

LEGAL AND TAX ALERT, June 18th 2018**The impact of the IDD transposition on the insurance distribution in Romania**

The Romanian Government adopted a draft law on insurance distribution (the "**Draft Law**") in order to transpose the Directive (EU) 2016/97 of the European Parliament and of the Council of January 20th 2016 on insurance distribution (*Insurance Distribution Directive*, „**IDD**”). Currently, the Draft Law is registered at the Romanian Senate for debates and it should be adopted and published until July 1st, 2018 and effectively apply at the latest on October 1st, 2018. If the Draft Law will be adopted by the Parliament, Law no. 32/2000 on the activity and supervision of intermediaries in insurance and reinsurance ("**Law no. 32/2000**") will be repealed, and the activity of insurance intermediaries will have to be restructured in accordance with the new regulations.

The IDD aims to innovate the insurance and reinsurance market by creating legal methods to implement professional and organizational strict requirements, which will ensure full respect for the fundamental rights of consumers and clients.

According to the Draft Law, intermediary insurance activity may be carried out by primary or secondary intermediaries, the latter carrying out insurance distribution activity under the full supervision of a primary intermediary or of one or more insurance and/or reinsurance companies.

In order to be able to carry out distribution activity, the primary and the secondary intermediaries must register with the Financial Supervisory Authority ("**ASF**") in their dedicated registers. For the primary intermediaries, the registration is carried out as a result of obtaining the operating authorization or permit from ASF and for the secondary intermediaries, by the primary insurers or intermediaries under whose responsibility they act, and who must ensure that they meet the registration conditions. On the other hand, insurance companies and their employees are exempted from registration as intermediaries with ASF. Moreover, the insurers and the primary intermediaries have to open and maintain their own registers regarding the natural or legal persons that carry out distribution activities, in a computerized system, storing all the related modifications.

Additionally, credit institutions or investment firms that have carried out bancassurance activity, respectively acted as insurance agent or brokerage assistant, under the terms of Law no. 32/2000, will have to choose to carry out the insurance distribution activity as a primary or secondary intermediary and notify in this regard ASF, within 120 days from the date that the new law entries into force. In the event that they have not submitted such a notification to ASF within the aforementioned term of 120 days, credit institutions and investment firms may conduct insurance distribution activity as secondary intermediaries.

The insurance intermediaries registered under the Law no. 32/2000 until the date of entrance into force of the new law will have to comply with the requirements regarding the professional competence and moral probity until February 23rd, 2019.

Moreover, within 180 days as of the date of entrance into force of the new law, the primary intermediaries whose activity is suspended at that date or who have a temporary ban on carrying out their activity may resume their activity only provided that they observe the provisions of the new law. Otherwise, ASF will withdraw their authorization.

In order to obtain the operating authorization, the primary intermediaries must, among others, have a minimum subscribed and paid-up capital which value cannot be less than RON 150,000 (approximately EUR 32,000). At the same time, the insurance intermediaries must hold a professional liability insurance valid in the European Union or other equivalent warranty amounting at least to EUR 1,250,000 for each compensation claim and EUR 1,850,000 per year, in aggregate, for all compensation claims, unless the insurance or the warranty is already provided by a company on whose behalf the intermediary acts or which assumes full liability for the intermediary's actions. The level of the professional liability insurance or the equivalent warranty that the ancillary insurance intermediaries must hold will be determined by ASF rules.

ASF will set up an online registration system that will allow to directly fill in the registration form and to create a unique information point electronically compiled and updated and the links to each unique information point or to the registry or registers established by ASF should be found on the website of the European Insurance and Occupational Pensions Authority ("**EIOPA**").

Among the main innovative provisions of the Draft Law, it is worth mentioning the prohibition of offering incentives to those involved in the insurance distribution, if these incentives are offered to promote a particular insurance product, to the detriment of the clients' interests. Furthermore, insurance intermediaries are forbidden to advertise against a remuneration the products, activities or actions of any kind of insurers.

Also, the insurance intermediaries, their employees and the employees of insurance companies are obliged to constantly update their knowledge and competence, performing at least 15 hours of development and annual training.

The Draft Law also includes strict rules regarding the information that should be provided to the consumer in the context of the insurance distribution. The insurance distributor must provide clear information that cannot mislead the consumer or the client and, if it offers consultancy before concluding a specific contract, it has to make personalized recommendations in order to document the reason for the suitability of a particular product to the customers' requirements and needs.

The Draft Law requires that objective information about an insurance product to be provided to clients in an easily understandable form in order to enable them to make an informed decision. It is imperative that this information is transmitted through a standardized information document regarding the insurance product, whether or not consultancy is provided and whether or not the insurance product is part of a package resulting from a combined sale. The sale is combined when an insurance product is offered together with a non-insurance service or ancillary product within a package or by the same agreement. In this respect, distributors must inform all customers about the possibility of separately purchasing the different components of an offered package ("**cross-selling**"). In case of cross-selling, distributors are required to provide an adequate description of the various components of the package and a separate evidence of the costs and expenses for each component.

Moreover, insurance intermediaries and insurers must take all the appropriate measures to detect interest conflicts that may appear in the distribution activity and to inform customers in this regard. At the same time, the insurers are obliged to clearly state how the activity will be carried out and to inform the clients regarding the nature of the remuneration received by their employees in connection with the insurance contract.

Another innovative element of the Draft Law is represented by the standards imposed for the sale of life insurance products with investment component ("**unit-linked**"), that are in line with the standards for investment products regulated by Directive 2014/65/EU on markets in financial instruments (MiFIDII) and

should be subject to the rules regarding the sales standards and conflicts of interest, ensuring a better protection for the consumer.

Unlike the provisions of Law no. 32/2000, the Draft Law sanctions more severely the failure to comply with its requirements. Thus, for certain infringements, the fines may reach up to RON 22,400,000 (approximately EUR 4,800,000) or 5% of the total annual turnover according to the latest available approved annual financial statements or, as the case may be, according to the most recent consolidated accounts or twice the value of the benefit or of the avoided loss resulting from the infringement and/or such infringements may even be sanctioned by imprisonment.

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