

СТАТЬИ

UDC 347.764

Insurance law in Poland

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For citation: Orlicki, Marcin. 2021. Insurance law in Poland. *Pravovedenie* 65 (3): 254–263. <https://doi.org/10.21638/spbu25.2021.301>

In recent years Polish insurance law has undergone a series of rapid changes. The key driving force behind these changes has been the need to adapt national legal regulations to requirements of Community law. Consumer pressure has also been a powerful influence, as a result of which insurance services are gradually becoming more customer-friendly. Polish laws on insurance contracts have been developing primarily in the following directions: strengthening the position of insurance service customers, creating dedicated regulations for group insurance, extending the scope of compulsory insurance, ensuring full compensation for traffic accident damages, and regulation of insurance distribution business (including insurance intermediaries). This article discusses basic issues of insurance law under the Polish legal system and general trends in its development, especially as regards adapting national regulations to requirements of European Union, the strengthening of the position of the customers buying insurance services, creation of regulations dedicated for group insurance, and extending the scope of compulsory insurance and ensuring full compensation for traffic accident damages. In particular, the article addresses issues of insurance contracts, protection of clients of insurance services (favoring customers concluding and delivery of insurance contracts), compulsory insurance, insurance concluded on behalf of a third party, group insurance, and new rules of insurance distribution in European and Polish law. The article indicates the main legislative acts of the Polish insurance law and the most important decisions and resolutions of the Polish Supreme Court.

Keywords: insurance law, insurance contract, compulsory insurance, insurance service customer, group insurance, insurance distribution, insurance intermediaries.

Introduction

Insurance law is a set of legal regulations related to the use of a whole array of insurance instruments. It mainly consists of private law regulations (private insurance law), supplemented by administrative and criminal law regulations (public insurance law).

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The fundamental provision in the Polish private insurance law is the definition of an insurance contract stipulated in the Civil Code¹ — a legislative act passed on 23 April 1964. The provisions of the Civil Code specifically addressing insurance contracts (Art. 805 to 834 thereof) have been repeatedly amended. The most profound of these amendments was made in 2007², when private insurance law was modernized, adapted to the market economy reality and supplemented with a number of regulations protecting customers³.

The Insurance and Reinsurance Act⁴ of 11 September 2015 contains both private and public law provisions. Its opening part introduces important additions to the Civil Code provisions on insurance contracts. In particular, the Insurance and Reinsurance Act indicates lists the obligations of insurance companies with regard to the conclusion and delivery of insurance contracts. It also defines a series of safeguards protecting the customers who have concluded insurance contracts in respect of a particular threat to their interests, including particularly, unit-linked life insurance contracts.

For the most part, however, the Insurance and Reinsurance Act contains regulations addressing the principles of the operation of insurance companies, including in particular such aspects as internal organization, financial management, licensing by the Polish Financial Supervision Authority and supervision. These regulations implement the EU's Solvency II Directive⁵.

Another extremely important piece of legislation containing provisions on (both private and public law) insurance law is the Act on Compulsory Insurance, Insurance Guarantee Fund and Polish Motor Insurers' Bureau of 22 May 2003⁶. The Act sets out the principles of the conclusion and delivery of compulsory insurance contracts in general, and in particular the legal rules concerning compulsory third-party liability insurance of vehicle owners and farmers, as well as compulsory insurance of farm buildings against fire and other force majeure events. In addition, it also contains a number of provisions applicable to the operation of two institutions of essential importance for the Polish insurance market: the Insurance Guarantee Fund (Ubezpieczeniowy Fundusz Gwarancyjny, hereinafter UFG) and the Polish Motor Insurers' Bureau (Polskie Biuro Ubezpieczycieli Komunikacyjnych, PBUK).

The Insurance Distribution Act⁷ of 15 December 2017 is yet another legislative act governing the Polish insurance market. It is an implementation of the EU Directive on insurance distribution⁸ of 2016. The Act defines the tasks of insurance companies, agents and brokers in concluding and delivery of insurance contracts. In particular, the Act stresses that all distribution activities must be carried out in a fair, honest and professional manner, in the best interest of the customer.

The fifth legislative instrument of importance for the Polish insurance law is the Act on Handling Complaints by Financial Market Entities and on the Financial Ombudsman⁹. It defines the fundamental principles in terms of the protection of rights and interests of

¹ Consolidated text: Journal of Laws. 2019. Item 1145 as amended.

² Regulation of 13 April 2007 on Amendments to the Civil Code and selected other legislative acts (Journal of Laws. 2007. No. 82. Item 557).

³ For a detailed overview of the amendment, see: *Orlicki M., Pokrzywniak J.* Umowa ubezpieczenia — Komentarz do nowelizacji kodeksu cywilnego. Warszawa: Wolters Kluwer Polska, 2008.

⁴ Consolidated text: Journal of Laws. 2020. Item 895 as amended.

⁵ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) // EU Official Journal. 17.12.2009. L 335/1.

⁶ Consolidated text: Journal of Laws. 2019. Item 2214 as amended.

⁷ Consolidated text: Journal of Laws. 2019. Item 1881 as amended.

⁸ Directive of the European Parliament and of the Council (EU) 2016/97 of 20 January 2016 on insurance distribution // EU Official Journal. 02.02.2016. L 26/19.

⁹ Consolidated text: Journal of Laws. 2019. Item 2279 as amended.

consumers who have concluded contracts with financial institutions (including, but not limited to, insurance contracts).

1. Insurance contract

There are two definitions of the insurance contract in the Polish legislation, and each of those definitions addresses a different set of aspects.

Let us first take a look at the more general definition that recognizes the insurance contract as key in the insurance activity of insurance companies. Art. 4 (1) of the Insurance and Reinsurance Act stipulates that the insurance business is understood as the performance of insurance activities including solicitation and the provision of an insurance coverage in the event of risk following the occurrence of a chance (force majeure) event. This definition therefore emphasizes the services expected from the insurance company after the conclusion of an insurance contract: the provision of an insurance coverage is understood as a readiness to disburse a benefit in cash in the case of an insured chance event.

In its turn, the definition of an insurance contract contained in Art. 805 of the Civil Code focuses on the benefit in cash to be provided by the insurance company in the event of an accident provided for in the insurance contract. This benefit takes the following forms:

- in the case of a property insurance: a specific compensation for damages sustained as a result of an accident, as provided for in the insurance contract;
- in the case of a personal insurance: an agreed sum of money, disability pension or other benefit in the case of an event affecting the insured person as provided for in the insurance contract.

An interpretation of the two definitions combined makes it reasonable to assume that in insurance business, a contract denotes a contract pursuant to which an insurance company accepts the risk of having to pay a specified sum of money in case of an accident contemplated in such a contract (in other words, to provide an insurance cover) and to actually pay that sum if the insured event occurs, while the policyholder undertakes to pay the insurance premium¹⁰.

2. Directions of the development of Polish laws on insurance contracts

In recent years Polish insurance law has undergone a series of rapid changes. The key driving force behind these changes has been the need to adapt the national legal regulations to the requirements of the Community law. Consumer pressure has also been a powerful influence, as a result of which insurance services are gradually becoming more customer-friendly.

Polish laws on insurance contracts have been developing primarily in the following directions:

- strengthening the position of insurance service customers;
- creating dedicated regulations for group insurance;
- extending the scope of compulsory insurance;
- ensuring full compensation for traffic accident damages;
- regulation of insurance distribution business (including insurance intermediaries).

¹⁰ Cf.: *Orlicki M.* Umowa ubezpieczenia // System Prawa Prywatnego — Prawo zobowiązań — część szczegółowa / ed. J. Panowicz-Lipska. Warszawa: C. H. Beck, 2011. P. 803–890.

3. Strengthening the position of the customers of insurance services

In the recent years, the Polish legislator has introduced specific protective regulations, first in the area of insurance, and then in other areas of the financial market, followed by the business-to-consumer sector as a whole. Insurance relationships frequently involve disputes regarding the fulfilment of conditions for payment of benefits and the amount of such payment. Moreover, the principle of the equality of arms does not guarantee the actual equality of parties to insurance contracts. Therefore, it was necessary to introduce a number of legal regulations providing the customers of insurance services with the right to receive reliable and comprehensive information about the insurance contract being concluded and protecting them against unfair terms in model contracts, thus making it easier to effectively enforce claims against insurance companies.

Several legal solutions favouring customers who conclude and deliver insurance contracts are particularly noteworthy:

- the right to withdraw from an insurance contract within 30 days if the insurance contract is concluded for a period longer than 6 months (for corporate customers, this period is reduced to 7 days) — Art. 812 (4) of the Civil Code;
- providing the policyholders with the right to refund for the period of unused coverage (Article 813 (1) of the Civil Code);
- protection of customers against arbitrary and unexpected termination of insurance coverage in case of late payment of the premium (or an instalment thereof) (Art. 814 of the Civil Code);
- protection against excessive penalties being applied to customers who have provided false or incomplete responses to questions asked by the insurance company before insurance contract conclusion (Art. 815 of the Civil Code);
- the right to demand premium adjustment if the probability of an accident changes significantly (Art. 816 of the Civil Code);
- guaranteed disbursement of a benefit in cash within 30 days from the date of notification of the event or within 14 days from the date when all the circumstances of the case could be clarified (Art. 817 of the Civil Code).

The Polish legislator concluded that a particularly large disproportion of economic and intellectual potential exists not only between insurers and their customers but also between insurers and other groups of insurance service recipients. Therefore, Polish insurance law grants special safeguards not only to consumers within the meaning of Art. 22 (1) of the Civil Code (i. e. a natural person in a business-to-consumer transaction not related to that person's business or professional activity), but also to natural persons who conclude a contract related to their business or professional activity directly (Art. 805 (4) of the Civil Code), as well as to natural persons who are insured by virtue of an insurance contract concluded by a third party, as long as such a contract is not directly related to such persons' business or professional activity. This applies in particular to the protection against prohibited (abusive) clauses in the general terms and conditions of insurance with respect to sole traders and to insured persons on behalf of whom an insurance contract has been concluded by a third party.

In some cases, the Polish legislator has gone even further. Sometimes, consumer protection in insurance is extended to include all entities that may have any claims against the insurer. In accordance with Art. 15 (5) of the Insurance and Reinsurance Act, any ambiguous provisions in the terms of an insurance contract, general terms and conditions insurance and other contract templates must be interpreted in favour of the policyholder, the insured or the beneficiary. The Insurance Distribution Act, on the other hand, requires that all insurance distributors (including insurance companies and their dependent insur-

ance agents) must act in a manner consistent with the best interests of their customers, whether or not the customer is a business operator and whether or not the insurance contract is being concluded in connection with that business.

The Polish Financial Supervision Authority (Komisja Nadzoru Finansowego, hereinafter KNF) acts not only in the interest of consumers but also on behalf of all insurance service customers. Art. 329 (2) of the Insurance and Reinsurance Act stipulates that the supervision of insurance companies exercised by the KNF consists, among other things, in protecting the interests of the policyholders, the insured and the beneficiaries.

The body dedicated to the protection of the rights and interests of natural persons in their relations with financial market entities is the Financial Ombudsman. The Act on Handling Complaints by Financial Market Entities and on the Financial Ombudsman governs the entire system of protection of rights and interests of financial service customers. It is an alternative to the system based on common courts. Obviously, the existence of this alternative complaints system does not affect the consumers' right to take legal action. However, together with the detailed regulation of the complaint status, the imposition of the obligation to respond to the complaint and the determination of the consequences of a failure to do so, a fast track for enforcing the rights of consumers of financial institutions' services has been established.

A characteristic feature of the new system of the protection of financial service customers is that it is built on private law instruments. The legislator recognized the possible conflicts between the customer and the financial institution and strived to resolve that conflict at the earliest possible stage, in an out-of-court proceedings. Hence the extensive and well-regulated complaint procedure.

However, the legislator is well aware that the complaint procedure may fail. It only works well if the financial institution is willing to resolve the conflict, taking into account as far as possible the interests of the consumer. In the absence of such willingness, the complaint procedure will not be resolved to the customer's satisfaction, in a manner that complies with applicable legal regulations.

For this very reason the Financial Ombudsman must be the key figure in the system of individual protection of rights and interests of financial services customers. In Art. 17 (1) of the Act on Handling Complaints by Financial Market Entities and on the Financial Ombudsman, the legislator instructs the Financial Ombudsman to take action to protect the customers of financial market entities, in particular by:

- hearing requests submitted in individual cases, following rejection of the customer's claims by the financial market entity in the complaint handling procedure;
- hearing requests concerning failure to comply with the outcome of the complaint¹¹.

4. Dedicated regulations for group insurance

A group insurance is a special variety of insurance concluded on behalf of a third party (i. e. insurance whereby a specific entity (referred to as "the policyholder") concludes an insurance contract on the basis of which the insurer provides coverage to another entity (referred to as "the insured").

The group insurance is quite popular in Poland, especially in such contexts as insuring employees of a specific employer, students of a specific school, group travellers and attendees of various types of recreational events etc. In recent years, banks have begun

¹¹ For a detailed overview of safeguards protecting insurance service customers, see: *Więcko-Tułowicka M.* Ochrona konsumentów w umowach ubezpieczenia. Warszawa: Wolters Kluwer Polska, 2014; *Ochrona konsumentów na rynku ubezpieczeniowym w Polsce / eds J. Monkiewicz, M. Orlicki.* Warszawa: POLTEXT, 2015.

to insure their customers *en masse* (including in particular personal account and credit card holders).

The great economic and social importance of insurance concluded on behalf of a third party (including group insurance) and the multitude of disputes that arise in connection therewith have inspired the legislator to create a dedicated set of legal regulations.

The following ones are particularly noteworthy:

- Art. 18 (1) of the Insurance and Reinsurance Act, which states that in insurance concluded on behalf of a third party, especially in group insurance, the policyholder must not receive remuneration or other benefits in return for offering the possibility to obtain insurance coverage or for other activities related to the delivery of an insurance contract;
- Art. 18 (4) of the Insurance and Reinsurance Act, pursuant to which the policyholder must provide certain information to any person interested in becoming a party to a group insurance contract in advance;
- Art. 18 (5) of the Insurance and Reinsurance Act, pursuant to which the policyholder — whilst offering coverage to the potential insured — must act in a thorough, honest and professional manner, taking into account the best interest of the insured;
- Art. 19 of the Insurance and Reinsurance Act, which provides that in an insurance contract concluded on behalf of a third party (and in particular in a group insurance contract), where the insured's consent to receive coverage or to finance the insurance premium is required, the insurance company cannot exercise its rights arising under provisions that limit or exclude its liability or penalize the insured for a default or impose obligations on him/her, if the terms of the contract had not been delivered to the insured before such consent was expressed.

5. The growing scope of compulsory insurance

In 2003, the Polish legislator passed the Act on Compulsory Insurance, Insurance Guarantee Fund and Polish Motor Insurers' Bureau. The Act marked the first time when a comprehensive legislative framework for compulsory insurance was introduced to the Polish legislation. General definitions of compulsory insurance (Art. 4 in connection with Art. 11 (1)) and fulfilment of the insurance obligation (Art. 10 (1)) were adopted. The legislator defined the distinct features distinguishing the obligatory insurance from other types of insurance. As a result, since 1 January 2004, Poland has enjoyed a solid foundation on which to build a consistent and transparent system of compulsory insurance.

Pursuant to Art. 4 of the Compulsory Insurance Act, compulsory insurance includes:

- third-party liability insurance of motor vehicle owners covering damage caused by the operation of their vehicles;
- third-party liability insurance of farmers possessing an agricultural holding;
- insurance of farm buildings against fire and other force majeure events;
- insurance required under separate acts or international agreements ratified by the Republic of Poland, obliging certain entities to conclude an insurance contract.

The last, open-ended category of compulsory insurance refers exclusively to the third-party liability insurance introduced by the legislator in the interest of potential victims (in order to enable them effective enforcement of their compensation claims). The number of such compulsory insurances grows constantly. Most of them concern third-party liability of entities providing various types of business services, primarily including those

related to medicine, tax and legal advice, real estate sales, organization of mass events, or tourism.

The insurance obligation binding on representatives of various groups of professionals or entrepreneurs carrying out a specific type of business is often fulfilled by way of concluding a group insurance contract by a professional or business association or self-regulatory body. Such a solution is common and generally accepted. It is an affordable, effective and reliable way to secure compulsory insurance coverage¹².

6. Full compensation for traffic accident damages

Beyond any reasonable doubt, the compulsory third-party liability insurance of vehicle owners is the most important insurance on the Polish market. Its importance is determined by both economic and social reasons. Insurance benefits provide full compensation to road accidents victims (the number of whom is still very high in Poland).

Much has been done in recent years to ensure that compensation paid to victims of motor vehicle accidents actually corresponds to the damage suffered. However, full compensation for damages has not been ensured by the introduction of new regulations, but by the interpretation of existing law by the Supreme Court in the spirit of respecting victims' rights. The most important Polish Supreme Court rulings determining the right to compensation for road accident victims are listed below:

- decision of 15 March 2006 (III CZP 91/05) concerning the interpretation of the term "total loss" in third-party liability insurance of motor vehicle owners;
- decision of 13 March 2005 (III CZP 81/05) concerning the scope of liability of the insurance company with regard to personal injury suffered by the spouse of the person responsible for the damage in the event of marriages with joint property regime;
- resolution of 17 May 2007 (III CZP 150/06) concerning inclusion of VAT when calculating the compensation for damages adjusted via the so-called estimation method;
- resolution of 15 May 2009 (III CZP 140/08) concerning the insurer's right to reduce the reimbursement of funeral expenses of a traffic accident victim by the amount of funeral allowance from the Social Insurance Agency;
- resolution of 17 November 2011 (III CZP 5/11) concerning the reimbursement of car rental expenses borne during the repair of a vehicle damaged in a road accident with regard to claims of natural persons other than sole traders;
- resolution of 13 March 2012 (III CZP 75/11) concerning reimbursement by the insurance company of the legal cost borne by the injured party in the pre-court loss adjustment proceedings;
- decision of 20 June 2012 (III CZP 85/11) concerning the right of a traffic accident victim to pursue claims for payment of compensation for damages to the vehicle from the insurance of the party causing the damage, including the cost of OEM parts;
- decision of 2 January 2014 (III CZP 2/14) concerning the admissibility of a claim for compensation for the death of a close relative.

¹² For a detailed overview of the legal construct and scope of application of compulsory obligation as a legal instrument, see: *Orlicki M. Ubezpieczenia obowiązkowe*. Warszawa: Lex a Wolters Kluwer business, 2011.

Poland's Insurance Guarantee Fund (UFG) is an institution whose task is to provide compensation to individuals injured in motor accidents in situations when no insurance company is legally required to provide such compensation.

The Insurance Guarantee Fund was established in 1990. At present, the legal basis for its operations is defined in Articles 96 to 119 of the Act on Compulsory Insurance, the Insurance Guarantee Fund and the Polish Motor Insurers' Bureau.

The need for the UFG to take action is determined by the imperfections of the compulsory insurance system, as a result of which certain accident victims who, according to the criteria defined by the legislator, are eligible for compensation, are unable to receive it from insurance companies. In such a situation, the UFG acts as a substitute for an insurance company and pays out the compensation according to the rules that would be followed by an insurance company if it were obliged to provide the compensation. The UFG pays compensation as long as the damage has been occurred in the territory of the Republic of Poland. Examples include:

- situations when damage was caused in circumstances causing third-party liability of an unidentified motor vehicle owner or driver. As a result, it is impossible to determine whether such owner/driver has complied with the compulsory insurance obligation. Even if they have and therefore an insurance company has provided coverage, the injured party is unable to effectively make a claim for damages;
- the owner of an identified motor vehicle that caused the damage does not have a valid third-party liability compulsory insurance;
- bankruptcy of the insurance company or dismissal of a petition for declaration of bankruptcy, or discontinuance of bankruptcy proceedings if the assets of the debtor are obviously insufficient even to satisfy the costs of the bankruptcy proceedings; or forced liquidation of the insurance company when the claims of beneficiaries cannot be satisfied by the assets covering the technical provisions¹³.

7. Regulation of insurance distribution business (including insurance intermediaries)

Pursuant to Art. 4 (1) of the Insurance Distribution Act, insurance distribution means an activity performed exclusively by an insurance distributor, consisting of:

- advising, proposing or performing other preparatory activities aimed at concluding an insurance contract or insurance guarantee contracts;
- concluding insurance contracts or insurance guarantee contracts in the name of an insurance company, in the name or on behalf of a customer or directly by an insurance company;
- providing assistance by an insurance intermediary in the administration and delivery of insurance contracts or insurance guarantee contracts, also in cases involving claims for compensation or benefit.

Insurance distribution is an activity performed exclusively by the insurance distributor, that is: an insurance company, an insurance agent, a supplementary insurance agent or an insurance broker. An insurance company is always a party to an insurance contract.

¹³ For more information about compulsory third-party liability insurance of motor vehicle owners in Poland, see: *Orlicki M., Pokrzywniak J., Raczyński A. Obowiązkowe ubezpieczenie OC posiadaczy pojazdów mechanicznych. Bydgoszcz-Poznań: Branta, 2007; Kompensacja szkód komunikacyjnych — Nowoczesne rozwiązania prawne / ed. K. Ludwichowska. Warszawa: POLTEXT, 2011.*

It is also a distributor, unless an insurance intermediary (i. e. an insurance agent or broker) is involved in the procedure.

Pursuant to the Insurance Distribution Act, the fundamental obligation of an insurance distributor is to act honestly, professionally and with integrity, in a manner consistent with the best interests of customers (Art. 7.1). More specifically, pursuant to Article 8, distributors are required to understand, before concluding an insurance contract and on the basis of information obtained from the customer, the actual needs and requirements of the customer and then to provide unbiased and easily comprehensible information about the insurance product. The objective is to help the customer make an informed decision. The ultimate goal is to ensure that the proposed insurance contract is consistent with the customer's insurance needs and requirements. Thus, the distributor's knowledge and experience should be used in the customer's best interest. This helps avoid any conflict of interest between insurance distributors and their customers that could lead to contracts that are unfavourable to customers¹⁴.

Conclusions

Polish insurance law has seen a period of rapid changes related to its adaptation to the free market economy and the requirements of European Union law. It is reasonable to assume that in the years to come the number of ground-breaking legislative acts and court rulings will be much lower. It will probably be a time when the recently introduced rules will be solidified and fine-tuned, without any major legislative breakthroughs.

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Received: November 1, 2020

Accepted: November 6, 2021

¹⁴ For more information about insurance distribution in Polish law, see: *Dystrybucja usług ubezpieczeniowych – Wybrane zagadnienia prawne* / eds B. Gnela, M. Szaraniec. Warszawa: Difin, 2017; *Nowe zasady dystrybucji ubezpieczeń* / ed. J. Pokrzywniak. Warszawa: Wolters Kluwer Polska, 2018.

Страховое право в Польше

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Для цитирования: *Orlicki M.* Insurance law in Poland // Правоведение. 2021. Т. 65, № 3. С. 254–263. <https://doi.org/10.21638/spbu25.2021.301>

В последние годы польское страховое законодательство претерпело ряд быстрых изменений. Ключевой движущей силой этих изменений стала необходимость адаптации национальных правовых норм к требованиям законодательства Европейского сообщества. Давление потребителей также оказало мощное влияние, в результате чего страховые услуги постепенно становятся более удобными для клиентов. Польское законодательство о договорах страхования развивается в основном в следующих направлениях: укрепление позиций потребителей страховых услуг, создание специальных правил для группового страхования, расширение сферы обязательного страхования, обеспечение полной компенсации ущерба в результате дорожно-транспортных происшествий, регулирование бизнеса по распределению страховых услуг (включая страховых посредников). В статье рассматриваются основные вопросы страхового права в Польше и общие направления развития польского страхового права, в частности адаптация национальных положений польского законодательства к требованиям права Европейского союза, усиление позиций потребителей страховых услуг, создание специальных правовых норм, касающихся группового страхования, расширение объема обязательного страхования и гарантия полной компенсации пострадавшим в дорожно-транспортных происшествиях. Затрагиваются вопросы, связанные с законодательством о договоре страхования, с защитой клиентов страховых услуг (предпочтительным отношением к клиентам при заключении и исполнении договоров страхования), с обязательным страхованием, страхованием третьих лиц, групповым страхованием и новыми правилами распространения страховых продуктов в европейском и польском праве. Указаны основные правовые акты польского законодательства о страховании, а также наиболее важные решения и постановления Верховного суда Польши.

Ключевые слова: страховое право, договор страхования, обязательное страхование, потребитель страховых услуг, групповое страхование, распространение страхования, страховые посредники.

Статья поступила в редакцию 1 ноября 2020 г.
Рекомендована к печати 6 ноября 2021 г.

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