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Concerned market: United Kingdom



## The Problem of Insurable Interest under UK and Irish Law

Under UK law and Irish law, in order for a policy to be considered as valid, the policyholder needs to have an insurable interest in the life of the insured persons or persons for whose benefit the contract is held.

### What is the insurable interest?

Insurable interest is the condition whereby a person would suffer a direct financial loss on the death of another. An insurance contract is established to cover that financial loss should the death occur.

Since the launch of its solution (Profolio) for UK residents Baloise has sought to deliver a contract to its partners and clients which is legally robust.

Surprisingly to the lay person, the industry is awash with contracts, investment bonds, that if ever subjected to thorough scrutiny in the Courts of the UK could be found to be null and void.

The risk to their validity sits within the UK and Irish Laws on insurable interest, laws upon which many 'international' contracts issued in Ireland and Luxembourg are often based.

The relevant Laws of 1774 and 1866, respectively, demand that for a contract to be valid there must be an insurable interest between the parties.

Yet the Laws do not recognise an automatic insurable interest between parents and children/grandchildren in either direction.

Section 1 of the Life Assurance Act 1774 (England and Wales) determines the following:

"no insurance shall be made by any person...on the life or lives of any person...wherein the person or persons for whose use, benefit or on whose account such policy or policies shall be made, shall have no interest,...and that every assurance made contrary to the true intent and meaning hereof shall be null and void to all intents and purposes whatsoever"

As such, if a contract were written for the benefit of someone in whom

- a/ the policyholder(s) had no insurable interest, or if a contract were written on

- b/ the lives of persons in whom the policyholder(s) had no insurable interest the contracts is fundamentally flawed.

Knowing these weaknesses in UK Law, Baloise Vie Luxembourg S.A. launched its contract for UK residents with a Choice of Law.

The policyholder, in conjunction with their advisers, can select UK Law, Luxembourg Law or the Law of their European Nationality as the basis for the contractual relationship.

### A potential solution to the Problem of Insurable Interest under UK Law?

In 2013 the Law Commissions (England/Wales and Scotland) produced a discussion paper on the problem.

It was evident to all that the Law was simply not relevant to our modern world.

Within the report the following text (article 6.7) exposed the dangers for policyholders of 'investment bonds' where a named law firm stated " .... the owners of the policies rely upon the good faith of the insurer not to seek to rely upon the 1774 Act. "

Yet, suggestions to amend the Law failed and were said to have failed due to the potential non-intended consequences on other business segments of the insurance industry.

Unsurprisingly, the Law Commissions (England/Wales and Scotland) are revisiting the subject – see the link below to the Law Commission website dated 20<sup>th</sup> June 2018.

The intention is to have a far more focused approach with draft legislation concentrating upon life insurance (omitting indemnity and non-life) to "pull the law of insurable interest into the 21<sup>st</sup> Century".

They invite comments upon the draft legislation until 14<sup>th</sup> September 2018.

<https://www.lawcom.gov.uk/Updating-the-law-of-insurable-interest/>



### Baloise UK Profolio

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A compliant life insurance contract specially designed for UK residents.

Wealth planners do not want solutions for tax, estate and succession planning having inherent weakness such that they may be challenged by some malign 3<sup>rd</sup> party.

Baloise offers legally robust solutions for UK residents now and will do so in the future.

Want to know more? Contact us.

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