CRUCIAL BANCASSURANCE ISSUES IN ROMANIA

The modality of selling insurance products in conjunction with and as collateral of banking loans i.e. the enunciation of bancassurance activity in Romania entails the following elements/aspects and legal instruments (in force):

- Insurance Law no. 32/2000 as further amended;
- Insurance Supervision Commission (ISC)* Order no. 10/2007 approving the Norms on insurance and reinsurance intermediaries as amended by ISC Order no. 12/2007;
- Government Ordinance no. 85/2004 for the consumers' protection as regard the conclusion and the performance of distance contracts regarding financial services;
- Directive 2002/92/EC of the European Parliament;
- Directive 2002/65/EC of the European Parliament.

The bancassurance activity is defined by the Law no. 32/2000, as further amended, as the activity of intermediation of insurance products which are complementary to the products of credit institutions and non-banking financial institutions, performed by the network of these institutions. The credit institutions and the non-banking financial institutions that are performing bancassurance activity are considered by the same law as subordinated insurance agents.

In accordance with the provisions of the ISC Order no. 10/2007, in order to perform the bancassurance activity, the subordinated insurance agents must fulfill certain conditions, the most important of them being the following ones:

(i) the bancassurance activity shall be performed only by natural persons that have concluded individual labor contracts for un undetermined period with the subordinated insurance agent;

(ii) the bancassurance activity shall be performed only at the main and/or secondary premises of the subordinated agent.

As mentioned above, the bancassurance activity is defined as an insurance intermediation activity. The Law no. 32/2000, as further amended, defines the insurance intermediation activity as the introducing, proposing or carrying out other work preparatory to the conclusion of insurance contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim.

The Law no. 32/2000 and the ISC Order no. 10/2007 should be in line with the provisions of the Directive 2002/92/EC of the European Parliament. It is a general perception that the above mentioned Romanian legal provisions have been constructed in accordance with the relevant EU Directive. However, the EU directive does not provide the condition that the bancassurance activity must be performed only at the main and/or secondary premises of the subordinated agent, but the fact that the member states may adopt more strict provisions as regard the information to be put at the insured person's upon conclusion of the insurance contract. However, it is to be noted that the condition regarding the performance of bancassurance activity exclusively at the main and/or secondary premises of the subordinated agent does not fall under the above mentioned provisions of the Directive. The insertion by ISC of such a condition should also be regarded as a limitation imposed to the insurance companies to their selling networks, which may raise other legal debates regarding its validity.

Also, when a bank sells a loan product and in doing so also sells bancassurance, such an activity should also be categorized as a way of “distance selling”, in which case the provisions of the Directive 2002/65/EC of the European Parliament and of the Government Ordinance no. 85/2004 for the consumers’ protection as regard the conclusion and the performance of distance contracts regarding financial services are applicable. According to such legal provisions, the performance of services using communication systems does not mean that the provider is performing an activity at the place where the customer receives and accepts a product or where the customer is signing the relevant documents for the acquisition of the product. Moreover, in accordance with the applicable legal provisions, the place of signing of the contract is considered to be the premises of the provider of the product.

On a hypothetical scenario where the following applies, we note the following: Where a Loan A is sold in a retail partners’ shop B, by the latters’ employees, based on an IT application supplied by C and only using the contract forms supplied also by C, and where the applicant signs the application form in front of B’s employee C, the latter sends on-line, by the IT application, the relevant information to C premises, and where C performs the credit checks and sends back on-line, by the same IT application, its decision regarding the approval or, as the case may be, the rejection of the application, in case C decides to approve the respective application, the employee of the retail partner prints from the system the credit contract already signed by C’s legal representatives and gives it to the applicant for signing. The employee of the retail partner only assures the communication between the applicant and C, he is not entitled to decide, to negotiate or to perform any other activity in the name and on behalf of C. In accordance with the credit contract, Loan A is secured either by a Co-debtor brought by the applicant, either by a life insurance concluded by the applicant, by adhering to the group life insurance policy. It results clearly from the application form that the decision regarding the type of the collateral belongs exclusively to the applicant, neither the retail partner employee, nor C being involved in such decision. Thus, the retail partner does not intermediate any insurance product, since the client adheres to the group insurance policy existing in favor of C is and should be regarded as a contractual obligation between the prospective client and C. Moreover, none claim can be legally sustained regarding the performing by C of a bancassurance activity at the retail partner’ shop, since the credit contract concluded between the client and C is pre-signed by C and includes, as a contractual obligation, the conclusion of the insurance policy by the client, all activities of C in relation with the conclusion of the credit contract being performed at C’s premises and only communicated to the client at the retail partner’ shop, using the latter’s infrastructure.

Taking into consideration the above mentioned definitions of the bancassurance activity and of the insurance intermediation activity, the description of the Loan A credit product, as well as the fact that the life insurance is a collateral of the credit contract, it is to be concluded that the retail partner employee does not perform any insurance intermediation activity. Since the parties of the credit contract are not present in the same place, on the moment of the conclusion of the credit contract, for the credit contract is concluded at distance - the retail partner duty is limited to only assuring the communication conducted for the sole purpose of concluding the credit contract (and not the insurance contract, which is actually a contractual obligation inserted in the credit contract). In the above case scenario, B uses only the infrastructure and the personnel of the retail partner, both as means of distance communication between the two parties of the credit contract. Moreover, the insurance policy starts to product legal effects only upon signing by the client of the credit contract, provided that the granting of the requested loan has been approved in advance to the signing.

Nevertheless, again in the above case scenario, the contracts to be concluded (including the credit contract) should be in line with the above mentioned procedure and should expressly provide the limited role of the retail partner in the method used for selling its credit products.

Not least, as a collateral to the credit contract, credit risk insurance may be concluded, and such an insurance contract does not require the intervention of the client as the client would not be the party of such insurance contract. The cost of the credit risk insurance may be recovered even from its client.

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