
INTERNATIONAL INSURANCE LAW AND REGULATION

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Salzburg, Austria

Volume 1

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Chapter 39

Poland

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I. INTRODUCTION

§ 39:1 Regulatory Bodies, Sources

Supervision of the insurance sector is the responsibility of the Financial Supervision Commission (*Komisja Nadzoru Finansowego*, KNF).¹ The competences and duties of the Financial Supervision Commission are set forth in the Act of 21 July 2006 on Financial Market Supervision.²

[Section 39:1]

¹The following chapter focuses on the legal regulations governing commercial insurance in Poland; the social insurance system is not addressed. As the regulations on social security are very extensive and not related to those on commercial insurance, a presentation of the social security system in Poland exceeds the scope of this chapter.

²Before a central regulator was set up for the Polish financial sector, the Financial Supervision Commission, in 2006, supervision of financial institutions

In addition to insurance supervision, the Financial Supervision Commission is the regulator for most of the financial services industry, including banks, pension and investment funds, and the capital market. With respect to the insurance market, the Financial Supervision Commission's basic responsibilities include:

1. Protecting the interests of the insured and beneficiaries by preventing situations where insurance companies are unable to pay indemnities;
2. Issuing licenses to insurance companies; and
3. Supervising the activities of insurance companies and insurance intermediaries.

The Financial Supervision Commission has broad supervisory and controlling powers. If the Financial Supervision Commission discovers irregularities in the operations of insurers, it may order the insurer to:

1. Undertake or cease undertaking certain activities;
2. Introduce changes to its investment programs; or
3. Draw up a recovery program aimed, e.g., at increasing its equity or solvency margin and/or pay certain penalties.

In the case of severe irregularities, the Financial Supervision Commission may impose a mandatory management on the insurer or even withdraw its insurance license. Other important bodies and institutions on the Polish insurance market include:

1. The Guaranteed Insurance Fund (*Ubezpieczeniowy Fundusz Gwarancyjny*), an institution which protects the interests of the injured by paying indemnities in certain statutorily defined cases (e.g., in the event of an insurer becoming insolvent or in the case of traffic accidents where the perpetrator is unknown or does not have valid insurance);
2. The Polish Office of Vehicle Insurers (*Polskie Biuro Ubezpieczen Komunikacyjnych*), a body whose members are insurers providing motor insurance (mandatory membership) and which has responsibilities in connection with the administration of certain crossborder matters relating to traffic accidents; and
3. The Insurance Ombudsman (*Rzecznik Ubezpieczonych*), with

was decentralized. Insurers were supervised by the Commission for the Supervision of Insurance and Pension Funds (*Komisja Nadzoru Ubezpieczen i Funduszy Emerytalnych*).

competence with respect to the protection of rights of the insured and settlement of insurance disputes.³

The main sources of Polish insurance law are:

1. Act of 22 May 2003 on Insurance Activities (the “Insurance Act”),⁴ which sets out the conditions on which insurance activities can be carried out (includes provisions on formation of insurance companies, financial requirements, and conditions of crossborder insurance) and regulations on insurance supervision);
2. Act of 22 May 2003 on Insurance Intermediation, which regulates the activities of insurance agents and brokers (includes provision on required qualifications, registration, and supervision of insurance intermediaries);
3. Title XXVII of the Third Chapter of the Civil Code on insurance contracts, which contains insurance contract law, such as requirements for form, conditions for conclusion and termination of insurance contracts, rights and obligations of the parties, and a statute of limitation for claims;⁵
4. Act of 22 May 2003 on Compulsory Insurance, the Insurance Guarantee Fund, and the Polish Office of Vehicle Insurers; and
5. Act of 21 July 2006 on Financial Market Supervision, which sets forth the responsibilities and competences of the Financial Supervision Commission.

Marine insurance is governed by the Marine Code of 18 September 2001 (articles 292–338).

§ 39:2 Market Structure

In 2009, there were 30 life insurance companies and 34 non-life insurance companies operating on the Polish insurance market (not including insurers providing crossborder insurance).¹

The life insurance segment is dominated by attributable to bancassurance and credit insurance, short-term single-premium

³The Ombudsman is appointed by the Prime Minister to a four-year term.

⁴The Insurance Act was adopted in 2003 together with a number of other Acts regulating insurance activities. The main purpose of the Acts was to harmonize Polish regulations with European Union (EU) law. Since 2003, the Act has been amended several times.

⁵The Civil Code provisions do not apply to marine insurance or reinsurance.

[Section 39:2]

¹Polish Insurance Chamber (*Polska Izba Ubezpieczen*).

policies linked to investment funds, and index-linked products. The non-life segment is dominated by vehicle insurance, household, homeowner, and general liability insurance.

II. PRINCIPLES OF INSURANCE LAW

§ 39:3 Meaning of Insurance

The majority of the provisions of the Civil Code on insurance contracts are mandatory and cannot be amended by the parties in the contract, unless the provision explicitly provides that it is a *ius dispositivum*.

An insurance contract is defined in article 805, section 1, of the Civil Code as a contract under which the insurer, acting within the scope of its business activities, agrees to provide a benefit on the occurrence of an event defined in the contract, and the insured agrees to pay a premium. The Civil Code contains no definition of “insurable event” but requires this event to be defined in the insurance contract. According to commentaries this must be a future event, possible but uncertain. A causal link must exist between the event and the loss, otherwise the insurer will not be liable.

An insurance contract can only be concluded with an insurer which is authorized to conduct insurance business. An insurance contract entered into with a company which is not authorized to conduct insurance activities is invalid.¹

Apart from contracts for compulsory insurance, insurance contracts are generally entered into on a voluntary basis. In the case of compulsory insurance, an insurer cannot refuse to provide insurance as long as it has a license to insure the risk in question.²

§ 39:4 Basic Elements of the Contract—In General

Contracts for insurance of persons (which include life insurance, and health and personal accident insurance) must include certain compulsory provisions, such as:

[Section 39:3]

¹Supreme Court Judgment of 23 November 1999, Number III CKN 475/98.

²Compulsory insurance is regulated by the Act of 22 May 2003 on Compulsory Insurance, the Insurance Guarantee Fund, and the Polish Office of Vehicle Insurers and by several other Acts which regulate specific types of compulsory insurance. Compulsory insurance includes compulsory motor insurance and third-party liability insurance of attorneys, tax advisers, notaries, insurance agents and brokers, and tourist offices.

1. Definitions of each of the benefits;
2. Amount of premium corresponding to each of the main and supplementary benefits; and
3. Rules on calculating the benefit amount, methods used to calculate increases and reductions, and determination of costs and other amounts deducted by the insurer from the benefits.¹

For property insurance contracts, the law does not provide a list of compulsory provisions.

§ 39:5 Basic Elements of the Contract—Parties

Insurer and Insuring Party

Parties to the insurance contract are the insurer (*ubezpieczyciel* or *zakład ubezpieczeń*) and the insuring party (*ubezpieczający*). An insurance contract can only be validly concluded with an insurance company which is licensed to conduct insurance activities. The insuring party is the party which concludes the insurance contract and pays the premium.

Insured

The insured (*ubezpieczony*) is the person whose interest is insured and which is to receive the benefit, except under life insurance. Usually, the insuring party also is the insured under the insurance contract. The insuring party can, however, also insure the interests of a third party, which then becomes the insured, e.g., a transport agent can conclude an insurance for the benefit of the cargo owner or an employer can conclude a personal accident policy for an employee.

The name of the insured does not need to be indicated in the contract unless required to identify the object of the insurance.¹ An insured which is not named in the contract must have an insurable interest, even if he is the holder of the policy or other insurance document. If he does not have an insurable interest, the insurer can refuse to pay indemnity. The conclusion of a life insurance for a third party requires the consent of the third party.

The insured has certain obligations under the insurance

[Section 39:4]

¹Insurance Act, article 13, section 1.

[Section 39:5]

¹Civil Code, article 808, section 1.

contract (e.g., to disclose information or to inform the insurer of an accident). Except for the obligation to mitigate damage, an insured which is not informed that insurance has been concluded will not be obligated to comply with these obligations.

The insured may demand the indemnity directly from the insurer, unless the parties agreed otherwise. No such limitation of the insured's rights can be agreed after an insurable event has happened. This provision guarantees that the situation of the insured will not deteriorate after the loss.

The insured can request the insurer to provide him with all the details of the insurance contract and the general terms and conditions in the scope to which they affect the rights and obligations of the insured. The insurer may raise any charges it has against the insuring party (e.g., for non-payment of premium) against the insured as well.

Beneficiary

The insurance contract may state that if the insured event, e.g., death, occurs, the benefit should be given to the person or persons named in the policy or to the current policyholder. This person is referred to as the beneficiary.

§ 39:6 Basic Elements of the Contract—Insurable Interest

Article 821 of the Civil Code provides that any property interest¹ may be insured under a property insurance policy, provided that the interest is measurable in financial terms and provided it is not illegal.

Commentators define insurable interest as any financial value which may be lost by the insured or the beneficiary in the event of loss of or damage to property. The validity of an insurance contract depends on whether the insured has a valid insurable interest in the property being preserved in an unchanged and intact condition.

The law does not explicitly state that it is sufficient for the interest to exist at the time of the loss or whether it also must exist when the policy is issued, as is the case in many other jurisdictions. The stance taken by some commentators is that it is sufficient for the interest to exist only at the time of the loss. However, other commentators contend that the interest also must

[Section 39:6]

¹Although the term “insurable interest” was introduced into Polish insurance law in 2007, the interest theory was previously acknowledged in jurisprudence and case law.

exist when the contract is concluded because all the necessary prerequisites must be fulfilled at this time for the contract to be valid. If the interest ceases to exist (e.g., as a result of the sale of a given property), this may lead to cancellation of the insurance.

§ 39:7 Basic Elements of the Contract—Formation

There are no requirements as to the form of the insurance contract and even an insurance contract concluded verbally is binding. For evidentiary purposes, conclusion of an insurance contract should be set out in a document, a policy, or another insurance document. In the case of doubt, the insurance contract is deemed to be concluded when the insuring party receives the insurance document from the insurer or the intermediary.

An exception to this general rule is set forth in article 811 of the Civil Code, which regulates the situation where the insurer submits the insurance document in reply to an offer made by a prospective insuring party. If the insurance document contains provisions which are less beneficial to the insuring party than those set out in its offer, the insurer must inform the insuring party of this in writing and request the party to submit any objections within a set period (at least seven days).

If the insuring party does not submit objections, the contract is entered into in accordance with the terms of the insurance document on the day after the set period expires. If, when submitting the insurance document, the insurer fails to inform the insuring party of the discrepancies to its offer, the insurance contract is concluded in accordance with the terms of the offer.

§ 39:8 Basic Elements of the Contract—Void and Voidable Contracts

The law states that any provisions of an insurance contract or general terms and conditions which are in breach of the provisions of the Civil Code are invalid.¹ An insurance contract also is void if there is no possibility of the insured event ever occurring.²

A contract can also cover a period prior to the conclusion of the contract. The insurance cover, however, cannot be backdated to cover any period prior to conclusion of the insurance contract if, when concluding the insurance, any of the parties was or by acting diligently should have been aware that the insured event had

[Section 39:8]

¹Civil Code, article 807, section 1.

²Civil Code, article 806, section 1.

happened or that the possibility of it ever happening had ceased to exist. Any such backdating will be invalid.³ Commentators also state that in accordance with the *fraus omnia corrumpit* and *uberrimae fides* rules, an insurance contracted entered into in bad faith is null and void.

§ 39:9 Basic Elements of the Contract—Premiums

The insurer can demand payment of the premium only from the insuring person, not from the insured. Article 18 of the Insurance Act provides that the insurer sets the premium after analyzing the insurance risk. The law prohibits dumping by providing that the amount of the premium must be such that it at least covers the fulfillment of all the obligations under the insurance contract and the insurer's costs.

The amount of the premium should be calculated as specified in the general terms and conditions, in particular with respect to any reduction or increase in the basic rate. The insurer may adjust the premium and other fees provided that the insurance contract specified the method used and the dates the adjustments are made.¹ The premium is due only for the actual policy term. If the insurance expires before the end of the originally agreed policy term, the premium for the remaining term must be returned to the insuring party.²

Unless the parties agree otherwise, the policy term starts when the premium or the first installment of the premium is paid. If the premium is payable in installments and one of the installments is not paid on time, the insurance will expire, if expiry is provided for in either the contract or the general terms and conditions and the insurer has requested the insuring party to pay the installment and has informed it that, if payment is not made within seven days of receipt of the payment demand, the insurance will expire.³

§ 39:10 Disclosure and Misrepresentation

Under Polish law, the information to be disclosed to the insurer is limited. Pursuant to article 815, section 1, of the Civil Code, the insuring party is obliged to disclose to the insurer only the

³Civil Code, article 806, section 1.

[Section 39:9]

¹Insurance Act, article 18, section 5.

²Civil Code, article 813, section 1.

³Civil Code, article 813.

facts about which the insurer inquires either in a special inquiry form or in other documents submitted prior to the insurance contract being concluded. If the insuring party does not provide answers to all the questions and the insurer issues the policy, the unanswered questions are assumed to have been irrelevant.

If, during the policy term, any changes occur in the facts about which the insurer initially inquired, the insuring party is only obliged to immediately notify the insurer of these changes if the insurance contract so provides. This obligation does not apply to life insurance. If the insurance contract is entered into on the account of a third party — the insured — the disclosure obligations also apply to the insured, unless the insured was unaware of the fact that the insurance contract had been entered into on its account.¹

The insurer is not liable for the consequences of any facts which were not disclosed to him despite the obligation to disclose having existed. If the insuring party or the insured willfully failed to disclose information, the assumption is in the case of doubt that the event and its consequences are the result of circumstances that were not disclosed.

If any circumstances arise which lead to a material change in the likelihood of the insurable event occurring, each of the parties may request that the premium be adjusted accordingly, except for life insurance contracts. Once this request has been submitted, the other party can terminate the insurance contract with immediate effect within 14 days.

§ 39:11 General Terms and Conditions

Pursuant to article 12a of the Insurance Act, the general terms and conditions must specify:

1. The type of insurance and its subject;
2. The conditions for changing the limit of the indemnity or liability, if such change is provided for in the general terms and conditions;
3. The rights and obligations of each of the parties to the contract;
4. The scope of the insurer's liability;
5. In the case of property insurance, the method used to assess the loss;
6. The method of calculating the indemnity or any other bene-

[Section 39:10]

¹Civil Code, article 815, section 21.

fit, if the general terms deviate in this respect from general principles;

7. The method of calculating the premium, premium payment method, and the method used to adjust the premium, if adjustment is provided for;
8. The procedure and conditions for amending an insurance contract entered into for an unspecified term; and
9. The conditions, procedures, and deadlines for termination of the contract by any party, if termination is provided for in the general terms and conditions.

Until August 2007, this provision was contained in the Civil Code. When amending the Civil Code, Parliament decided to move this provision to the Insurance Act on the grounds that, when this provision is contained in the Insurance Act, the insurer's duty to provide certain information in the general terms and conditions becomes an administrative duty and the authority competent for protecting the interests of consumers, the Competition and Consumer Protection Office, can impose administrative sanctions on insurers which do not comply with this provision.¹ The general terms and conditions are binding on an insuring party if they were submitted to the insuring party prior to conclusion of the insurance contract.²

[Section 39:11]

¹The Competition and Consumer Protection Office controls the general terms and conditions of insurers. In September 2006, following a review of the general terms and conditions of 18 insurers, the Office published a report of its review (see <http://www.uokik.gov.pl>). The conclusions were that the situation of consumers on the Polish insurance market is unsatisfactory. Most terms in the contracts analyzed were unclearly formulated and not precise enough to allow the insured to understand its rights and obligations. In addition, in several cases the terms did not comply with the law. The President of the Competition and Consumer Protection Office demanded that the incorrect terms be amended. In several cases where the insurers did not comply with this demand, administrative fines were imposed on insurers.

In January 2010, the Office published a report on the results of its review of general terms and conditions of 13 life insurers. The conclusions were similar to the conclusions of the 2006 report.

²Civil Code, article 384, section 1.

§ 39:12 Cancellation

If the policy term is more than six months, an insuring party who is a consumer may cancel the insurance contract with 30 days' notice and, in all other cases, within seven days.¹

If the contract is entered into for a specified term, the insurer can only terminate it in cases provided for by the law and for serious reasons specified in the contract or in the general terms and conditions.

§ 39:13 Subrogation

Unless the contract provides otherwise, once an insurer has paid an indemnity, any recovery right the insured has against the third party liable for the loss passes to the insurer up to the amount of the indemnity. If the insurer has covered only a part of the loss, the insured can execute its recovery right with respect to the remaining part of the loss with priority over the insurer's rights.¹

The insurer cannot exercise any recovery rights with respect to any persons who are members of the insured's household, unless the loss was caused intentionally.

§ 39:14 Interpretation of Insurance Contracts

The terms of insurance contracts and the general terms and conditions must be formulated unambiguously and in an understandable manner according to article 12, section 2, of the Insurance Act.

Any ambiguity will be construed against the insurer and in favor of the insured, in accordance with the *contra proferentem* rule. Article 12, section 3, of the Insurance Act states that any provisions which are ambiguous will be interpreted in favor of the insuring party, the insured, the beneficiary, or any other person which has rights under the insurance contract.

This interpretation rule also is upheld in case law. The Supreme Court has emphasized in several judgments that since the purpose of an insurance contract is to provide protection, the contract will be interpreted from the position of the protected

[Section 39:12]

¹Civil Code, article 812, section 4.

[Section 39:13]

¹Civil Code, article 828, section 1.

party.¹ The Supreme Court also concluded that the insurer — as a professional and the author of the general terms and conditions — is obliged to formulate its provisions in a clear and precise manner. It would be against the principles of good faith if the consequences of flawed and negligent wording were to the detriment of the insured.²

Article 812, section 8, of the Civil Code provides that, where there are discrepancies between the insurance contract and the general terms and conditions, the insurer is obliged to inform the insuring party of this in writing prior to execution of the contract. If the insurer fails to provide this information, the insurer will not be able to rely on any discrepancies which are disadvantageous to the insuring party. This obligation does not arise if the contract was concluded after negotiations between the parties.

§ 39:15 Punitive Damages

Under Polish law, compensation is always equal to the actual loss in accordance with the rule that the injured party may not be unjustly enriched as a result of the loss. Therefore, punitive damages are not awarded in Poland.

III. TYPES OF INSURANCE

§ 39:16 In General

The Civil Code contains regulations which are different for property insurance and for insurance of persons. The Civil Code divides insurance contracts using the criterion of the subject of insurance, i.e., person or property, while the Insurance Act applies the criterion of line of business and divides insurance into life and non-life insurance. The Insurance Act also uses the term “Chapter One Insurance” for life insurance and “Chapter Two Insurance” for non-life insurance, following the classification of insurance groups in the Attachment to the Insurance Act.

The provisions of the Civil Code apply to all types of life and non-life insurance. Apart from the regulations on compulsory insurance, there are no specific provisions which regulate the different types of non-life or life insurance, such as fire insurance, travel, or medical insurance.

[Section 39:14]

¹Supreme Court Judgment of 28 May 1997, III CKN 76/97.

²Supreme Court Judgment of 2 September 1998, III CKN 605/97.

§ 39:17 Property Insurance

Articles 821–828 of the Civil Code contain rules and requirements which apply to property insurance contracts. In addition to typical insurance against damage of certain property, property insurance includes third-party liability insurance, credit insurance, business interruption insurance, and similar types of insurance.

Pursuant to article 824 of the Civil Code, in property insurance, the sum insured is the upper limit of the insurer's liability unless the parties agree otherwise. If, following conclusion of the policy, the value of the insured property falls, the insuring party can request that the sum insured be reduced. For the same reason, the insurer also can unilaterally reduce the sum insured and notify the insuring party thereof. Any such reduction also must entail a reduction in the premium.

As a general rule, the indemnity cannot be higher than the loss suffered. This prevents the insured from being unjustly enriched. This provision is not mandatory and the parties can agree that the indemnity will be higher than the value of the insured property.

In the case of double insurance, the insuring party cannot demand indemnity which exceeds the loss suffered. Each of the insurers will pay indemnity in proportion to the sum insured.¹ If, however, one of the contracts provides for an indemnity which exceeds the loss, the portion of indemnity which exceeds the loss will be paid by the insurer which agreed to pay indemnity exceeding the loss.²

Article 823 of the Civil Code states that, if the insured property is sold, the rights under the insurance contract can be assigned to the purchaser. Assignment requires the consent of the insurer unless the insurance contract provides otherwise. The rights under the insurance are assigned together with the obligations unless the parties have agreed otherwise and the insurer has consented to this. If the rights under the insurance contract are not assigned to the new owner, the insurance expires.

If an insured event occurs, the insured is obliged to use all available means to prevent or reduce losses. If the insured does not do so, either intentionally or due to gross negligence, the

[Section 39:17]

¹Civil Code, article 824(1), section 2.

²Civil Code, article 824(1), section 3.

insurer is not liable for any losses arising from such omissions.³ The insurer is not liable if the insuring party or the insured causes the loss intentionally, while no indemnity is payable in the case of gross negligence unless the parties have agreed otherwise or payment of the indemnity is justified for reasons of equity. Another instance where indemnity is not payable is if the loss is caused intentionally by a member of the insured's household unless the policy provides otherwise. Under third-party liability insurance, the parties can agree that the insurer also is liable for intentional acts or in the case of gross negligence.⁴

Under third-party liability insurance, the insurer agrees to indemnify a third party for losses for which the insured is liable. The third party may directly request the insurer to pay the indemnity to the third party without having first to approach the insured (*actio directa*). In this case, the insurer cannot raise any objections that certain obligations under the policy were breached if the breach occurred after the accident.⁵

Unless the parties agree otherwise, third-party liability insurance is concluded on the basis of an act-committed trigger. The parties also can agree on a claims made, loss occurrence, or loss manifestation clause.⁶

§ 39:18 Insurance of Persons

Articles 829–834 of the Civil Code contain rules and requirements which apply to contracts for the insurance of persons. The Civil Code term “insurance of persons” covers accident and health insurance in addition to typical life insurance.

Pursuant to article 829, section 2, of the Civil Code, the insurance coverage under a contract for life insurance on behalf of a third party starts after the insured consents to being covered by such an insurance. Consent also must be given to the sum insured. Any amendments to the contract require the consent of the insured and cannot impair any of the rights of the insured or the beneficiary. This prevents situations where the life of a person could become the subject of a gamble.

On the other hand, commentators have raised the point that no

³Civil Code, article 826.

⁴Civil Code, article 827.

⁵Civil Code, article 822, section 5.

⁶Civil Code, article 822, sections 2 and 3. This is an amendment that was introduced to the Civil Code by the Act of 13 April 2007, which entered into force on 10 August 2007. Prior to the amendment, third-party liability insurance could only be concluded on the basis of an act-committed clause.

exceptions were introduced with respect to group insurance. Life and personal accident insurance have become a popular form of employee benefit in Poland. Commentators pointed out that the requirement for individuals to consent¹ to the conclusion of the contract and any changes thereto may substantially reduce the quantity of group insurance.

A contract for the insurance of persons may be terminated by the insuring party at any time with the notice period set forth in the contract or — absent such contractual notice period — with immediate effect. The contract may be terminated by the insurer only in the cases provided for in the law.

Unless the contract provides otherwise, the contract also is terminated if the premium is not paid on time despite the insurer having notified the party of this, set an additional time for payment, and informed the party of the consequences of non-payment.²

The insuring party can appoint one or more beneficiaries to receive the benefit on the death of the insured person or state that the policyholder receives the benefit. The insuring person can change these appointments at any time.³ If the insuring party and the insured are not the same person, any change in beneficiary requires the consent of the insured. The contract also can provide for the insured to change beneficiary without the consent of the insuring party.⁴

Pursuant to article 832, section 1, of the Civil Code, a beneficiary will not be entitled to receive the benefit if the beneficiary contributed to the death of the insured.

If the insured commits suicide two years after the policy is concluded, the insurer will be obliged to pay the benefit. The contract may provide a shorter term, though not shorter than six months.⁵ Article 834 of the Civil Code provides that, if an insured event occurs three years after conclusion of the policy (or a shorter term if agreed by the parties), the insurer cannot claim that, when the contract was concluded, the facts disclosed were untrue, in particular that an illness the insured had was not disclosed. The contract may provide a shorter term.

[Section 39:18]

¹This requirement was introduced in 2007.

²Civil Code, article 830, section 2.

³Civil Code, article 831, section 1.

⁴Civil Code, article 831, section 1(1).

⁵Civil Code, article 833.

§ 39:19 Compulsory Insurance

Compulsory insurance is governed by the Act of 22 May 2003 on Compulsory Insurance, the Insurance Guarantee Fund, the Polish Office of Vehicle Insurers, and several other Acts which regulate specific types of compulsory insurance.

The Compulsory Insurance Act contains, in article 1-22, provisions which are applicable to all types of compulsory insurance. In addition, the Act contains specific regulations on three types of compulsory insurance, namely:

1. Compulsory motor insurance;
2. Third-party farmers' liability; and
3. Compulsory insurance for farm buildings.

Compulsory insurance is defined as third-party liability insurance or property insurance which is required by law or international agreements ratified by Poland.¹

Compulsory insurance is either third-party liability insurance or property insurance. In addition to the three types of compulsory insurance which are regulated directly in the Compulsory Insurance Act, there are other types of compulsory insurance, such as:

1. Third-party liability insurance for attorneys, tax advisers, notaries, auditors, and patent attorneys;
2. Third-party liability insurance for insurance agents and brokers; and
3. Third-party liability insurance for tourist offices.

Compulsory insurance requires the conclusion of an insurance contract. An insurer cannot refuse to provide compulsory insurance as long as the insurer has a license to conduct insurance activities for the group to which the compulsory insurance belongs.² Article 12, section 2, of the Compulsory Insurance Act provides that, if the insured does not pay an insurance premium installment, the insurer's liability does not expire. The contract continues to be valid, and the insurer has a claim against the insured for payment of the missing part of the premium.

With respect to certain types of insurance, the law regulates the terms and conditions of such contracts and certain contract

[Section 39:19]

¹Compulsory Insurance Act, article 3, section 1.

²Act of 22 May 2003 on Compulsory Insurance, article 5, section 2; The terms of several types of compulsory insurance are set forth in regulations issued by the Minister of Finance.

elements.³ If the insurance contract is contrary to statutory requirements, the statutory requirements prevail.

§ 39:20 Marine Insurance

Marine insurance is governed by articles 292–338 of the Marine Code. The provisions of the Civil Code on insurance contracts do not apply to marine insurance. Most of the provisions of the Marine Code on marine insurance are of a *ius dispositivum* nature. The parties to marine insurance can without any limitations choose the governing law.¹

Marine insurance relates to specific large risks which, in most cases, are subject to reinsurance. The insurance contracts are concluded in most instances on the basis of standard pertinent insurance clauses applied by international insurers associations (e.g., the International Underwriting Association of London).

IV. INSURANCE MARKET

§ 39:21 Establishment of an Insurance Company, Branch, or Subsidiary—Foreign Insurance Carrier Wishing to Set Up Head Office

In General

Generally, an insurer may operate in Poland either as a joint-stock company or a mutual insurance company (*towarzystwo ubezpieczeniowych wzajemnych*). A mutual insurance association is an insurance association which is established for the purpose of insuring its members on the basis of reciprocity.¹ Considering, however, that this form is of limited use for commercial insurance activities, the following information is provided with respect to insurers operating in the form of a joint-stock company.

Requirements

Engaging in insurance activities in Poland requires a license

³For example, the terms and conditions of the contract for compulsory vehicle insurance are regulated by articles 23–43 of the Compulsory Insurance Act. The Act implements the Third Motor Insurance Directive 90/232/EEC of 14 May 1990, particularly with respect to the single premium principle, which means that the insurance is valid throughout the European Union.

[Section 39:20]

¹Marine Code, article 359.

[Section 39:21]

¹Establishing and conducting the business of a mutual insurance association are governed by the provisions of the Insurance Act, specifically articles 38–91.

issued by the Financial Supervision Commission. The license will be granted for different classes of insurance and associated risks. An insurance company cannot conduct life insurance and non-life insurance business (see text, below) at the same time (the “separation” principle).

The share capital of the insurer must be at least equal to the highest level of the minimum guaranteed capital required for the type of insurance business in which the insurer plans to engage.² The entire share capital must be paid up in cash before the insurer is registered. In-kind contributions are not allowed. Funds which are contributed to the share capital cannot be from a credit or loan, otherwise encumbered, or from illegal or undisclosed sources.³

Prior to the insurer being registered, the insurer’s articles of association must be approved by the Financial Supervision Commission,⁴ while any subsequent changes to key provisions of the articles of association (such as a change of registered office, change in share capital, changes in asset management principles, or change in the organizational fund) require the Financial Supervision Commission’s consent.

The management board of an insurer must consist of at least two members. Article 27 of the Insurance Act provides that management board members:

1. Must have full legal capacity;
2. Must hold a university or equivalent degree;
3. Cannot have been convicted for an intentional offense confirmed by a final and non-revisable sentence; and
4. Must give surety for running the affairs of the insurer in a proper manner.

At least two members of the management board of the insurer, including its president, must have the professional experience required to manage the insurer’s affairs. Additionally, at least two members of the insurer’s management board must have a good knowledge of the Polish language. However, the regulator can waive this last requirement if this knowledge is unnecessary, particularly in view of the scope of the insurer’s activities.

The appointment of two members of the insurer’s management

²Detailed capital requirements are set forth in the Minister of Finance Regulation of 28 November 2003 on the methods for calculating solvency margin and the minimum guaranteed capital for types and groups of insurance business.

³Insurance Act, article 33.

⁴Insurance Act, article 32, section 1.

board, including its president, requires the consent of the Financial Supervision Commission. The regulator may refuse its consent if the candidates do not fulfill statutory requirements.⁵

Procedure

Before an insurer can set up its head office in Poland, a license must be obtained from the Financial Supervision Commission. The license is issued on the application of the founder or founders. An insurance company in the form of a joint-stock company can be established by one or several founders. An insurance company can only issue registered shares.

Article 92, section 2, of the Insurance Act specifies the information that must be given in the application. This includes:

1. The names of the founders, name of the insurer, address of the head office and the type of insurance business in which the insurer plans to engage;
2. The amount of share capital and amount of funds designated for administrative purposes and for building up an insurance agent network (unless the insurance products are to be sold by the founders' network); and
3. The names of the management board members and of the actuary.

Together with the application, the founders must submit the documents listed in article 92, section 3, of the Insurance Act. The documents must be drawn up either in Polish or in their original language with a certified translation into Polish. The documents include:

1. The draft articles of association;
2. The draft general terms and conditions of the insurance in which the insurer plans to engage;
3. The financial statements of the founders for the preceding three years;
4. A calculation of solvency margin and calculation of equity,⁶ if the insurer is the founder;
5. The documents regarding the founders: excerpts from commercial registers, bank statements for the preceding year and tax returns for the last three years;
6. The proof that the founders have sufficient funds to cover the share capital and the organizational fund;

⁵Insurance Law, article 27.

⁶The requirements are set forth in the Minister of Finance Regulation of 28 November 2003 on the methods for calculating solvency margin and the minimum guaranteed capital for types and groups of insurance business.

7. A business plan (which should include information on the reinsurance program, the sources of financing the guaranteed capital, and the solvency margin, estimate of administrative costs, and organizational structure), covering a period of three years;⁷ and
8. The documents evidencing the educational and professional background of members of the management and supervisory boards.

In addition to the information submitted with the application, the regulator may require the founders to submit information on their corporate structure, financial situation, and past activities. Commentators have observed that the regulator has extensive powers in the licensing process. As the Act contains a general description of the scope of information which may be requested, in practice, the regulator can require the founders to submit very detailed information on their operations or financial situation.

If the new insurance company is to be a subsidiary or affiliate of an insurer, credit institution, or investment firm which operates in the EU under a license, the Financial Supervision Commission will ask the regulator responsible for the insurer or financial institution to provide information on the activities of the entity and its shareholder.

This information will enable the Financial Supervision Commission to determine whether the founders or prospective shareholders can guarantee that the new insurer will conduct its insurance activities properly. Article 98, section 1, of the Insurance Act states that a license will not be granted if:

1. The application and other documents do not fulfill legal requirements set out in the law;
2. The members of the management and/or supervisory boards do not fulfill the requirements set out in the law;
3. The founders have been convicted of an intentional offence, cannot guarantee that the insurer's activities will be conducted in a way that protects the interests of all the parties to the insurance contract, have not proved that they have sufficient funds to finance the organizational fund and the shares in the share capital, or operations are financed from illegal or undisclosed sources;
4. The insurer's business plan does not confirm that it will be able to perform its obligations; and
5. The insurer's activities could pose a threat to security and public order.

⁷Insurance Act, article 93.

On receipt of the license, the founders must establish the insurer by executing articles of association of a joint-stock company. The company must be registered with the Polish Court Register (*Krajowy Rejestr Sadowy*).⁸ The insurer must commence its activities within 12 months of the license issue date.

Acquisitions of New or Existing Shares in Insurance Companies

Within 12 months of registration, any acquisition of shares in an insurance company requires a license from the Financial Supervision Commission.⁹

Subsequently, the regulator must be notified of any acquisition of an insurance company's shares, whether directly or indirectly, which leads to 10 per cent, 33 per cent, or 50 per cent of votes at the general meeting or in the share capital being acquired or exceeded. The regulator can, within 60 working days of the date of the receipt of the notification with all information and documents as required by law:

1. The prospective buyer did not supplement the parts missing from the notification or from the documents and information attached to the notification in the set term;
2. The prospective buyer did not send the additional information or documents requested by the regulator; and
3. The reason for the objection is the necessity for the insurer to be managed in a stable and careful manner given the potential impact of the prospective buyer on the insurer or given the evaluation of the financial standing of the prospective buyer.

Article 35a-o of the Insurance Act sets forth detailed requirements for the notification and describes the powers of the regulator in the proceedings. Any acquisition of shares which is in breach of the requirements set forth in article 35 of the Insurance Act (i.e., without the required notification or despite the regulator's objection) will mean that the buyer cannot exercise the voting rights attached to the shares acquired.

§ 39:22 Establishment of an Insurance Company, Branch, or Subsidiary—Foreign Insurance Carrier Seeking to Directly Establish Branches

Requirements

Insurers from the EU are subject to rules different from those

⁸The process of establishing a joint-stock company is governed by the Code of Commercial Companies, articles 301 *et seq.*

⁹Insurance Act, article 34.

for other insurers. The establishment of a branch by an EU insurer is based on the principle of freedom of establishment (see text, below). The procedure for a non-EU insurer to establish a branch in Poland is more complex and is based on the principle of reciprocity, unless the insurer's home state is a member of the World Trade Organization (WTO).

The branch must operate in accordance with Polish law. The articles of association of the branch must be approved by the Financial Supervision Commission and must be executed in the form of a notarial act.¹ The articles must specify:

1. The organizational structure of the branch;
2. The manner in which local units are to be established and represented;
3. The types of technical reserves and how they will be set up by the branch; and
4. The principles to be applied to settle accounts with the head office.

The branch must be registered with the Polish Court Register and can only commence its activities after registration. It is represented by the director, acting together with a deputy director, or two deputy directors acting together. The branch director and his deputies:

1. Must have full legal capacity;
2. Must hold a university or equivalent degree;
3. Cannot have been convicted for an intentional offense confirmed by a final and non-revisable sentence; and
4. Must give surety for running the affairs of the insurer in a proper manner.

The branch director and at least one deputy must have the professional experience required to manage an insurance business. Additionally, the branch director and at least one deputy must have a good knowledge of the Polish language. However, the regulator can waive this last requirement if this knowledge is unnecessary in view of the scope of the insurer's activities. The appointment of the branch director and at least one deputy requires the consent of the Financial Supervision Commission. The regulator may refuse its consent if the candidates do not fulfill statutory requirements.²

All documents regarding the activities of the branch must be

[Section 39:22]

¹Insurance Act, article 105, section 2.

²Insurance Law, article 110, section 3.

kept at its office in Poland. The foreign insurer is fully liable for the obligations of its branch office. The foreign insurer must establish a deposit of the amount of the minimum guaranteed capital.³ The deposit is regarded as part of the branch's equity and should be deposited in a bank account in Poland for the entire duration of the branch's operations.

The branch is obliged to create technical reserves to cover liabilities under the insurance contracts concluded in Poland.⁴ The foreign insurer also is obliged to keep funds in Poland of an amount not lower than the solvency margin and not lower than the guaranteed capital in an amount determined in accordance with article 116 of the Insurance Act.

Pursuant to article 109 of the Insurance Act, a foreign insurer which is granted a license to operate a branch in Poland and which has an insurance license in at least one EU state may request the Financial Supervision Commission and the regulators of these EU states to agree that:

1. The solvency margin can be calculated for the insurer's entire operations in the EU through its branches;
2. The deposit can be established in only one of the EU states where the insurer has a branch; and
3. The assets forming the technical reserves can be maintained in only one of the EU states where the insurer has a branch.

Procedure

Establishment of a branch in Poland by a foreign insurer requires a license from the Financial Supervision Commission.⁵ The application must include the following information:

1. The name of the insurer and the address of its head office;
2. The registered office and type of insurance business in which the branch is to engage; and
3. The names of the branch director and his deputies, and names of the actuary, accountant, and investment adviser (if applicable).

Together with the application, the insurer must submit the documents described in article 107, section 3, of the Insurance Act. The documents must be drawn up either in Polish or in their original language with a certified translation into Polish. These documents include:

³Insurance Act, article 113.

⁴Insurance Act, article 115.

⁵Insurance Act, article 107.

1. The articles of association of the foreign insurer;
2. The draft articles of association of the branch;
3. The draft general terms and conditions of the insurance in which the insurer plans to engage;
4. A calculation of the solvency margin and calculation of equity — if the insurer is the founder;
5. A certificate from the regulator of the foreign insurer's home state confirming that the insurer holds an insurance license and information on the insurer's financial situation;
6. The financial statements of the foreign insurer for the preceding three years;
7. The documents regarding the founders, with excerpts from commercial registers, bank statements for the preceding year, and tax returns for the last three years;
8. The business plan, in the form required to establish an insurance company in Poland; and
9. The documents evidencing the educational and professional background of the branch director and his deputies.

The license issued by the Financial Supervision Commission specifies the types of insurance business the branch may conduct. Article 114, section 1, of the Insurance Act provides that a license to operate a branch will not be issued if:

1. The application does not fulfill the requirements set out in the law;
2. The branch director and his deputies do not fulfill the requirements set out in the law;
3. The foreign insurer does not have sufficient funds to finance the activities of the branch as presented in the business plan, does not have sufficient funds to cover the branch's required technical reserves, or finances its operations from illegal or undisclosed sources;
4. The branch's business plan does not confirm that it will be able to perform its obligations; and
5. The activities of the insurer could pose a threat to security and public order.

The license is issued in the form of an administrative decision. On receipt of the license, the founders must execute the articles of association in the form of a notarial deed. The branch must be registered with the Polish Court Register. The branch must commence its activities within 12 months of the license issue date.

**§ 39:23 Crossborder Market—Foreign Insurance Carriers
Wishing to Supply Crossborder Insurance
Services**

In General

As of September 2010, the Financial Supervision Commission received notifications from 537 insurers of their intention to supply crossborder insurance services in Poland.

In addition, 17 insurers from the EU notified the Financial Supervision Commission of their intention to set up branches in Poland.

Requirements

A foreign insurer which is authorized and has its head office in an EU member state can, in accordance with the freedom of services and freedom of establishment principles, conduct insurance activities in Poland (the single passport rule).¹ These activities are supervised by the regulator in the insurer's home state.² The foreign insurer is obliged to comply with Polish law. The policy or other document confirming the conclusion of an insurance agreement on the basis of freedom of services and freedom of establishment must specify:

1. The address of the insurer's head office, or of the branch office;
2. The date and place of contract conclusion, contract term, and parties;
3. Subject of insurance and general terms and conditions which govern the contract;
4. The premium; and 5. The court which has jurisdiction for claims.³

If the Financial Supervision Commission concludes that a foreign insurer does not act in compliance with Polish law, it can request the insurer to repair any irregularities. If the insurer does not take the steps required, the Financial Supervision Commission will inform its home regulator. If all the above actions taken by the Financial Supervision Commission or the home regulator prove to be unsuccessful, the Financial Supervision

[Section 39:23]

¹Directives 92/49 and 92/96.

²Insurance Act, article 128.

³Insurance Act, article 140.

Commission can use its statutory powers to prevent further breaches of law.⁴

Procedure

An EU insurer intending to operate in Poland through a branch must notify its home regulator of its intention. The home regulator should notify the Financial Supervision Commission of this and send it certain information and documents in accordance with article 132, section 1, and article 135, section 1, of the Insurance Act, such as:

1. A certificate that the insurer has sufficient funds to cover the solvency margin;
2. Information on the types of insurance the insurer provides and on the types of insurance products the insurer intends to sell in Poland; and
3. Information on the organizational structure of the branch.

Within two months of receipt of the above information, the Financial Supervision Commission is obliged to inform the home regulator of the conditions on which the insurer may operate in Poland. The foreign insurer may start operating once it is informed of the conditions on which it may operate in Poland. If the Financial Supervision Commission fails to submit this information within the two-month period, the insurer can start operating after the lapse of this period. The Financial Supervision Commission has no measures it can apply to object to the start-up of crossborder operations.

A simplified procedure applies when an EU insurer intends to operate in Poland directly by using the principle of freedom of services. The insurer can start operating in Poland once its home regulator has submitted to the Financial Supervision Commission the information and documents listed in article 132, section 1, of the Insurance Act. Such information and documents include:

1. A certificate that the insurer has sufficient funds to cover the solvency margin;
2. The types of insurance the insurer conducts; and
3. The types of insurance product the insurer intends to sell in Poland.

The law sets out certain additional requirements for insurers intending to provide third-party liability motor insurance without

⁴Insurance Act, article 139.

opening a branch in Poland.⁵ The insurer is obliged to appoint a representative or representatives for insurance claims who will be authorized to settle claims made and represent the insurer (in person or through appointed attorneys) before Polish courts.⁶ Details of these representatives will be submitted to the Financial Supervision Commission by the insurer's home regulator.

Classes of Insurance

An EU insurer can supply crossborder services in Poland in all classes of insurance covered by the license issued by the competent authorities in its home state.

§ 39:24 Crossborder Market—Domestic Insurance Carriers Wishing to Supply Services Abroad

In General

As of April 2011, 17 Polish insurers had decided to supply crossborder insurance activities, most of them in the Czech Republic and Lithuania.¹

Requirements

A Polish insurer can, in accordance with the freedom of services and freedom of establishment principles, conduct insurance activities in all EU states. These activities are supervised by the Polish regulator, the Financial Supervision Commission.²

Procedure

A Polish insurer intending to provide crossborder insurance services in the EU must notify the Financial Supervision Commission of its intention.³ If the insurer intends to operate in the EU through a branch, it must submit to the Financial Supervision Commission information and documents in accordance with article 135, section 1, of the Insurance Act. Such information and documents include:

1. The names of the EU member states in which the insurer intends to operate;

⁵A foreign insurer setting up a branch in Poland also is obliged to appoint a representative for insurance claims (Insurance Act, article 107).

⁶Insurance Act, article 133.

[Section 39:24]

¹Financial Supervision Commission (see <http://www.knf.gov.pl>).

²Insurance Act, article 127.

³Insurance Act, article 134.

2. The planned scope of activities, e.g., types of insurance the insurer intends to sell in the EU;
3. The business plan; and
4. The organizational structure of the branch.

Within three months of receipt of this information, the Financial Supervision Commission will submit to the host regulators in all the EU member states in which the insurer intends to operate the above information together with a declaration that the insurer has sufficient funds to cover the solvency margin. Pursuant to article 135, section 3, of the Insurance Act, the Financial Supervision Commission can refuse to notify the host regulators of the intention to provide crossborder services in the following cases:

1. The financial situation of the insurer is such that the insurer will not be able to operate a branch;
2. The organizational structure of the branch does not ensure that it will function properly;
3. The persons designated to manage the branch do not have the educational or professional background required to manage insurance affairs properly, have been convicted for an intentional offence, or have not given surety for running the insurer's activities in a proper manner; or
4. The business plan does not guarantee that operations will be properly run.

The branch may start operating in the relevant EU state once it is informed by the host state regulator of the conditions on which it may operate. If the Polish insurer intends to operate in the EU without establishing a branch by using freedom of services, it must notify the Financial Supervision Commission of this and submit information on the types of insurance the insurer intends to conduct in the other EU states. The law also sets out certain additional requirements for insurers intending to provide third-party liability motor insurance.⁴

Within 30 days of receipt of this information, the Financial Supervision Commission will notify the host regulators in all the EU member states in which the insurer intends to operate of the intention to provide crossborder services and will confirm that the insurer has sufficient funds to cover the solvency margin.⁵

The Financial Supervision Commission can refuse to notify the host regulators of this intention if the insurer's financial situa-

⁴The requirements are described in article 137, section 1, of the Insurance Act.

⁵Insurance Act, article 137, section 2.

tion is such that the insurer will be unable to conduct the intended insurance activities. The insurer can commence crossborder services once the host regulator or regulators confirm that they have received the required notification.

Classes of Insurance

A Polish insurer can supply crossborder services within the EU in all classes of insurance covered by the license issued by the Financial Supervision Commission.

V. COMPETITION LAW

§ 39:25 Concerted Practices between Insurance, Co-Insurance, or Reinsurance, Vertical and Horizontal Structures—Regulation

The Council of Ministers Regulation of 22 March 2011 on excluding certain agreements concluded between undertakings in the insurance sector from the prohibition on agreements restricting competition (the “2011 Regulation”) sets out the rules and condition on which certain agreements between insurers are exempt from antitrust restrictions.

The 2011 Regulation entered into force on 1 April 2011 and is effective until 31 March 2018. As an interim rule, it provides that any agreements concluded prior to 1 April 2011 which do not conform to the provisions of the 2011 Regulation will continue to be subject to earlier regulations,¹ although only until 31 March 2012.

Paragraph 3 of the 2011 Regulation states that, provided that such agreements fulfill the requirements set forth in the 2011 Regulation, the prohibition on agreements restricting competition² does not apply to agreements entered into between undertakings in the insurance sector with respect to:

1. The joint establishment and distribution of calculations of the average cost of covering a specified risk in the past in connection with insurance involving an element of capitalization, mortality tables, and tables showing the frequency of illness, accident, and invalidity;

[Section 39:25]

¹Council of Ministers Regulation of 30 July 2007 on excluding certain agreements concluded between undertakings in the insurance sector from the prohibition on agreements restricting competition.

²This prohibition is set forth in article 6 of the Competition and Consumer Protection Act of 16 February 2007.

2. The carrying-out of studies on insurance and the distribution of the results of such studies;
5. The joint insurance of a specific category of risks by groups of insurance undertakings or of insurance undertakings and reinsurance undertakings; and

§ 39:26 Concerted Practices between Insurance, Co-Insurance, or Reinsurance, Vertical and Horizontal Structures—Exemptions for Cooperation Agreements between Insurers

Exemption Regarding Joint Establishment of Calculations and Tables with Respect to Certain Risks and Joint Studies on Certain Risks

Pursuant to section 4 of the 2011 Regulation, the joint establishment and distribution of calculations of the average cost of covering a specified risk in the past in connection with insurance involving an element of capitalization, mortality tables, and tables showing the frequency of illness, accident, and invalidity as well as the joint carrying out of studies on the probable impact of general circumstances external to the interested undertaking, either on the frequency or scale of future claims for a given risk or risk category or on the profitability of different types of investment, and the distribution of the results of such studies, are covered by the exemption, provided that the calculation or results:

1. Do not identify the insurance undertakings concerned or any insured;
2. Do not contain any statements on the amount of the insurance premium; and
3. Do not commit the participating undertaking or affiliates to not use any other calculations or results of studies prepared by other parties or groups or procure that other entities cannot use the calculations or results of studies jointly prepared by the participating undertakings.

Exemptions for Common Coverage of Certain Risks by Several Insurers

Pursuant to section 8 of the 2007 Regulation, certain joint insurance of a specific category of risks by groups of insurance undertakings or of insurance undertakings and reinsurance undertakings are covered by the exemption. The exemption applies to co-insurance or co-reinsurance groups for a period of three years from the date the group was established, provided that the group was created in order exclusively to cover new risks, regardless of the market share of the group.

With respect to co-insurance or co-reinsurance groups which do not fall within the scope of the exemption (due to the fact that they have been in existence for more than three years or were not created to cover a new risk), the exemption provided in the 2000 Regulation applies if the the participating undertakings do not in any of the markets concerned represent:

1. More than 20 per cent of the relevant market, in the case of co-insurance groups; and
2. More than 25 per cent of the relevant market, in the case of co-reinsurance groups.

Market share is calculated in accordance with the following rules:

1. On the basis of gross premium income;¹ and
2. On the basis of data relating to the preceding tax year.

Sections 11 and 12 of the 2007 Regulation also provide certain rules for the situation where market share was initially below the relevant threshold, but eventually exceeded it. The exemption applies on condition that:

1. Each participating undertaking has the right to withdraw from the group, subject to observing an appropriate notice period, without incurring any sanctions;
2. The rules of the group do not oblige any member of the group to insure or re-insure through the group, in whole or in part, any risk of the type covered by the group;
3. The rules of the group do not restrict the activity of the group or its members to the insurance or reinsurance of risks located in any particular part of Poland;
4. The agreement does not limit output or sales;
5. The agreement does not allocate markets or customers;
6. The members of a co-reinsurance group do not agree on the insurance premiums which they charge in direct insurance.

§ 39:27 Insurance Joint Ventures and Insurance Mergers

The antitrust rules which apply to mergers, acquisitions of shares in existing insurance companies, and establishment of new insurance companies are set forth in articles 13–17 of the Competition and Consumer Protection Act of 16 February 2007 (the “Antitrust Act”).

[Section 39:26]

¹If gross premium income data are not available, estimates based on other reliable market information, including insurance cover provided or insured risk value, may be used to establish the market share of the undertaking concerned.

In general, any merger, acquisition of shares in existing companies, and establishment of new companies (concentration) must be notified to the Polish antitrust authorities¹ if:

1. The worldwide turnover of the entities (i.e., the capital group to which the concerned undertakings belongs) participating in the concentration in the year preceding the notification exceeded €1-billion; or
2. The turnover of the entities taking part in the concentration in the year preceding the notification exceeded €50-million in Poland.

Article 14 of the Antitrust Act provides for certain exceptions to the notification obligation (e.g., notification is not required if the turnover in Poland of the entity over which control is to be assumed did not exceed €10-million in the two years preceding the notification). The turnover of insurers is calculated on the basis of gross premiums written.²

VI. IMPLICATIONS FOR CONSUMERS

§ 39:28 In General

As noted, Polish law contains a rule that any ambiguity in an insurance contract will be construed against the insurer and in favor of the insured, in accordance with the *in dubio contra proferentem* rule.¹ This rule has consequently been upheld in judgments passed by Polish courts, particularly the Supreme Court. The rule is a repetition of the rule contained in article 385, section 2, of the Civil Code, which is applicable to all contracts entered into with consumers and which states that any provisions of general terms and conditions which are ambiguous shall be interpreted in favor of the consumer.

Commentators have concluded that the terms “clear” and “unambiguous” must be interpreted in relation to the average consumer. Some commentators also refer to a “reasonable” consumer. The interests of the insured are also protected by several rules contained in the Insurance Act and the Civil Code. Examples are that:

[Section 39:27]

¹Any mergers and acquisitions with EU dimensions are subject to notification to the European Commission, pursuant to Council Regulation 139/2004.

²Council of Ministers Regulation of 17 July 2007 on the method of calculating the turnover of undertakings participating in the concentration, section 5.

[Section 39:28]

¹Insurance Act, article 12, section 3.

1. Any insurance contract with an insurance term of more than six months must contain a “cooling off period”, during which the insuring party may cancel the contract (for consumers the period is 30 days);²
2. The insurer must inform an insuring party who is an individual of the applicable law and of the procedure applied to examine complaints and the body competent to do so;³
3. The insuring party, the insured, or the beneficiary of an insurance contract may always sue the insurer in a court with jurisdiction over the place of residence of those persons;⁴ and
4. The insurer as principal is liable for any damage caused by its insurance agent.⁵

In addition, insurance contracts concluded with consumers enjoy protection under the consumer protection provisions set forth in the Civil Code and other laws. Pursuant to article 22¹, section 2, of the Civil Code, a consumer is an individual who performs a certain transaction which is not related to its business or professional activities.

Article 385¹, section 1, of the Civil Code provides that any contract terms which were not individually negotiated are not binding on the consumer if they are contrary to good custom or grossly violate the consumer’s interests (so-called “abusive clause”). This does not apply to provisions on the principal performances of the parties, particularly price and fees, if they were clearly and unambiguously formulated.

Provisions which were not individually negotiated are provisions over which the consumer had no real influence, particularly the provisions of the general terms and conditions which were proposed by the other party. Article 385³ of the Civil Code contains a non-exclusive list of examples of abusive clauses, which includes provisions:

1. Excluding liability to the consumer for bodily injury;
2. Stating that a contract concluded for a set term is prolonged if the consumer does not object to prolongation within a very short period; and
3. Excluding the jurisdiction of Polish courts or providing for the jurisdiction of arbitral tribunals or a different entity, or providing for the jurisdiction of a court which under the law is not territorially competent.

²Civil Code, article 812, section 4.

³Insurance Act, article 13a.

⁴Insurance Act, article 9.

⁵Act of 22 May 2003 on Insurance Intermediation, article 11, section 1.

The President of the Competition and Consumer Protection Office regularly inspects the general terms and conditions of contracts concluded with consumers by banks, insurers, investment funds, and tourist offices. If the Office concludes that any of the terms contain abusive clauses, as defined in article 385¹, section 1, of the Civil Code, it will request the Competition and Consumer Protection Court to issue a binding award in this respect. The Competition and Consumer Protection Office keeps a register of clauses which have been declared to be abusive by the Competition and Consumer Protection Court.⁶

VII. CONCLUSION

§ 39:29 In General

Insurance laws have recently undergone extensive changes in Poland. The purpose of these changes was mainly to strengthen the position of the insured in relation to insurance companies, as well as to implement recent developments in EU law into Polish legislation. These trends can be expected to continued in future legislation.

⁶See http://www.uokik.gov.pl/pl/ochrona_konsumentow/niedozwolone_klauzule/rejestr_klauzul_niedozwolonych/. The list contains several clauses from general terms and conditions of insurance contracts which have been declared abusive by the court.

