of the contract and sufficiently in advance for due consideration, the insurer and its agent shall inform in writing the policyholder of all matters related to the insurance contract, the insured's rights, the provisions to which the insured has to pay special attention, notification duties that may arise in the course of the insurance cover. Moreover, the insurer shall, independent of the policy, let know the policyholder during the contract period of the facts and developments that can be of importance to the insurance relationship.

(2) If this pre-contractual information duty was not duly fulfilled, the contract shall be deemed as having been concluded in accordance with the terms written in the policy, unless the policyholder objects to the conclusion of the contract within fourteen days. The burden of proving that the pre-contractual information duty has been duly fulfilled shall lie with the insurer.

(3) The Undersecretariat of Treasury shall determine the form and contents of the information addressed to the consumer by taking into account the regulations of foreign countries and especially those of the European Union.



## **c) Obligation to Deliver the Insurance Policy**

### **aa) In General**

**Article 1424-**(1) The insurer shall deliver the insurance policy duly signed by authorized persons to the policyholder within twenty four hours from the conclusion of the contract if the insurance contract had been concluded by the insurer or its agent, otherwise within fifteen days. The insurer shall be liable for losses arising from late delivery of the policy.

(2) If the policyholder loses the insurance policy, it can request a new policy from the insurer provided that it pays the expenses related thereto.

(3) In case the policy is not delivered, the proof of the contract shall be subject to general provisions.

### **bb) Contents**

**Article 1425-**(1) The insurance policy shall set out the respective rights of the parties, provisions relating to default, general and special conditions, if any, and shall be drafted in an intelligible and easily readable manner.

(2) If the contents of the policy and its annexes (endorsements) deviated from the terms set out in the application form or from the terms mutually agreed by the parties, such terms shall be ineffective to the extent that these are detrimental to the policyholder, insured or beneficiary.

(3) Unless otherwise provided by law, any subsequent alteration of the general conditions, which are in favour of the policyholder, the insured or the beneficiary, shall be effective immediately and shall apply directly. Where such an alteration justifies a request for additional premium, the insurer shall be entitled to claim the additional premium within eight days from the alteration. If the request was not accepted within eight days, the contract shall continue on the basis of the previous general conditions.

## **d) Obligation to Pay the Expenses**

**Article 1426-** (1) The insurer shall pay reasonable expenses incurred by the policyholder, insured or beneficiary in order to determine the scope of the risk, the amount of the indemnity or the fixed sum payable, even if it was subsequently established that these were useless.

(2) In case of underinsurance, Article 1462 shall be applied by way of analogy.

## **e) Obligation to Pay Indemnity**

### **aa) In General**

**Article 1427-** (1) If there was no agreement providing for restitution in kind (i.e. "repair policy"), the insurance indemnity shall be paid in cash.

(2) Following materialisation of the risk, the obligation to pay the insurance indemnity or the fixed sum shall fall due, when the insurer has completed its investigation about its obligation, after the documents related to the risk are given to it and in any event within forty five days from the date of notification made according to Article 1446. In personal insurances this period shall be fifteen days. If the investigation was delayed because of a fault that cannot be attributed to the insurer, the period shall not begin to run.

(3) If the investigation was not finalised within three months from the date of notification made according to Article 1446, the insurer shall pay at least fifty percent of the loss as mutually agreed by the parties or, in the absence of such agreement, as determined promptly by a preliminary Court survey, or at least fifty percent of the fixed sum.

(4) When the payment falls due, the insurer shall be automatically in default without any further notification being required.

(5) Any provision exonerating the insurer from paying default interest shall be ineffective.

### **bb) Indemnities paid for partial losses**

**Article 1428-**(1) Except in liability insurance, indemnities paid for partial losses during the contract period shall be deducted from the sum insured, unless otherwise agreed.

(2) In the case of partial losses the parties shall have the right to terminate the contract. However, the insurer shall be allowed to use its right to terminate only after having paid the partial loss.

### **cc) Fault in the Materialisation of the Risk**

**Article 1429-**(1) Unless otherwise agreed, the insurer shall pay losses arising from the negligence of the policyholder, the insured, the beneficiary and the persons for whose acts these persons are legally liable. If the policyholder, the insured, the beneficiary and the persons for whose acts these persons are legally liable intentionally cause the materialisation of the risk, the insurer shall be discharged from liability and shall not reimburse the premiums paid.

(2) Articles 1495, 1503 and paragraph 2 of Article 1504 are reserved.

## **2. Duties and Obligations of The Policyholder**

### **a) Obligation to Pay Premiums**

#### **aa) In General**

**Article 1430-** (1) The policyholder shall pay the premium as agreed by the contract. Unless otherwise agreed, the insurance premium shall be paid in advance. The provisions in special legislation are reserved.

(2) The insurance premium shall be paid in cash. Provided that the first instalment of the premium is paid in cash, a negotiable instrument may be tendered in settlement of the subsequent instalments. In such a case, the payment of the premium shall be deemed to have been effected upon collection of the sum payable under the negotiable instrument.

(3) The policyholder may avoid the contract by paying half of the agreed premium before the insurer's liability attaches. In the case of partial avoidance, the policyholder shall be liable to pay half of the premium related to the avoided portion.

#### **bb) Time of Payment**

**Article 1431-**(1) The total insurance premium or, if payment in instalments is agreed, the first instalment thereof shall be paid upon conclusion of the contract in exchange of the delivery of the insurance policy. In transport insurances relating to goods carried by land or by sea, the insurance premium shall be paid at the conclusion of the contract even if the insurance policy is not issued yet.

(2) The due dates of the subsequent instalments, their amounts and the consequences of non-payment of the premium at the due date shall be stated in the policy or notified to the policyholder in writing together with the delivery of the policy.

(3) Where payment in instalments is agreed, upon the materialisation of the risk, the portion of the total premium corresponding to the indemnity or the fixed sum to be paid shall become due and payable.

(4) As for insurances in favour of a third party, when the enforcement proceedings against the policyholder for the premiums due proved to be without result, the insurance contract can be continued in loss insurances with the insured and in personal insurances with the beneficiary if these persons undertook to pay the premium upon notification made by the insurer. Otherwise, the insurer is entitled to exercise its rights as against the policyholder.

(5) Subject to Article 1480, the insurer is entitled to deduct the premium due from the indemnity amount or the fixed sum to be paid. In such a case, Article 129 of the Turkish Code of Obligations shall not apply to insurance contracts.

**cc) Place of Payment**

**Article 1432-**(1) The insurance premium shall be paid at the policyholder's address indicated in the contract. The policyholder's address as indicated in the contract shall be ignored if the insurance premium was in fact paid continuously at another address designated by the policyholder..

**dd) Reduction of the Premium**

**Article 1433-** (1) If, as a result of alterations, the risk is lessened so as to justify lesser premium, the agreed premium shall be decreased or reimbursed, as the case may be.

(2) Paragraph (1) shall be applicable also when the higher premium is due to the policyholder's erroneous declaration with regards to circumstances aggravating the risk.

**ee) Default**

**Article 1434-** (1) The policyholder shall be in default if it did not pay the premium requested in accordance with Article 1431.

(2) If the premium or the first instalment thereof is not paid in time, the insurer may avoid the contract within three months as long as payment is not effected. The period of three months shall begin to run from the date of maturity. In case the premium is not claimed by way of a lawsuit or enforcement proceedings within three months from the maturity date, the insurer shall be regarded as having avoided the contract.

(3) If any of the subsequent instalments was not paid at the relevant maturity date, the insurer shall notify the policyholder by way of a registered letter or a notice served through a notary public that payment must be effected within ten days, failing which the contract is to be deemed as having been terminated at the expiry of the ten-days-period. If the outstanding amount remained unpaid at the expiry of this period, the contract shall be terminated. Any additional rights of the insurer arising under the Turkish Code of Obligations in respect of the policyholder's default are reserved.

(4) If two notifications were sent to the policyholder within one premium period, the insurer is entitled to terminate the contract with effect from the end of that premium period. The rules on exemption in respect of personal insurances are reserved.

## **b) Duty of Disclosure**

### **aa) At the Conclusion of the Contract**

#### **aaa) In General**

**Article 1435-**(1) The policyholder shall inform the insurer of all important circumstances of which it is or ought to be aware at the time of conclusion of the contract. Circumstances that are not so disclosed at all or disclosed insufficiently or wrongly to the insurer shall be deemed of importance if they could lead to the non-conclusion of the contract or to its conclusion with different terms (had the insurer known the truth). Circumstances asked by the insurer orally or in writing shall be deemed as important until proof to the contrary.

#### **bbb) Written Questions**

**Article 1436-** (1) If the insurer has given to the policyholder a list of questions to be answered, the policyholder shall not be liable for any circumstances remaining outside the scope of the questions contained in that list, unless the policyholder has hidden an important issue in bad faith.

(2) The insurer may also ask questions about circumstances not included in the list. These questions have to be in writing and clear. The policyholder has to answer these questions.

#### **ccc) Connection**

**Article 1437-** (1) As for indemnity and fixed sum payments, the connection between circumstances not disclosed or disclosed incorrectly and the materialisation of the risk shall be taken into consideration in accordance with the rules set out in Article 1439.

#### **ddd) Knowledge of the Insurer about the Truth**

**Article 1438-**(1) If the real situation with regards to non-disclosed or incorrectly disclosed circumstances or facts is known to the insurer, it shall not have the right to avoid the contract arguing that the duty of disclosure has been violated. The burden of proof shall lie with the policyholder.

### **eee) Remedy**

**Article 1439-**(1) If circumstances of importance to the insurer are not disclosed at all or disclosed incorrectly, the insurer may avoid the contract or request additional premium within the period specified in Article 1440. In case the request for additional premium is not accepted within ten days, the insurer shall be deemed to have avoided the contract. The fact that certain important circumstances were not discovered as a result of the policyholder's negligence or were not deemed to be important by the policyholder shall not be taken into consideration.

(2) After the materialisation of the risk, in case the duty of disclosure was negligently violated by the policyholder and if this violation affected the amount of the indemnity or fixed sum to be paid or was relevant for the materialisation of the risk, a deduction from the indemnity shall be made in proportion to the degree of negligence. Where the policyholder acted with intent, the insurer shall be discharged of its obligation to indemnify or to pay a fixed sum if there was a connection between the violation of the duty of disclosure and the materialised risk; if there was no such connection, the insurer shall indemnify or pay the fixed sum proportionally, by taking into consideration the ratio between the premium paid and the premium which should be paid.

### **fff) Form of and Time Limit for Avoidance**

**Article 1440-**(1) The avoidance must be addressed to the policyholder by way of a declaration.

(2) The avoidance must be notified to the policyholder within fifteen days. This period starts to run from the date the insurer became aware of the breach of the duty of disclosure.

### **ggg) Effects of Avoidance**

**Article 1441-**(1) In case of avoidance, if the policyholder has acted intentionally, the insurer shall be entitled to the portion of the premium corresponding to the period in which it has carried the risk.

### **hhh) Loss of Right of Avoidance**

**Article 1442-** (1) The right of avoidance cannot be invoked when:

- a) the right of avoidance was waived explicitly or implicitly.
- b) the insurer has caused the breach giving rise to avoidance.
- c) the insurer has concluded the contract despite questions left unanswered.

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**bb) Duty to Disclose Changes Occurred Between Proposal and Acceptance**

**Article 1443-**(1) The provisions relating to the duty of disclosure shall apply by way of analogy in respect of changes that have occurred as between the proposal and the acceptance.

**cc) During The Contract Period****aaa) In General**

**Article 1444-**(1) After conclusion of the contract, the policyholder shall not accomplish acts or transactions, which would lead to an increase of the amount of indemnity due to aggravation of the risk or current status, without the insurer's prior consent.

(2) If the policyholder or another person authorised by the policyholder accomplishes acts or transactions, which increase the probability of the materialisation of the risk or aggravate the current status or if circumstances designated by the parties at the conclusion of the contract as aggravation of the risk are materialised, the policyholder shall notify the insurer immediately or, if these transactions had been concluded without its knowledge, within ten days as of the date of awareness.

### **bbb) Rights of the Insurer**

**Article 1445-** (1) During the contract period, the insurer may terminate the contract or request additional premium within one month from the date it became aware of the facts increasing the probability of materialisation of the risk or aggravating the current status or of the events designated by the parties at the conclusion of the contract as aggravation of the risk. In case the request for additional premium has not been accepted within ten days, the contract shall be deemed as having been terminated.

(2) The right to terminate shall be ineffective if the status *ante quo* is re-established.

(3) The right to terminate or to request additional premium shall be forfeited if not used in time.

(4) Paragraphs (1) to (3) shall not apply if the aggravation is caused by circumstances relating to the interest of the insurer, an event caused by the insurer, the accomplishment of a humanitarian duty or, in life insurances, the alterations in the health conditions of the insured.

(5) After the materialisation of the risk, if the duty of disclosure was negligently violated by the policyholder and if this violation affected the amount of the indemnity or the fixed sum to be paid or was relevant for the materialisation of the risk, a deduction from the indemnity or the fixed sum shall be made in proportion to the degree of negligence. Where the policyholder has acted with intent, the insurer shall be discharged of its obligation to indemnify or to pay a fixed sum if there was a connection between changes made and the risk materialised. If there was no such connection, the insurer shall pay the indemnity or the fixed sum proportionally, by taking into consideration the ratio between the premium paid and the premium that should be paid.

(6) If the insurer discovered, before the materialisation of the risk, that the policyholder has violated its duty of disclosure intentionally and used its right to terminate the contract in accordance with paragraph (1), it shall nevertheless be entitled to the premium of the current premium period.

(7) If the risk did materialise within the time limit provided for the notification of termination or the time limit provided for the termination being effective and in connection with the changes made, the insurance indemnity or the fixed sum shall be paid by taking into account the ratio between the premium actually paid and the premium which should be paid.



**a) At the Time of Materialisation of Risk**

**Article 1446-**(1) The policyholder shall notify the insurer without delay when it becomes aware of the materialisation of the risk.

(2) If the insurance indemnity or the fixed sum to be paid increased as a result of the failure or delay in giving notice of the materialisation of the risk, the insurance indemnity or the fixed sum shall be reduced by taking into consideration the degree of the negligence.

(3) Paragraph (2) does not apply if the insurer had actually become aware of the materialisation of the risk before the increase .

**c) Duty to Provide Information and Duty to Allow Investigation**

**Article 1447-**(1) After the materialisation of the risk, the policyholder must, in accordance with the contract or upon the insurer's request, provide all information and documents, which are necessary for determining the extent of the risk and indemnity, and which might be expected from the policyholder, to the insurer within a reasonable period of time. Further, the policyholder shall, having regard to the information and documents it received, allow the insurer to investigate the site of the risk or other relevant sites and take appropriate measures as might be expected.

(2) If the amount to be paid increased because of a breach of this duty, a deduction shall be made from the indemnity by taking into consideration the degree of negligence.

**d) Duty to Prevent, Mitigate the Loss; Duty to Protect the Insurer's Right of Recourse**

**Article 1448-** (1) In the event that the risk materialised or materialisation of the risk became highly probable, the policyholder must, circumstances permitting, take measures to prevent the loss or its increase, mitigate the loss, and to protect the insurer's rights of recourse against third persons. -The policyholder must comply with the instructions of the insurer as much as possible. In case of several insurers giving contradictory instructions, the policyholder shall take into consideration the most appropriate instruction in respect of reducing the loss and protecting the insurer's rights of recourse.

(2) If the breach of this duty has created a situation detrimental to the insurer, the insurance indemnity shall be reduced proportionally by taking into consideration the degree of the negligence.

(3) The insurer must indemnify the policyholder for reasonable expenses made pursuant to paragraph (1) in addition to the indemnity or the fixed sum to be paid even where these expenses were found to be useless. In the case of underinsurance, Article 1462 shall apply by way of analogy.

(4) Upon the policyholder's request, the insurer must pay in advance an amount sufficient to meet such expenses.

### **e) Violation of the Duties Stipulated in the Contract**

**Article 1449-** (1) Provisions to the effect that the insurer will be discharged from its obligation of performance by terminating the contract entirely or partly in the event that the policyholder is in breach of a contractual duty towards the insurer, shall be ineffective if the breach was not negligent, unless otherwise provided by this Code or other legislation.

(2) If the breach was negligent, the right to terminate, which is not used within one month from the date of awareness, is lost , unless a different period is provided in this Code.

(3) The insurer cannot terminate the contract where the violation had not any effect on the materialisation of the risk or the extent of the insurer's obligation to be fulfilled.

### **B) Scope of Application of Legal Provisions**

**Article 1450-**(1) The provisions of this Code shall not apply to contracts made with Social Security Institution unless otherwise provided by the Social Security legislation.

### **C) Provisions Applicable to Insurance Contracts**

**Article 1451-**(1) If there was found no provision available in this Code, the provisions of the Turkish Code of Obligations shall apply to insurance contracts.

### **D) Protective Provisions**

**Article 1452-**(1) Contracts against the provisions of Articles 1404 and 1408 and the second sentence of paragraph (1) of Article 1429 shall be invalid.

(2) Terms violating the provisions of Articles 1418 and 1420 and that of the paragraph (2) of Article 1430 shall not be valid.

(3) Articles 1405, 1409, 1413 to 1417, 1419, 1421, 1422 to 1426, paragraphs (2) to (5) of Article 1427, Article 1428, paragraphs (1) and (3) of Article 1430, paragraph (1), (2) and (4) of Article 1431 and the provisions of Articles 1433 through to 1449 cannot be altered to the detriment of the policyholder, the insured, and the beneficiary. In case of detrimental alteration, the provisions of this Code shall apply.

## **PART TWO**

### **Special Provisions on Particular Insurance Classes**

#### **CHAPTER ONE**

#### **Indemnity Insurances**

### **A) Property Insurance**

#### **I) Interest and Scope**

##### **1. In General**

**Article 1453-** (1) Persons having an interest in the non-materialisation of the risk may protect such interest by taking out property insurance.

(2) Unless otherwise agreed, loss of profit resulting from the materialisation of the risk and loss or damage due to inherent defects of the insured property shall not be within the scope of the insurance cover. An amount in excess of the profit that might reasonably be expected from the insured property cannot be insured.

(3) In the insurance of a group of properties, the insurance contract shall apply as a whole without having regard to the change in the group by way of inclusion or segregation of individual items.

(4) Property insurance made for a group of properties shall cover the individual items within that group.

##### **2. Insurance in Favour of a Third Party**

**Article 1454-** (1) The policyholder may take out insurance for a third party's interest with or without disclosing the identity of that third party. The rights arising from the insurance contract shall belong directly to the insured. Unless otherwise agreed, the insured is entitled to claim from and sue the insurer for the payment of the insurance indemnity.

(2) In cases where the identity of the third party is disclosed, the policyholder shall be deemed as having acted on its own behalf and in favour of the third party, rather than as a representative of the third party.

(3) The person in favour of whom the insurance is taken out may also be left undisclosed. If it were understood that such an insurance taken out "to whom it may concern" is concluded for the benefit of a third party, paragraph (2) of this Article shall apply.

### 3. Insurance taken out for Common Interests

**Article 1455** - (1) If a person having insurable interest only in a part of a property or right over a property takes out insurance for more than its share, the exceeding part of the insurance shall be deemed to have been made in favour of the remaining shareholders with the same kind of interest as the policyholder.

### 4. Restrictions over Interest

#### a) Restricted Rights *in Rem*

**Article 1456** - (1) Where insurance is taken out to protect the ownership interest over a property charged with a restricted right *in rem* ("restricted real right") such as a mortgage or usufruct, the right of the restricted real right's holder shall extend also to the insurance indemnity, unless otherwise provided in the legislation.

(2) If the insurer was notified of the existence of restricted real rights over the insured property, the insurer cannot pay the insurance indemnity to the insured without the approval of the holders of those restricted real rights. No notification to the insurer is required in cases where the restricted real rights have become public by way of a registry or where the insurer is already aware of the restricted real right. The insurance indemnity may be paid to the insured for the repair or restitution of the insured property to its previous state on the condition that a security has been provided.

(3) The insurer who acted in breach of paragraph (2) shall be released from its obligations towards the holders of the restricted real rights provided that their approval (to the payment effected to the insured) has been obtained.

(4) The insurer shall notify the holders of restricted real rights, of whom it is aware or who informed the insurer about their rights, of the fact that the policyholder has defaulted on the premium payments or has been served a request by the insurer for payment of additional premium.

(5) In the event of termination or avoidance of the contract by the policyholder or the insurer, the holders of the restricted real rights shall be informed of that fact by the insurer within fifteen days from the date of notification if the termination or avoidance occurred upon initiative of the insurer and in other cases, from the cessation of the insurance contract. The insurance contract shall continue to be effective for the holders of the real rights for another fifteen days after it has come to an end. If the holders of the real rights did not notify the insurer within fifteen days of their decision to uphold the insurance contract on their own behalf, the contract shall become ineffective also for those holders of real rights. If the holders of the real rights declared their decision to uphold the insurance contract, the insurer may not reject this request without a just cause.

(6) The insurer shall inform the person who declares being the holder of a restricted real right, of the insurance cover and sum insured, upon its request.

(7) Article 1416 shall also apply in respect of the person who notifies its restricted real right to the insurer.

(8) The provisions of this Article shall not apply to the restricted real rights established in favour of the policyholder.

## **b) Arrest**

**Article 1457-** (1) In the event of the arrest of the insured property, the insurer shall be released from its obligation by paying the insurance indemnity to the enforcement office provided that it had been informed of the arrest in time. The enforcement officer shall ask the debtor whether the property arrested is insured, and in the affirmative with which insurer. If the enforcement officer determines that the property arrested is insured, it shall notice the insurer that, until further notice, it shall be released from its obligations only by paying the insurance indemnity to the enforcement office.

## **II) Retroactive Insurance**

**Article 1458-** The insurance can be taken out in a way that the insurance protection is provided from a date earlier than date of conclusion of the contract. However, the contract shall be invalid if it was known at the conclusion of the contract to the insurer or to the policyholder or -provided that it is aware of the insurance- to the insured that the risk had already been materialised or the possibility of materialisation of the risk had ceased. In case the policyholder or the insured knew that the risk had already been materialised or the possibility of materialisation of the risk had ceased and the insurer was not aware of these facts, the insurer shall be entitled to collect all premiums agreed while not being bound by the contract.

## **III) Principle of Indemnity**

### **1. In General**

**Article 1459 – (1)** The insurer shall indemnify the (true) loss sustained by the insured.

### **2. Insurance Value**

**Article 1460- (1)** The insurance value shall be the full value of the interest insured.

### 3. Sum insured

**Article 1461-**(1) The liability of the insurer is limited to the sum insured. The insurer shall not pay more than the loss sustained even if the sum insured exceeds the value of the interest insured at the time of the materialisation of the risk.

(2) Paragraph (1) shall not apply to the new value insurances providing for compensation in kind.

### 4. Effects

#### a) Underinsurance

**Article 1462-** (1) In case the sum insured is less than the insurance value, if the insured interest is partly damaged, the insurer shall pay the insurance indemnity in the proportion that the sum insured bears to the insurance value, unless otherwise agreed.

#### b) Overinsurance

**Article 1463-**(1) In case the sum insured exceeds the insurance value the excessive part is invalid. The sum insured and the insurance premium corresponding to overinsurance shall be reduced and the premium paid in surplus shall be reimbursed.

(2) A contract of insurance constituting overinsurance is invalid if the policyholder concluded it in bad faith to obtain financial benefit. If the insurer was unaware of the invalidity at the conclusion of the contract, it shall be entitled to the premium until the end of the premium period, in which it became aware.

#### c) Agreed Value Insurance

**Article 1464-**(1) If the parties determine by agreement the insurance value as a specific amount, this amount shall be decisive as between the parties for the insurance value.

(2) If the agreed value is excessively high, the insurer can request its reduction. In case of agreed value on the anticipated profit, the insurer may request its reduction where the agreed value exceeds the amount of profit commercially predictable as at the date of conclusion of the insurance contract.

#### d) Multiple Insurance

##### aa) The Rule

**Article 1465-** (1) If the same interest is insured against the same risk, for the same period by more than one insurer at the same date or at different dates, the policyholder shall not be paid in excess of the insurance value.

(2) In case of multiple insurance the policyholder shall notify each insurer of both the materialisation of the risk and other insurances taken out for the same interest. Article 1446 shall apply to the breach of this provision.

**bb) Co-insurance**

**Article 1466-**(1) If the same interest is insured with more than one insurer at the same date, against the same risk and for the same period, all of the co-insurance contracts shall be deemed valid only up to the value of the insured interest. In such a case, each insurer shall be liable in the proportion that its insured sum bears to the total of the insurance sums.

(2) If the insurers are jointly liable according to their contracts, the insured shall not have the right to claim more than its loss and each of the insurers shall be liable up to the sum it has to pay according to its contract. In that case, the insurer who effected payment shall have recourse to the remaining insurers in the proportion of the insurance sums that the insurers have to pay to the insured under their contracts.

**cc) Double insurance**

**Article 1467 –** (1) In respect of an interest covered for its full value, the same person or other persons cannot subsequently take out insurance against the same risks, for the same periods. If such an insurance was nevertheless taken out, it shall be deemed valid only under the following circumstances and conditions:

a) If the subsequent and previous insurers approved. In this case the insurance contracts shall be deemed as concluded at the same time and upon the materialisation of the risk the insurance sum shall be paid by the insurers according to the proportions indicated in Article 1446.

b) If the policyholder transferred its rights arising out of the previous insurance contract to the subsequent insurer or waived its rights under the previous insurance contract. In this case, the transfer or the waiver must be written on the insurance policy, failing which the subsequent insurance shall be deemed as invalid.

c) If the liability of the subsequent insurer was restricted to the part of the loss that is not paid by the previous insurer. In this case, the previous insurance must be annotated on the subsequent insurance policy, failing which the subsequent insurance shall be deemed as invalid.

**dd) Partial Insurance**

**Article 1468-** (1) If the value of the interest is not covered completely under the previous insurance contract, this interest may be insured under one or several contracts up to the remaining uninsured part. In such a case the insurers who have insured the remaining uninsured part of the interest shall be liable according to the date of their contracts. The contracts concluded on the same day shall be regarded as concluded at the same time.

**e) Insurer's Right to Inspect the Insured Interest**

**Article 1469-(1)** The insurer may inspect the value of the insured interest within the contract period.

**IV) Change of the Insured Interest's Holder**

**Article 1470-** (1) The insurance contract shall terminate if the holder of the insured interest changed, unless otherwise agreed.

**V) Duty to refrain from Changes to Lost Property and at the Scene of Loss**

**Article 1471-** (1) The policyholder shall not make any changes to the lost property or at the scene of loss averting or rendering more difficult the determination of the cause of the loss unless the change is made in order to reduce the amount thereof or with the insurer's consent.

(2) In the event of negligent breach of this duty, the indemnity shall be reduced in proportion to the negligence provided that there is a causal link between the breach and the loss or damage.

**VI) Subrogation**

**Article 1472-** (1) The insurer shall legally succeed the insured upon payment of the insurance indemnity. If the insured has the right to sue third parties liable for the loss occurred, this right shall pass on to the insurer up to the amount it has paid. If legal action or enforcement proceedings had already been initiated against the parties liable, the insurer may continue these proceedings as per the rule of subrogation without the Court's or defendant's consent provided that it proves the payment effected to the insured.

(2) The insured shall be liable as against the insurer if it were in breach of the rights that have passed on to the insurer as per paragraph (1). If the insurer had partially indemnified the loss, the insured shall maintain its right to sue the persons liable for the remaining part of the loss.



## **B) Liability Insurance**

### **I) General Provisions**

#### **1. Subject and Scope of the Contract**

**Article 1473-** (1) Under a liability insurance contract, the insurer shall pay to the victim compensation up to the amount stipulated in the insurance contract, for the liability of the insured due to an event that occurred, unless otherwise agreed, during the contract period, even if the loss materialised after that period.

(2) If the insurance is taken out for the liability related to the enterprise of the insured, this insurance shall cover, unless otherwise agreed, the liability of the representatives, administrators, auditors and also the employees of the insured. In that case, the insurance shall be deemed taken out in favour of those persons.

#### **2. Legal Protection**

**Article 1474-**(1) Reasonable expenses relating to the claim raised against the insured shall be paid by the insurer. Expenses exceeding the sum insured shall be covered only if the contract so provides.

(2) The insurer shall make advance payment to the insured for these expenses upon the request of the insured.

#### **3. Duty of Notification**

**Article 1475-** (1) The insured shall notify the insurer within ten days of those events that may give rise to its liability.

(2) The insured shall notify the insurer of any claim made against it immediately, unless otherwise agreed. Upon this notification or in cases where the victim claims from the insurer directly, Article 1427 shall apply.

(3) If the duty of notification is not complied with, the provisions of paragraphs (2) and (3) of Article 1446 shall apply by way of analogy.

#### **4. Assistance by the Insurer**

**Article 1476-**(1) The insurer shall declare to the insured within five days as of the date of notification made in accordance with Article 1475, whether, it will take the necessary legal steps and decisions on behalf of the insured but for its own account and under its own responsibility and assist in the defence of the insured with regards to the claims of the victim. Otherwise, paragraph (4) of this Article shall apply.

(2) The insured has to accomplish all necessary acts until the end of the period mentioned in paragraph (1).

(3) If the insurer assumed claims control in accordance with paragraph (1), it shall also give due consideration to the rights and interests of the insured.

(4) If the insurer remained silent, it shall pay the indemnity that would become final and binding as against the insured. Any settlement agreed by the insured without the consent of the insurer is not binding upon the insurer if the insurer did not approve such settlement within fifteen days from notification. The insurer shall not refrain from approving the settlement for unjust causes.

#### **5. Intentional Acts**

**Article 1477-** (1) The insurer shall not be liable for loss arising out of any event for which the insured is liable, if caused by intent.

#### **6. Right of Direct Action**

**Article 1478-** (1) The victim may claim its loss up to the insured sum directly from the insurer provided that the claim is brought within the prescription period applicable to the insurance contract.

#### **7. Right of The Insurer to Obtain Information from the Victim**

**Article 1479-** (1) The insurer may request information from the victim for determining the cause and the extent of the loss. The victim must provide all of the documents that can be reasonably provided. In the case the victim does not comply with this duty, the liability of the insurer shall be limited to the amount that it would have to pay had the duty been fulfilled, provided that the victim is notified of the situation in writing.

#### **8. Set off**

**Article 1480-** (1) The insurer shall not set off the insurance indemnity against any sums due to it under the insurance contract.

## 9. Subrogation

**Article 1481-**(1) The insurer shall legally succeed the insured upon payment of the insurance indemnity. If the insured has the right to sue third parties for the loss he sustained, this right shall pass on to the insurer up to the amount it has paid.

(2) If legal action or enforcement proceedings had already been initiated against the parties liable, the insurer may continue these proceedings as per the rule of subrogation without the Court's or defendant's consent provided that it proves the payment effected to the insured.

(3) The insured or the victim shall be liable as against the insurer if it were in breach of the rights that have passed on to the insurer as per paragraph (1).

## 10. Prescription

**Article 1482-**(1) The claim of indemnity directed against the insurer (by the insured) shall be prescribed within ten years as of the event constituting the subject of the insurance.

# II) Compulsory Liability Insurance

## 1. Obligation of Contracting

**Article 1483-**(1) Subject to the provisions of other legislation, insurers shall not refrain from granting cover for compulsory insurances in the insurance classes, in which they are active.

## 2. Obligation of Performance as against the Victim

**Article 1484-**(1) In case the insurer is totally or partially discharged of its obligation of performance towards the insured, its obligation of performance as against the victim shall remain effective up to the sum insured under the compulsory insurance.

(2) The termination of the insurance relationship shall become effective as against the victim after one month following the notification by the insurer to the competent authorities that the contract has expired or is to expire.

(3) The liability of the insurer shall cease to the extent that the loss is compensated by Social Security Institutions.

### **III) Provisions applicable to Liability Insurance**

**Article 1485-** (1) Together with the general provisions, Articles 1454 and 1458, paragraph (1) of Article 1466 and Article 1477 shall also apply to liability insurances.

### **C) Protective Provisions**

**Article 1486-** (1) Contracts against the provisions of the second sentence of paragraph (2) of Article 1453, the second sentence of paragraph (1) of Article 1458, Articles 1459 and 1461, paragraph (1) of Article 1463, Articles 1472 and 1477 shall be invalid.

(2) Terms violating the provisions of paragraph (1) of Article 1456, Articles 1465 to 1468, 1479, 1480, 1482, 1484 and 1485 shall not be valid.

(3) Paragraph (2) of Article 1471 and Articles 1474 to 1476 cannot be altered to the detriment of the insured. In case of detrimental alteration, the provisions of this Code shall apply.

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## **CHAPTER TWO**

### **Personal Insurances**

#### **A) Life Insurance**

##### **I. Definition**

**Article 1487-** (1) Under a life insurance contract, the insurer undertakes, in exchange for a premium, to pay a fixed sum to the policyholder or a person designated by the policyholder upon the death or survival of the insured.

(2) If the person on whose life the insurance was taken out died before the payment of the first premium, the insurance contract shall be invalid.

##### **II. Tontines**

**Article 1488-** (1) Tontines may be established pursuant to the principle of distributing the assets constituted by contributions amongst the survivors at a determined date or amongst the beneficiaries previously designated by the deceased.

##### **III. Avoidance of the Contract**

**Article 1489-** (1) The policyholder may avoid the contract within fifteen days from the notification made by the insurer that it is entitled to do so. The burden of proof in respect of the notification lies with the insurer. If no such notification has been made, the right to withdraw from the contract shall be extinguished after one month following the payment of the first premium.

(2) Article 1430 is reserved.

#### **IV. Person on whose Life Insurance is taken out**

**Article 1490** - (1) The policyholder can take out insurance on its own life or on the life of another person against death or survival.

(2) Insurance on the life of another person requires that the beneficiary has an interest in the survival of that person. Moreover, in insurances against death, in case the insurance sum exceeds the regular funeral expenses, the written consent of the insured or its legal representative is required. If the insured is older than fifteen years of age, its consent shall be obtained also in addition to that of its legal representative. A contract made without prior authorisation shall be invalid if consent is not subsequently given.

(3) If the legal representative was designated as beneficiary or is the policyholder, it cannot represent the insured in the giving of the consent.

(4) If the interest ceased after the conclusion of the contract, the contract becomes invalid, however the surrender value shall be paid to the policyholder.

#### **V. Insurance Value**

**Article 1491** - (1) The life of an individual can be insured with one or more insurers at various insurance sums.

(2) If the insurance sum to be paid is higher than the pecuniary interest of the beneficiary, the exceeding part shall be deemed as been made in favour of the insured.

(3) Article 1472 shall not apply to life insurance. The assignment to the insurance company by the policyholder and its inheritors, who collected the insurance sum from the insurer in accordance with the life insurance contract, or by the inheritors of the persons, upon which the risk materialised, of their claim as against third persons, who had caused the occurrence of the risk, shall be invalid.

#### **VI. Medical Doctor Examination**

**Article 1492-** (1) In spite of an agreement between the policyholder and the insurer providing that the person, on whose life insurance is to be taken out, shall sustain a medical doctor's examination, the insurer cannot force that person to undergo this examination.

## **VII. Beneficiary**

### **1. Designation and Change**

**Article 1493-** (1) Subject to paragraphs (2) and (3) of the Article 1490 the policyholder can take out insurance in favour of a real person or a legal entity.

(2) The policyholder shall notify the insurer of the beneficiary it has designated.

(3) If the beneficiary is not notified to the insurer, the insurer shall be discharged of its liability by payment effected in good faith.

(4) If the policyholder delivers to the beneficiary the insurance policy containing the written statement of a waiver of the right to change the beneficiary, it shall not be entitled anymore to change that person. In case of doubt, the right of the policyholder to change the beneficiary shall be deemed as reserved. In case the policyholder explicitly waives the right to change the beneficiary and delivers the insurance policy to the beneficiary, the change of the beneficiary remains nevertheless possible if conditions for debarment from heritage or avoidance of the donation are fulfilled or if the reason for designation as beneficiary has ceased.

(5) The designation and change of the beneficiary is not dependent on the insurer's authorisation.

(6) Where the beneficiary cannot be changed, the sum payable upon use by the policyholder of its right to surrender the policy to the insurer or borrow from the insurer or, unless otherwise agreed, in case of bankruptcy of the insurer before the materialisation of the risk shall belong to the beneficiary.

(7) The right to claim and collect the insurance sum from the insurer shall belong to the beneficiary unless otherwise agreed.

### **2. Interpretation Rule for the Designation of Beneficiary**

**Article 1494 -** (1) In insurances against the risk of death, if several persons are designated as beneficiaries without indication of their shares, each of these persons shall be entitled to the insurance sum at an equal rate. A share not collected by any one of the beneficiaries shall be added to the shares of the others. Renunciation or waiver of inheritance shall not have any effect on the right of the beneficiary.

(2) If no beneficiary was designated in insurances against the risk of death, the contract shall be deemed as made in favour of the inheritors of the policyholder; in insurances for survival, the contract shall be deemed as made in favour of the insured.

### **VIII. Right in Favour of the Policyholder**

**Article 1495** - (1) If the beneficiary does not obtain the right to claim from the insurer, this right shall pass to the policyholder, and upon its death, to its inheritors.

### **IX. Group Insurances**

**Article 1496** - (1) Insurance may be taken out under a single contract in favour of the persons belonging to a group, which should consist of at least ten persons and of which the members are determinable according to the criteria set forth by the policyholder. Any adherent to the group during the contract period shall benefit from the insurance until the end of the group insurance contract. The validity of the contract shall not be affected by the fact that the number of group members decreases to less than ten persons after the conclusion of the contract.

(2) A document summarising the contents of the policy shall be delivered to each member of the group.

(3) The right to designate the beneficiary shall belong to each member of the group, unless otherwise agreed.

(4) In case of ceasing to be a member of the group within the contract period, the coverage provided by the group insurance may be continued on an individual basis by the policyholder, the insured, or the beneficiary unless otherwise agreed. The continuation by the insured or the beneficiary shall only be possible if they assumed the title of the policyholder. These persons shall be jointly liable together with the previous policyholder for their share of outstanding premiums related to the past days.

(5) Surrendering the policy to the insurer, borrowing from the insurer, exemption from payment of premium, duty of notification in group insurances as well as other relevant matters shall be regulated by the Ministry to which the Undersecretariat of Treasury reports.



## **X. Disclosure**

### **1. Wrongful Declaration of the Age**

**Article 1497** - (1) If the premium was determined lower as a result of the wrongful declaration of the insured's age at the conclusion of the contract, the insurance sum shall be paid according to the proportion that the premium determined lower bears on the premium calculated on the real age. If the risk did materialise and the insurance sum is paid before the reduction, the insurer may request the paid surplus with any interest accrued thereon.

(2) In case a higher premium is paid as compared to the real age, the insurance sum shall be increased according to the premium actually paid. If the insurance sum is paid before the increase, the insurer must complete the deficit.

(3) The insurer may only avoid the contract on the grounds that the age was wrongfully declared if at the conclusion of the contract the real age fell outside the limits determined in accordance with the technical parameters.

### **2. Violation of the Duty of Disclosure at the Conclusion of the Contract**

**Article 1498** - (1) The insurer cannot avoid the contract on the grounds that the policyholder was in breach of its duty of disclosure at the conclusion of the contract if five years including the renewals had elapsed since the contract was entered into, but may claim only additional premium, unless the duty of disclosure was violated with intent. In case the policyholder does not agree to pay the requested additional premium, the insurer shall pay upon materialisation of the risk the insurance sum based on the ratio between the premium paid and the premium that should have been paid. However, if the aggravated risk fell outside the limits of the insurer determined in accordance with technical parameters as a result of the violation of the duty of disclosure, the insurer can avoid the contract. In renewed contracts, this period shall be counted from the conclusion of the initial contract.

### **3. Violation of the Duty of Disclosure during the Contract**

**Article 1499** - (1) The insurer cannot terminate the contract on the grounds that the policyholder was in breach of its duty of disclosure if five years including the renewals had elapsed since the increase of the risk and can only request additional premium, unless the duty of disclosure was violated intentionally. In case the policyholder does not agree to pay the additional premium, the insurer shall pay upon materialisation of the risk the insurance sum based on the ratio between the premium paid and the premium that should have been paid. However, if the aggravated risk fell outside the limits of the insurer determined in accordance with technical parameters due to the violation of the duty of disclosure, the insurer may terminate the contract.

### **XI. Surrender**

**Article 1500** - (1) In insurance contracts effective since at least one year and under which the premium for one year has been paid the policyholder may terminate the contract and leave the insurance at any time. The surrender value shall be calculated in accordance with the generally accepted actuarial principles prevailing at the time of the request for leaving.

(2) In insurances for survival the surrender value can be requested from the insurer only if it can be proven that the insured is in good health.

### **XII. Lending**

**Article 1501** - (1) In insurance contracts effective since at least one year and under which the premium for one year has been paid, the insurer shall, upon the request of the policyholder, be obliged to lend money to the insured based on a value calculated under the generally accepted actuarial principles prevailing at the time of the request.

### **XIII. Insurance exempted of Premium**

**Article 1502** - (1) If the policyholder fails to fulfil its obligation to pay the premium, in insurance contracts in effect since at least one year and under which the premium for one year has been paid, the insurer shall not have the right to terminate the contract and claim for premiums. In such a case, the insurance shall be transformed into an insurance exempt of premium. In insurances exempt of premium, the insurance sum shall be paid according to the ratio between the premium actually paid and the premium that should have been paid pursuant to the contract.

#### **XIV. Suicide**

**Article 1503 - (1)** In insurance contracts against the risk of death in effect since at least three years including renewals, if the insured commits suicide or dies as a result of an attempted suicide after this period, the insurer shall be obliged to pay the insurance sum.

(2) If the suicide or the death of the insured as a result of attempt to commit suicide has resulted from a disorder in its mental faculties before the expiry of three years, the insurer shall pay the insurance sum.

#### **XV. Murder of the Insured by the Policyholder or Beneficiary**

**Article 1504- (1)** If the policyholder killed the insured or was the co-author of that crime with intent to cause the payment of the insurance sum, the insurer shall be discharged from liability.

(2) If the beneficiary killed the insured or was the co-author of that crime in any manner, it shall be deprived of the benefit of the insurance and the insurance sum shall be paid to the inheritors of the deceased.

#### **XVI. Beneficiary Replacing the Policyholder**

**Article 1505- (1)** If the rights arising out of the insurance contract to the benefit of the policyholder are seized by way of a precautionary or final arrest or if the policyholder is declared bankrupt, the beneficiary designated by its name may become a party to the insurance contract by replacing the consenting policyholder.

(2) In case the beneficiary becomes a party to the contract, it shall be liable for the sums due to the creditors or the bankruptcy administration up to the amount that the policyholder could claim from the insurer had the contract been terminated by the insurer.

(3) Where any beneficiary was not designated at all or not designated by its name, the right described in paragraph (1) shall pass on to the spouse and children of the policyholder.

(4) The beneficiary or its spouse and children must notify the insurer for becoming a party to the insurance contract by replacing the policyholder. The right described in paragraph (1) shall be lost if the beneficiary or its spouse and children did not give notice within one month from the declaration of the bankruptcy or from becoming aware of the arrest.

## **XVII. Bankruptcy of the Insurer**

**Article 1506** - (1) In insurances taken out for a period longer than one year, if at the date the insurer is declared bankrupt the risk had not materialised yet, the mathematical reserves as at the date, on which the insurer was declared bankrupt, and if upon the occurrence of the risk the insurance sum had not been paid yet the mathematical reserves as at the date, on which the risk materialised, shall be paid to the entitled persons. Where the risk is materialised, any portion exceeding the mathematical reserves shall be paid from the securities constituted by the insurer and any deficit shall be included in the list of priorities in bankruptcy.

## **B) Accident Insurance**

### **I) In General**

**Article 1507-** (1) The accident insurance provides cover, in exchange for a premium, against death, temporary or permanent invalidity or disability of working of the insured. The insurance sum shall be paid to the policyholder or to the person designated by him in the case of death occurring suddenly or latest within one year from the accident and to the insured in the case of temporary or permanent invalidity or disability of working.

(2) An indemnity calculated daily shall be paid to the insured temporarily disabled of working for the period in which the disability continues, not exceeding the time limit provided for in the insurance policy.

### **II) Medical Expenses**

**Article 1508-** (1) Unless otherwise agreed, the insurer shall pay in addition to the insurance sum indicated in the insurance policy, the medical expenses incurred by the insured.

### **III) Insured**

**Article 1509** - (1) An accident insurance may be taken out against accidents that might happen to the policyholder or to another person.

#### **IV) Applicable Provisions**

**Article 1510** - (1) Paragraphs (2) to (4) of Article 1490 regulating the insured under life insurance shall also apply to insurance against the risk of death as a result of an accident.

(2) The remaining provisions on life insurance shall apply also to accident insurance by way of analogy.

(3) If the contract provided that actual losses are to be indemnified by the insurer, the provisions relating to indemnity insurance shall apply to such accident insurance by way of analogy.

### **C) Sickness Insurance and Health Insurance**

#### **I) Taking out of the Insurance**

**Article 1511-** (1) Sickness insurance and health insurance may be taken out in favour of the insured. In sickness insurance, a beneficiary may be designated, as well.

#### **II) Extent of Cover**

##### **1. Insurance cover**

**Article 1512-** (1) Under a sickness insurance contract, the insurer provides insurance cover against one or more sicknesses specified in the contract occurring or appearing within the contract period. If the contract covered more than one sickness, the insurance sum shall be paid and the contract shall cease upon the occurrence or appearance of one of those sicknesses. Unless otherwise agreed, the cover shall be deemed as granted for the occurrence of only one of the sicknesses.

## 2. Health insurance cover

**Article 1513-** (1) Under a health insurance contract, the insurer shall provide cover for;

- a) The expenses as agreed in the contract related to any kind of medical treatment including medications revealed necessary as a result of sickness, pregnancy and accouchement, early diagnosis of sicknesses including ambulatory examinations,
- b) Daily hospital expenses in case of an inpatient where treatment in hospital is necessary,
- c) Daily inability allowance aimed at compensating the loss in the earnings of the insured due to his inability to work as a result of sickness,
- d) In case the insured becomes in need of care, the expenses resulting from caring or daily care money stipulated.

(2) Unless otherwise agreed, the insurance covers all of the amounts described in paragraph (1).

## III) Insurance Value

**Article 1514 -** (1) Insurance on the health of the insured can be taken out from one or more insurers at different insurance sums in sickness insurances and in health insurances in the nature of a fixed sum insurance.

(2) In cases where the sum payable is higher than the insurable interest, the exceeding amount shall be deemed as provided in favour of the insured.

## IV) Beneficiary in Sickness Insurance

**Article 1515 -** (1) A relationship of interest must exist between the beneficiary and the insured to take out insurance for the sickness of another person with the designation of a beneficiary. Moreover the written consent of the insured is required. If the insured has a legal representative, the written consent must emanate from that legal representative. In case the insured is older than fifteen years, its written consent shall also be necessary; otherwise the contract shall be invalid.

(2) If the representative was the policyholder or designated as the beneficiary, it cannot represent the insured in providing such consent.

(3) The policyholder shall notify the insurer of the designated beneficiary. If such duty is not complied with, the insurer shall be discharged from liability by payment made in good faith.

(4) Where the beneficiary is not designated, the insurance shall be deemed as having been concluded in favour of the insured.

## **V) Waiting period**

**Article 1516** - (1) Under contracts providing for waiting periods, the maximum length of such periods shall be determined by the Undersecretariat of Treasury or by an institution deemed appropriate by the said Undersecretariat.

## **V) Inclusion of a Newborn or an Adopted Child under the Insurance Cover**

**Article 1517-** (1) If any sickness insurance or a health insurance existed for either the mother or the father during delivery, the newborn shall be included in the coverage of the insurance starting from the time of birth without extra premium, unless otherwise agreed. For the inclusion, notice of the birth must be given to the insurer within two months.

(2) The provision of paragraph (1) shall apply also to adopted children.

## **VII) Right to Request Information**

**Article 1518-** (1) The insurer must provide information upon the request of the relevant person or its legal representative, to the medical doctor designated by them, about the report obtained while investigating its obligation, in order to ascertain whether the sickness falls within the insurance cover and whether medical treatment is necessary and shall permit the examination of such report.

## **VIII) Other Provisions Applicable to Sickness Insurance and Health Insurance**

**Article 1519-** (1) Provisions on life insurance, shall apply, with the exception of the provisions of Articles 1497 and 1504, also to sickness insurance. However the application of Article 1503 to sickness insurance shall require the materialisation of the risk specified in the contract as a result of an attempt to committing suicide.

(2) In addition to the general provisions, the provisions relating to indemnity insurance and the provisions of the Articles 1500 to 1502 shall also apply to health insurances where the insurer has to cover the actual losses such as the expenses made for the sickness of the insured, medicine and treatment costs.

**IX) Protective Provisions**

**Article 1520-** (1) Contracts against the provisions of paragraph (2) of Article 1487, the first sentence of paragraph (2) and paragraph (4) of Article 1490, Article 1504 and the first sentence of paragraph (1) of Article 1515 shall be invalid.

(2) Terms violating the provisions of paragraph (3) of Article 1490, paragraph (2) of Article 1491, paragraph (1) of Article 1496, Article 1506, paragraph (1) of Article 1507, Article 1510, Article 1511, paragraph (2) of Article 1514, the second sentence of paragraph (1) and paragraph (2) of Article 1515, Article 1518 and Article 1519 shall not be valid.

(3) Article 1489, the second and third sentences of the paragraph (2) of Article 1490, Article 1492, Articles 1497 through 1503, the fourth sentence of the paragraph (1) of Article 1515, and Article 1517 cannot be altered to the detriment of the policyholder, the insured, and the beneficiary. In case of detrimental alteration, the provisions of this Code shall apply.