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**DUTCH CIVIL CODE**

**Dutch Civil Code**  
**Book 7 Particular agreements**  
**Title 7.17 Insurance agreement**  
**Section 7.17.1 General provisions**

Article 7:925 Definition of 'insurance agreement'

- 1. An insurance agreement is an agreement under which one of the parties ('the insurer') engages himself towards the opposite party ('the policyholder') to pay one or more insurance benefits in exchange for an insurance premium, while neither party, at the moment they entered into this agreement, knows for certain if, when and to what amount any insurance benefits will have to be paid, nor how long the agreed payment of insurance premiums will last. An insurance agreement is either an indemnity insurance or a sums insurance (non-indemnity insurance).

- 2. An insurance on a person is the insurance which is concluded on the life or health of a human being.

Article 7:926 'Insurance benefit' and 'beneficiary'

- 1. An insurance benefit includes also another performance than the payment of money.

- 2. In the present Section (Section 7.17.1) by a beneficiary is understood a person who is entitled, pursuant to the insurance agreement, to an insurance benefit in case of the materialization of a risk or who may become entitled to an insurance benefit by accepting his appointment as insured person.

Article 7:927 Reinsurance agreements

The provisions of the present Title (Title 7.17) do not apply to reinsurance agreements.

Article 7:928 Pre-contractual information duty

- 1. Before the conclusion of the insurance agreement the policyholder must inform the insurer of all circumstances of which he is aware or ought to be aware and of which he knows

or ought to know that the insurer's decision whether or not to enter into the insurance agreement, and if so, on which terms and conditions, depends or may depend on it.

- 2. If the interests of a third person, whose identity is known at the moment of the conclusion of the insurance agreement, are covered by the insurance, then the duty to inform the insurer meant in paragraph 1 also includes circumstances concerning that third person of which this third party is aware or ought to be aware and of which he knows or ought to know that the insurer's decision depends or may depend on it. The previous sentence is not applicable in the event of an insurance on a person.

- 3. Where an insurance on a person relates to a risk run by a third party whose identity is known and who has reached the age of sixteen years, the duty to inform the insurer includes as well circumstances concerning this third party of which this third party is aware or ought to be aware and of which he knows or ought to know that the insurer's decision depends or may depend on it.

- 4. The duty to inform the insurer does not relate to circumstances which the insurer already knows or ought to know and neither to circumstances which could not lead to a more unfavourable decision for the policyholder or insured person. The policyholder or third party, meant in paragraph 2 or paragraph 3, cannot appeal to the fact that the insurer already knows or ought to know certain circumstances if he has given an incorrect or incomplete answer to a specific question that the insurer has asked on this end. Furthermore, the duty to inform the insurer does not relate to circumstances to which no medical examination may relate or about which no questions may be asked pursuant to Article 4 up to and including 6 of the Act on Medical Examinations in the events meant in these Articles of that Act.

- 5. The policyholder is only obliged to inform the insurer about facts of his criminal past or that of a third party as far as these facts have occurred within eight years prior to the conclusion of the insurance agreement and as far as the insurer has explicitly asked a question about that past in not to be mistaken words.

- 6. When the insurance agreement has been concluded on the basis of a questionnaire formulated by the insurer, the insurer cannot appeal to the fact that other questions are not answered or that circumstances about which no questions were asked are not mentioned by the

policyholder or third party and neither to the fact that a question which was formulated generally has been answered incompletely, unless this is done with the wilful intent to mislead the insurer.

Article 7:929 Legal effects of a non-observance of the pre-contractual information duty or the insurance agreement

- 1. The insurer who discovers that the pre-contractual information duty of Article 7:928 has not been observed, may only invoke the effects thereof if he has notified the policyholder of this non-observance within two months after it has been discovered, mentioning as well the possible consequences thereof.

- 2. The insurer who discovers that the policyholder has misled him with wilful intent or who would not have entered into the insurance agreement if he would have been aware of the true state, may terminate the insurance agreement with immediate effect within two months after this discovery.

- 3. The policyholder may terminate the insurance agreement with immediate effect within two months after the insurer has acted in accordance with paragraph 1 or, in the event of the materialisation of an insured risk, after he has invoked the non-observance of the pre-contractual information duty. Where it concerns an insurance on a person the insurer may restrict the ending of the insurance agreement to the person to whose risk the appeal to non-observance relates.

Article 7:930 Legal effects of a non-observance of the pre-contractual information duty for the entitlement to insurance benefits

- 1. When the pre-contractual information duty of Article 7:928 has not been observed, there exists only an entitlement to an insurance benefit if this results from paragraph 2 and 3.

- 2. The agreed insurance benefit is paid fully if the not mentioned or incorrect circumstances are of no importance for the assessment of the risk that has materialised itself.

- 3. If the requirements of paragraph 2 are not met, but the insurer would, if he would have been aware of the true state, only have stipulated a higher insurance premium or have closed the insurance for a lower insurance sum, then the insurance benefit is reduced in proportion to the amount that the insurance premiums would have been increased or to the amount that the insured sum would have been decreased. Where the insurer, if he would have been aware of the true state,

would have stipulated other conditions, the insurance benefit will be paid out as if these conditions would have been included in the insurance agreement.

- 4. Contrary to paragraph 2 and 3, no insurance benefit is payable when the insurer, who would have been aware of the true state, would not have entered into the insurance agreement at all.

- 5. Contrary to paragraph 2 and 3, no insurance benefit is payable to the policyholder or to a third party as meant in Article 7:928, paragraph 2 or 3, who has misled the insurer with wilful intent. An insurance benefit is neither payable to a third party if the policyholder, with the wilful intent to mislead the insurer, has not observed the pre-contractual information duty with regard to circumstances related to this third party.

#### Article 7:931 Exclusion of normal grounds of voidability

The insurer cannot invoke the grounds of voidability referred to in Article 3:44, paragraph 3, and Article 6:228 of the Civil Code.

#### Article 7:932 Handing over of a written insurance policy

- 1. As soon as possible, the insurer hands over a deed, called 'insurance policy', in which the insurance agreement is written down. An insurance policy that is drawn up in the manner as referred to in Article 156a, paragraph 1, of the Code of Civil Procedure must contain an electronic signature which meets the requirements meant in Article 3:15a, paragraph 2. The insurer is not obliged to issue an insurance policy if the nature of the insurance agreement justifies a derogatory use and the policyholder has no importance in the handing over of the insurance policy.

- 2. Paragraph 1 applies accordingly to any modifications to (changes in) the insurance agreements.

- 3. When a certificate of proof, handed over by the insurer, is lost, the insurer will hand over a new certificate of proof, if he desires so against the payment of costs. When the certificate of proof is put to order or to bearer or in the event of the insurance of goods which usually are traded by means of documents (negotiable instruments), the insurer may, before the payment of the insurance benefit, demand from the holder of a new certificate of proof that he provides security for the time during which the insurer can be forced to make a payment.

Article 7:933 Communications from the insurer must be in writing

- 1. All communications from the insurer based on the provisions of the present Title (Title 7:17) or the insurance agreement must be made in writing. The insurer may for this purpose cling to the last domicile of the addressee as it is known to him.

- 2. Rules derogating from paragraph 1 may be set by Order in Council where it concerns the transmission of communications by electronic means. In such Order in Council rules may be provided as well with respect to the way in which notifications, that have to be made pursuant to the present Title (Title 7:17) or the insurance agreement, have to be sent by electronic means of communication.

- 3. An Order in Council as referred to in paragraph 2 shall not be put forward for voting unless four weeks have passed since the draft was submitted to Parliament (States-General).

Article 7:934 No timely payment of subsequent insurance premiums

A non-compliance with the obligation to pay subsequent insurance premiums can only lead to the end or suspension of the insurance agreement or the applicable coverage if the debtor, after the due date, has been urged in vain by letter of formal notice to pay the claimable debts within fourteen days as from the day following that formal notice, mentioning as well the consequences when no payment will be received. The first sentence does not apply to the situation meant in Article 6:83, under point (c), of the Civil Code.

Article 7:935 Offsetting due and demandable debts with insurance benefits

- 1. The insurer may set off an insurance benefit which he has to pay to a beneficiary, not being his debtor, against all due and demandable insurance premiums claimable under the same insurance agreement as well as against the damage due to a delay in payment of these debts and against the costs referred to in Article 6:96 paragraph 2, under point (c), of the Civil Code. The first sentence does not apply to insurances put to order or to bearer.

- 2. Where it concerns an insurance against liability, the insurer is, in derogation from Article 6:127, paragraph 2, of the Civil Code, not allowed to set off an insurance benefit which he has to pay to the policyholder, being the beneficiary, against other due and demandable insurance premiums, damages and costs as meant in paragraph 1 than those claimable under the same insurance agreement as which resulted in the payable insurance benefit.

Article 7:936 Payment of insurance premiums and the 'del credere clause'

- 1. Where an intermediary has made himself liable towards the insurer for the payment of the insurance premiums and costs related to an insurance agreement, in the sense that they form his own debts, the policyholder will be acquitted towards the insurer as far as the premiums and costs have been paid by the intermediary to the insurer, either because they were booked to the debit of his current account with the insurer or in another way, or as far as they have been paid by the policyholder to the intermediary. The policyholder must compensate such insurance premiums and costs to the intermediary.

- 2. When an insurance benefit has become payable, the insurer must, if the intermediary requests so, hand over, irrespective of any rights of third parties, a part of this benefit to the intermediary equal to what the intermediary may claim pursuant to paragraph 1 from the policyholder. Where the policyholder under the insurance agreement is entitled to the insurance benefit, the insurer has the same obligation with respect to what the intermediary may claim from the policyholder pursuant to other insurance agreements in which the same policyholder and the same intermediary are involved.

- 3. The insurer who intends to pay an insurance benefit to another person than the intermediary, shall request the intermediary to inform him within ten days about the amount he can claim pursuant to paragraph 1 from the policyholder. If the intermediary responds to this request, the insurer must hand over the specified amount to him as much as possible. When the insurer has complied with this obligation or when the intermediary has not mentioned any claimable amount within the period set to him for this purpose, then the insurer is at liberty to pay the (remaining) indebted insurance benefit in full to the beneficiary.

- 4. Paragraph 2 and 3 are not applicable:

a. to insurances put to order or to bearer, unless the policyholder is the beneficiary of the insurance benefit;

b. to mandatory liability insurances.

Angsana New- 5. Paragraph 2, second sentence, is furthermore not applicable:

a. if the beneficiary's entitlement to the insurance benefit is encumbered with a pledge as meant in Article 3:229 of the Civil Code or if a privilege as meant in Article 3:283 of the Civil Code is attached to this entitlement;



b. to voluntarily concluded liability insurances.

- 6. When the intermediary collects the insurance benefit in the name and on behalf of the beneficiary, he is entitled to set off the compensation meant in paragraph 1, second sentence, indebted by the policyholder to him, against what he has to pay out to the beneficiary, to the amount of what he may claim from the policyholder pursuant to paragraph 2, 4 and 5 of the present Article.

#### Article 7:937 Acquittal of the insurer towards the beneficiary

The insurer who pays an insurance benefit to an intermediary is only acquitted towards to beneficiary insofar the benefit has been paid out by the intermediary to the beneficiary, but in any case as far as the beneficiary has enjoyed an advantage (profit) from the payment to the intermediary.

#### Article 7:938 Return of premium when no risk has been run

- 1. Except when the policyholder or third party meant in Article 7:928, paragraph 2 or 3, has wilfully intended to mislead the insurer, no premium is indebted if no risk, whatsoever, has been run. When over a full insurance year no risk has been run, no premium is indebted over that year. The insurer is, nevertheless, entitled to a fair compensation for the costs he has made at his own expense.

- 2. During one month after the end of a full insurance year in which no risk has been run, each party may terminate the insurance agreement with effect as of the beginning of the new insurance year. This termination has no legal force if a risk has been run between the beginning of the new insurance year and the termination.

- 3. Where the risk has been run with regard to a smaller number of objects or a smaller quantity than insured, paragraph 1 and 2 apply as far as no risk has been run.

#### Article 7:939 Reduction of premiums in the event of an in between termination

Except in the event of a termination due to a wilful intend to mislead the insurer, the running premiums with regard to an agreed insurance period will be reduced in fairness when this agreement is terminated prematurely.

#### Article 7:940 Duration and ending of an insurance agreement

- 1. In case of a termination at an effective termination date at the end of an insurance period with the purpose to prevent a continuation of the agreement, a term of notice of two months has to be observed.

- 2. The policyholder and, unless it concerns an insurance on a person, the insurer may terminate an insurance agreement which has been concluded for a period of more than five years or which has been extended for such a period at an effective termination date at the end of each fifth year within that period. The term of notice mentioned in paragraph 1 applies to such a termination.

- 3. If the insurer has stipulated the right to terminate the insurance agreement prematurely, then the policyholder shall have the same right. The insurer, respectively, policyholder has to observe a term of notice of two months for such a termination, unless the other party has wilfully intended to mislead him. Where the insurance agreement covers damage caused by risks as meant in Article 3:38 of the Financial Supervision Act, the insurer respectively policyholder has the right, when such a risk has materialised itself or when such a materialisation threatens to occur, to terminate the insurance agreement with due observance of a term of notice of seven days instead of two months. The insurer may only terminate the insurance agreement prematurely on the grounds mentioned in the insurance agreement which are of such a nature that the insurer cannot be expected to be bound by the insurance agreement any longer.

- 4. Where the insurer on the basis of a to this end stipulated right changes the conditions of the insurance agreement to the disadvantage of the policyholder or beneficiary, the policyholder may terminate the insurance agreement at an effective termination date as of which the changed conditions take effect, but in any case within one month after the change in conditions were notified to him.

- 5. The insurer is not allowed to end or change an insurance on a person on the ground of increased health risks, insofar these are related to the personal qualities or characteristics of the person to which the insurance applies.

- 6. The policyholder may always terminate the insurance agreement by electronic means of communication. Rules may be set by Order in Council for the way in which a termination by electronic means of communication is to be sent.

- 7. The presentation of an Order in Council to be determined pursuant to paragraph 6 shall not take place any sooner than four weeks after the draft has been submitted to both Chambers of Parliament.

#### Article 7:941 Information duty at the materialisation of the risk

- 1. As soon as the policyholder or the beneficiary has become aware or ought to have become aware of the materialisation of the risk, he is obliged to notify this materialisation to the insurer. This has to be done as soon as reasonably possible.

- 2. The policyholder and the beneficiary are obliged to provide the insurer within a reasonable period with all information and documents that are of importance to assess the insurer's obligation to pay the insurance benefit.

- 3. If the beneficiary has not complied with an obligation as meant in paragraph 1 or 2, then the insurer is entitled to reduce the payable insurance benefit with the damage he has suffered as a result of this non-compliance.

- 4. The insurer may only stipulate the loss of an entitlement to an insurance benefit due to the non-compliance with an obligation as meant in paragraph 1 and 2, as far as his reasonable interests are harmed by such a non-compliance.

- 5. The entitlement to the insurance benefit expires if the policyholder or beneficiary has not complied with an obligation as meant in paragraph 1 or 2 with the wilful intent to mislead the insurer, except as far as this deceit does not justify the loss of the entitlement to the insurance benefit.

#### Article 7:942 Prescription

- 1. A legal claim (right of action) against the insurer to claim the payment of an insurance benefit becomes prescribed upon the expiration of three years after the day following the one on which the beneficiary has become aware that this benefit is due and demandable (claimable).

- 2. The prescription period will be interrupted by a written declaration in which a claim is laid to the insurance benefit. A new prescription period of three years starts to run as of the day following the one on which the insurer either has recognized the claim or has made unmistakably clear to reject the claim.

- 3. In the event of an insurance against liability the prescription period is interrupted, in derogation from paragraph 2, first sentence, by any negotiation between the insurer and the beneficiary or the person suffering damage. In such case a new prescription period of three years starts to run as of the day following the one on which the insurer either has recognized the claim or has made unmistakably clear to the person with whom he is negotiating and, if this person is another than the person entitled to the insurance benefit, to the latter that he rejects the claim.

#### Article 7:943 Mandatory law

- 1. It is not possible to derogate from Articles 7:931, 7:932, 7:935", paragraph 2, 7:936 and 7:939.

- 2. It is not possible to derogate to the disadvantage of the policyholder or beneficiary from Articles 7:933, paragraph 1, first sentence, 7:937, 7:940, paragraph 1, 3, 5 and 6, 7:941, paragraph 1, 2, 4 and 5, and 7:942.

- 3. When the policyholder is a natural person who, when he entered into the insurance agreement, did not act in the course of his professional practice or business, it is not possible to derogate to the disadvantage of the policyholder or beneficiary from Articles 7:928 up to and including 7:930, 7:934 and 7:940, paragraph 2 and 4.

#### Section 7.17.2 Indemnity insurance

##### Article 7:944 Definition of 'indemnity insurance agreement'

An indemnity insurance agreement is an insurance agreement intending to provide a compensation for material loss which the insured person may suffer.

##### Article 7:945 'Insured person'

For the purpose of the present Section (Section 7.17.2) by an 'insured person' is understood the person who, in the event that he has suffered damage, is entitled under the insurance agreement to a compensation or who may become entitled to a compensation by accepting his appointment as beneficiary.

##### Article 7:946 'Insured interests'

- 1. The insurance agreement only covers the interests of the policyholder, unless something else has been agreed upon.

- 2. If by virtue of a marriage or registered partnership an object belongs to a community of property, then the interests of both co-proprietors are covered by an insurance of that object.

#### Article 7:947 Withdrawal of the appointment of a third party as beneficiary

The policyholder may only withdraw an appointment of a third party as beneficiary of an insurance benefit claimable in the event of damage in cooperation with the insurer or this third party. However, where it concerns damage already suffered, the policyholder and insurer cannot undo such an appointment jointly.

#### Article 7:948 Transfer of insured interests

- 1. At a transfer of a thing or a limited property right with which a thing is encumbered, the rights and obligations derived from the insurance agreement, covering the interests of the alienator that this thing is preserved, pass, together with the risk, to the acquiring party, even when the risk already had passed to the acquiring party before the thing or limited property right was legally transferred. The same applies to secondary insurances which came to existence at the conclusion of this same insurance agreement. No passage will take place if this is indicated by the juridical act under which the thing is transferred or by a declaration of the new interested party to the insurer.

- 2. The insurance agreement ceases to exist one month after it passed over to the new insured person, unless within this period the new insured person notifies the insurer that he continues the insurance agreement. In that event the insurer may, within two months after he has received this notification of the new insured person, terminate the insurance agreement under observance of a term of notice of one month.

- 3. Insurance premiums due and demandable before the new insured person has notified the insurer that he continues the insurance agreement are only indebted by the policyholder.

- 4. The provisions in paragraph 2 do not lead to a lengthening of the duration of the insurance agreement, nor to a restriction of the right to terminate this agreement on another ground.

- 5. Paragraph 1 up to and including 4 do not apply if the insurance agreement itself points out the acquiring party as third party who is appointed as beneficiary in the sense of Article 7:947.

Article 7:949 Insurance policies put to order or to bearer With regard to insurance policies as referred to in Article 7:932, paragraph 3, second sentence, the holder of the insurance policy or of another document issued by the insurer as certificate of proof is the insured person, provided that the insured interests are his. Article 6:253, paragraph 2, of the Civil Code and Articles 7:947, 7:948 and 7:950 do not apply to insurances meant in the previous sentence.

Article 7:950 Right of termination at the death of the policyholder If the policyholder dies, both his heirs and the insurer may, with due observance of a term of notice of one month, terminate the insurance agreement within nine months from the moment on which they became aware of the policyholder's death.

Article 7:951 Damage caused by the nature of or a defect in the insured object itself The insurer shall not pay a compensation for damage to the insured object if this damage is caused by the nature of or a defect in that object itself.

Article 7:952 Own fault of the insured person The insurer shall not pay a compensation for damage to an insured person who has caused the damage himself on purpose or by reckless behaviour.

Article 7:953 Insurance against liability and the prohibition to acknowledge (admit) certain events or facts If an insurance against liability prohibits the insured person to make certain acknowledgements, then a violation of this prohibition has no effect as far as the acknowledgement is correct. A prohibition to acknowledge facts has never any effect.

Article 7:954 Direct rights of the injured person towards the insurer in case of an insurance against liability

- 1. If, in case of an insurance against liability, the insurer has been informed pursuant to Article 7:941 of the materialisation of the risk, then the injured person may claim that, if an insurance benefit has to be paid by the insurer to the insured person, the amount of this benefit, which the insured person under the insurance agreement may claim from the insurer on the ground of the death or injury of the injured person, is paid directly to him.

- 2. Where the insured person is a legal person who has ceased to exist, while the obligation to compensate the damage of the injured person has not passed over to another person, the injured person may claim the payment referred to in paragraph 1 from the insurer without the need that the insurer has been informed of the materialisation of the risk.

- 3. When the injured person has not yet exercised his right meant in paragraph 1, a payment of the indebted insurance benefit to the insured person shall only release the insurer from his obligation towards the injured person if he has requested the injured person in vain if he wants to exercise this right or if the injured person has waived this right.

- 4. The insured person is not competent to dispose of his entitlement to the insurance benefit to the disadvantage of the injured person as far as this entitlement forms a compensation for damage caused by death or injury, nor is such an entitlement available for seizure by another person than the injured person.

- 5. Insofar the insurance benefit which the insurer has to pay under the insurance agreement to the insured person does not cover all the damage for which the insured person is liable towards two or more injured persons, the indebted insurance benefit will be imputed to each of the injured person in proportion to the damage suffered by each of them and, as far as the injured persons have suffered damage caused by death or injury as well as other damage, in proportion to these different types of damage. Nevertheless, the insurer who was unknown of the existence of debt-claims of other injured persons and, therefore, has paid in good faith a larger amount to an injured person or the insured person than the amount to which this person would have been entitled according to the previous imputation rule, is only obliged towards the other injured persons to pay the remaining part of the indebted insurance benefit, provided that such a part is still available in view of the maximum coverage of the insurance. The payment to the injured persons may be postponed as far as there are reasonable grounds to doubt about the amount that has to be paid pursuant to the provision in the first sentence of this paragraph.

- 6. An injured person who files a lawsuit against the insurer in connection with damage suffered by death or injury may only do so if he has ensured that the insured person is called to court in time. This rule suffers exception in the situation meant in paragraph 2.

- 7. Paragraph 1 up to and including 6 do not apply as far as the injured person has been indemnified or as far as the law has granted him a separate and independent right to damages against the insurer.

#### Article 7:955 Insured sum

- 1. The insured sum is the maximum amount of compensation which the insurer is obliged to pay under the insurance agreement as a result of the same event, subject to what is provided for by Article 7:959.

- 2. The insured sum will not be reduced by or after the payment of an insurance benefit as meant in paragraph 1.

#### Article 7:956 Insured value

A building is insured for its rebuilding value, and other things for their replacement value. The replacement value equals the amount required for obtaining a thing of an equivalent type, quality, quantity, condition and age (year).

#### Article 7:957 Obligation to take measures to prevent or reduce damage

- 1. As soon as the policyholder or the insured person is aware or ought to be aware of the materialisation of the risk or of a serious threat of such a materialisation, each of them, in proportion to their opportunities, is obliged to take, within a reasonable time, all measures that could lead to the prevention or reduction of damage.

- 2. The insurer reimburses the expenses connected to the measures referred to in paragraph 1 and compensates the damage which might have been caused to objects used in this process.

- 3. If the insured person has not complied with the obligation referred to in paragraph 1, the insurer is entitled to deduct the damage he has suffered as a result of this non-compliance from the insurance benefit to be paid.

#### Article 7:958 Compensation for damage

- 1. There is a total loss when an object:

a. has perished;

b. has been damaged in such a way that it has stopped to be an object of the insured type, or;



c. is no longer under control of the insured person and regaining this control is not to be expected.

- 2. In the event of a total loss the insurer compensates the value of the insured interest in the object.

- 3. Where the insurer, in a situation as meant in paragraph 1, under point (c), has complied with his obligation to pay the indebted insurance benefit and, afterwards, it becomes possible to regain the object, he may claim, at choice of the insured person, either a refund of the paid insurance benefit or the transfer of the object in order to become its proprietor.

- 4. With regard to an insurance for replacement value, for rebuilding value or for new value the insurer compensates, in the event of partial damage, at his own choice either the costs of repair and the reduction in value of the object compared to its market (selling) value despite its restoration, or the insured value of an undamaged object reduced by the market (selling) value of its remains.

- 5. If the amount of the insured sum is less than the value underlying the calculation of damages, then the compensation will be reduced according to paragraph 2 and 4 in proportion to the extent that this amount is lower than that value.

#### Article 7:959 Compensation for costs

- 1. The compensation meant in Article 7:957 (cost for preventing or reducing damage) and reasonable costs made to assess the damage are for account of the insurer, even when because of this, in combination with the compensation for damages itself, the insured sum would be exceeded.

- 2. If the value of an undamaged object, calculated on the basis of the insurance, is not fully covered by the insurance, then the compensation meant in Article 7:957 (cost for preventing or reducing damage) is only for account of the insurer under corresponding application of Article 7:958, paragraph 5.

#### Article 7:960 Indemnity principle

The insured person will receive no compensation under the insurance agreement if he would attain a clearly more advantageous position as a result of that agreement. The previous sentence does not apply when the value of an object has been assessed in advance by an expert

assigned for this purpose or by parties themselves in conformity with an advisory report of an expert.

#### Article 961 Multiple insurance coverage

- 1. If the same damage is covered by more than one insurance agreement, then the insured person may, with due observance of Article 7:960, hold each insurer liable for it. The insurer is to this end entitled to postpone the compliance with his obligation to pay damages until the insured person has mentioned the other insurance agreements.

- 2. For the purpose of paragraph 1, with damage covered by an insurance agreement is equated damage which is compensated by the insurer without being legally obliged to do so.

- 3. The insurers have mutually a right of recourse against each other so that each of them bears his own part in proportion to the amount for which each of them can be held liable separately. On the same basis the insurers have mutually a right of recourse against each other for the reasonable costs of assessing the damage as well as for the reasonable costs of defence in and out of court. The insured person is towards each of the insurers separately obliged to refrain from any behaviour which could harm their mutual rights of recourse.

- 4. Where two or more insurers are involved in the same insurance agreement, the liability of each insurer is restricted to a proportional part of what in total is charged to that insurance.

#### Article 7:962 Subrogation of rights

- 1. If the insured person, to the point of the suffered damage, has other debt-claims for compensation against third persons than those derived from an insurance agreement, then these debt-claims pass by means of subrogation to the insurer insofar he, whether or not on the basis of a legal obligation, has compensated that damage. After the risk has been materialised, the insured person must refrain from any behaviour which could harm the rights of the insurer against third persons.

- 2. Where the insurer has acquired a debt-claim by means of subrogation or on the basis of a transfer, he is not allowed to exercise it to the prejudice of a right to damages of the insured person.

- 3. The insurer shall have no right of recourse or claim against the insured person nor against a jointly insured person, the legally separated spouse or the registered partner or other life

companion of the insured person, the insured person's blood relatives in the direct line, the employee or employer of the insured person or a person who is in service under an employment agreement of the same employer as the insured person. This rule does not apply as far as such a person is towards the insured person liable because of a circumstance which has been detrimental to the insurance benefit, if that circumstance would be attributable to the insured person.

#### Article 7:963 Mandatory law

- 1. It is not possible to derogate from Articles 7:960 and 7:962, paragraph 2 and 3, first sentence.

- 2. It is not possible to derogate to the disadvantage of the insured person from Article 7:953.

- 3. It is not possible to derogate to the disadvantage of a third person from Article 7:947, second sentence.

- 4. It is not possible to derogate to the disadvantage of the injured person from Article 7:954.

- 5. It is not possible to derogate to the disadvantage of the policyholder or the insured person from Article 7:957, paragraph 2.

- 6. It is not possible to derogate to the disadvantage of the policyholder or the insured person from Article 7:959, paragraph 1, as far as the costs meant in that paragraph do not exceed the amount which is equal to the insured sum and as far as the policyholder is a natural person who, when entering into the insurance agreement, did not act in the course of his professional practice or business.

#### Section 7.17.3 Sums insurance (non-indemnity insurance)

##### Subsection 7.17.3.1 General provisions

Article 7:964 Definition of 'sums insurance agreement' ('non-indemnity insurance agreement') A sums insurance agreement (non-indemnity agreement) is an insurance agreement under which it is indifferent if and to what extent the insurance benefit serves as compensation for damage. The conclusion of such an agreement is only permitted by means of an insurance on a person and by means of an insurance which as such is designated and approved by Order in Council, which regulation, if necessary, also determines the applying limits.

#### Article 7:965 Definition of 'insured person', 'beneficiary' and 'insurance benefit'

In the present Section (Section 7:17.3) by an 'insured person' is understood the person to whom's life or health the insurance is related and by a 'beneficiary' is understood the person who is appointed as the one receiving the insurance benefit. By an 'insurance benefit' is understood the amounts meant in Articles 7:978, paragraph 2, 7:980, paragraph 2, 7:981 and 7:983.

#### Article 7:966 Appointment of a beneficiary and change of such an appointment

- 1. The policyholder may, by means of a written declaration to the insurer:

a. appoint himself or one or more third parties, whether or not in addition to himself, as beneficiary, either as principal beneficiary or as limited proprietor;

b. put the entitlement to the insurance benefit under a fiduciary administration of an administrator;

c. revoke or change a disposal of an entitlement as meant under point (a) or (b).

- 2. The insurer may reject an appointment or its alteration if it would make performing his obligation to pay the insurance benefit unreasonably more difficult. He shall exercise this right by notifying the policyholder of his rejection within one month after the appointment or alteration.

- 3. A fiduciary administration over an entitlement to a sums insurance has the same legal effects as a fiduciary administration instituted under a last will, on the understanding that: a. the time periods meant in Articles 4:178, 4:179, paragraph 2, and 4:180, paragraph 2, of the Civil Code start to run from the moment on which the insurance benefit or the first of a series of such benefits has become due and demandable (eligible), and; b. the fiduciary administration, as far as it has not been instituted in the interest of another person than the beneficiary, also ends when the policyholder and beneficiary have notified the insurer in writing of their joint decision to end it.

- 4. The appointment of someone as principal beneficiary as a way to provide security for a debt is considered to be an appointment as pledgee. The previous sentence applies accordingly to the appointment of someone as the principal beneficiary as a way to pay or satisfy a debt, unless the appointment is restricted to what is indebted to the principal beneficiary.

Article 7:967 Ending of an appointment as beneficiary;

- 1. Unless there appears to exist another intention, the appointment of a beneficiary ends if he dies:

- a. before he has accepted his appointment, or;
- b. before an insurance benefit to which the appointment relates, has become due and demandable (eligible).

- 2. If the beneficiary has been appointed by means of the indication of a certain capacity, then the appointment is regarded to have been done in favour of the person who has this capacity at the moment on which the appointment has become irrevocable pursuant to Article 7:968, under point (b) up to and including point (d).

- 3. Contrary to paragraph 2, the appointment of a beneficiary by means of an indication of a certain capacity will have become irrevocable if it has been accepted [with approval of the policyholder; Article 7:969 paragraph 1, second sentence] by a person who possesses the indicated capacity at the moment of acceptance.

- 4. If the beneficiary has been appointed by means of a statement that the 'heirs' of the policyholder or of the insured person as such are appointed as beneficiary, then for the purpose of the insurance agreement all persons who are called to the deceased's estate in their capacity as heir will be regarded as beneficiary, irrespective whether they have accepted the inheritance. They are entitled to the insurance benefit in the same proportion as in which they have been called to the deceased's estate.

- 5. Where the estate of the deceased policyholder or insured person itself has been appointed as beneficiary, the entitlement to the insurance benefit belongs to the heirs who have accepted the inheritance. They are entitled to the insurance benefit in the same proportion as in which they have obtained a share in the deceased's estate.

- 6. If the beneficiary has been appointed by means of a statement that the 'children' of the policyholder or of the insured person as such are appointed as beneficiary, then the descendants of these children will be regarded as beneficiary by right of representation.

- 7. When an insurance benefit becomes due and demandable (eligible) because of the death of the insured person, while another beneficiary appears to have died at the same time or it appears that both have died and it is not possible to determine who of them has died first, then the

insurance benefit does not accrue to this beneficiary, unless there appears to exist another intention.

- 8. As long as no third party has been appointed as beneficiary, the entitlement to the insurance benefit belongs to the policyholder. In addition, the policyholder is deemed to have appointed himself as beneficiary in the event that none of the appointments as beneficiary of a third party has legal effect.

#### Article 7:968 Moment on which an appointment becomes irrevocable

The appointment of a third party as beneficiary cannot be revoked:

- a. if that third party has accepted his appointment;
- b. if the risk has ceased to exist because of the death of the insured person;
- c. if an insurance benefit has become due and demandable (eligible);
- d. if this is indicated by the insurance agreement.

#### Article 7:969 Acceptance of the appointment as beneficiary

- 1. The favoured third party obtains his entitlement to the insurance benefit by acceptance of his appointment as beneficiary. Contrary to Article 6:253, paragraph 3 and 4, of the Civil Code, he can only accept his appointment by means of a declaration addressed to the insurer. Unless the appointment has become irrevocable pursuant to Article 7:968, under point (b) up to and including point (d), the beneficiary is only able to accept his appointment if he notifies the insurer in writing of his acceptance and he presents to him, in addition, a written approval of the policyholder of this acceptance.

- 2. Where the appointment as beneficiary has become irrevocable pursuant to Article 7:968, under point (b) up to and including (d), the favoured third party may reject his appointment by means of a written declaration addressed to the insurer.

- 3. The favoured third party may undo his appointment as beneficiary by waiving his rights to the insurance benefit.

#### Article 7:970 Transfer of an entitlement derived from a sums insurance (non-indemnity insurance)

- 1. The entitlement of the policyholder derived from a sums insurance (non-indemnity insurance) can only be transferred in full as a whole. Nevertheless, the debt-claims

derived from such an insurance may be transferred separately as far as the law or the insurance agreement does not provide otherwise.

- 2. The delivery of an entitlement or debt-claim to an insurance benefit derived from a sums insurance (non-indemnity insurance) requires the written notification of the transfer to the insurer by the alienator or the acquiring party.

Article 7:971 Establishment of a pledge on the entitlement or debt-claims derived from a sums insurance (non-indemnity insurance)

- 1. Article 3:239 of the Civil Code does not apply to the establishment of a pledge on an entitlement or debt-claim derived from a sums insurance (non-indemnity insurance).

- 2. If the pledge is established on an entitlement to an insurance benefit, then for the purpose of Articles 3:246 and 3:253 of the Civil Code and Article 490b of the Code of Civil Procedure, the beneficiary will take the place of pledgor. Where a third party, who has been appointed as beneficiary, has not yet accepted his appointment, the pledgee will give him the opportunity to do so.

- 3. A surplus as meant in Article 3:253 paragraph 1, second sentence, of the Civil Code may also, contrary to paragraph 2, be handed over by the pledgee to the insurer. The insurer then will have to pay this amount to the beneficiary.

Article 7:972 Restrictions of the rights to be exercised by the policyholder

- 1. The policyholder is only able to exercise the rights he has pursuant to the insurance agreement with written approval of:

a. the beneficiary, when his appointment has become irrevocable pursuant to Article 7:968;

b. the limited proprietor, when a limited property right has been established on the entitlement to the insurance benefit, obtained by the policyholder by virtue of the insurance agreement.

- 2. If the exercise of rights as meant in paragraph 1 would not lead to a change in the legal status of the beneficiary or of the limited proprietor, respectively, then the policyholder does not need his approval.

Article 7:973 Deliberately materialising the risk

No rights can be drawn from an insurance agreement by a person who has been convicted by a final and binding judicial decision of deliberately materialising the risk or of intentionally cooperating in such materialisation.

#### Article 7:974 Mandatory law

It is not possible to derogate from the formal requirements of Articles 7:966, paragraph 1, 7:969, paragraph 1, second sentence, 7:972 and 7:973.

#### Subsection 7.17.3.2 Life insurance (or 'life assurance')

##### Article 7:975 Definition of 'life insurance agreement'

A life insurance agreement is a sums insurance agreement (non-indemnity insurance) concluded on the life or death of a specific person, on the understanding that an accident insurance is not considered as a life insurance.

##### Article 7:976 Burial and funeral insurances

Articles 7:978, paragraph 1, 7:980, paragraph 1, and 7:981 do not apply to an insurance intended to compensate the costs of the disposal of the dead; neither is Article 7:986 applicable to such insurances, as far as it is related to these statutory provisions. Further criteria may be set by Order in Council. The value of these insurances and the rights resulting from them cannot be seized and are not affected by the bankruptcy of the policyholder, nor by the application of the Debt Repayment Scheme for Natural Persons to the policyholder, and neither by the settlement of his heritage.

##### Article 7:977 Termination, rescission and expiration of a life insurance

- 1. Without prejudice to what is stipulated elsewhere in the present Title (Title 7.17), a life insurance agreement cannot be terminated or rescinded by the insurer, nor can it expire by virtue of any contractual condition. The first sentence, however, does not stand in the way of a contractual condition on the basis of which the life insurance agreement [like an investment fund insurance] ends or may be terminated by the insurer if it no longer has a paid up value or a surrender value as a result of a stipulated right to set off insurance premiums, stipulated interest and costs.

- 2. Without prejudice to what is stipulated elsewhere in the present Section (Section 7.17.3), the insurer is only able to surrender the life insurance against payment of the surrender



value or to continue it free of premium when the policyholder collaborates in this, which collaboration must be obtained after the life insurance agreement was concluded.

Article 7:978 Right of the policyholder to surrender the life insurance or to make it free of premium

- 1. As far as the life insurance, the life annuity savings account or the life annuity investment right actually provides for one or more insurance benefits, the policyholder has the right to surrender it entirely or partially and take the surrender value instead. The life insurance ends because of such surrender, except as far as insurance benefits may still result from it. The surrender value belongs to the policyholder.

- 2. When a life insurance has a paid up value, the policyholder has the right to continue it free of premiums. This right may be excluded as far as it concerns the situation that the amount of the to be paid insurance benefits, accumulated (accrued) at the moment on which the insurance has been made free of premiums, is less than a minimum amount set to this end by Order in Council.

Article 7:979 Right to borrow money on the life insurance policy

- 1. The policyholder has the right to borrow money from the insurer on a life insurance meant in Article 7:978, paragraph 1, to the amount of the surrender value and against the usual conditions.

- 2. As far as the policyholder does not pay back the amount that he has borrowed pursuant to paragraph 1, the insurer may deduct this amount, increased with interest and costs, from the cash value of the periodical insurance benefits and withhold it from the payments he has to make by virtue or on account of the insurance [for instance in the event of a seizure or the bankruptcy of the policyholder]

Article 7:980 Non-payment of subsequent insurance premiums.

- 1. A non-payment of subsequent insurance premiums can only have effect if the insurer, after the due date, has pointed out this effect in a declaration addressed to the policyholder and, if relevant, to the beneficiary who has accepted his appointment, to the pledgee and to the seizer (attaching creditor), and the requested payment has not been made within a period of at least one month as set for this purpose in that declaration.

- 2. If the requested payment has not been made within the period meant in paragraph 1, a life insurance with a paid up value will be continued as a life insurance free of premiums or, if the life insurance agreement provides for this possibility, it will be continued by means of a set off of the insurance premiums, the stipulated interest and the costs against the surrender value. Where no right of continuation, as referred to in the previous sentence, exists, the life insurance agreement will end and the policyholder will be entitled to the surrender value, if present.

- 3. It is possible to stipulate, in derogation from paragraph 1, that interest and costs will be chargeable as from the due date of the insurance premium.

Article 7:981 Death caused by an event excluded as insured risk Where the insured person has died as a result of a cause excluded as risk and the life insurance has a surrender value, the insurer has to pay an amount equal to the surrender value, calculated to the day prior to the day of death. This amount belongs to the beneficiary. If the life insurance has no surrender value, but it has a paid up value, then the policyholder is considered to have exercised his right as meant in Article 7:978, paragraph 2, the day prior to the day of death, and the insured person is considered to have died by a cause which is not excluded as risk.

Article 7:982 Incorrect information about age or gender

- 1. When the age or gender (sex) of the insured person has been reported incorrectly, the life insurance is considered to have been concluded for a calculated insurance benefit (or benefits) in adjustment with the correct age or gender (sex), but on the basis of the same amount of insurance premiums as agreed upon. Articles 7:929, 7:930 and 7:983 do not apply to this extent.

- 2. Paragraph 1 does not apply if the insurer would not have concluded the life insurance agreement if he would have been aware of the correct age or correct gender (sex).

Article 7:983 Legal effects of non-compliance with the pre-contractual information duty of Article 7:928 or 7:929

- 1. If the policyholder, pursuant to law or agreement, has the right to surrender a life insurance agreement and to take the surrender value, and this agreement is terminated in accordance with Article 7:929, then the policyholder obtains an entitlement to the surrender value calculated to the day prior to the termination.

- 2. If, at the end of the risk, the insurer invokes the legal effects of a non-observance of the pre-contractual information duty referred to in Article 7:928, then the beneficiary obtains an entitlement to an amount calculated in an equal way as mentioned in paragraph 1. However, if the application of Article 7:930, paragraph 2 or 3, would lead to a higher insurance benefit, then the beneficiary obtains an entitlement to an amount equal to that higher benefit.

- 3. The insurer who in accordance with Article 7:929, under reservation of rights, has pointed out to the policyholder that the pre-contractual information duty of Article 7:928 has not been observed or who has invoked the legal effects of such a non-observance, notifies this, where relevant, to the person who has accepted his appointment as beneficiary, and to the pledgee. In the situation meant in the first sentence, the insurer informs also the seisor (attaching creditor), unless a declaration as meant in Article 476a, first paragraph, of the Code of Civil Procedure has not yet been made.

#### Article 7:984 Pledging and foreclosure of the entitlement of the policyholder

- 1. Where a pledge is established on a life insurance entitlement of the policyholder, the pledgee has the right to surrender the life insurance and to take the surrender value, unless the policyholder misses the right to surrender the life insurance himself. As far as the appointment of another person as beneficiary is not yet irrevocable, the pledgee is also able to appoint the policyholder as beneficiary of the insurance benefit. The pledgee is only able to surrender the life insurance and to take the surrender value if the pledgee, on a moment that the debtor already was in default, has notified the policyholder at least four weeks in advance by registered letter or by bailiff's notification of his intention to surrender the life insurance and to take the surrender value. The insurer has no duty to investigate if the debtor is in default. The pledgee sends a copy of the registered letter of bailiff's notification, meant in the third sentence, to the insurer.

- 2. To be able to surrender the life insurance and to take the surrender value the pledgee must, at the moment on which he notifies the policyholder of his intention to invoke this right, mention also that the policyholder, during the period of four weeks meant in paragraph 1, has the right to borrow money from the insurer on the life insurance, with which the policyholder could pay off, as far as possible, the debt which the pledgor owes to the pledgee, unless this right of the policyholder has been excluded in the life insurance agreement.

- 3. Where the pledgee has surrendered the life insurance and taken the surrender value or where the policyholder has borrowed money on the life insurance in accordance with paragraph 2, the established pledge only continues to rest on the debt-claim to the surrender value, respectively, on the borrowed money on the life insurance.

- 4. The pledgee is not entitled to sell off the pledged entitlement to the insurance benefit as provided for by Article 3:248 of the Civil Code.

#### Article 7:985 Prescription

A right of action against the insurer to claim the payment of an insurance benefit becomes prescribed on the expiry of five years from the day on which this debt-claim has become due and demandable (eligible), unless a longer period has been agreed upon.

#### Article 7:986 Mandatory law

- 1. It is not possible to derogate from Article 7:984.

- 2. It is not possible to derogate to the disadvantage of the policyholder, the beneficiary or the pledgee from Articles 7:977, 7:981 and 7:982.

- 3. Where the policyholder is a natural person who, when he entered into the life insurance agreement, did not act in the course of his professional practice or business, it is not possible to derogate to the disadvantage of him or of the beneficiary, the pledgee or the seizer (attaching creditor) from Articles 7:978, paragraph 2, 7:980 and 7:983.

- 4. An exclusion or limitation of the right, meant in Article 7:978, paragraph 1, cannot be invoked against the creditors of the policyholder, against the liquidator in his bankruptcy, against the administrator appointed under an official moratorium on payment granted to the policyholder or under the application of the Debt Repayment Scheme for Natural Persons to the policyholder or against the liquidator who is settling the heritage (estate) of the deceased policyholder. The first sentence does not apply to an insurance, a life annuity savings account or a life annuity investment right which grants an entitlement to periodically paid insurance benefits or periodically supplied benefits in kind, as far as the premiums which have been paid to this end, also because the contract of insurance, the contract of the life annuity savings account or the contract of the life annuity investment right stipulates that it cannot be surrendered against payment of the surrender value, could be taken into account in determining the taxable income derived from employment and home ownership.