

## Conclusion and form of the contract<sup>1</sup>

<b>Austria</b>	<p>§ 3 VersVG:</p> <ul style="list-style-type: none"> <li>- Insurer must transmit insurance certificate to insured on paper or electronically.</li> <li>- Copy of genuine signature sufficient.</li> </ul>
<b>Bulgaria</b>	<p>There is a general reference to the Contracts and Obligations Act and the Commercial Act as to the conclusion of contracts, offer and acceptance and other general civil/commercial law rules.</p> <p><u>Art.184 Code for the Insurance:</u> An insurance contract shall be concluded in writing in the form of an insurance policy or of another written act.</p> <p>The written proposal or request addressed to the insurer concerning the conclusion of an insurance contract or written replies of the insured to queries made by the insurer with regard to circumstances of importance to assessing the nature and amount of risk, shall form an integral part of the insurance contract.</p> <p>The written form is deemed observed in cases where the contract has been drawn up in the form of an electronic document.</p> <p>The insurance contract may also be concluded through the means of long distance communication if this has been provided for by law.</p> <p><u>Art.261, para.1 Code for the Insurance:</u> Compulsory third party motor insurance contract has the form of an insurance policy and a mark issued by the Guarantee fund. The insurance policy is a special form printed in accordance with the procedure for printing securities.</p>
<b>Croatia</b>	<p>Pursuant to Article 925 of the Civil Obligations Act the insurance contract shall be concluded only when the application concerning the insurance has been accepted.</p> <p>The contract shall be concluded by consensus of both parties, and after the conclusion of the insurance contract, the insurer shall immediately provide the policyholder with a clearly written up and signed insurance policy or any other document relating to insurance (covering note, etc.)</p> <p>Only exceptionally a written form of the insurance contract is required, since the contract shall be considered concluded when signed by the insurer and the policyholder.</p> <p>A written application made to the insurer as regards the conclusion of the insurance contract shall be binding on the applicant for a period of eight days, unless the applicant has not determined a shorter time limit; where a medical examination is required, this time limit shall be 30 days.</p>

<sup>1</sup> The information in this table is provided by insurance experts or insurance organisations from respective country. It does not contain a thorough review of all Member States' insurance contract laws and does not reflect the official opinion of the Commission.

	<p>If the insurer fails to reject the application which does not depart from his terms and conditions for the insurance in question, within that time limit, the application shall be deemed to have been accepted and the contract concluded.</p> <p>In that case, the contract shall be considered concluded at the time the application is received by the insurer.</p>
<b>Estonia</b>	<p>Insurance contract is a consensual contract which is subject to the general rules of the conclusion of contracts - usually insured person submits the offer and insurer accepts.</p> <p>Contract doesn't have to be in writing, but the insurer has the obligation to issue a policy (allowed also electronically, mechanical signature is sufficient - § 434 (1) LOA, § 78 (2) General Part of the Civil Code Act)</p> <p>There are specific rules to be found from MTPL Insurance Act:</p> <ul style="list-style-type: none"> <li>- MTPL insurance contracts shall be entered into at least in a format that can be reproduced in writing. § 8 (1)</li> </ul> <p>MTPL policy at least in a format which can be reproduced in writing, except for the green card which shall be issued in writing. § 9 (2)</p>
<b>Finland</b>	<p>There are few form requirements as to the conclusion of insurance contracts as such. Therefore, similar rules as are applied in the conclusion of any contracts would apply (Contracts Act 228/1929).</p> <p>This means that there is freedom of form. However, section 11 of the Insurance Contracts Acts contains detailed provisions on the commencement of insurance cover, unless otherwise agreed.</p> <p>Reference must be made to the documentary requirements made to insurers to issue policies and insurance conditions without delay.</p> <p>Please see the above section "Definition of insurance contract". In addition to that, the insurance contract must be in writing.</p>
<b>France</b>	<p><u>Article L112-3 Insurance Code:</u> Modifié par Loi n°2005-1579 du 19 décembre 2005 - art. 54 (V) JORF 20 décembre 2005</p> <p>The contract and all the attached information provided by the insurer shall be draft in written form, in French and in a clear format.</p> <p><u>Le contrat d'assurance est consensuel. Il est conclu par l'accord des parties, quelle que soit la forme des consentements (verbale ou écrite). L'écrit n'est exigé que pour la preuve de l'existence et du contenu du contrat.</u></p> <p>If the parties decide to apply another law to the contract, they can also decide to use another language.</p> <p>If the applicable law is the French one, the parties can nevertheless decide to use another language, in particular the one of the insured's country of residence.</p> <p>Every addition or modification to the original contract shall be done in written form and shall</p>

	<p>be signed by both of the parties.</p> <p>An exception is foreseen in the case of modifications of a complementarity health insurance contract imposed by a State Council decree (Art. L 871-1 Social Security Code). In the latter case the insurer shall inform the insured, who has 30 days to refuse the proposed modifications. If no refusal is made, the proposed modifications would be effective after one month from the expiring of the 30-days deadline.</p>
<b>Germany</b>	<p>The general rules of the Civil Code apply (§§ 145 seq. BGB ). The insurance contract is a consensual contract which is formed by the consent of the parties. It is normally the insured person who submits the offer which the insurer accepts after having examined the offer.</p> <p>The insurance contract needs not to be in writing, however the insurer has to issue a policy, s. § 3 (1) VVG. The policy has to be handed over in writing. As long as the insurer has not issued the policy the applicant is not obliged to pay the premium, § 33 VVG, Insurance protection can be denied if the insured person has not paid the first due premium, , § 37 (2) VVG. § 3 (1) VVG is semi-mandatory, § 18 VVG.</p>
<b>Greece</b>	<p><u>Conclusion of the contract:</u></p> <p>The conclusion of the insurance contract is subject to the general rules of Civil Code. Its conclusion presupposes proposal and acceptance. In practice the insured submits to the insurer the proposal which is usually made on a form provided by the latter. The insurance contract is concluded as soon as the insurer accepts the proposal. Acceptance is substantiated when the contract is issued and delivered to the insured.</p> <p><u>Form of the contract:</u></p> <p>The insurance contract is not obligatorily subject to written form. However, written form is needed for evidencing its conclusion and to this end, the policy is issued by the insurer and is signed by him (even by mechanic means). Law 2496/97 also stipulates that the insurer is obliged to provide the policyholder with the insurance contract.</p>
<b>Hungary</b>	<p>As a general practice insurance contract is concluded in written form<sup>2</sup>.</p> <p><b>(Ptk. 6:443)</b></p> <p>If the insurance contract has been not concluded in written form, the insurance company is obliged to complete a certificate on the coverage. If the terms of the policy differs from the original application of the client, and this difference is not contested by the contracting party immediately after the receipt of the policy, the contract will be fixed in accordance with the contents of the policy.</p> <p>The client (contracting party) is tied by the application for 15 days, (and for 60 days where health underwriting is required).</p> <p><b>(Ptk. 6:443)</b></p> <p>A contract will be also created if the insurer does not respond to a client's application in 15 days (and 60 days where health underwriting is required), and the application was made on the official application form of the insurance company. If the contract - that is concluded without the explicit statement of the insurer - deviates from the general conditions of the insurer, the insurer is entitled to make a written proposal within 15 days to have the contract amended in accordance with the general terms. If the modification is not accepted</p>

<sup>2</sup> ■ **Bit.** – Act on Insurance Institutions and Insurance Business; Act of LX of 2003.

	by the client or does not respond it within 15 days, the insurer will be entitled to terminate the contract in writing with 30 days notice.
<b>Italy</b>	<p><u>Art. 1326, 1887 Civil Code:</u> The proposal is considered to be the offer made by the insured; the proposal is valid for a period of 15 days<sup>3</sup>. The contract is concluded when the insurer's acceptance is known by the insured (derogated for life insurance)</p> <p><u>Art. 1888 Civil Code:</u> compulsory written form for evidentiary purposes; it's compulsory for the insurer to deliver the insured copy of the contract</p> <p>Contracts should be drafted in Italian if not otherwise agreed</p> <p><u>Art. 185 d.lgs. 209 7/9/2005:</u> Obligation for the insurers to deliver the insured (attached to a copy of the insurance contract) also a comprehensive information note.</p> <p><u>Artt. 58, 59, 60,61 Code of Consumers</u></p>
<b>Portugal</b>	<p><b>Articles 32 to 38</b> of the Legal Regime state:</p> <p style="text-align: center;"><b>SECTION V</b></p> <p style="text-align: center;"><b>FORM OF THE CONTRACT OF INSURANCE AND INSURANCE POLICY</b></p> <p style="text-align: center;"><b>Article 32</b></p> <p style="text-align: center;"><i>Form</i></p> <ol style="list-style-type: none"> <li>1. The validity of the contract of insurance shall not be subject to compliance with any special requirement as to form.</li> <li>2. The insurer is obliged to formalize the contract in a written instrument, referred to as the insurance policy, and to provide it to the policyholder.</li> <li>3. The policy must be dated and signed by the insurer.</li> </ol> <p style="text-align: center;"><b>Article 33</b></p> <p style="text-align: center;"><i>Advertising messages</i></p> <ol style="list-style-type: none"> <li>1. The contract of insurance shall include any concrete and objective advertising messages relating thereto, and any contradictory clauses shall be excluded from the contract, save where these are more favorable to the policyholder or the beneficiary.</li> <li>2. The provisions of the preceding paragraph shall not apply when a period of one year has</li> </ol>

<sup>3</sup> 30 days if a medical certification is requested

elapsed between the last date of broadcasting of these advertising messages and conclusion of the contract or when the messages themselves set a period of validity and the contract has been concluded outside that period.

#### **Article 34**

##### *Provision of the policy*

1. The policy must be provided to the policyholder upon conclusion of the contract or must be sent to the policyholder within a period of 14 days for mass risk insurance, save where there is good reason for not doing so, or within the period agreed for major risks insurance.
2. Where agreed, the insurer may provide the policy to the policyholder on a durable medium.
3. Once the insurance policy has been provided, the insurer may not rely upon clauses that are not contained therein, without prejudice to the rules governing business error.
4. In the event of any delay in provision of the policy, the insurer may not rely on any clauses that do not appear in the written document signed by the policyholder or previously provided thereto.
5. The policyholder may at any time request that they be provided with the insurance policy, even after the contract has been terminated.
6. Once the period referred to in para. 1 has elapsed and until such time as the policy is provided, the policyholder may terminate the contract, such termination having retroactive effect and the policyholder shall be entitled to the return of the entire premium paid.

#### **Article 35**

##### *Consolidation of the contract*

If the policyholder has not indicated any discrepancy between what was agreed and the content of the policy within 30 days of the date of provision of the policy, only discrepancies arising out of the written or other durable medium document may be relied upon.

#### **Article 36**

##### *Drafting and language of the policy*

1. The insurance policy shall be drafted in comprehensible, clear and rigorous terms and in highly legible print, using words and expressions used in everyday language provided that the use of legal or technical terms is not essential.
2. The insurance policy shall be drafted in Portuguese, save where the policyholder requests that it be drafted in another language, subject to an agreement between the parties to that effect being entered into prior to issue of the policy.
3. In the case of mandatory insurance, a Portuguese version of the policy must be provided,

which shall in any case prevail over the version drafted in any other language.

### **Article 37**

#### *Policy wording*

1. The policy shall include the full content of what has been agreed by the parties, namely the general, special and particular conditions applicable.

2. The policy must include at least the following elements:

(a) the word "apólice" [policy] and the full details of the documents which it comprises;

(b) the particulars, including the tax identification number, and the domicile of the parties and, where justified, the details of the insured, the beneficiary and the representative of the insurer for the purposes of claims;

(c) the nature of the insurance;

(d) the risks covered;

(e) the territorial scope and period of cover of the contract;

(f) the rights and obligations of the parties as well as those of the insured and of the beneficiary;

(g) the sum insured or the method by which it may be calculated;

(h) the premium or the formula for calculation thereof;

(i) the start of the period of validity of the contract, with details of the date, time, and duration;

(j) the content of the benefit to be provided by the insurer in the event of loss or the manner in which this may be determined; and

(k) the legislation applying to the contract and the terms of arbitration.

3. Furthermore, the policy must include, highlighted and using a larger typeface:

(a) any clauses that set out causes of nullity, extension, suspension or termination of the contract at the initiative of either party;

(b) any clauses that establish the scope of cover, namely exclusions or limitations; and

(c) any clauses that impose on the policyholder or the beneficiary any term-related duty to advise.

4. Without prejudice to the duty to provide the policy and any responsibility in relation thereto, any breach of the preceding points shall entitle the policyholder to terminate the contract in the terms provided for in ali.23 (2) and (3) and, at any time, to request that the

	<p>policy be corrected.</p> <p style="text-align: center;"><b>Article 38</b></p> <p style="text-align: center;"><i>Non-assignable, to order and assignable policies</i></p> <ol style="list-style-type: none"> <li>1. The insurance policy may be non-assignable [nominative], to order or assignable [to bearer], and shall be non-assignable should the parties fail to stipulate the respective arrangement.</li> <li>2. Endorsement of a policy to order transfers the contractual rights of the endorsing policyholder or insured, without prejudice to the fact that the contract of insurance may authorize partial endorsement.</li> <li>3. Deliver of the policy to bearer transfers the contractual rights of the bearer, whether policyholder or insured, unless otherwise agreed.</li> <li>4. A non-assignable policy shall be provided by the policyholder to whomsoever succeeds them in the event of assignment of contractual position, and in the case of assignment of receivables, the policyholder must provide a copy of the policy.</li> </ol> <p><b>OBSERVATION</b></p> <p><b>Please note that there exist special rules on the conclusion and termination of specific insurance contracts such as the compulsory regime for motor insurance liability (Decree-law 291/2007 of 21/08/2007)</b></p>
<p><b>Romania</b></p>	<p><u>The conclusion of insurance contract</u>  Article 2200 of Civil Code states that the insurance contract must be concluded in writing. The conclusion of insurance contract is proved by the insurance policy or the insurance certificate issued and signed by the insurer or by the covering note issued and signed by the insurance broker.  The documents certifying the completion of an insurance certificate can be signed electronically.</p> <p><u>The form of the insurance contract</u>  Order no. 23/2009 for the implementation of the Norms regarding the information that insurers and insurance intermediaries must provide customers and other items that must be included in insurance contract, issued by the Insurance Supervisory Commission states that the insurance contract and insurance conditions has to be clear written and easy to read, to use a font size of at least 10, on paper or on another durable medium, in at least two copies, an original copy has to be kept by each party. The background color of the paper of the documents, of the insurance contract and insurance conditions should be contrasted with that of the font used.</p> <p>Article 2201 of Civil Code states that the insurance policy must contain at least:  - the name of the insured, the place of the domicile/residence of the parties and insurance and the beneficiary name if this is not a party in the contract  - the object of insurance</p>

	<ul style="list-style-type: none"> <li>- the insured risks</li> <li>- the start date and the termination date of the insurer liability</li> <li>- the insurance premiums</li> <li>- the insured sums.</li> </ul> <p>Article 2238 of Civil Code states that the insurers are required to provide the insured in the insurance contracts, at least the following information (information that must be submitted in writing, in Romanian language, in clear writing):</p> <ul style="list-style-type: none"> <li>- optional or additional terms and benefits of harnessing technical reserves; <ul style="list-style-type: none"> <li>- the start and the termination of the contract, including termination of the arrangements;</li> </ul> </li> <li>- the modalities and the term of insurance premiums payment;</li> <li>- the elements for calculating insurance claims, indicating redemption amounts, the amounts secured low and the extent to which they are secured;</li> <li>- the method of payment of insurance claims;</li> <li>- the law applicable to the contract of insurance;</li> <li>- other elements established by rules adopted by the authority in whose jurisdiction falls, under the law, the supervision of the insurance.</li> </ul>
<p><b>Slovakia</b></p>	<p>§ 791 of CC  Legal acts concerning insurance shall require a written form. The insurer shall provide the person who entered into the insurance contract with a policy as a written confirmation of its conclusion.</p> <p>§ 790 of CC  To conclude an insurance contract an insurance proposal must be accepted within the period set by proposer, or, if the proposer did not set such period, within 1 month from the day of its receiving. The contract is concluded at the moment the proposer received a notice of acceptance of the proposal.</p> <p>The proposal may also be accepted by payment of the insurance premium in the amount referred in proposal.</p> <p>§ 795 of CC  The obligation of the insurer to pay claims and its right to the insurance premium shall come into existence on the first day after the conclusion of the insurance contract, unless agreed otherwise.</p>
<p><b>Spain</b></p>	<p>The insurance contract is consensual therefore it is concluded when de offer and the acceptance concur and, in any case, when the policyholder notifies his acceptance of the proposal to the insurer.</p> <p>Insurers are not obliged to follow a specific form when drafting a contract of insurance in Spain.</p> <p>However, Spanish insured's, Spanish Courts and Authorities are all familiar with a specific type of contract that comprises the schedule: general conditions, and any special conditions or terms.</p> <p>(Art. 5 LCS) The insurance contract and its modifications or additions must be formalized in writing.</p>



<p><b>Sweden</b></p>	<p>In general there are no specific requirements regarding the form of insurance contracts. Binding insurance contracts may - with few exceptions – be concluded orally. But, in practice, an insurance contract is normally substantiated by at least two documents - an insurance policy and general conditions.</p>
<p><b>United Kingdom</b></p>	<p><b>Insurable Interest</b></p> <p><b>Insurable interest in non-indemnity policies (life, critical illness and personal accident):</b></p> <p><u>Life Assurance Act 1774</u></p> <p>1. Section 1 bans the making of insurances where there is no interest, and renders any policy issued in such circumstances null and void. Subsequent case law and statutes have established what interest is required under this section (Law Commission Issues Paper 4, Issues paper 4, January 2008, p. 10):</p> <p>a) interest arising out of natural affection:</p> <p>Under English law this is possible for own life or life of spouse, <u>but not</u> among parents and children (Law Commission Issues Paper 4, Issues paper 4, January 2008, p. 10-12; <i>Wainwright v Bland</i> (1835) 1 Moo. &amp; R 481; <i>Murphy v Murphy</i> [2004] 1 Lloyd’s IR 744)</p> <p>Note section 11 of the Married Women’s Property Act 1882 states that a policy if insurance taken out by a husband for the benefit of his wife or children, or by a wife for the benefit of her husband or children creates a statutory trust of the policy in the hands of the executor. This side steps the needs for children to insure their parents’ lives in which they do not have an automatic insurable interest.</p> <p>b) interest arising out of a potential financial loss which is recognised by law and can be shown at the time of the contract:</p> <p>The insured must show that he will or may lose some legal or equitable right or come under some kind of legal liability in consequence of the death of the person whose life is insured (<i>Lucena v Craufurd</i> (1806) 2 Bos &amp; PNR 269; <i>Dalby v India &amp; London Life Assurance</i> (1854) 15 C.B. 365). The mere expectation or hope of future pecuniary benefit from the prolongation of the life insured or of fulfilment by him of moral obligations owed to the insured is insufficient to sustain an insurable interest (McGillivray on Insurance Law (12th ed.) paragraph 1-070; <i>Sharma v Home Insurance Co of New York</i> [1966] E.A.8(K)).</p> <p>In this case, the insurable interest is limited to the economic value of the interest. The key elements are that the interest is pecuniary and must be recognised by law</p> <p>Examples include:</p> <ul style="list-style-type: none"> <li>- creditor on the life of a debtor for the amount of the debt;</li> <li>- a joint debtor in the life of a joint debtor up to the amount of the debt;</li> <li>- employer in the life of an employee (for the period of notice);</li> </ul> <p>(Law Commission Issues Paper 4, Issues paper 4, January 2008, p. 10-14).</p> <p>Where the death of the life insured will involve the assured in a liability, it is no answer for the insurers to show that he will also derive some benefit, since the contract is not one of indemnity (<i>Branford v Saunders</i> (1871) 25 W.R. 650)</p> <p>c) interest arising out of statutory provisions:</p>

For example, the Civil Partnership Act 2004 creates a presumption of natural affection among civil partners as among married couples, thus recognising an unlimited insurable interest for civil partners.

(Law Commission Issues Paper 4, Issues paper 4, January 2008, p. 16)

See also the Local Government Act 1972, Local Government (Scotland) Act 1973, Land Drainage Act 1991, Police (Northern Ireland) Act 2003 which give local authorities or councils the right to insure the lives of members of the authority, council or district policing partnership whilst engaged on the business of the authority, council or partnership.

d) interest recognised by the courts that does not fit into any of the above categories (Law Commission Issues Paper 4, Issues paper 4, January 2008, p. 17):

*Feasey v Sun Life Assurance Co of Canada (2003)*

The case led to a fresh categorisation of insurable interest into four categories with two relevant for life:

- cases where the court has defined the subject matter as a particular life of a particular person and where the insurance is to recover a sum on the death of that person
- cases "in which the court has recognised interests which are not even strictly pecuniary".

Based on this judgment in some policies on lives (in particular those on many lives and over a substantial period) it is not necessary to show a strict pecuniary loss recognised by law.

(Law Commission Issues Paper 4, Issues paper 4, January 2008, p. 17-19)

Further requirements under the Life Assurance Act 1774:

- Interest must be shown to have subsisted at the date on which the contract was made: *Dalby v India and London Life Assurance (1854)* 15 C.B. 365; McGillivray on Insurance Law (12th ed.) paragraph 1-065)
- Section 2 requires the names of those interested to be noted in the policy document.
- Section 3 limits the amount of any recovery to the value of the interest.
- Section 4 provides that the 1774 Act does not apply to "ships, goods, or merchandises".

Consequences of a lack of an insurable interest

Under section 1 of the Life Assurance Act 1774 policies made without an insurable interest are null and void. Pursuant to section 1 a policy made without the insertion of the names of all interested parties is illegal. Case law has also established that a contract of insurance created without an insurable interest is illegal (*Harse v Pearl Life Assurance Co [1904]* 1 KB 558).

Under English law as a general rule premiums are not repayable where a contract is illegal, unless the policy holder shows that the insurer bears a greater degree of responsibility for the illegal contract (Law Commission Issues Paper 4, Issues paper 4, January 2008, p. 20).

**Insurable interest in indemnity policies:**

Under the indemnity principle the policyholder may only receive indemnity for the amount of loss they have suffered. Thus, a loss has to be proved in any case. (Law Commission Issues Paper 4, Issues paper 4, January 2008, p. 34)

- Insurable interest in goods:

The Gambling Act 2005: Following the entry into force of this act in 2007, the law on insurable interest in indemnity insurance changed and no longer requires an insurable interest for most forms of indemnity insurance. A policy holder no longer needs to show an insurable interest in the goods to prove that the contract is not a wager, as both insurance and wager contracts

are enforceable. Nevertheless, under the indemnity principle the policyholder still needs to prove a loss in order to receive the indemnity. (Law Commission Issues Paper 4, Issues paper 4, 2008, p. 39)

- Insurable interest in land and buildings:

It is broadly accepted that the Life Assurance Act 1774 does not apply to land and buildings. If that is the case, since the entry into force of the Gambling Act 2005 no insurable interest is required for insurance of land and buildings and the rules will be the same as for goods. The indemnity principle also applies (Law Commission Issues Paper 4, Issues paper 4, 2008, p. 40)

**Offer and acceptance:**

An offer could be made by the insured or insurer. In practice, the offer is normally made by the insured by completing a proposal form. If the insurer accepts with qualifications the acceptance may amount to a counter-offer (Birds, p.85).

For online contracts, however, an offer is usually made by the insurer by quoting a premium and inviting the insured to accept it (Birds, p.86)

ICOBS 3.1.9 states that the performance of a distance contract may only begin after the consumer has given his approval.

**Form:**

The insurance contract is generally considered a consensual contract which is formed by the consent of the parties, no special form being required. An oral agreement, provided that it can be proved, is binding, provided that there is the necessary agreement on the material terms. In practice though, insurance contracts are recorded in a policy (Birds, p.94).

Regulation 9 (3) of the UK Electronic Commerce Regulation 2002 states that, when insurance is contracted electronically, the terms and conditions shall be made available in a way that they can be stored and reproduced.

Specific contracts:

Marine Insurance Act 1906, Section 22.

For marine insurances, the contract should be embodied in a policy:

"Subject to the provisions of any statute, a contract of marine insurance is inadmissible in evidence unless it is embodied in a marine policy in accordance with this Act. The policy may be executed and issued either at the time when the contract is concluded, or afterwards."

Furthermore, there are formalities for life insurance and compulsory motor insurance contracts.

(Birds, p.94).