

## Unfair contract terms<sup>1</sup>

<b>Austria</b>	<p><u>Examples:</u></p> <p>Clauses in insurance contracts may be void for violating the VersVG, for example</p> <ul style="list-style-type: none"> <li>§ 5(4) VersVG: Waiving right to contest contract because of error</li> <li>§ 6(4): right of withdrawal for insurer in case of violation of obligations</li> <li>§ 11(4): waiving obligation of insurer to pay default interest</li> <li>§ 39(1): terms of less than 2 weeks in case of non-payment of premium</li> <li>Or any clause violating (semi-)mandatory rules of the VersVG</li> </ul> <p>Clauses in insurance contracts with consumers may be void because they violate the “black list” as contained in § 6 para. 1 or para. 2 Konsumentenschutzgesetz/Consumer Protection Act</p> <p>Clauses in insurance contracts with consumers may be void because they violate general standards of unfair terms control</p> <ul style="list-style-type: none"> <li>- Surprising clauses (§ 864a ABGB/Civil Code)</li> <li>- Unfair clauses (§ 879 para. 3 ABGB/Civil Code)</li> <li>- Intransparent clauses (§ 6 para. 3 KSchG/Consumer Protection Act – directly applicable only to consumer insurance).</li> </ul> <p>E.g. OGH (Supreme Court) 23<sup>rd</sup> January 2013, 7Ob201/12b: Several clauses of the General Conditions on legal expenses insurance as used by Austrian insurers were held to be void or not binding on the policyholder based on § 864a, 897 para 3 ABGB or/and § 6 para 3 KSchG)</p>
<b>Bulgaria</b>	<p>Unfair contract terms are dealt with in <u>Chapter VI, art.143-148 of Consumers Protection Act</u>. The <u>Code for the Insurance</u> does not mention those and does not make any references to them. However Consumers Protection Act contains general rules and is applicable as long as there are no contradictory specific rules in the Code for the Insurance. Art.143 of Consumers Protection Act defines Unfair contract term in a consumer contract as <i>any clause to the detriment of the consumer which is contrary to the good faith and entails a significant inequality between the rights and obligations of the trader or provider and those of the consumer.</i> Unfair contract terms are null and void unless they are individually negotiated. The trader has the burden of proof for establishing that certain contract terms are individually negotiated.</p>
<b>Croatia</b>	<p>Pursuant to Article 96 (to 104) of the Consumer Protection Act '<i>a contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the contractual parties' rights and obligations, to the detriment of the consumer.</i>'</p>

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

	<p>The position of the Consumer Protection Act is that certain contractual terms shall be deemed not individually negotiated where it has been drafted by the trader in advance for which reason the consumer was therefore not able to influence its content, particularly when it is a term of the pre-formulated standard contract of the trader.</p> <p>An unfair contractual term shall be deemed null and void.</p>
<b>Estonia</b>	<p>General unfair terms-regulation applies to both B2C and B2B insurance contracts.</p> <p>LOA § 42. Invalidity of standard terms</p> <p>(1) A standard term is void if, taking into account the nature, contents and manner of entry into the contract, the interests of the parties and other material circumstances, the term causes unfair harm to the other party, particularly if it causes a significant imbalance in the parties' rights and obligations arising from the contract to the detriment of the other party. Unfair harm is presumed if a standard term derogates from a fundamental principle of law or restricts the rights and obligations arising for the other party from the nature of the contract such that it becomes questionable as to whether the purpose of the contract can be achieved. Invalidity of standard terms and the circumstances relating thereto shall be assessed as at the date of entry into the contract.</p> <p>(2) A standard term is not deemed to be unfair if it relates to the main subject matter of the contract or to the relationship between the price and the value of the services or goods supplied in exchange or if the contents of the term is based on such legislation which must not be derogated from pursuant to an agreement between the parties.</p> <p>Subparagraph 3 provides a black list on standard terms considered to be unfair in particular, though in B2B contracts unfairness of those terms is only presumed.</p> <p>One must also look at the imperative clauses in the insurance contract part of LOA, which there are many, e.g. § 451 - any agreement by which the insurer is not required to pay a fine for a delay in the performance of its obligation is void.</p>
<b>Finland</b>	<p>Both section 36 of the Contracts Act (229/1928) as well as Chapter 3 and 4 of the Consumer Protection Act (38/1978) concern regulation of contract terms. An unfair contract term may be set aside or adjusted. Furthermore a contract term, which differs from the provisions of the Insurance Contract Act or any other insured party entitled to compensation as the detriment of the policyholder, shall be invalid.</p> <p>In addition, a contract term, which differs from the provisions of the said Act to the detriment of the policyholder shall be invalid, if the</p>

	<p>policyholder is a consumer or any other natural person or legal entity which can be treated as a consumer in relation to the insurer considering the nature and extent of his/her business activities and other relevant circumstances.</p> <p>The application of these provisions is in theory possible also in the context of insurance contracts, but the specificity of the mostly mandatory provisions of the Insurance contracts Act. In the context of large risks, this has neither any significance.</p>
<b>France</b>	<p><u>Implementation of the Unfair Contract Terms Directive (93/13/EC): Article L132-1 Consumer Code:</u>          (Modifié par LOI n°2010-737 du 1er juillet 2010 - art. 62)</p> <p>In B2C contracts those clauses having the effect of significantly unbalancing the contract on the consumer's side are considered as unfair.</p> <p>Council of State decree issued upon the advice of the <i>Commission des clauses abusives</i> determine the types of clauses that must be regarded as unfair. In case of litigation upon one of those clauses, it's up to the professional to demonstrate the fair nature of the clauses.</p> <p>A State Council decree shall determine which clauses, regarding their importance for the contract equilibrium, should be judged unfair according to the present article.</p> <p>[...]</p> <p>Without any prejudice to the general interpretation rules provided by Articles 1156, 1161, 1163 and 1164 Civil Code, the unfair nature of a clause shall be identify referring to the moment of the conclusion of the contract, to all the circumstances occurring on the specific moment and to all the other clauses of the contract. The judgement should also take into account any other contract having a legal influence on the conclusion or on the execution of the relevant contract.</p> <p>Unfair clauses are considered as non-written.</p> <p>[...]</p> <p>The contract shall remain valid if it still has a "legal sense" without the clauses judged as unfair.</p> <p><u>The above mentioned article shall not be applied when the insurance contract was taken out in pursuance of the insured's business (Cass. Civ. 1er, 23.2.1999, RGDA 1999, 325)<sup>2</sup>.</u></p>

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<sup>2</sup> Principles of European Contract Law (PEICL), J. Basedow, J. Birds, M. Clarke, H. Cousy, H. Heiss 2009, p. 124 N11.

	<p><u>Article L534-1 Consumer Code:</u>  (Créé par LOI n°2010-737 du 1er juillet 2010 - art. 62)</p> <p>The Unfair Clauses commission, established by the Ministry of Consumers, shall analyse the standard terms and conditions normally proposed to consumers. The Commission shall judge on the eventual unfair nature of the clauses.</p> <p><u>Article L113-11 Insurance Code:</u></p> <p>They are invalid:</p> <ul style="list-style-type: none"> <li>- All general clauses depriving the insured of his rights in case of violation of laws or regulations, unless such violation constitutes a crime or intentional tort;</li> <li>- All clauses depriving the insured of his rights, due to a delay on the insured's part in stating a claim to the authorities or delivery of documents, without prejudice to the insurer's right to claim for a compensation proportionate to the damage that this delay has caused to his interests.</li> </ul>
<b>Germany</b>	<p>The general rules on unfair terms (§§ 307 seq. BGB) apply to B2B and B2C insurance contracts.</p> <p>§ 307 BGB</p> <p>(1) Provisions in standard business terms are ineffective if, contrary to the requirement of good faith, they unreasonably disadvantage the other party to the contract with the user. An unreasonable disadvantage may also arise from the provision not being clear and comprehensible.</p> <p>(2) An unreasonable disadvantage is, in case of doubt, to be assumed to exist if a provision</p> <ol style="list-style-type: none"> <li>1. is not compatible with essential principles of the statutory provision from which it deviates, or</li> <li>2. limits essential rights or duties inherent in the nature of the contract to such an extent that attainment of the purpose of the contract is jeopardised.</li> </ol> <p>The unfairness control does not apply to the obligations concerning the payment of the premium and the main performance of the insurer.</p>
<b>Greece</b>	<p>Unfair contract terms are envisaged in art. 2 of law 2251/94 in regard to consumer protection which contains a list of per se void terms on the ground that they are unfair. These general (and not insurance-related) rules that partly stem from EU Directive 93/13/EC are also applicable to the insurance contracts. Law 2496/97 in regard to insurance contract does not deal with unfair contract terms.</p> <p>In general terms, a term is deemed to be unfair and thus void if it causes significant imbalance in the rights and obligations of the counter-parties to the detriment of the consumer.</p> <p>Beyond the afore-mentioned regime of law 2251/94, the Ministerial</p>

	<p>Decision Z1-74/4.2.2011 is in place regarding abusive general terms of transactions used by banks and insurance companies.</p> <p>According to this decision issued by the Deputy Minister of Labour and Social Security, “<i>a clause in hospital care insurance contracts that allows the insurance company to proceed, during the course of the insurance contract or on any renewal date of such insurance cover, with an increase in the premiums with no previous determination of specific criteria that are certain and reasonable for consumer, on the basis of which such increase will take place</i>” shall be regarded as abusive.</p>
<b>Hungary</b>	<p><b>(Ptk. 6:103 and 6:104)<sup>3</sup></b></p> <p>Non-exhaustive list of unfair contract term are listed in the general contract rules of the civil code. These contract terms shall be null and void in the respect of consumer contracts.</p>
<b>Italy</b>	<p><u>Art. 166 d.lgs. 209 7/9/2005:</u></p> <p>Hard bargain clauses shall be clearly and exhaustively explained and well signalled (graphic form)</p> <p><u>Implementation of the Unfair Contract Terms Directive (93/13/EC)</u></p> <p><u>Art. 33-38 Consumer Code:</u></p> <p>Terms are considered unfair if they cause a significant imbalance in the rights and obligations arising under the contract, to the detriment of the consumer. An exhaustive list of clauses which are presumed to be unfair is presented.</p> <p>Terms and clauses which are not immediately clear shall always be interpreted in favour of the consumer. Guidelines to the interpretation of such clauses are presented.</p> <p>Unfair clauses which are not presented following the law are considered to be null, while the remaining part of the contract shall remain valid. Such nullity shall only operate for the benefit of the consumer.</p> <p>The general rules provided by the Civil Code shall continue to apply.</p> <p><u>Art. 1341 par. 2 Civil Code:</u></p> <p>List of clauses which must be specifically and written approved; if not, the courts are enabled to review them irrespective of their incorporation into commercial or consumer contracts.</p>

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<sup>3</sup> The text below refers to the following Hungarian laws

▪ Ptk. – Hungarian Civil Code; Act of V of 2013.

<b>Portugal</b>	<p>The Legal Regime on the Insurance Contract does not state specifically <u>on unfair contract terms.</u></p> <p>However <u>article 3</u> of the Legal Regime states:</p> <p><b><u>Article 3</u></b></p> <p><b><u>Reference to generally applicable provisions</u></b></p> <p><u><i>The provisions of this regime shall not prejudice application to the contract of insurance of the provisions of the laws on general contractual clauses, consumer protection and contracts that have been entered into remotely, pursuant to the provisions of the aforementioned laws.</i></u></p> <p><b><u>This means that the entire regime of unfair contract terms applies de pleno to the insurance contracts.</u></b></p> <p>This regime is now the subject of the Decree law 446/85 of 25 October 1985, amended by Decree law 220/95 of 31 August 1995 and Decree law 249/99 of 07 July 1999, which transposed the Directive 93/13/CEE of 05 April 1993.</p> <p>However, according to the Portuguese law, this regime is not only applicable to B2C contracts but also to B2B contracts.</p> <p>Besides the Portuguese law identifies two different sets of black and grey unfair clauses, one for B2B contracts and another one to B2C contracts; however the black and grey lists for B2B are also applicable to B2C contracts.</p> <p>The law identifies 11 black clauses and 9 grey clauses in B2B contracts and 8 black clauses and 14 grey clauses in B2C contracts.</p> <p>This regime applies also to individual contracts and there are special duties of information on the use, the nature and the meaning of any general contract terms.</p> <p>The consequence of the use of unfair contract terms is the “nullity” of the clauses; in principle the individual contracts remain in force, with the applicable supplemental norms ruling the affected parts, with recourse, if necessary to the rules of integration of the contracts; however the afore mentioned contracts may be declared null and void when, notwithstanding the use of the elements referred before, there is insurmountable indeterminateness with regard to essential aspects or an imbalance in the duties to perform which represents a serious affront to</p>

	<u>good faith.</u>
<b>Romania</b>	<p>The unfair contract terms are regulated by the Law no. 193/2000 <i>on unfair terms in contracts concluded between professionals and consumers</i>. According to the law, the insurers are considered professionals.</p> <p>The following provisions of a contract are considered unfair:</p> <ul style="list-style-type: none"> <li>- providing insurer right to unilaterally modify the terms of the contract, without a valid reason which has to be specified in the contract;</li> <li>- to oblige the consumer to submit to contractual terms which had no real opportunity to get acquainted prior of signing of the contract;</li> <li>- require the consumer to fulfill their contractual obligations, even when the insurer has not fulfilled on its own;</li> <li>- to give the right to the insurer to automatically extend a contract for a specified period by tacit agreement of the consumer if the limit during which he could express option was insufficient;</li> <li>- to give the right to the insurer to alter unilaterally without the consent of the consumer, the terms of the characteristics of products and services to be supplied or the delivery of a product or a service execution time;</li> <li>- to give the right to the insurer to unilaterally declare the conformity of the products and services provided by contractual provisions;</li> <li>- to provide to the insurer the exclusive right to interpret contractual clauses;</li> <li>- to restrict or cancel the consumer's right to claim compensation in cases in which the insurer does not fulfill its contractual obligations;</li> <li>- to require the consumer to pay a disproportionately high sum in case of default attributable to it compared to the damages suffered by the insurer;</li> <li>- to restrict or terminate the consumer's right to cancel or terminate the contract in the following cases: <ul style="list-style-type: none"> <li>a) the insurer unilaterally changed the terms</li> <li>b) the insurer has not fulfilled its contractual obligations;</li> <li>c) the insurer imposed to the consumer by contract clauses relating to the payment of a fixed sum in case of unilateral termination;</li> </ul> </li> <li>- exclude or limit the insurer liability for injury or death of a consumer, as a result of an act or omission on the use of professional products and services;</li> <li>- exclude the consumer's right to take legal action or exercise other legal remedy, asking him at the same time resolving disputes especially through arbitration;</li> <li>- allow unjustified the insurer to impose restrictions in administrating evidence by the consumer or to solicit the consumer to submit evidence that by law is subject to other parts of the contract obligation;</li> <li>- to entitle the insurer to transfer contractual obligations to third parties - agent, trustee, etc.. - without the consumer's consent if the transfer serves to reduce the guarantees or other liability to the consumer;</li> <li>- prohibit the consumer to offset a debt that he has on the insurer with a debt that the insurer has on him;</li> <li>- provide that the product price is determined at the time of delivery or allowed the seller of goods or service providers the right to increase prices without in both cases, to give the consumer the right to cancel the</li> </ul>

	<p>contract if the final price is too high in relation to the price agreed when the contract was concluded.</p> <ul style="list-style-type: none"> <li>- enables insurers to obtain money from the consumer, in case of failure or completion of the contract by the latter, without providing compensation in the amount equivalent to the existence of the consumer and, if a breach of contract by the professional;</li> <li>- entitle the insurer to unilaterally terminate the contract without providing the same right and the consumer;</li> <li>- give the insurer the right to terminate the contract for an indeterminate duration without reasonable notice, except for some reason.</li> </ul>
<b>Slovakia</b>	<p>§ 53 of CC</p> <p>Contract must not contain provisions that cause considerable imbalance between the rights and obligations of the parties to the detriment of the consumer.</p> <p>A long list of clauses which are presumed to be unfair is presented.</p> <p>§ 53a of CC</p> <p>If the court determined some contractual conditions in the contract made in multiple cases and it is usual that consumer doesn't affect the content of the contract in the significant way or in the general business condition to be invalid due to the unacceptability of such condition or did not award performance to the provider due to such conditions, provider shall refrain from using them or any condition with the same meaning in the contract with all consumer.</p> <p>Act on Consumer Protection on Distance Delivery of Financial Services</p> <p>§ 8</p> <p>Contract on distance shall not contain provisions by which consumer is in advance giving up any rights and provisions that proving fulfilment of all duties of provider or part of this duties resulting from this act lean on consumer.</p>
<b>Spain</b>	<p><u>Art. 82 Royal Legislative Decree 1/2007, General Act to protect consumers</u></p> <p><b>Definition of Unfair clauses:</b></p> <p>Unfair clause are all those stipulations not individually negotiated and not expressly admitted, that contrary to the requirement of good faith cause, to the detriment of the consumer, a significant imbalance in the rights and obligations of the parties arising from the contract.</p> <p>An exhaustive list of clauses which are presumed to be unfair is presented.</p>

	<p><i>(LCS) Insurance Contract Act</i> establishes that general terms of the insurance contract can't be "harmful" for the insured. (Art. 3)</p> <p><i>Harmful clauses</i> are another term used within the Insurance Contract Act, which refers to unfair clauses.</p> <p>Unfair clauses as well as Harmful clauses are considered to be null, while the remaining part of the contract shall be deemed valid.</p> <p>The failure of the insurer of the mandatory rules of the Insurance Contract Law (among which is the article 3) where such conduct has a repetitive character is considered a serious offense. (<u>Art. 40.4 h) Insurance Supervision Act</u>)</p>
<b>Sweden</b>	<p>The Swedish system can be described as a 'two-track' system.</p> <ol style="list-style-type: none"> <li>1. <b><i>The Swedish Contract Act (1915:218), Article 36</i></b>, is a general clause empowering Courts to adjust or set aside unfair contract terms. The Act applies to insurance contracts. Concrete disputes between two parties – e.g. an insurance company and a policyholder – whether a policy condition is unfair or not is normally decided by the ordinary courts (or an arbitral tribunal). The assessments made by the courts are always based on the specific circumstances in the individual case.</li> <li>2. <b><i>The Act (1994:512) on Contract Terms in Consumer Relations, Article 3</i></b>, is a general clause, which regulates the possibility to prohibit business enterprises to forthwith use unfair contract terms. The Act applies solely between business enterprises and consumers. The Act does not directly govern contracts between individual parties but rather sets the legal frame for business enterprises' market conduct. <b><i>The Market Court</i></b> is empowered to prohibit use of unfair contracts.</li> <li>3. The Act also forms a basis for <b><i>the Swedish Consumer Agency</i></b> 's (Sw.: Konsumentverket) supervisory role.</li> </ol>
<b>United Kingdom</b>	<p><u>The Unfair Contract Terms Act 1977</u> does not apply to insurance contracts. However consumer insurance is subject to the <u>Unfair Terms in Consumer Contracts Regulations 1999</u> ("Regulations"). There is some case law on the application of the Regulations but many disputes are dealt with by the Financial Ombudsman Service. FOS decisions are not reported, but some of its decisions are published by it on an anonymised basis in Ombudsman News as illustrations of how FOS it decisions. Relevant case law and FOS decisions are referred to below where applicable.</p> <p><b>B2C</b></p> <p>The Regulations implement the <u>Unfair Contract Terms Directive</u></p>

(93/13/EC):

The Regulations apply in relation to unfair terms in contracts concluded between a seller or a supplier and a consumer.

Section 5:

A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer. A term shall always be regarded as not having been individually negotiated where it has been drafted in advance.

The onus of proving that a term is individually negotiated is on the drafter.

*Pearl Assurance Plc v Kavanagh [2001] C.L.Y. 3832*

A motor policy sought to impose an absolute obligation on the insured to repay sums required by the Road Traffic Act 1988 to be paid to third party victims for liability incurred by an unauthorised driver of the insured's vehicle, where there was no liability under the policy itself. The statutory requirements provide that the insured must indemnify the insurer only where the insured had caused or permitted the use of the vehicle. It was held that the clause had to be construed contra preferentum, but if that was wrong, the clause was unfair as there was an attempt to remove statutory protection without the term being individually negotiated or being brought to the insured's attention.

An indicative list of unfair terms is presented in Schedule II:

Terms which have the object or effect of:

"(a) excluding or limiting the legal liability of a seller or supplier in the event of the death of a consumer or personal injury to the latter resulting from an act or omission of that seller or supplier;

(b) inappropriately excluding or limiting the legal rights of the consumer vis-à-vis the seller or supplier or another party in the event of total or partial non-performance or inadequate performance by the seller or supplier of any of the contractual obligations, including the option of offsetting a debt owed to the seller or supplier against any claim which the consumer may have against him;

(c) making an agreement binding on the consumer whereas provision of services by the seller or supplier is subject to a condition whose realisation depends on his own will alone;

(d) permitting the seller or supplier to retain sums paid by the consumer where the latter decides not to conclude or perform the contract, without providing for the consumer to receive compensation of an equivalent amount from the seller or supplier where the latter is the party cancelling the contract.

The Financial Ombudsman Service has held that it is unfair to provide for a pro rata premium refund if the insurer cancels a policy but to not

refund any of the premium if a customer cancels four or more months after the start of a policy. Where a policy was cancelled after five months by the customer, the insurance company was required to make a pro rata refund after deducting a reasonable administration fee (Issue 54 Ombudsman News);

(e) requiring any consumer who fails to fulfil his obligation to pay a disproportionately high sum in compensation;

(f) authorising the seller or supplier to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer, or permitting the seller or supplier to retain the sums paid for services not yet supplied by him where it is the seller or supplier himself who dissolves the contract;

(g) enabling the seller or supplier to terminate a contract of indeterminate duration without reasonable notice except where there are serious grounds for doing so;

(h) automatically extending a contract of fixed duration where the consumer does not indicate otherwise, when the deadline fixed for the consumer to express his desire not to extend the contract is unreasonably early;

(i) irrevocably binding the consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract;

(j) enabling the seller or supplier to alter the terms of the contract unilaterally without a valid reason which is specified in the contract.

The Financial Ombudsman Service has held that it is unfair for a travel insurer to exclude cover for illnesses not known about at the start of a policy but that the insured becomes aware of before a trip. Such a term allows the insurer to change its mind about the cover it will offer and seeks to remove the element of risk (Issue 36 Ombudsman News);

(k) enabling the seller or supplier to alter unilaterally without a valid reason any characteristics of the product or service to be provided;

(l) providing for the price of goods to be determined at the time of delivery or allowing a seller of goods or supplier of services to increase their price without in both cases giving the consumer the corresponding right to cancel the contract if the final price is too high in relation to the price agreed when the contract was concluded;

(m) giving the seller or supplier the right to determine whether the goods or services supplied are in conformity with the contract, or giving him the exclusive right to interpret any term of the contract;

(n) limiting the seller's or supplier's obligation to respect commitments undertaken by his agents or making his commitments subject to compliance with a particular formality;

(o) obliging the consumer to fulfil all his obligations where the seller or supplier does not perform his;

(p) giving the seller or supplier the possibility of transferring his rights and obligations under the contract, where this may serve to reduce the guarantees for the consumer, without the latter's agreement;

(q) excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration not covered by legal provisions, unduly restricting the evidence available to him or imposing on him a burden of proof which, according to the applicable law, should lie with another party to the contract.

## 2. Scope of paragraphs 1(g), (j) and (l)

(a) Paragraph 1(g) is without hindrance to terms by which a supplier of financial services reserves the right to terminate unilaterally a contract of indeterminate duration without notice where there is a valid reason, provided that the supplier is required to inform the other contracting party or parties thereof immediately.

(b) Paragraph 1(j) is without hindrance to terms under which a supplier of financial services reserves the right to alter the rate of interest payable by the consumer or due to the latter, or the amount of other charges for financial services without notice where there is a valid reason, provided that the supplier is required to inform the other contracting party or parties thereof at the earliest opportunity and that the latter are free to dissolve the contract immediately.

Paragraph 1(j) is also without hindrance to terms under which a seller or supplier reserves the right to alter unilaterally the conditions of a contract of indeterminate duration, provided that he is required to inform the consumer with reasonable notice and that the consumer is free to dissolve the contract.

(c) Paragraphs 1(g), (j) and (l) do not apply to:

- transactions in transferable securities, financial instruments and other products or services where the price is linked to fluctuations in a stock exchange quotation or index or a financial market rate that the seller or supplier does not control;

- contracts for the purchase or sale of foreign currency, traveller's cheques or international money orders denominated in foreign currency;

(d) Paragraph 1(l) is without hindrance to price indexation clauses, where lawful, provided that the method by which prices vary is explicitly described."

Other terms which clearly are contrary to the Regulations are unreasonable deadlines on the insured, for example in giving notice of a

	<p>loss and clauses which give the insurer complete control over the actions of an insured following an insured loss (e.g. standard terms in liability policies)(Birds, p. 107)</p> <p><b><u>Regulation 6(2)</u></b></p> <p>Regulation 6(2) imposes a fundamental restriction on the operation of the Regulations. It excludes "core provisions" from scrutiny under the Regulations if they are expressed in plain, intelligible language. The premium, the insuring clause and the exceptions will fall into this category. Therefore, if the premium, insuring clause and exceptions are expressed plainly and clearly they will not be considered for fairness. However if they are not expressed in plain, intelligible language, they will be construed against insurers and their fairness will be considered.</p> <p>(Colinvaux's Law of Insurance, 9th Edition, p.132)</p> <p><i>Bankers Insurance Co v South</i> [2004] Lloyd's Rep. I.R. 1</p> <p>The Regulations prevent automatic reliance on claims conditions by insurers where the insured is a consumer. Also held that an exclusion was a core provision so that it was not subject to the fairness test if it was expressed in plain, intelligible language.</p>
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