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Banks as tied insurance intermediaries (IIM)

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The PAST in EU (the present in other countries)

- Originally, they had to follow all requirements provided in EU law and national law for any IIM as far as the applicable law allows banks to conduct such business. → **This is a bureaucratic procedure which does not suit the banking activities.**
- In addition, mere sales of simple insurance products, usually conducted by filling applications from banks' desks by the consumers were mostly not regulated at all. → **This does not satisfy consumer protection standards.**

The PRESENT: IMD 1

- **Solution: Insurance Mediation Directive (IMD 1, already old at the time of its enacting!) introduces the new notion of tied insurance intermediary (the PRESENT)**
 - ❑ Bank as tied intermediary does not need to follow all the requirements provided for IIMs → **General accepted solution**
 - ❑ All kinds of mediation activities are regulated with the exception of very small businesses. Direct sales are not regulated → **General accepted solution for small businesses but not for direct sales**
 - ❑ Banks as tied IIMs can work under the restrictions of art. 2 para 7 IMD 1 (ins. products must not be in competition or insurance must be complementary to the goods or services supplied by the tied IIM, not authority to collect premiums) → **Unnecessary restrictions**
 - ❑ However, IMD 1 does not provide that tied IIM must provide the list of information to the customer (precontractual information, art. 12, 13 of IMD 1). This can be provided by the national law of MS since IMD 1 is a minimum harmonisation Directive. → **This does not satisfy consumer protection standards**

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Solution: IMD 2 (the FUTURE)

- **Banks as tied IIMs can work without the restrictions of art. 2 par. 8 (i.e. without presupposing that ins. products are not in competition or insurance is complementary to the goods/services supplied in the framework of its principle professional activity, does not collect premiums)**
- **They can work also as tied IIMs of other IIMs (art. 2 par. 8 of IMD 2). IIMs can be registered by other IIMs as well (art. 3 par. 1 sec. b)**
- **Tied IIMs are subject to professional requirements (art. 8)**
- **Precontractual information must be given by tied IIMs as well (art. 16-18, 23)**
- **The same level of consumer protection applies for both direct sales from ins. undertakings and sales from IIMs (recital 6). All sales of insurance products including direct sales are covered by IMD 2 (art. 2 par. 3)**

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Special issues: Crossing an ocean of information

- **The bank as tied intermediary can sell the main financial product which it has manufactured and ancillary insurance investment product manufactured by the insurer:**
 - ❑ Information for its main financial product (art. 24-25 MiFID 2, total number of information pieces: 15) and key information as manufacturer of the product (art. 5-11, 12-13 PRIPs, total number of information pieces: 26)
 - ❑ Information to be given according to IMD 2 in its capacity as tied intermediary (art. 15-21 total number of information pieces: 22) and additionally information on investment insurance products (art. 22-25, total number of information pieces: 10)
 - ❑ Information on investment insurance products according to PRIPs (art. 5-11, 12-13 total number of information pieces: 26) whereby the manufacturer in this case is the insurer
 - ❑ Additional information in the case of online sales (ECD, art. 5, 6, 10, total number of information pieces: 26)
 - ❑ Additional information in the case of distance marketing (DMD, art. 3-5 total number of information pieces: 49)

Special issues: Crossing an ocean of information *(cont.)* Reaching the coast – Results:

- ➔ Customer is protected by valuable information but is overloaded partly with asymmetric and overlapping information
- ➔ By provision of this information the customer is not protected as to the content of the terms and conditions of the insurance product
- ➔ Customers remain responsible to take advantage and to evaluate the multitude of information. Legislator should ensure that customers have taken in fact the benefits of this information rather than inserting more information duties

Special issues: Crossing an ocean of information (cont.)

Results

- Lack of special information! Risk of misleading clients!
 - E.g. a bank should warn its clients that it sells insurance products under the liability of the insurer or an other IIM, as the case may be and not under its liability
- Bank does not have to rely on confidence clients have to its activities as safeguard of their savings!
 - A bank selling insurance products in its capacity as tied intermediary should warn its clients that the product is not manufactured by the bank!

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Special issues: Crossing an ocean of information (cont.)

Results (cont.)

- **It should not be allowed to banks to title the insurance investment products of the insurer which it sells as “bancassurance products” of the bank or similar misleading/confusing expressions.**
 - A bank selling insurance products/investment insurance products of an insurer must put emphasis to the name of the insurer by using capital and bold letters. Small letters should be used for the name of the bank and emphasise its capacity as intermediary and not as manufacturer of the product. 8
- **The trust clients show in banks leads more easily to a situation where customers receive services from them without questioning the quality of such services i.e.:**
 - Possibility to purchase products designed to provide useless coverage/double coverage which implies fines imposed by the supervisory Authority

Bancassurance in action: The two main categories of bancassurance

1. Bank just markets insurance products. It is left to the clients' discretion to buy insurance. The risk covered is irrelevant to the bank's business.

- ❑ Example 1: Payment Protection Insurance (**PPI**) covers risks related to a person having a financial obligation. The risks covered by PPI generally include accident, sickness and unemployment, and for certain products life – Packaged product (credit + insurance)
- ❑ Example 2: Unit-linked Life Insurance (**ULLI**), which cover risks of death and/or survival which combine UL offerings with some with-profit element. The underlying funds can be complex and the associated risks and/or costs are not necessarily sufficiently transparent to consumers – Packaged product (investment + insurance)

2. Banks impose a condition on their clients to enter into an insurance contract in order to gain access to another offered good or service. The risk covered is relevant to the bank business.

- ❑ Example: The payment obligation PPI provides coverage for is generally associated to a loan product. Loan products most frequently associated with PPI are **Consumer Credit (CC)-PPI** or **mortgage-PPI**.

Bancassurance in action: The two main categories of bancassurance (*cont.*)

- In both cases bank has to safeguard the right of the consumer to choose its insurer which is difficult to be controlled if the bank is IIM of only one ins. co.
- According to the Greek supervisory Authority, Banks should not refer to a certain insurer in order to cover PPIs in a way creating to their borrowers/clients the impression that the purchase of the insurance¹⁰ from the certain insurer is obligatory.

Bancassurance in action: Group Insurance (GI) issues

- **Banks as tied IIMs are close to sell insurances under the umbrella of GI: the group is part of their clientele. One single contract can cover thousands of clients. The policyholder can be an employer and the insured its employee, but also the bank can be the policyholder and its client the insured. In the last case the bank acts formally as policyholder but in fact as IIM.**
- Examples: travel insurance, accident insurance for the holders of credit cards

What happens if the insurer transfers its portfolio?



Who can provide objections against the transfer of insurance portfolio? Every insured individually or only the policy holder (e.g. the employer of the insured employees)? → If applicable law does not include a special provision for GI, then the answer depends on the wording of the terms of the GI:

- ☐ If the policy provides for a reservation for the right of the policyholder to amend the terms of the policy regardless of the benefit or the detriment on the rights of the insured and including the possibility to reduce coverage and to cancel the contract, then there is no need for approval for each individual insured ¹²
- ☐ If however the certification of coverage of the insurer or a similar certification of the policyholder has been dispatched to each insured does not provide that any reservation as to the coverage is included in the policy, the transfer of portfolio has to follow the procedure provided in the Union and MS law (publication of the intent to transfer and the possibility the insured to object within a certain time period). How can the insurer know if the policyholder has on its own initiative distributed to each insured a certification regarding its coverage without any reservation?

What happens if the bank transfers its portfolio?

- ➡ As far as the insurance product is sold by the bank as ancillary to another financial product of the bank the insured can serve objection as in case of transfer of insurance portfolio
- ➡ As far as the insurance product is sold separately not as ancillary, we face a simple change of IIM (no special legal provision)

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Further questions

- **Duration of the bank assurance agreement and the duration of the coverage of each individual insured (problems in case of cancellations)**
 - **Duration of each individual coverage and duration of the risk covered (e.g. duration of loan and/or mortgage)**
 - **How do banks prevent clients' leakage and how to guarantee its commission?**
- ☞ Among others by close monitoring which part of the undertaken work is linked with clients (e.g. via an IT system)

Further questions (cont.)

- What happens if Banks or insurance undertakings are merged with an other bank or insurance undertaking respectively?
- What happens if the bank or the insurance undertaking terminates the insurance contract?
- Can this question be solved/regulated exclusive by the bankassurance agreement?
- Has each individual insured claim to continue its individual coverage?

☞ The answer depends on 1) the applicable law and in particular if the law includes special provisions for GI and 2) on the structure of the GI contract

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Further questions (cont.)

- What happens if in a business policy the client is not satisfied with the insurer who denies to pay the insurance money, if the insured is a very good client of the Bank?
 - Should the insurer proceed with commercial solution? Does it affect its relations with reinsurers? How can we ensure that both partners, Bank and insurer, will proceed objectively and overcome the dilemma?
 - What happens if Bank and insurer cease to be part of a financial conglomerate?
- ☞ It would be not equitable and outside business practice, to oblige the insurer to maintain its establishment merely in order to maintain and serve the group policies.

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Thank you!

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