

INFORMATION ON 'GENERAL GOOD' RULES WITH REGARD TO CONDUCTING INSURANCE MEDIATION ACTIVITIES IN THE REPUBLIC OF POLAND

Introduction

This information is to be communicated to insurance intermediaries in the EU Member States and in EFTA Member States - the parties to the Agreement on the European Economic Area interested in pursuing the business of insurance mediation in the Republic of Poland.

This information concerns the obligations resulting from the national legal order and relating to insurance distribution and which serve to protect the general good pursuant to Article 11(1) of Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution.

The intention of the Polish Financial Supervision Authority is to provide an overview on, and assistance in, undertaking business activity in the territory of the Republic of Poland within the common market. This information must not be treated as a record of the mandatory provisions of law. Provisions of law are laid down in legal acts governing insurance mediation published in the Polish Journal of Laws (PL. *Dziennik Ustaw*). In the event of any difference of interpretation between this information, other official and/or private overviews, and translations of legal acts on the one hand, and the texts of standard acts published in the Journal of Laws on the other, the latter prevail.

This information should not be treated as a comprehensive source of information on domestic legal regulations which any person interested in pursuing such business in Poland should comply with.

Basic rules for conducting the business of insurance mediation in Poland

The main act which governs the rules of conducting the business of insurance mediation is the *Act of 15 December 2017 on insurance distribution* (Journal of Laws 2018, item 2210, as amended). The substance of insurance mediation in Poland is performance of insurance distribution and/or reinsurance distribution by insurance intermediaries. The following entities may act as insurance intermediary: an insurance agent, ancillary insurance agent, insurance broker, and reinsurance broker who perform insurance distribution or reinsurance distribution against payment. The activity of insurance intermediaries is a business activity.

Insurance distribution means a business pursued exclusively by an insurance distributor which consists in:

- (1) providing advice, suggesting or performing other preparatory activities aimed at conclusion of an insurance contract or insurance guarantee contracts;
- (2) concluding insurance contracts or insurance guarantee contracts on behalf of an insurance undertaking, for or on behalf of a client, or directly by an insurance undertaking;

(3) providing, by an insurance intermediary, of assistance in the management and performance of insurance contracts and/or insurance guarantee contracts, as well as in cases regarding compensation or benefits.

Insurance distribution consists also in providing information regarding one or more insurance contracts or insurance guarantee contracts according to the criteria selected by a client through websites and/or other media, and in developing a ranking of insurance products including comparison of prices and premiums under an insurance contract or insurance guarantee contract, where a client can enter into, directly or indirectly, an insurance contract or insurance guarantee contract through websites or other media.

The provisions of law applicable in the territory of the Republic of Poland provide for a clear separation between agency activities (performed by insurance agents and ancillary insurance agents) and brokerage activities in the area of insurance (performed exclusively by insurance brokers).

Under Article 4(3) of the *Act on insurance distribution*, an insurance agent or ancillary insurance agent, as part of an agency business, perform the activities in respect of insurance distribution for and/or on behalf of an insurance undertaking (agency activities).

Under Article 4(4) of the *Act on insurance distribution*, an insurance broker, as part of the brokerage business, performs the activities in respect of insurance distribution for and/or on behalf of a client (brokerage activities in respect of insurance). In essence, the brokerage business consists in providing a client with advice based on a sound analysis of insurance products available on the market and in making recommendations (Article 32(1) point 4 of the *Act on insurance distribution*).

According to the principles of insurance distribution applicable in the territory of the Republic of Poland, concurrent pursuit of the agency and brokerage businesses is prohibited. Restrictions as to prohibition of links between an insurance agent and ancillary insurance agent have been laid down in Articles 25 and 30 of the *Act on insurance distribution*.

Under Article 25 of the *Act on insurance distribution*, an insurance agent, an ancillary insurance agent, a person who performs agency activities, a member of the management board or supervisory board of an insurance agent, a member of the management board or supervisory board of an ancillary insurance agent, members of non-corporate entities which are insurance agents or ancillary insurance agents, members of the management board of an insurance agent or ancillary insurance agent, as referred to in Article 19(3) point 2(b) (half of management board members), a shareholder of an insurance agent or ancillary insurance agent, and a person who performs distribution activities of an insurance undertaking must not pursue the brokerage business in respect of insurance, brokerage activities in respect of insurance, hold shares of an insurance broker, except for shares admitted to trading on a regulated market, or remain in any relationship which might compromise the pursuit of business in the area of insurance distribution in compliance with the requirement to act fairly, duly and professionally, in the best interest of clients.

Under Article 30(1) of the *Act on insurance distribution*, an insurance broker shall not:

- (1) engage in agency business, agency activities, distribution activities of an insurance undertaking or distribution activities of a reinsurance undertaking;
- (2) have a permanent contractual relationship with any insurance undertaking, reinsurance undertaking, insurance agent or ancillary insurance agent;
- (3) be a member of supervisory or management bodies of an insurance undertaking, reinsurance undertaking, insurance agent or ancillary insurance agent;
- (4) hold shares of any insurance undertaking or reinsurance undertaking, with the exception of shares admitted to trading on a regulated market;
- (5) hold shares of any insurance agent or ancillary insurance agent, with the exception of shares admitted to trading on a regulated market;
- (6) be in any other relationship which might compromise the pursuit of the business of insurance distribution in accordance with the requirements laid down in Article 7(1).

Under Article 30(3) of the *Act on insurance distribution*, a reinsurance broker shall not:

- (1) engage in agency business, agency activities, distribution activities of an insurance undertaking or distribution activities of a reinsurance undertaking;
- (2) have a permanent contractual relationship with any insurance undertaking, reinsurance undertaking, insurance agent or ancillary insurance agent;
- (3) be a member of supervisory or management bodies of an insurance undertaking, reinsurance undertaking, insurance agent or ancillary insurance agent;
- (4) hold shares of any insurance undertaking or reinsurance undertaking, with the exception of shares admitted to trading on a regulated market;
- (5) hold shares of any insurance agent or ancillary insurance agent, with the exception of shares admitted to trading on a regulated market;
- (6) be in any other relationship which might compromise the pursuit of the business of reinsurance distribution in accordance with the requirement to act fairly, reliably and professionally, subject to Article 7(1), which applies accordingly.

The above-mentioned provisions of law apply, accordingly, to members of bodies of an insurance broker operating as a corporate entity and to the persons through whom an insurance broker performs brokerage activities in respect of insurance (Article 30(6) and 30(7) of the *Act on insurance distribution*).

The provisions on the prohibition of agency business, agency activities, distribution activities of an insurance undertaking or distribution activities of a reinsurance undertaking also apply to the personnel of a reinsurance broker hired under a contract of employment, other than the persons through whom the reinsurance broker performs brokerage activities in respect of reinsurance (Article 30(8) and 30(9) of the *Act on insurance distribution*).

Information obligations towards a client in relation to the performance of insurance distribution

The *Act on insurance distribution* provides for information requirements towards clients. The requirements concern the presentation of a power of attorney and a document of authorisation of a specific natural person to act on behalf of an agent/broker, at the time of the first act, notification of the person to the intermediary and communication of the possibility

to check the entry in an appropriate register of intermediaries, and the nature of remuneration, and are contained in the following provisions of the Act on insurance distribution.

Requirements concerning insurance agents and ancillary insurance agents:

Article 22. 1. Before concluding an insurance contract or insurance guarantee contract, an insurance agent or ancillary insurance agent shall:

- (1) provide the client, at the time of the first act in respect of the agency business, the power of attorney referred to in Article 21(1);
 - (2) notify the client whether the agent acts for one or multiple insurance undertakings, and communicate the business names of the insurance undertakings for which the agent pursues the agency business;
 - (3) communicate to the client the business name under which the agent pursues the agency business, the address of their head office, and whether the agent is an insurance agent or ancillary insurance agent;
 - (4) communicate to the client the reference number of the entry in the register of agents, the website address at which the register is available, and how the entry in the register may be checked;
 - (5) communicate to the client the nature of remuneration received in connection with the proposed conclusion of the insurance contract or insurance guarantee contract, in particular the agent shall communicate whether the agent receives:
 - (a) a fee paid directly by the client,
 - (b) any kind of commission included in the amount of the premium,
 - (c) any other type of remuneration,
 - (d) the remuneration which is a combination of remuneration types referred to in points (a–c);
 - (6) notify the client of the option for filing a complaint and for out-of-court resolution of disputes.
2. Before entering into the life insurance contract referred to in class 3 of Division I of the appendix to the Act on the business of insurance and reinsurance, an insurance agent shall inform the client about the rate of distribution costs associated with the proposed contract.
3. In the case referred to in Paragraph 1 point 5(a), an insurance agent and ancillary insurance agent shall inform the client about the amount of the fee and, where this is impossible, about the method used to calculate that fee.
4. Before entering into an insurance contract or insurance guarantee contract, an insurance agent shall also notify the client of the shares of the insurance undertaking which carry at least 10% of votes at the general meeting and, in the case of an insurance agent who is a corporate entity, of shares of the insurance agent held by the insurance undertaking which carry at least 10% of votes at the general meeting or meeting of shareholders.
5. An insurance agent and ancillary insurance agent shall:
- (1) provide the client, at each request, the power of attorney referred to in Article 21(1);
 - (...)
6. Any natural person who performs agency activities shall, at the time of the first act, make available the document of authorisation to act on behalf of an insurance agent or ancillary insurance agent.

Matters concerning insurance brokers.

Under Article 32(1) of the Act on insurance distribution, before entering into an insurance contract or insurance guarantee contract, an insurance broker shall:

- (1) communicate to the client, at the time of the first act, the business name under which the insurance broker pursues the brokerage business, the address of its head office, and that the insurance broker acts as an insurance broker;
- (2) communicate to the client, at the time of the first act, the reference number of the entry in the register of brokers, the website address at which the register is available, and how the entry in the register may be checked;
- (3) submit, to the insurance undertaking and the client, at the time of the first act, the authorisation to pursue the brokerage business in the area of insurance;
- (4) provide advice based on a sound analysis of insurance products available on the market in the number sufficient to recommend the most appropriate contract, and shall explain the grounds of the recommendation, considering the complexity of the insurance contract and/or insurance guarantee contract, and the type of client, unless the client declares in writing that he/she waives the right to recommendation;
- (5) notify the client, at the time of the first act, of the shares of the insurance undertaking which carry at least 10% of votes at the general meeting and, in the case of an insurance broker who is a corporate entity, of shares of the insurance broker held by the insurance undertaking which carry at least 10% of votes at the general meeting or meeting of shareholders;
- (6) communicate to the client the nature of remuneration received in connection with the proposed conclusion of the insurance contract or insurance guarantee contract, in particular whether the broker receives:
 - (a) a fee paid directly by the client,
 - (b) any kind of commission included in the amount of the premium,
 - (c) any other type of remuneration,
 - (d) the remuneration which is a combination of remuneration types referred to in points (a–c);
- (7) inform the client about the amount of the fee referred to in point 6(a) and, where this is impossible, about the method used to calculate that fee;
- (8) notify the client of the option for filing a complaint and for out-of-court resolution of disputes.

The provisions of Article 32 points 1–3 and point 5 of the *Act on insurance distribution* apply to the reinsurance broker accordingly, however the obligation referred to that provision also applies to the shares of the reinsurance undertaking held by the reinsurance broker which carry at least 10% of votes at the general meeting of that undertaking, and the shares of the reinsurance broker who is a corporate entity held by the reinsurance undertaking which carry at least 10% of votes at the general meeting or the meeting of shareholders of the reinsurance broker.

Natural persons who perform brokerage activities in the area of insurance shall produce, at the time of the first act, the document of authorisation to act on behalf of the insurance broker. The provision applies, accordingly, to natural persons who perform brokerage activities in the area of reinsurance (see Article 32(4) of the *Act on insurance distribution*, Article 32(6) of the *Act on insurance distribution*).

An insurance agent, ancillary insurance agent, insurance broker and reinsurance broker are required to keep confidential information obtained in the provision of distribution services

in the area of insurance, provided that such requirement remains in force at the termination of the contractual relationship with the principal (see Article 22(5) of the *Act on insurance distribution*, Article 32(3) point 1 of the *Act on insurance distribution*).

Requirements relating to distribution of unit-linked insurance contracts

The Republic of Poland applies special provisions on distribution of unit-linked life insurance contracts and life insurance contracts under which the performance of the insurance undertaking is determined on the basis of specified indices or other reference values, i.e. the insurance referred to in class 3 of Division I of the appendix to the *Act of 11 September 2015 on the business of insurance and reinsurance*, which regulates the rules for the pursuit of the business of insurance (Journal of Laws 2019, item 381, as amended).

Before entering into the life insurance contract referred to in class 3 of Division I of the appendix to the *Act on the business of insurance and reinsurance*, it is necessary to inform the client about the rate of distribution costs associated with the proposed contract. Such requirement applies to insurance undertakings, insurance agents, and insurance brokers (Article 22(2), Article 23(2), Article 32(2) of the *Act on insurance distribution*).

Information on the application of the option concerning the application of stricter provisions contained in Article 29(3) of Directive on insurance distribution.

The duty to assess the adequacy of a product and to suggest a contract appropriate for the client's needs as referred to in class 3 of Division I of the appendix to the *Act on the business of insurance and reinsurance* is laid down in Article 21 of the *Act on the business of insurance and reinsurance*.

Article 21 1. Before entering into a contract of insurance referred to in Division I, class 3, of the appendix to the Act, the insurance undertaking shall obtain, by means of a questionnaire, from the policyholder, information on the policyholder's needs, knowledge and experience in the area of life insurance and on the policyholder's financial situation, to be able to assess what insurance contract will be adequate to the policyholder's needs.

2. For a contract of insurance concluded for on another person's account, in particular group insurance referred to in Division I, class 3, of the appendix to the Act, the insurance undertaking shall obtain, by means of a questionnaire, information on the insured as referred to in Paragraph 1, before the insured gives his/her consent to be covered by the insurance contract concluded by the policyholder, so that the insurance undertaking could assess whether that insurance contract is appropriate for the insured's needs.

3. Following the analysis of information referred to in Paragraph 1, the insurance undertaking shall offer to the policyholder insurance appropriate for the policyholder's needs and provide the reasons for such offer, in particular the identified needs of the policyholder and explanation of how the offers satisfy such needs.

4. If the analysis of information referred to in Paragraph 1 shows that the policyholder's needs are inadequate to the policyholder's experience, knowledge in the area of life insurance or to the policyholder's financial situation, or if there is no insurance appropriate for the policyholder's needs, the insurance undertaking shall provide the policyholder with such information and, at the same time, warn the policyholder that no appropriate insurance may be offered based on the

result of the analysis or from the range of insurance products offered by the insurance undertaking. The policyholder shall confirm, in writing, the receipt of such information and state in writing that the policyholder is aware of the warning. In such a case, no insurance contract may be concluded with the policyholder, unless at the policyholder's written request.

5. In the case described in Paragraph 2, the insurance undertaking shall provide the insured, before the insured gives their consent to be covered by the contract concluded by the policyholder, with a recommendation of such cover and a statement of reasons for the recommendation. The reasons shall include in particular the identified needs of the insured and an explanation of how the cover provided under the insurance contract meets such needs. The provisions of Paragraphs 3 and 4 apply to the insured and the insurance undertaking accordingly.

5a. Before an insurance contract is concluded or the insured agrees to insurance coverage, the insurance undertaking shall submit information referred to in Paragraphs 3–5 to the policyholder or the insured in writing or (subject to the consent of the policyholder or the insured) on any other durable medium.

5b. If an insurance contract is concluded or the insured agrees to insurance coverage using the means of distance communication which prevent prior submission of information referred to in Paragraphs 3–5, the insurance undertaking may submit such information to the policyholder or the insured in writing or (subject to the consent of the policyholder or the insured) on any other durable medium, immediately after the conclusion of the insurance contract or after the consent to the insurance coverage is given, if:

- (1) the policyholder or the insured agreed to receive such information immediately after the conclusion of the contract or after the consent to insurance cover is given, and
- (2) the insurance undertaking allowed the policyholder or the insured to conclude the contract or to give their consent to insurance coverage at a later date so that the insurance undertaking may receive such information before such conclusion of the contract or before such consent is given.

5c. In the case referred to in Paragraph 5b, the policyholder or the insured may rescind the insurance contract without stating reasons, and if the insurance contract has been concluded on another person's account, the insured may withdraw from the insurance contract with the effect of termination of the contract without stating reasons by making a written statement within 30 days of confirmation of receipt of information referred to in Paragraphs 3–5. The time limit shall be deemed observed if the statement has been sent before the lapse of such time limit. The policyholder or the insured shall not bear the costs associated with the termination of the insurance contract.

6. If the policyholder or the insured refuses to complete the questionnaire referred to in Paragraphs 1 or 2, the provisions of Paragraphs 3 and 5 shall not apply.

7. The provisions of Paragraphs 1–5 do not apply to occupational pension schemes operated in the form of a group life insurance contract as referred to in the Act of 20 April 2004 on occupational pension schemes (Journal of Laws 2016, item 1449; 2018, items 1091, 1608, 1629 and 2215), and employees' capital pension schemes as referred to in the Act of 4 October 2018 on employees' capital pension schemes.

8. The minister competent for financial institutions shall specify, by means of a regulation, the minimum scope of data to be provided in the questionnaire referred to in Paragraphs 1 and 2, ensuring that information collected by means of the questionnaire allows for identification of the needs of the policyholder or the insured.

Special requirements for insurance contracts concluded on another person's account and for group insurance contracts

The *Act on the business of insurance and reinsurance* provides for a prohibition of compensating the policyholder, with the exception of insurance of employees provided by the employer. Thus, the insurance distributor and the persons who act on his/her behalf, with the exception described below, must not perform the functions of the policyholder and intermediary concurrently.

Article 18. 1. In the case of insurance contracts on another person's account, in particular group insurance contracts, the policyholder shall not receive any remuneration or other benefits in connection with offering such insurance or with any activities related to the performance of the insurance contract. This shall not preclude the insured's choice to undertake, towards the policyholder, to pay the cost of the insurance premium.

2. The prohibition of remuneration or other benefits as referred to in Paragraph 1 shall also apply to any person acting for or on behalf of the policyholder.

3. The first sentence of Paragraph 1 and the provision of Paragraph 2 shall not apply to group insurance contracts concluded for the account of employees, persons performing work under a civil-law contract or members of their families, or to insurance contracts concluded for the account of members of associations, self-governing professional organisations or trade unions.

Article 19. In insurance contracts concluded on another person's account, in particular group insurance contracts, if the insured's consent is necessary to provide cover or if the insured agrees to pay the insurance premium, then if a copy of the terms and conditions of the contract is not delivered to the insured before such consent is given, the insurance undertaking shall not make a reference to provisions limiting or excluding its liability or to provisions setting out the consequences of the insured's failure to comply with their obligations or provisions imposing certain obligations on the insured.

Complaint handling

Under the *Act of 5 August 2015 on the complaint handling procedure of financial market entities and on Financial Ombudsman* (Journal of Laws 2017, item 2270), insurance intermediaries, to the extent which does not apply to insurance coverage, are required to consider a complaint made by a client who is a natural person. A failure to reply to a proper complaint within 30 days, and in particularly complex cases within 60 days, of submission of the complaint, is deemed to constitute an implied decision to handle the complaint according to the client's will. Detailed regulations in that regard are contained in Chapter 2 'Complaint handling procedure of financial market entities' of the *Act on the complaint handling procedure of financial market entities and on the Financial Ombudsman* (Articles 3–10 of the said Act):

Article 3. 1. A complaint may be submitted to any of the organisational units of a financial market entity which provide customer service.

2. A complaint may be submitted:

(1) in writing—in person, to any of the organisational units of a financial market entity which provide customer service, or by post as defined in Article 3 point 21 of the *Act of 23 November 2012—the Postal Law* (Journal of Laws 2017, item 1481);

(2) orally—by phone or in person to the official report during the client’s visit at the organisational unit referred to in Paragraph 1;

(3) electronically, using means of electronic communication, if such means have been prescribed for that purpose by the financial market entity.

Article 4. 1. A financial market entity shall include, in the contract concluded with a client, the following information on the procedure for submitting and handling complaints:

(1) place and form of submission of the complaint;

(2) time limit for reviewing the complaint;

(3) method of notification of the final decision on the complaint.

2. With regard to the clients who have not entered into a contract with a financial market entity, information referred to in Paragraph 1 shall be delivered within 7 days of the day on which the client raised claims against the financial market entity.

Article 5. 1. After the client submits the complaint in accordance with the requirements referred to in Article 4(1) point 1, the financial market entity shall review the complaint and reply to the client in paper form or by means of any other durable medium.

2. The reply referred to in Paragraph 1 may only be submitted by the financial market entity by e-mail at the client’s request.

Article 6. The reply referred to in Article 5(1) shall be submitted without undue delay but no later than 30 days of receipt of the complaint. To meet the above-mentioned time limit, it is necessary to send the reply before the lapse of that time limit.

Article 7. In particularly complicated cases, where it is not possible to handle and respond to the complaint within the time limit referred to in Article 6, the financial market entity shall, in the notice to the client who submitted the complaint:

(1) explain the reason of the delay;

(2) indicate the circumstances to be established for the purpose of handling the case;

(3) indicate the expected time limit for handling the complaint and sending the reply which shall not exceed 60 days of receipt of the complaint.

Article 8. A failure to observe the time limit specified in Article 6, and in certain cases the time limit specified in Article 7, the complaint is deemed to constitute an implied decision to handle the complaint according to the client’s will.

Article 9. The reply referred to in Article 5(1) should contain, in particular:

(1) factual and legal grounds, unless the complaint has been handled according to the client’s will;

(2) exhaustive information on the opinion of the financial market on the objections raised, including indication of appropriate parts of the contract template or appropriate contract;

(3) full name of the person sending the reply, with an indication of that person’s job position;

(4) specification of the time limit in which the claim raised in the complaint handled according to the client’s will is to be satisfied (the time limit shall not exceeding 30 days of the date of the reply).

Article 10. Where the claims raised in the client’s complaint are not accepted, the reply referred to in Article 5(1) should also include instructions on the possibility to:

(1) appeal against the opinion expressed in the reply where the financial market entity provides for an appeal procedure, as well as the procedure to be followed to file such appeal;

- (2) use mediation or arbitration or any other arrangement for amicable resolution of disputes where the financial market entity provides for such possibility;
- (3) apply to the Financial Ombudsman for case review;
- (4) bring an action to a common court, indicating the entity to be sued and the court having territorial jurisdiction to examine the case.

Under Article 16 of the Act on insurance distribution, the requirements relating to the procedure for responding to the complaint within the certain time limit also apply to complaints filed by a client who is a corporate entity or a non-corporate entity:

Article 16 (...)

2. An insurance broker, as well as insurance agent and ancillary insurance agent who perform agency activities for more than one insurance undertaking in respect of the same division pertaining to insurance, as per appendix to the *Act on the business of insurance and reinsurance*, shall respond to a complaint filed by a client who is a corporate or non-corporate entity within 30 days of receipt of the complaint to the extent not applicable to the insurance coverage provided. To meet the above-mentioned time limit, it is necessary to send the reply before the lapse of that time limit.

3. In particularly complicated cases, where it is not possible to handle and respond to the complaint within the time limit referred to in Paragraphs 1 and 2, the insurance undertaking, insurance broker, insurance agent and ancillary insurance agent shall, in the notice to the client who submitted the complaint:

- (1) explain the reason of the delay;
- (2) indicate the circumstances to be established for the purpose of handling the case;
- (3) indicate the expected time limit for handling the complaint and sending the reply which shall not exceed 60 days of receipt of the complaint.

4. If the insurance undertaking, insurance broker, insurance agent and ancillary insurance agent referred to in Paragraphs 1 and 2 fail to respond to the complaint within the time limit referred to in Paragraphs 1 and 2, it is deemed that they have accepted the complaint.

5. The response to the complaint shall be submitted to the client in paper form or on any other durable medium.

6. An insurance agent and ancillary insurance agent who perform agency activities for more than one insurance undertaking in respect of the same division pertaining to insurance, as per appendix to the *Act on the business of insurance and reinsurance*, shall provide an insurance undertaking, at its request, with information on the complaints referred to in Paragraph 2 and on the complaints referred to in Article 2 point 1(e) of the *Act of 5 August 2015 on the complaint handling procedure of financial market entities and on the Financial Ombudsman* (Journal of laws 2017, items 2270 and 2486), made by the clients attracted by those agents to the requesting insurance undertaking.