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CHANGING PREMIUM IN LIFE INSURANCE CONTRACTS *VERSUS* PROTECTION AGAINST ABUSIVE CLAUSES

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INTRODUCTION

- Polish philosophy of protecting consumers against abusive clauses – implementation of the EU law
- Insurance contract specifics in protection against abusive clauses
- Changing premium during the term of the insurance contract – possibility & conditions
- Case study

POLISH PHILOSOPHY OF PROTECTING CONSUMERS AGAINST ABUSIVE CLAUSES

Implementation of the EU law into the Polish legal system:

- **Civil code** – provisions on the concept and consequences of applying unfair contract terms

- **Insurance Activity Act** – provisions on transparency and information duties

- **Act on Protection of Competition and Consumers** – procedures of applying the protection (*transparency control/ content control*).

ABUSIVE CLAUSES IN POLAND

- **Definition of abusive clauses (unfair contract terms) in the Polish legal system:**

  'a clause that has not been agreed with the consumer individually, and that shapes the rights and obligations in a manner contrary to good morals, grossly affecting the consumer's interests'

- **Effect:** non binding upon consumer

- **'Grey list' (indicative)** of 22 abusive clauses in the Civil code

DILLEMAS OF TRANSPARENCY IN INSURANCE

- *Any clauses that are shaped ambiguously* ***shall be interpreted in favour of the insuring party***

- art. 18 in the Insurance Activity Act, applicable also in B2B contracts.

- **Ambiguous clauses** are subject to control even if they concern the main subject matter of contract

- **Main subject matter of insurance:**

- payment of benefit after the event insured occured against the payment of the premium**, or**
- covering the risk against the payment of the premium.

CHANGING STANDARD CONTRACTS (1)

- *Standard terms issued during the term of the contract shall be binding upon the other party in case it has not terminated the agreement in a due time*

- **art. 384 Polish CC applicable to the changes of particular contractual clauses**

- *„**modification clauses**" as a basis for changing the contracts :*

- *based upon standard terms*
- *continous contracts*
- *contracts which may be terminated via notice.*

CHANGING STANDARD CONTRACTS (2)

- Possibility of a unilateral change of a contract based upon standard terms during its term:

An unfair term may be a clause *„enabling the entrepreneur to change the terms of the contract unilaterally with respect to the substantial features of the consideration – without an important reason”*

CHANGING LIFE INSURANCE CONTRACT (1)

- **Peculiarity of life insurance affecting possibility of changes:**
  - continuous contractual relationship
  - contract based upon standard contract terms
  - restrictions of terminating via notice
- **Practical problems of insurance premium in life insurance:**
  - only general legal provisions provided in the Civil Code

    but
  - strict approach of consumer protection authorities

CHANGING LIFE INSURANCE CONTRACT (2)

- **Art. 830 § 3 CC.** ***the insurer may terminate the life insurance only in the events provided by the law.***

- The provisions concerning termination of life insurance are applicable to possibility of changing the contract during its term.

- **Conclusion:**

  the change of life insurance is possible only in cases provided by the law.

CHANGING LIFE INSURANCE CONTRACT (3)

- **Art. 18 of the Insurance Activity Act:**

  the insurer may apply an adjustment of the insurance premium and other fees due from or to the policyholder under condition of including the methods and dates of applying the adjustment in the insurance contract.

- **Changing a life insurance contract within the above-mentioned limits:**

- does not exclude the possibility of applying rules on abusive clauses
- requires applying the procedure concerning the issuance of new or amending the standard terms
- needs consent of insuring party.

CASE STUDY – UNILATERAL CHANGE OF PREMIUM

The following standard term in life insurance contract has been recognized by the court as abusive :

- *„Increase of the regular insurance premium does not entail the increase of the insurance sum, beginning from the anniversary of the policy after the policyholder reached the age of 60”*

THANK YOU