

FINANCIAL ALERT

BDO

No. 6/2022

Year 2023 will bring changes in legislation concerning mandatory insurance

The government has planned the works on the new Bill on Amendment of the Act on Mandatory Insurances, Insurance Guarantee Fund and Polish Motor Insurers' Bureau and Act on Insurance and Reinsurance Activity (UC 135) for Q1 2023.

The Bill provides for implementation of Directive EU 2021/2018 into the Polish law. Thus, the amendment provides, first and foremost, for protection of injured parties in case of insolvency of the insurance institution in relation to claims resulting from traffic accidents in the Member State of their residence and in a Member State other than the Member State of their residence – currently, there are already some partial national regulations granting powers in the scope of bankruptcy of insurance institutions in relation to claims arising in the territory of the Republic of Poland to the

Insurance Guarantee Fund (UFG); these regulations will be adjusted and modified to the requirements of the Directive. The minimum sum guaranteed for the mandatory third-party liability insurance for owners of motor vehicles is also supposed to change – the Directive provides for minimum sum guaranteed amounts at the following level: for personal injury: EUR 6 450 000 for one accident, irrespective of the number of injured parties, or EUR 1 300 000 for one injured person; property damage: EUR 1 300 000 for one accident, irrespective of the number of injured parties.



EDYTA KALIŃSKA, Regionalny Partner Zarządzający w Dziale Rewizji Finansowej BDO, Region Zachód

The Bill also regulates the procedure of issue and use of insurance history certificates as well as adapts the terms used in the Act to the definitions of a “vehicle” and “vehicle movement” to those provided for in the Directive.

Furthermore, in connection with the judgement of the CJEU in the case C-428/20, introduction of a regulation that would

enable satisfaction of claims by the Insurance Guarantee Fund if the sum guaranteed is used up is proposed. The Insurance Guarantee Fund already pays out benefits if the sum guaranteed is used up under the Act on Special Rights of Injured Parties if the Sum Guaranteed Determined under the Legislation Effective prior to 1 January 2006 is Used up. (Journal of

Laws, item 1631, Act on So-Called Special Disability Pensions). The government has announced that due to the specifics of this solution that will result in an additional financial commitment for the Insurance Guarantee Fund, detailed changes in this scope will be preceded with consultations with insurance market entities and institutions.



No active links in communication with clients of insurance institutions

The Polish Financial Supervision Authority (UKNF) has published a position on activities of insurance and reinsurance institutions in terms of cybersecurity. Among other things, it provides for the obligation to apply the “security first” rule, multi-factor authentication in electronic access channels and avoidance of active links in communication with clients.

As UKNF informs in its position, in their ongoing activities and in relation to planned activities, especially in the area of services involving electronic access channels, the Institutions should consistently apply the paradigm referred to as “security first”. It consists in prioritising security and making decisions regarding the form of

processes and products based on reliable risk analyses which must factor in not only the issues of security of the Institution’s ICT environment, but also threats connected with use of its services by the clients. Needs for cost or process optimisation, that could be the reason for reorganisation of the method of conducting the

business, cannot affect the assumptions and models of those analyses, and their results must be used for effective risk control.

The analyses should cover also the requirements regarding provision of distance services to ensure maximum level of security of funds and data of clients achievable in the given conditions as well as factor in the current threat trends, vectors of attacks on clients, operating method of cybercriminals and potential risks resulting from the activities planned by the Institution, not only in relation to its own clients, but also in the context of potential impact of such activities on the entire sector of financial services.



In particular, the analyses should also regard the Institution's methods of confirmation of identity of clients using electronic access channels. These methods should be selected taking into consideration the risk connected with such channels, especially whether and to what extent application of multifactor verification of identity could contribute to improvement of the level of security of funds and data of clients. This applies also to use of other securing mechanisms, such as verification of the time and place of logging into the electronic access channel and the device from which the user logs in. UKNF is

of the opinion that in the light of intensified activity of cyber-criminals, lack of strong multifactor authentication of clients is an unacceptable risk. Such client authentication should be applied if the user gains access to information subject to insurance secrecy via remote access channels of the Institution and if the client executes operations connected with insurance product management that could entail financial effects, such as setting of bank account numbers or execution of cash transfers. Resignation from application of multifactor authentication in such cases is admissible only if the Institution, based on conducted

analyses, assesses the risk for the client as low. The supervisory authority is also of the opinion that sending active links to websites in e-mail (including embedding such links in images) and text messages addressed to the clients contravenes the message created and communicated to the clients for years regarding the risk of loss of data and funds, and the Institutions should make effort to limit this practice in favour of static information or information supplied to clients via mobile applications or other electronic channels that do not generate the risk of fraud.



A uniform bank licence and development bonds will be introduced

The Ministry of Finance has informed that works are on the way on a bill on amendment of certain acts in connection with ensuring development of the financial market and protection of investors on that market, implementing the measures provided for in the Capital Market Development Strategy (SRRK). The bill introduces such solutions as a uniform bank licence or development bonds in the Polish legal system.

The Ministry of Finance has submitted a bill implementing a series of important measures provided for in the Capital Market Development Strategy (form UD235) to consultations. The Bill provides for amendment of 19 acts (including but not limited to the Act on CIT, Act on Mandatory Insurances, Banking Law, Act on Investment Funds, Act on Trade in Financial Instruments). It was developed based on a broad agreement among the ministry, Polish Financial Supervision Authority (KNF), Chamber of Brokerage Houses and the Polish Bank Association.



The Bill includes provisions influencing the functioning of the entire capital market, including investment firms and funds as well as infrastructure institutions, such as the Stock Exchange. The Bill provides for introduction of: Uniform Bank Licence resulting in revocation of administrative obligations towards banks conducting brokerage activities within their structures; definition of Development Bonds, identical to the green bonds specified in the Green Bonds Principles; regulations dedicated to Exchange-Traded Funds (ETF), elimination of the regulatory obligation incompatible with their functioning model; provisions enabling development of securities lending in Poland; voluntary disclosure. The Bill provides also for change of effective regulations in the scope of functioning of the capital market, aiming at elimination of gold-plating cases.

Furthermore, the amendment provides for multiple changes in the provisions of the Act on Payment Services in the scope of fines imposed based on them. This regards, inter alia, introduction of the possibility to impose fines on the managers or members of supervisory bodies in specific amounts. Currently, the effective regulations allow for imposition of a fine up to three times the monthly gross remuneration of the penalised person. This leads to a situation where the penalty can be avoided based on the method of receipt or value of remuneration. Therefore, introduction of new regulations allowing to impose a fine of up to PLN 500 thousand was proposed.

Changes in the functioning of the Financial Ombudsman as of 2023

On 1 December the Sejm adopted the government Act on Amendment of the Act on Review of Complaints by Financial Market Entities and on the Financial Ombudsman and Certain Other Acts. The Act provides for better protection of the interests of customers using services of entities operating on the financial market.

The changes introduced under the new regulations will allow for more effective use of funds from the Financial Education Fund, contributing to improvement of the financial competences of the society.

Currently, the tasks connected with educational and information activity regarding the financial market are performed by the Financial Ombudsman who can dispose of the funds from the Financial Education Fund upon request of the Financial Education Council. Due to doubts

regards the legal nature of this fund and the possibility of disposal of these funds by the Financial Ombudsman, it has become necessary to transfer these tasks to the ministry of finance. This solution will enable effective use of the funds collected in the Financial Education Fund. The changes will facilitate planning of activities of the Financial Ombudsman and enable better use of Ombudsman's resources. Projected changes include, without limitation:

- ▶ introduction of annual declarations regarding fees intended for financial of the activity of the Ombudsman and his/her Office;
- ▶ improved flexibility of the method of introduction of changes of the Financial Ombudsman's plan,
- ▶ possibility of appointment of field plenipotentiaries by the Ombudsman.

The proposed changes will allow the Ombudsman to plan his/her activities effectively and, thus, will contribute to improvement of his/her efficiency and effectiveness of the financial market customer protection system. The new solutions will enter into force on 1 January 2023, except for certain provisions that will become effective on the day following the day of publication in the Journal of Laws (Journal of Laws of 2022, item 2647).



In short

Illegitimate entry in the register of unreliable debtors may infringe personal interests

The Supreme Court accepted the extraordinary complaint of the Financial Ombudsman regarding the dismissed lawsuit of the client regarding infringement of his personal interest by illegitimate entry of personal data of the borrower in the Central Database - Bank Register, the so-called register of unreliable debtors, resulting in dissemination of untrue information regarding him (judgment of 24 November 2022, case file ref. no. I NSNc 520/21).

The Platform of Sustainable Finance is live

The first session of the Polish Platform of Sustainable Finance set up at the Ministry of Finance has been held. The Platform has been created in connection with works carried out by the Ministry of Finance on the Roadmap for Sustainable Development of Finance in Poland. The purposes of the Roadmap will be identification of the strengths of the Polish capital market and potential challenges in the context of financing of climate transformation as well as mechanisms, instruments and financial services enabling directing of private capital to more effective undertakings supporting sustainable development.

Securities statutorily guaranteed by the State Treasury exempt from tax

The Council of Ministers has adopted the Bill on Amendment of the Act on Tax on Certain Financial Institutions, Amendment of the Act on Public

Finance and Environmental Protection Law. The Bill stipulates, among other things, that securities guaranteed under statutory law by the State Treasury will not be subject to the tax on certain financial institutions. These include, inter alia, bonds financing the BGK or PFR programmes. The solution will apply also to the value of assets resulting from the buyback transaction (so-called repo transaction).

A report presenting the status of financial education in Poland has been prepared

OECD experts have published a report presenting the status of financial education in Poland. The authors have diagnosed and described the needs of the residents of Poland in terms of financial education. They have also identified priorities and target groups that we will take into consideration in further works on the National Financial Education Strategy. The strategy under development will be a coherent action plan the basic goal of which will be expansion of financial knowledge and skills of the residents of Poland. It will help in coordination of activities in the area of financial education. It will also complement the activities taken in the scope of counteracting financial exclusion and protection of consumers.

The court is thinking about removal of the WIBOR rate from the loan agreement

The District Court in Katowice has decided, to secure the claim, that the borrower who contracted a loan in PLN will pay the loan instalment



calculated without WIBOR and based only on margin. It results from the Court's decision that it regards the so-called security of the claim. This means that no judgement "erasing" the WIBOR rate from the PLN mortgage loan has been issued yet. The case regards, among other things, doubts in the scope of the method of calculation of the WIBOR rate - this concerns, inter alia, the negligible number of transactions based on which the market rate is set as well as the risk of manipulation of this rate.

Works on replacing WIBOR with a new reference rate are on the way

The Steering Committee of the National Task Force for reform of reference rates has accepted the application of the administrator of reference rates - GPW Benchmark SA for consideration of the transactional data possessed by GPW Benchmark SA as proper and sufficient to set historical values of the WIRON index. The data have been verified and transferred by the bank which expressed readiness to act in the role of entities transferring such data for the purpose of calculation of indices based directly on transactions, including but not limited to the WIRON index that has been developed based on the deposit transactions executed by them with credit and financial institutions as well as large enterprises in compliance with the principles determined by the administrator.

New consolidated texts of financial acts have been published in the Journal of Laws

The consolidated text of the Act on Bonds has been published in the Journal of Laws under item 2244. Moreover, the new consolidated text of the announcement of the Marshal of the Sejm on publication of the consolidated text of the Act on Mortgage Loan and Supervision over Mortgage Loan Agents and Brokers was published under item 2245, and the announcement of the Marshal of the Sejm on publication of the consolidated text of the Banking Law was published under item 2324. The new consolidated text of the Act on Insurance

and Reinsurance Activity was published as well (item 2283).

Poles are spending more on private medical insurance

The Polish Chamber of Insurance has informed that current expenses incurred on healthcare increased in 2021 in comparison to 2020 by PLN 5.4 billion (12.5 percent) and amounted in 2021 to PLN 47.4 billion, accounting for 1.8 percent of GDP. The increase of expenses resulted, among other things, from increased direct expenses incurred by households which amounted to PLN 33.8 billion, i.e. PLN 4.1 billion (14 percent) more than last year. Over the same period, public spending increased as well - by 14 percent, and amounted to PLN 125.5 billion. The public spending on healthcare increased in 2021 by PLN 25 billion, i.e. by 21.5%. However, in 2021 hospitals provided 22 percent fewer services than in 2020 and 15% fewer than in 2019. As at the end of Q2 2022, Poles spent nearly PLN 550 million on private medical insurance. The number of policyholders increased by 11.6 percent.

The Office of Competition and Consumer Protection explains what to do in case of unauthorised transactions

The provider of payment services (e.g. a bank) is obliged to refund the transaction amount to the payer (e.g. a consumer) immediately if it is made without his/her consent. There are two exceptions: justified suspicion of an attempted fraud by the payer and report after expiry of 13 months from the transaction - as results from the position of the Office of Competition and Consumer Protection (UOKiK) on unauthorised transactions. Authorisation is a personal consent of the client to execution of the transaction, e.g. a transfer order. On the other hand, authentication is a technical action, e.g. entering a PIN or any other method specified in the banking system and resulting from the contract. Thus, two elements must exist collectively: authentication and will of the consumer to execute the transaction.

BDO is an international network of independent audit and advisory firms. Service provision within the BDO network is coordinated from the Brussels global office. BDO's beginnings go back to 1963. We have been present in Poland since 1991. We have 5 offices in: Warsaw, Kraków, Poznań, Wrocław and Katowice. BDO has for years been recognized in prestigious rankings of the activities performed by its Audit and Tax Advisory Departments, including most recently:

- The last distinctions for the company are related to the Rankings: Companies and Tax Advisors of Dziennik Gazeta Prawna for 2021:
 - ▶ 1st place The Best Tax Advisor in the category of medium-sized companies
- The 2021 rankings prepared by the Rzeczpospolita and Parkiet dailies:
 - ▶ 3rd Most Active Firm on the Stock Exchange
 - ▶ 4th Best Audit Firm
 - ▶ 5th Best Auditor of Listed Companies