Claims liquidation[1]

Austria	§§ 38, 39 VersVG First premium: 14 days period for payment; if paid within this period: full cover as of conclusion of the contract; if not paid within this period: insurer´s right to rescind the contract; if non-payment was negligent, insurer is freed of its obligation to pay insurance money. Further premiums: Insurer must give additional period of at least 2 weeks together with a warning about the consequences of non-payment If premium is not paid within the additional period: right of the insurer to cancel the contract; if the policyholder did not pay negligently, the insurer is also freed from its obligation to cover future insured events Sanctions do not apply if non-payment concerned only a minor part of the premium (no more than 10% or 60€ - see § 39a) See also § 40 – divisibility of premium
Bulgaria	Detailed rules exist mainly with regard to motor insurance. The only general rule is art.193 Code for the Insurance: The insurer is to pay the amount agreed upon the occurrence of the insured event. Several specific rules concern certain types of insurance products. Property insurance: Art.208 - The insurer is to pay the amount agreed within the agreed deadline which may not exceed 15 days from the moment the policyholder has fulfilled the notification obligation. The indemnity is equal to the amount of the damage on the day of occurrence of the event and do not cover lost profit, unless otherwise agreed in the insurance contract. Art.209 - The insurer may, with consent of the insured, also repair the damages in kind within 45 days from the moment the policyholder has fulfilled the notification obligation. Life and accident insurance: Art.238 – The insurer is to pay the amount agreed within 15 days from the moment when evidence of the insured event and of the amount of payment due has been presented. Motor insurance: Before indemnity payment for total loss of a vehicle registered in BG the insurer has to require proof of deregistration of the vehicle. The amount for the repair needed is fixed according to the method agreed on, based on a invoice issued by a motor service station

[1] 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.

	or an expert assessment. Third party motor insurance: Art.269 - An insurer who provides third party motor insurance has to appoint a representative for settlement of claims under this type of insurance in each Member State. Art. 271 - The insurer has to decide on claims within three months from the date on which the claim is filed. Where documents and proof are insufficient, the insurer may require presentation of additional documents. Within that deadline the insurer can either fix and pay the sum of the compensation, or provide a reasoned answer for refusal of payments or stating that the grounds and extent of the damage have not been fully established. The insurer cannot refuse to decide on claim where certain written documents supporting the claim have been presented. Art.273 - In cases of death or bodily injuries, the amount for compensation is fixed by an expert insurance committee of the insurer or by judicial procedure. In cases of damage to property, the compensation may not exceed the actual cost of the damage. Compensation for damage to motor vehicles shall be fixed in accordance with the regulations approved by the Financial Supervision Commission.
Croatia	Pursuant to Article 943 of the Civil Obligations Act in case of an insured event, the insurer shall pay the indemnity stipulated in the contract within the agreed time limit, which may not be longer than 14 days, counting from the date when the insurer has received a notice of the occurrence of the insured event. Where a certain period of time is required to establish the existence of the insurer's liability or the amount of indemnity, the insurer shall pay the indemnity stipulated in the contract within 30 days following the date of receipt of the claim for damages or shall notify the insured, within the same period that his claim is unfounded. If the amount of the insurer's liability is not determined within the quoted time limits the insurer shall immediately pay the undisputed amount of a portion of his liability as an advance payment. If the insurer fails to settle his liability within the prescribed time limits, he shall pay default interest to the insured person, starting from the date of receipt of the notice of the insured event. Pursuant to Article 12 of the Compulsory **Traffic Insurance Act in case of a claim for non-material damage t**he liable insurer shall be obliged, within a period of 30 days at the latest, and in case of a claim for material damage within a period of 14 days at the latest from the day of receiving the claim, to make a reasoned offer of compensation to the claimant i.e. a reasoned reply why the offer of compensation could not have been given. In the event that it is not possible to determine the final amount of compensation, the liable insurer shall be obliged to indemnify the injured party in form of an advance for the undisputed part of compensation. In the event of failure to carry out payment of compensation the liable insurer will be obliged to pay to the injured party the interests accrued calculated as from the date of the submitted claim.

Estonia	Following are the general rules, which however mostly apply to non-life insurance. - A policyholder shall immediately notify the insurer of the occurrence of an insured event. *In life insurance contracts the insurer need not be notified of an insured event if the attainment by the insured person of a certain age has been agreed upon as the insured event. As well, if a third party is entitled to performance of the obligation by the insurer, the third party shall give notice of the insured event and provide information and submit evidence concerning the insured event.* - An insurer may, after the occurrence of an insured event, request information from the policyholder which is necessary to determine the obligation to perform the contract. The insurer may request the submission of evidence insofar as the policyholder can reasonably be expected to submit such evidence. - An insurer's obligation to perform a contract falls due after the occurrence of an insured event and the completion of the process of determining the extent of the insurer's performance. - However, the insurer's obligation to perform a contract falls due if, two months after notifying the insurer of the insured event, the policyholder requests an explanation from the insurer as to why the process of determining the extent of performance has not yet been completed and the insurer fails to respond to the enquiry within one month. - If the process of determining the extent of the insurer's performance is not completed within one month after notification being given of an insured event, the policyholder may, if the occurrence of the insured event is established, request that money be paid at the expense of the insurer's performance obligation in the minimum amount which the insurer should pay under the circumstances. The running of the term shall be suspended for the period during which completion of the process is hindered by circumstances arising from the policyholder.
Finland	When the insurance event occurs, the insurer has the obligation to pay claimant the sum stipulated in the insurance contract, or inform the claimant that the compensation will not be paid no later than one month after the insurer has received the necessary documents and information. The claimant must provide the insurer with the documents and information that are necessary for establishing the insurer's liability, and that the claimant may reasonably be required to provide taking into account the insurer's ability to carry out investigation. If the amount of compensation is disputed, the insurer is liable to pay the compensation of the undisputed part within one month. If the payment of the compensation is delayed, the insurer is liable to pay interest according to the Finnish law. These matters are covered in detail by sections 69 to 75 in the Insurance Contracts Act. Section 73 provides as follows: "Any claims based on an insurance contract shall be made to the insurer within one year from the date at which the claimant becomes aware of an in-force insurance policy, of the occurrence of an insured event and of the loss, damage or injury that resulted from the occurrence. In any event, the claim shall be made within ten years from the

	occurrence of the insured event or, if the insurance has been taken out to cover against bodily injury or liability for damages, from the occurrence of the loss, damage or injury. Reporting the occurrence of an insured event is considered to equal the making of a claim for this purpose. If no claim is made within the period provided under Subsection 1, the claimant loses his entitlement to compensation." Section 74 provides further: "Any suit based on either a decision made by the insurer on a claim or another decision that affects the position of the policyholder, the insured or another party entitled to compensation or benefits, shall be filed within three years from the date of receipt by the party concerned of the insurer's written notice of the decision and of the time limit, under penalty of forfeiture of the underlying right. If the case is pending settlement by the Consumer Disputes Board, the Insurance Complaints Board or any other body resolving consumer disputes, the statute of limitations is suspended as provided in Section 11 of the act on the period of limitation of debt (728/2003)."
France	(FIRE INSURANCE) Article L122-2 Insurance Code: The insurer, unless otherwise agreed, shall be answerable for the sole material damage caused directly by the fire or the start of the fire. If, within three months as from the repair of the loss, the damage survey has not been completed, the insured shall be entitled to have interest accrue as from the demand for payment. If the damage survey has not been completed within six months, each of the parties may bring legal proceedings. ALL INSURANCES : PRESCRIPTION Fraudulent delay on the part of the insurer in settling the claim can interrupt the prescription of the duty of performance: Article L114-1 Insurance Code: Modifié par Loi n°2006-1640 du 21 décembre 2006 - art. 18 (V) JORF 22 décembre 2006 All legal actions arising from an insurance contract shall be barred two years as from the event that gave rise to them. However, said time limit shall run: 1) in the event of non-disclosure, omission, fraudulent representation or misrepresentation of the risk incurred, only from the date on which the insurer is aware of them; 2) in the event of loss, only from the date the concerned parties are aware of them, if

	they prove that they were unaware of such facts up till that moment. When the insured's action against the insurer arises from a third party's recourse, the limitation period shall run only from the date on which said third party brings a legal action against the insured or the latter has paid it compensation. The limitation period shall be increased to ten years for life insurance contract when the beneficiary is not the policyholder and in insurance contracts covering personal injury when the beneficiaries are the deceased insured's successors. Information on limitation period Article R.112-1: Les polices d'assurance doivent rappeler les dispositions des titres Ier et II du livre Ier de la partie législative du présent code concernant la prescription des actions dérivant du contrat d'assurance. Cour de cassation : l'absence d'une disposition des articles L.114-1 et L.114-2 empêche l'assureur d'opposer la prescription. Time of performance: Article L113-5 Insurance Code: Modifié par Loi n°81-5 du 7 janvier 1981 - art. 33 JORF 8 janvier 1981 rectificatif JORF 8 février 1981 Upon occurrence of the risk or the maturity of the contract, the insurer must perform the service defined in the contract within the agreed time and it may not be committed beyond said time. Construction insurance : Compulsory insurance against damage: Article L 242-1 Insurance Code: Modifié par LOI n°2008-735 du 28 juillet 2008 - art. 45 […] The insurer has a maximum period of sixty days as from receipt of the report of loss to notify the insured of its decision on the performance of the covers provided for in the contract. If the performance of the covers provided for in the contract is accepted, the insurer will make a compensation offer, where applicable on temporary basis, to cover the cost of the reparation work of the damage, within a maximum period of ninety days as from receipt of the report of loss. If the insured accepts the offer made, the insurer will settle the compensation within two weeks. When the insurer fails to comply within the time-limits provided for in the two

	paragraphs above or proposes a compensation offer that is clearly inadequate, the insured may, after it has notified the insurer, incur the expenses necessary to repair the damage. In such event, an interest double the legal interest rate shall be applied ipso jure to the compensation to be paid by the insurer. In the event of exceptional difficulties due to the nature or scope of the damage, the insurer may, at the same time as it notifies the insured of its agreement in principle to perform the cover, propose an additional time-limit to make its compensation offer. The proposal must be based exclusively on technical considerations and explained. The additional time-limit provided for in the previous paragraph must expressly be accepted by the insured and may not exceed one hundred and thirty five days. The insurance referred to in the first paragraph of this Article shall take effect after the expiry of the period of the completion bond referred to in Article 1792 of the Civil Code. However, it shall cover the payment of necessary repairs when: - prior to delivery, following an unsuccessful formal demand, the works contract entered into with the contractor has been terminated on ground of the latter's failure to perform its obligations. ntractor has not performed its obligations. Any insurance firm accredited in accordance with the terms set out in Article L321-1, even if it does not manage the risks governed by Articles L. 241-1 and L. 241-2 above, may cover the risks referred to in this Article. Motor vehicle, trailer or semi-trailer compulsory insurance Compensation procedures: Article L 211-9 Insurance Code: Modifié par Loi n°2003-706 du 1 août 2003 - art. 83 JORF 2 août 2003 Irrespective of the nature of the damage, where the liability is not disputed and the damage has been fully quantified, the insurer who covers public liability resulting from a motor vehicle accident shall be bound to make a reasoned offer of compensation to the victim within three-months at most as from the accident. Where the liability is disputed or is not clearly established, or where the damage is not fully quantified, the insurer must, within the same time limit, give a reasoned response on the items raised in the petition. An offer of compensation must be made to the victim who has sustained a physical injury within an eight-month period as of the date of the accident. If the victim dies, the offer shall be made to his heirs and, where applicable, to his/her spouse. The offer shall include all compensable items of the damage, including the items related to material

	damage, when they have not been the subject of prior settlement. The offer may be a provisory one where the insurer has not been informed, within three-months as of the accident, of the stabilisation of the victim's condition. The final offer of compensation must then be made within five-months following the date on which the insurer was informed of the said stabilisation. In any event, the most favourable time limit for the victim shall apply. In the event more than one vehicle is involved and if there are several insurers, the offer shall be made by one insurer acting on behalf of the other insurers. Rules applicable to non-marine loss insurance Indemnity Principle: Article L 121-1 Insurance Code: Insurance in respect of property is a compensation contract. The compensation that the insurer owes to the insured may not exceed the amount of the value of the insured property at the time of the loss. It may be provided that the insured must be his own insurer of a sum or a specific quota or that he shall bear a deduction fixed in advance on the compensation for the loss.
Germany	According to § 30 VVG the policyholder has to notify the insurer of the occurrence of the insured event without undue delay after he has learned thereof. If a third party is entitled to the right to the insurer's benefit, the third party has to notify the insurer. (2) An insurer may not invoke an agreement according to which it does not have to pay because of the breach of the duty to notify if it learns about the occurrence of an insured event in good time by other means. § 31 VVG After the occurrence of an insured event, the policyholder has to disclose all the information necessary to establish the occurrence of the insured event or the extent of the insurer's liability. The insurer may demand proof to the extent that the policyholder may be reasonably expected to obtain such proof. (2) If a third party has the right to receive benefits from the insurer, he must also fulfil the obligations under subsection (1). § 28 VVG on precautionary measures (terminology of the PEICL) is also very important but a separate issue
Greece	<u>Art 7 of law 2496/1997 in regard to insurance contract :</u> (see above “Disclosure duties of the customer) <u>Art 7§ 7 of law 2496/1997 provides also for the following:</u> On the occurrence of the insured event, the insurer must pay the insurance money

	promptly. If a longer period is required for the assessment of the full extent of the loss, the insurer shall be obliged to pay the undisputed amount without undue delay. In case of the investment life policies, the insurer shall pay the amount of the surrender values and the potential profit coming out of the results as set out in the provisions of the Legislative Decree 400/1970 within 30 days from the date of submission of the application by the beneficiary. MTPL insurance: Specific rules are provided regarding the settlement procedure and payment of compensation to the beneficiaries of MTPL insurance contracts (Bank of Greece Decision No 3/5/26.1.2011).
Hungary	**Ptk. 6: 462 §[2]** Time limit of claim liquidation is not explicitly regulated by the contract law. Exact terms and conditions of when and how the service/performance of insurer is due are stipulated in the contract. **Ptk. 6:464** [Exemption from settlement obligation] (1) The insurance company shall be exempt from its payment obligation if it is able to prove that damages have been caused unlawfully, either willfully or by gross negligence, by: a) the insured person or the contracting party; b) any family member living in their household, any managing partner or any employee, member or agent working in a position specified in the standard contract terms; or c) any executive officer of the insured legal person specified in the standard contract terms, or any member, employee or agent of such insured legal person authorized to manage the insured property. (2) The provision referred to in Subsection (1) shall also apply to any breach of the obligation to prevent and mitigate damages.
Italy	Liability MOTOR-VEHICLE mandatory insurance, art. 143 - 150 d.lgs. 209 7/9/2005: Procedural rules for the claims liquidation. Principle of "direct reparation" (immediate reparation by the insurer of the driver's own vehicle and after reintegration by the guilty driver's insurance company) in case of damages only to vehicles and drivers (not to third subjects).
Portugal	1. Articles 99 to 104 of the Legal Regime state for the general regime: CHAPTER IX

[2] *The text below refers to the following Hungarian laws*

- **Ptk.** – *Hungarian Civil Code; Act of V of 2013.*

	LOSS SECTION I CONCEPT AND REPORTING Article 99 Concept A loss is the occurrence, in full or in part, of the event that triggers the risk cover provided for in the contract. Article 100 Reporting of the loss 1. The occurrence of a loss must be reported to the insurer by the policyholder, by the insured or by the beneficiary, within the time limit laid down in the contract or, where no time limit has been set, within the eight days immediately following the date on which the reporting party became aware of it. 2. The report must set out the circumstances surrounding the occurrence of the loss, the possible causes thereof and the respective consequences. 3. The policyholder, the insured or the beneficiary must likewise provide the insurer with any relevant information requested thereby in relation to the loss and its consequences. Article 101 Failure to report a loss 1. The contract may provide for the insurer to reduce the payment having regard to any loss or damage that it may incur as a result of non-fulfilment of the duties set out in the preceding article. 2. The contract may also provide for cover to be forfeited in the event of intentional non-fulfillment or incorrect fulfillment of the duties listed in the preceding article having caused significant loss or damage to the insurer. 3. The provisions of the preceding paragraphs shall not apply when the insurer has become aware of the loss by any other means during the time limit stipulated in para.1 of the preceding article, or the party responsible for reporting the loss is able to prove that it could not reasonably have duly reported it earlier than it did. 4. The provisions of paras 1 and 2 may not be relied upon against injured parties in the case of compulsory public liability insurance and the insurer shall have the right of recourse against any party in breach in relation to the payment it effects, within the

	limits referred to in those paragraphs. SECTION II PAYMENT Article 102 Payment by the insurer 1. The insurer shall be obliged to effect the payment under the contract to the relevant party, once the occurrence of the loss and the causes, circumstances and consequences thereof have been confirmed. 2. For the purposes of the provisions of the preceding paragraph, depending on the circumstances, advance quantification of the consequences of the loss may be required. 3. The payment to be effected by the insurer may be pecuniary or non-pecuniary. Article 103 Third party rights Any payment made to the prejudice of any rights of third parties of which the insurer is aware, namely preferred creditors, shall not release it from the obligation to discharge its duty. Article 104 Due date The insurer's payment shall fall due 30 days after the facts referred to in art. 102 have been established. 2. Articles 128 to 136 state for the damage insurance: SECTION III COMPENSATORY PRINCIPLE Article 128 Amount payable by the insurer The amount payable by the insurer shall be limited to the damage arising from the loss up to the amount of the sum insured. Article 129

	Salvage Any property salvaged from the loss may only be abandoned in favor of the insurer where provision in this respect has been made in the contract. Article 130 Property insurance 1. In property insurance, the damage to be taken into account in order to determine the amount payable by the insurer shall be that of the value of the interest insured at the time of the loss. 2. In property insurance, the insurer shall only be liable for business interruption arising out of the loss if this has been agreed. 3. The provisions of the preceding paragraph shall likewise apply to the value of loss of use of the item. Article 131 Agreement l. Without prejudice to the provisions of art.128 and para. l of the preceding article, the parties may agree on the value of the interest insured to be taken into account in order to calculate the compensation, and this amount must not be manifestly unfounded. 2. The parties may agree, in particular, to set a rebuilding or replacement value for the property or not to take account of any diminution in the value of the interest insured on the basis of wear and tear or use of the property. 3. The agreements provided for in the preceding paragraphs shall not prejudice application of the regime of alteration of the risk provided for in arts 91-94. Article 132 Over-insurance 1. If the sum insured exceeds the value of the interest insured, the provisions of art.128 shall apply, and the parties may request a reduction in the contract. 2. If the policyholder or the insured is acting in good faith, the insurer shall proceed to return any excess premiums that have been paid in the two years preceding the request for reduction in the contract, less any acquisition costs calculated proportionally. Article 134 Under- insurance

	Save as otherwise agreed, if the sum insured is lower than the value of the subject matter of the insurance, the insurer shall only be liable for the damage in the respective proportion. Article 135 Review 1. Save as otherwise stipulated, in insurance relating to housing risks, the value of the property insured or the insured proportion thereof shall be automatically reviewed in accordance with the indices published for this purpose by the Instituto de Seguros de Portugal. 2. Without prejudice to the information provided for in arts 18-21, the insurer must inform the policyholder, upon conclusion of the contract and at the time of any extensions, of the content of the provisions of the preceding paragraph, as well as the insured value of the property to be taken into account for the purpose of compensation in the event of total loss, and of the criteria for review thereof. 3. Failure to fulfill the duties established in the preceding paragraph shall give rise to non-application of the provisions of the preceding article, to the extent of non-fulfillment. Article 136 Subrogation by the insurer 1. Any insurer that has paid out compensation shall be subrogated, to the extent of the amount paid, in the rights of the insured against the third party responsible for the loss. 2. The policyholder or the insured shall be liable up to the limit of the compensation paid by the insurer, for any act or omission that prejudices the rights provided for in the preceding paragraph. 3. Partial subrogation shall not prejudice the right of the insured in relation to the portion of the risk not covered, when the insured acts jointly with the insurer against the liable third party, save as otherwise agreed in major risks insurance contracts. 4. The provisions of para. 1 shall not apply: (a) against the insured if the insured is liable for the third party in accordance with the provisions of the law; and (b) against the spouse, any person who lives in a de facto partnership, ascendants and descendants of the insured who live with them in the same household, save where the liability of such third parties is fraudulent or is covered by a contract of insurance 3. Articles 214 and 217 state for health insurance:

	Article 214 Contractual clauses The contract conditions of renewable annual sickness insurance shall, in a clearly visible and highlighted manner state that: (a) The insurer only guarantees to make the agreed payments or to pay the expenses incurred in each year during the term of the contract. (b) The terms of compensation if the contract is not renewed or of the insured's cover relates to the risk covered in the contract, in accordance with the provisions of art.217. Article 217 Termination of the contract 1. If a contract or cover is not renewed and the risk is not covered by a subsequent contract of insurance, the insurer may not, within the following two years and until the sum insured in the last period of validity of the contract is shown to be exhausted, refuse payments relating to sickness that was evident during the tenTIS of the policy or other events occurring, provided they were covered by the insurance. 2. For the purposes of the provisions of the preceding paragraph, the insurer must be informed of the illness within 30 days immediately following the end of the contract, save where there is a just impediment. OBSERVATION Please note that there exist special rules on claims liquidation for certain kinds of compulsory insurance, such as motor insurance liability (Decree-law 291/2007 of 21/08/2007, articles 31 to 46) and working accidents insurance (Law 98/2009, article 23, and Portaria 256/2011, clause 27)
Romania	Article 2208 of Civil Code states that if the insured risk occurs, the insurer must pay the insurance indemnity as provided in the contract. When there is disagreement on indemnity insurance of the disputed shall be paid by the insurer prior to resolving disagreement by agreement or by the court. In the cases established by the contract, in property insurance and liability insurance, the insurer owes no indemnity if the insured risk was caused deliberately by the insured, the beneficiary of insurance or a member of management of the insured legal entity.
Slovakia	Detailed rules exist mainly with regard to motor insurance. § 797 of CC The right to the claim payment shall arise if the event to which the rise of the insurer´s obligation to pay the claim is related occurs (insured event).

	The claim is payable within 15 days after the date when insurer finished the necessary investigation to ascertain to extant of the insurer´s obligation to pay the claim. The investigation must be performed without undue delay, if it cannot be finished within 1 month after the date when the insurer learned about insured event, the insurer is obliged to provide the insured with an adequate advance payment at the request of the insured. Act No. 381/2001 Coll. On Compulsory MTPL insurance Detailed rules exist mainly with regard to motor insurance. § 10 The insured party is obliged to notify the insurer in writing of the insured event a) within 15 days of its occurrence if the event took place in the Slovakia b) within 30 days of its occurrence if the event took place outside Slovakia § 11 The insurer shall be obliged, without undue delay, to undertake investigation necessary to determine the scope of its obligation to pay insurance benefits and within 3 months of the date when the insured party notified of the incident causing damage a) to complete the investigation necessary to determine the scope of its obligation to pay insurance benefits and to notify the insured party of the amount of the insurance benefit if the scope of the insurer's obligation to pay insurance benefits and the entitlement to compensation of damage has been proven; b) to provide to the insured party a written explanation of the reasons for which it refused or reduced the insurance benefit.
Spain	<u>Notification of the claim</u> The policyholder, the insured or the beneficiary must declare the claim to the insurer within 7 days with the effect from the date when they became aware of it (Art. 16 LCS). Longer or shorter contractual deadlines are allowed. Late notification only entitles an insurer to damages for prejudice suffered. However, this does not apply if it is proved that the insurer has knowledge of the loss by other means. The policyholder or the insured must provide the insurer with information on the circumstances and the consequences of the claim so as to enable him to determine its causes and the extent of loss or damage. The insured and the policyholder must use all means available to them to reduce the consequences of the claim.
Sweden	***Chapter 7, Article 1 (1) the Insurance Contract Act (2005:104)*** An insurance company which have been notified about the occurrence of an insured event shall, *without delay*, take the necessary measures in order to investigate and settle the claim. ***Chapter 7, Article 1(2) the Insurance Contract Act (2005:104)***

	Insurance indemnification (except for periodic payments) shall be paid within ***one month*** after the entitled party reported the insured event and submitted such investigation/findings as may reasonably be re- quested. This does not apply where e.g. the right of indemnification is dependent upon repair or replacement of property, a decision from an authority, etc. Where a claimant obviously is entitled to a certain amount, such amount shall be paid immediately. Where payment is not made timely, the Insurance Company is obligated to pay interest pursuant to ***Chapter 6, the Interest Act (1975:635).*** (At present in the range of 10 %). ***Chapter 7, Article 2 (1) the Insurance Contract Act (2005:104)*** Where a party entitled to insurance indemnity has failed to comply with policy conditions re notification obligations and/or investigation obligations and such failure has caused loss to the Insurance Company, the indemnity may be reduced in accordance with what is reasonable under the circumstances. If the Insured's failure in re of notification/investigation obligations concern a third party liability insurance, the Insurance Company may instead reclaim a reasonable amount from the insured. ***Chapter 7, Article 2 (2) the Insurance Contract Act (2005:104)*** Article 2 (1) shall not apply where the negligence is insignificant.
United Kingdom	*[We have assumed for the purposes of our review that "Claims liquidation" (which is not a term we are familiar with) refers to claims handling and the procedure for making a claim.]* *Claims handling and procedure in England and Wales is governed by both law and regulation.* *General regulatory principles of claims handling by insurers.* *All insurers operating in the UK must be authorised by the Prudential Regulation Authority to carry out insurance business. In respect of their claims handling activities (whether carried out by them or delegated to a claims handling company), they must comply with the Financial Conduct Authority's (FCA) Handbook, including the Insurance Conduct of Business Sourcebook (ICOBS).* *The ICOBS applies to a firm with respect to specified activities (including carrying out contracts of insurance) in relation to a non-investment insurance contract from an establishment maintained by the firm or its appointed representative in the United Kingdom (ICOBS 1.1.1 R), extended to the extent necessary to be compatible with European law [ICOBS 1 Annex 1 Part 3 1.1 R]. It also applies where the firm has outsourced insurance intermediation activities to a third party processor (ICOBS 1 Annex 1*

	1.1R). *ICOBS 8.1 contains some general principles of claims handling applicable to all insurers:* *ICOBS 8.1.1:* *An insurer must:* *- handle claims promptly and fairly;* *- provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress;* *- not unreasonably reject a claim (including by terminating or avoiding a policy); and* *- settle claims promptly once settlement terms are agreed.* *ICOBS 8.1.2: contains specific rules for handling consumer claims. The general rule is that a rejection of a consumer policyholder's claim is automatically unreasonable(absent fraud) in a number of specific situations. These are (i) non-disclosure of a fact material to the risk which the insured could not reasonably have been expected to disclose, (ii) non-negligent misrepresentation of a fact material to the risk, or (iii) breach of warranty or condition (except in some limited circumstances).* *There are additional claims handling requirements applicable to certain types of insurance (such as motor insurance and employers' liability insurance). These are contained in ICOBS 8.* *The procedure for making a claim* *The procedure for filing a claim is usually set out in detail in the policy, and the insurer is generally free to include any conditions in the policy that the insured must comply with when making a claim (Bird's, p.282). The insurer may also include conditions in the policy relating to the provision of information by the insured regarding claims or potential claims, co-operation and other assistance that the insured may be required to give.* *An insurer may choose to make compliance with a certain specific term condition precedent to the provision of indemnity under the policy. If such a condition is not complied with the cover is not triggered and the insurer will not be liable to indemnify the insured, irrespective of whether the breach of condition causes any prejudice to the insurer.* *Typical conditions relating to claims handling and procedure include:* *- Notice:* *The first basic obligation is to give a notice of a loss; MacGillivray considers that, even in*

	the absence of any written terms regarding notice, the insured is under an implied obligation to give notice of his loss within a reasonable time. *Oral notice is sufficient, unless the policy expressly stipulates the need for written notice (Bird's, p.282), although MacGillivray points out that the requirement for notice in writing is capable of being waived by an insurer (Webster v General Accident Fire and Life Assurance Corp Ltd (1953)). Notwithstanding the possibility of waiver, it may be in the insured's best interests to give written notice for evidential purposes.* *Layher Ltd v Lowe (2000)* *In third party liability insurance policies notice is often also required when an insured becomes aware of circumstances which are likely to give rise to a claim. This is commonly referred to as a "circumstance" (Birds, p.282).* *What precisely constitutes a "circumstance" which must be notified is the subject of some judicial debate, and will also depend on the precise wording of the policy. For example, an obligation in a policy to notify the insurer of a circumstance that "may" give rise to a claim would impose a more onerous obligation than an obligation to notify the insurer of a circumstance "likely" to give rise to a claim.* *The general rule, as espoused by leading texts such as Jackson and Powell on Professional Liability, is that the obligation on an insured to notify should be construed objectively, but taking into account the actual knowledge of the insured.* *- Time limits:* *Verelst's Administratrix v Motor Union Insurance Company (1925)* *If a policy contains a condition to notify the insurer of a loss "as soon as possible" this should be construed subjectively, taking into account all of the circumstances including when the insured became aware of the loss.* *Cassel v Lancashire and Yorkshire Accident Insurance Company (1885)* *If the insurance policy states a clear time limit for a notice (14 days within occurrence of the event) and if the notice is a condition of the insurer's liability, the time limit has to be complied with strictly, even if the insured only becomes aware of the loss at a later stage (Bird's, p.283). Alternatively, some policies may specify that the time period for notification only starts running once the insured is aware, or should reasonably have been*

	aware, of a loss. *It should be noted in the consumer context that the UK's Association of British Insurers recommends that a consumer policyholder should not be required to do more than "report a claim and subsequent developments as soon as reasonably possible", and this is the standard position in consumer contracts of insurance.* *- Timing of loss:* *It should also be noted that the precise time when a loss occurs – or when the insured first became aware of that loss - may affect whether a particular policy provides cover for said loss. Broadly, there are two types of policy which must be distinguished:* *1) "Occurrence" policies:* *Under an occurrence policy coverage is provided for losses arising from events that occurred during the policy term, regardless of when the claim itself is made (subject to any time limits on making a claim). Occurrence policies are common in the motor, homeowner and general commercial liability insurance markets.* *2) "Claims-made" policies:* *In contrast, a claims-made policy provides coverage for any claim of which the insured became aware during the policy term, provided that the insured notifies the insurer during that term. Under a claims-made policy an insured usually has the option to purchase an "extended reporting period" or "discovery period", which will allow it to make claims under the policy for a specified time after the policy term expires. Claims-made policies are common in the professional liability, directors & officers' and medical malpractice insurance markets.* *- Place of notice:* *A policy may contain a condition that the notice to be sent to a particular place (e.g. the insurer's head office). However, in the absence of a specific requirement a notice to any agent of the insurer with the authority (or ostensible authority) to receive it would suffice*

	(Bird's, p. 285). *- Particulars:* *Notice of a loss is usually informal and precedes the completion of a formal claim form, which is sent by the insurer to the once notice has been given (Bird's, p. 285).* *There are two common types of standard conditions regarding the level of particulars of a loss an insured must provide:* *1) the insured may be required to give "full particulars of the loss":* *Mason v Harvey (1853)* *The particulars must be sufficient to enable the insurer to ascertain the nature, extent and character of the loss. MacGillivray comments that any requirement to give "full particulars" should be construed to mean an obligation to give "the best particulars the assured can reasonably give" (Mason v Harvey (1853)).* *2) The insured may be required to give such proofs and information as may reasonably be requested by the insurer. (Bird's, p. 285).* *Braunstein v Accidental Death Insurance Co. (1861); Widefree Ltd v Brit Insurance Ltd (2009)* *These cases make clear that a requirement to provide "proofs satisfactory to the insurer" will be interpreted to mean "proofs reasonably required by the insurer". As such, although the insurer is entitled to ask for evidence and information which may not be absolutely necessary to prove the insured's case, the insured is not under a duty to provide all proofs and information regarding the particular loss, only what is reasonable.* *The interpretation of either of the conditions regarding particulars of loss outlined above, and in particular what is deemed reasonable to provide, will also be dependent on the time period within which particulars must be supplied to the insurer (National Bank of Australasia v Brock (1864) and MacGillivray p.619).* *Public policy limitations on claims* *Any claim for a loss under an insurance policy will also be subject to the application of public policy rules (in addition to the formal requirements – described above - that the insured needs to fulfil (Bird's, p.273).* *The two key public policy maxims, which apply in many areas of the law beyond insurance as well, are:* *1. No cause of action can arise from a wrongful act (often known as ex turpi causa non*

	oritur actio,). *2. A person may not benefit from his own wrongs or crimes.* *Effectively, the second principle is a more specific version of the first.* *The main insurance-related cases that expand on these principles can be sub-divided into two groups: those relating to first party insurance and those relating to third party insurance.* *For first party insurance:* *WH Smith & Co. v Clinton & Harris (1908)* *Any claim for which an indemnity is sought under an insurance policy must carry an element of fortuity. An insured cannot recover a loss suffered due to his own deliberate wrongful act: an indemnity granted to a publisher against libel was unenforceable as the libel was intentional (Bird's, p.274). This is an example of the more general principle that the insured "cannot by his own intentional act bring about the event upon which the insurance money is payable and then recover under the policy (MacGillivray, p.399).* *Geismar v Sun Alliance and London Insurance Ltd (1977)* *An insured cannot recover a loss caused by his own deliberate criminal or tortious act (Bird's, p. 274): the insured smuggled jewellery into Britain without paying the necessary excise duty. He was not then allowed to claim against his insurer when the jewellery was subsequently stolen.* *For third party insurance:* *The general rule is that "the intentional commission of a crime against a third party for which the insured is liable in damages in tort will not be covered by the insured's liability insurance" (Bird's, p. 276). However, there are competing public policy considerations in this area, in particular the desire that victims of tortfeasors have recourse against the tortfeasor in damages. Often, such damages would be funded by the tortfeasor through the application of the tortfeasor's insurance policy and thus it might be said to be against public policy for an insurer to refuse cover in these circumstances. This argument is particularly relevant for motor insurance claims:* *Tinline v White Cross Insurance Association Ltd (1921); James v British General Insurance Co. (1927):* *The insureds, in each case, were liable for unintentional manslaughter. However, the insurers were ordered to pay the indemnity, despite the fact that the insured would "profit" from their criminal actions. This was because, in each case, the claimant's action (speeding and driving whilst drunk respectively) were still classed as accidents due to negligence, for which the applicable policy provided coverage (Bird's, p.277). MacGillivray*

	comments, in respect of these two cases, that "the correctness of these decisions…is now established beyond doubt". *Hardy v Motor Insurers' Bureau CA (1964); Gardner v Moore (1984):* *Even if the insured acts deliberately (as opposed to negligently) in causing personal injury to an innocent victim, the rules of the Road Traffic Act 1988 and the Motor Insurer's Bureau have been interpreted as rendering compulsory the payment of a motorist's liability claim in order to safeguard the interests of an innocent victim who has suffered loss as a result of the motorist's actions (Bird's, p. 277-8).* *However, in areas other than motor insurance (and employers' liability insurance) claims by an insured for loss caused by deliberate or reckless acts in a criminal course of conduct would likely be barred due to public policy considerations. The underlying principle is that insurance against the proceeds/consequences of crime is unenforceable and may be void (Birds, p.280).*