

# NEW POLISH ACT ON INSURANCE AND REINSURANCE ACTIVITY

On 11 September 2015 the Polish *Sejm* adopted the Act on Insurance and Reinsurance activity that sets out the framework for conduct of personal and property insurance business as well as reinsurance activity (the "**Act**"). The Act will replace the former Act on Insurance Activity of 22 May 2003. On 1 October 2015 the Act was approved by the Polish *Senat*. It must still be signed by the Polish President.

The main purpose of the Act is to implement Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of insurance and reinsurance – Solvency II into the Polish legal system. By doing so, it will introduce the same capital requirements and standards governing risk management applicable to insurance and reinsurance companies across the European Union.

Moreover, by reacting to the continuing discussion regarding the bancassurance market and attempting to regulate it, the Act introduces a number of pro-consumer provisions. In this briefing we focus on the key new regulations in this area.

## Remuneration

In recent months, the perceived conflict of interest regarding remuneration received by a bank acting as the policy holder in third-party insurance contracts, in particular, under the so-called "group model", has received a lot of public attention. The Polish Financial Supervision Authority (*Komisja Nadzoru Finansowego* – "**PFSA**") first attempted to eliminate this conflict in its Recommendation U and in the Guidelines for insurance companies, which came into effect as of April 2015.

The Act follows that direction by providing that the policy holder in a third-party contract, in particular under the group insurance model, must not receive any remuneration or other benefits in connection with the offering of insurance coverage or performing its duties under such contract.

The new regulation does not preclude the insured persons from financing the cost of the insurance premium. However, compared to Recommendation U, which also explicitly allows for the reimbursement by the insured of expenses incurred by the policy holder, the Act appears to deprive the policy holder from the ability to recover such expenses.

With notably rare exceptions for insurance of family members or employees, these rules will apply to the entire market, also outside the bancassurance channel.

### Analysis of individual needs of customers

The Act strengthens consumers' protection with respect to unit-linked and structured life insurance products. Before concluding the insurance contract, the insurance company must analyse the clients' needs, knowledge and experience in the area of life insurance and his or her financial position. Based on that analysis, the insurance company must provide a suitable insurance offer together with a justification explaining how this offer corresponds to the clients' needs.

If the product is not suitable, given the clients' experience, knowledge or financial position or if there is no insurance product that would meet his or her needs, the insurance company must inform the client that it is unable to offer suitable insurance. In such case, the insurance contract may only be concluded following a written demand from the client.

This requirement applies also with respect to third-party insurance contracts, including a group insurance policy. The suitability analysis in such case must be conducted with respect to each client before he or she agrees to be covered under the policy.

### Right of rescission

The Act gives the client (both, a policy holder under an individual contract and an insured person under a third-party insurance contract) a right to rescind any life insurance contract with an investment component within 60 days from receipt of the first annual information on the level of benefits to which the client is entitled under the contract (such information being sent to the client within 10 – 14 months from the date of the contract). In such case, the insurance company will have to reimburse to the client the value of premiums paid prior to rescission (in case of structured products or investment insurance policies) or the value of the insurance capital fund units as of the date of rescission (in case of unit-linked insurance) reduced by a maximum discount of 4%.

### Consequences of failure to deliver the terms of the contract

In the case of third-party insurance contracts, including group insurance contracts, an insurance company must deliver to the insured persons the terms of the contract before he or she consents to the insurance cover or to financing of the insurance premium. The Act provides that in case of the failure to deliver these terms, the insurance company cannot rely on any provisions that limit or exclude the insurance company's liability, introduce consequences of breach of contract by the insured person or impose on him or her additional obligations.

### Standard form contracts

The Act extends the existing requirement that the general terms and conditions of insurance and the insurance contract must be clear and understandable, to all other standard form contracts, such as, for example, the by-laws of insurance capital funds. All standard form contracts will now also have to be interpreted in favour of the policy holder, the insured person, the beneficiary or any other party entitled under the insurance contract (including the injured party). The general terms and conditions of insurance and all the other documents concluded under standard form contract must also be made available by the insurance company on its website.

### Short-form information on the most important provisions of the contract

The Act requires that in all standard form contracts, in particular in the general terms and conditions, there is information included listing the most important contractual provisions. According to the draft ordinance to be issued under the Act, such short-form information should be presented in a table specifying the numbers of paragraphs or points of the contract setting out the provisions listed in the Act.

### New powers of the PFSA

Under the Act the PFSA will be entitled to issue recommendations addressed to insurance and reinsurance companies, to the extent necessary for the implementation of the guidelines and recommendations of European Insurance and Occupational Pension Authority (EIOPA) or, which is important for insurance distribution, for the purpose of:

- ensuring compliance of the insurance and reinsurance companies' activity with the law,
- protecting the interests of the policy holders, the insured persons or parties entitled under the insurance contract,
- limiting the risk associated with the insurance or reinsurance companies' activity, or
- ensuring the ability of insurance companies to perform their obligations.

Moreover, the PFSA has been identified in the Act as the authority responsible for the performance of the tasks set out in the Regulation of the European Parliament and of the (EU) Council no. 1286/2014 of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs), which will apply as of 31 December 2016. It means that the PFSA may monitor the market of insurance investment products and, where justified, issue administrative orders, prohibiting or limiting the scope of:

- the marketing, distribution or sale of certain products or products with certain specified features, or
- a type of financial activity or practice of an insurance or reinsurance company.

These far-reaching powers of the PFSA will be of significant importance to the market of life insurance products with an investment component.

## Coming into force

A majority of the provisions of the Act will come into force on 1 January 2016.

A later date – 1 April 2016 – has been set for those provisions that require broader adjustment of the market, i.e. those regarding:

- prohibition of remuneration in third-party beneficiary insurance contracts,
- consequences of failure to deliver contract terms and conditions,
- analysis of the clients' needs.

Note: The Act will also apply to contracts concluded before the entry into force of the Act, except that:

- the prohibition of remuneration in third-party contracts shall apply to insurance contracts concluded before 1 April 2016 only with respect to events occurring after 31 March 2016,

- the consequences of the failure to deliver policy terms and conditions to the insured person and the requirement to analyse the consumer's needs shall only apply to third-party insurance contracts concluded before 1 April 2016 if:
  - the insured person consents to provision of insurance cover or to financing the insurance premium after 31 March 2016,
  - the insurance cover is extended or renewed after 31 March 2016,
- provisions on rescission of the contract shall apply to:
  - contracts concluded after 31 December 2015, and
  - third-party contracts concluded up until 31 December 2015 – only if the insured person's consent to provision of insurance cover or to financing the insurance premium has been given after 31 December 2015.

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