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## Complaints Act 2015 – a New Measure of Customer Protection on the Polish Insurance Market

*On 5 August 2015 the Sejm passed the Act on the handling of complaints by financial market organisations and on the Financial Ombudsman. The Complaints Act was signed by the President of Poland on 25 August 2015 and came into force (except for article 62 and Chapter 4) on 11 October 2015. The new law was adopted in order to improve the protection of persons (in particular consumers) who use financial services. This purpose is to be achieved by setting out the procedures and time-frames for the processing of complaints by financial market organisations.*

*Upon its implementation, the Complaints Act is expected to ensure that complaints filed by clients of financial market institutions, including those of insurance companies, are settled in a timely manner and out of court. Since the Act is relatively short and applies universally to the entire financial services sector, it contains a large number of very general rules. This may mean that a case-by-case application of the Complaints Act may bring about an array of difficulties in interpretation caused by the fact that the applied provisions may fail to address the distinctive characteristics of a given type of service or activity.*

*The purpose of the paper is to introduce and analyse key features of the Complaints Act.*

**Key words:** complaints, Polish insurance market, Finance Ombudsman, consumer protection

### Introduction

On 5 August 2015 the Sejm passed the Act on the handling of complaints by financial market organisations and on the Financial Ombudsman<sup>1</sup>. The Complaints Act was signed by the President

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1. Journal of Laws of 2015, item 1348, hereinafter: “Complaints Act”. For a more extensive discussion on the Financial Ombudsman, see para. 5 below.

of Poland on 25 August 2015<sup>2</sup> and came into force (except for article 62 and Chapter 4) on 11 October 2015.

The new law was adopted in order to<sup>3</sup> improve the protection of persons (in particular consumers) who use financial services. This purpose is to be achieved by setting out the procedures and time-frames for the processing of complaints by financial market organisations. According to the drafters of the Act, the presented measure is of crucial practical importance as this is the first precise legal regulation ever adopted in Poland governing the initiation and handling of complaints procedures on the financial services market<sup>4</sup>. However, there have been concerns that the novel solutions introduced by the Act are not sufficiently aligned with already existing statutory regulations that govern the enforcement of clients' claims under contracts concluded with financial market organisations, and in particular under contracts of insurance. These concerns are reinforced by the results of a detailed analysis of domestic regulations that already apply to insurance practice (namely the Civil Code<sup>5</sup>, general laws on consumer protection and the normative acts that create the legal framework for the functioning of the financial market)<sup>6</sup>. This issue will be discussed more extensively in the final section of this article.

Upon its implementation, the Complaints Act is expected to ensure that complaints filed by clients of financial market institutions, including those of insurance companies, are settled in a timely manner and out of court. Since the Act is relatively short and applies universally to the entire financial services sector, it contains a large number of very general rules. This may mean that a case-by-case application of the Complaints Act may bring about an array of difficulties in interpretation caused by the fact that the applied provisions may fail to address the distinctive characteristics of a given type of service or activity [e.g. insurance services]<sup>7</sup>.

In this context, it should be noted that even at the early stages of legislative works the Complaints Act has raised a lot of questions, including some regarding the terminology used. Concerns have been expressed by insurance companies in particular<sup>8</sup>. This is a consequence of the fact that the Complaints Act, apart from introducing a wide array of new, consumer-oriented measures, significantly interferes with existing solutions and, even more importantly, replaces the long-standing institution of the Insurance Ombudsman with the institution of the Financial Ombudsman.

2. See <http://www.sejm.gov.pl/sejm7.nsf/PrzebiegProc.xsp?id=A9BBE8E7964FA41EC1257E51003CE94A>, accessed on 4 November 2015.
3. For a detailed analysis of the Complaints Act against the background of the Polish insurance legislation and commercial practice, see E. Kowalewski, M.P. Ziemiak, "Ustawa reklamacyjna o obrót ubezpieczeniowy. Część I", *Wiadomości Ubezpieczeniowe* 2015 (3), pending publication.
4. See *Uzasadnienie do Poselskiego projektu ustawy o rozpatrywaniu reklamacji przez podmioty rynku finansowego i o Rzeczniku Finansowym* (Statement of reasons for the deputy sponsored Bill on the handling of complaints by financial market organisations and on the Financial Ombudsman), Parliamentary Paper No. 3430, p. 12, <http://orka.sejm.gov.pl/Druki7ka.nsf/0/0BB6C339F594749CC1257E510039B079/%24File/3430.pdf>, accessed on 4 November 2015.
5. Journal of Laws of 2014, item 121 as amended, hereinafter: "CC"
6. See *Uzasadnienie...*, p. 12 et seq.
7. For example, it is unclear how the provisions of the Complaints Act affect the procedure of submitting and enforcing claims under insurance contracts (art. 817 CC, and art. 16 of the Insurance Activity Act of 22 May 2003, a uniform text published in the Journal of Laws 2015, item 1206 as amended, and art. 14 of the Act on Compulsory Insurance, the Insurance Guarantee Fund and the Polish Motor Insurers' Bureau of 22 May 2003, a uniform text published in the Journal of Laws 2013, item 392, as amended).
8. E. Kowalewski, M.P. Ziemiak, "Ustawa reklamacyjna...".

The issues mentioned above, as well as a number of other doubts regarding the Complaints Act, including those questioning the very purpose of its adoption, have been raised by central administrative bodies (and especially by the Office of Competition and Consumer Protection<sup>9</sup> and the Polish Financial Supervision Authority<sup>10</sup>), the Supreme Court<sup>11</sup>, The Polish Confederation Lewiatan – the most influential Polish business organisation representing employers' interests in Poland and the EU,<sup>12</sup> and the Business Centre Club<sup>13</sup>.

## 1. Definition and concept of a complaint

Apart from the regulation of the procedure before the Financial Ombudsman, the concept of a complaint is a key element of the Complaints Act and has fundamental significance for the Act's application. Article 2 (2) of the Complaints Act sets out a legal definition of the term. In accordance with this provision, a complaint is a statement addressed to a financial market organisation by its client, in which the client submits their reservations regarding services provided by the financial market organisation. The normative description of the discussed term is very general. The broad limits of its application and the wide range of factual circumstances in which they may apply suggest that the measure's substantive scope is wide and this, from the very outset, implicates many practical difficulties. Since the term "reservation" is a colloquial one and the definition of a complaint contains a general reference to the services provided by financial market organisation, it should be argued that a complaint may concern any aspect of the provision of financial services (e.g. their advertisement)<sup>14</sup>.

9. The OCCP complained that it had not been consulted on the draft of the Complaints Act. Moreover, the OCCP argued that the Financial Ombudsman had not been introduced into the network of consumer protection on the financial services market, and that this may render the work of the Ombudsman ineffective. See Leszczyna: *MF nie chce likwidacji Rzecznika Ubezpieczonych*, <http://serwis.gazetaprawna.pl/finanse-osobiste/artykuly/879433,leszczyna-mf-nie-chce-likwidacji-rzecznika-ubezpieczonych.html>, accessed on 4 November 2015.
10. See *Kontrowersyjny zapis usunięty z „reklamacyjnego” projektu*, [http://gu.com.pl/index.php?option=com\\_content&view=article&id=56870:kontrowersyjny-zapis-usunite-z-reklamacyjnego-projektu&catid=100&Itemid=103](http://gu.com.pl/index.php?option=com_content&view=article&id=56870:kontrowersyjny-zapis-usunite-z-reklamacyjnego-projektu&catid=100&Itemid=103), accessed on 4 November 2015.
11. See *Opinia Sądu Najwyższego do poselskiego projektu ustawy o rozpatrywaniu reklamacji przez podmioty rynku finansowego i o Rzeczniku Ubezpieczonych* (The opinion of the Supreme Court on the Deputy-sponsored bill on the handling of complaints by financial market organisations and on the Financial Ombudsman), <http://orka.sejm.gov.pl/Druki7ka.nsf/0/119EE3BAA4464324C1257E7A002B79B3/%24File/3430-007.pdf>, accessed on 4 November 2015.
12. See Konfederacja Lewiatan, *Uwagi do projektu ustawy o rozpatrywaniu reklamacji przez podmioty rynku finansowego i o Rzeczniku Finansowym – druk 3430* (Comments on the bill on the handling of complaints by financial market organisations and on the Financial Ombudsman – Parliamentary Paper No. 3430), [http://konfederacja-lewiatan.pl/legislacja/opinie/prawo-ogolnogospodarcze/1/uwagi\\_do\\_projektu\\_ustawy\\_o\\_rozpatrywaniu\\_reklamacji\\_przez\\_podmioty\\_rynk\\_u\\_finansowego\\_i\\_o\\_rzeczniku\\_finansowym\\_druk\\_343](http://konfederacja-lewiatan.pl/legislacja/opinie/prawo-ogolnogospodarcze/1/uwagi_do_projektu_ustawy_o_rozpatrywaniu_reklamacji_przez_podmioty_rynk_u_finansowego_i_o_rzeczniku_finansowym_druk_343), accessed on 4 November 2015.
13. See K. Radkiewicz, *Opinia BCC do projektu ustawy o rozpatrywaniu reklamacji przez podmioty rynku finansowego i o Rzeczniku Ubezpieczonych* (the BCC's opinion on the bill on the handling of complaints by financial market organisations and on the Insurance Ombudsman), [http://inwestycje.pl/finanse\\_osobiste/Opinia-BCC-do-projektu-ustawy-o-rozpatrywaniu-reklamacji-przez-podmioty-rynk\\_u\\_finansowego-i-o-Rzeczniku-Finansowym;264352;0.html](http://inwestycje.pl/finanse_osobiste/Opinia-BCC-do-projektu-ustawy-o-rozpatrywaniu-reklamacji-przez-podmioty-rynk_u_finansowego-i-o-Rzeczniku-Finansowym;264352;0.html), accessed on 4 November 2015.
14. E. Kowalewski, M.P. Ziemiak, "Ustawa reklamacyjna..."

One of the major difficulties that result from the adopted measure is that the Complaints Act does not explicitly link the concept of a claim in a legal sense<sup>15</sup> with the concept of a complaint, which may beg such fundamental questions, including questions as to the legal nature (normative structure) of a complaint under civil and insurance law, or raise doubts regarding whether or not the category of complaint may include trivial matters, whose relation to insurance services may be so loose that it is barely reasonable to even attempt to classify them as legal claims. In defining a complaint, the legislator used the term “statement” and thus accepted a wider regulation whose scope goes beyond that of claims. It seems, however, that since the term “claims” is used throughout the Act<sup>16</sup> in provisions applicable to the complaint handling process, it should be accepted that a complaint should apply either to specific services rendered for a specific client or to specific claims of this client<sup>17</sup>.

Moving on, the general nature of the complaint concept, as understood in the discussed Act, translates into the relatively broad freedom on the part of a client in formulating demands addressed at a financial market organisation. In effect, and also considering the specific nature of financial services, a client’s requests will sometimes extend beyond the limits of a claim in the classic sense<sup>18</sup>.

Arguably, a consequence of the above approach is the absence of any minimum requirements as to the content of a complaint<sup>19</sup>; a client is given considerable leeway in both formulating their demands (claims) and justifying them. The discussed Act also does not indicate what data or information a client must disclose in a complaint. This, in certain circumstances, will make it difficult for organisations obliged to accept complaints to differentiate between a complaint and an ordinary statement of opinion.

Furthermore, the analysed Act does not include any rules that would govern time frames applicable to the complaints procedure. In particular, the Complaints Act gives no indication of a time limit within which a client may submit their complaints to a financial market organisation (e.g. an insurance company). A consequence of this is an uncertainty regarding the question of whether a complaint can be submitted by a client at any time, irrespective of any legal rules or factual circumstances, or whether, rather, the temporal aspect of complaint submission should be governed by the provisions on limitations of claims, the provisions applying to the contract of insurance<sup>20</sup> or those applicable to claims asserted by aggrieved parties in third party liability insurance<sup>21</sup>. Finally, doubts are also raised regarding the relationship (including the semantic relationship) between the submission of a complaint and the discontinuation of the running of the limitation period for claims for indemnification directed against insurers<sup>22</sup>.

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15. A claim in the legal sense is defined as a normative form of a legal right, which includes the entitlement to request somebody to behave in a certain way; here, a client is the obligee.

16. See art. 4 (2), art. 9 (4) or art. 10.

17. E. Kowalewski, M.P. Ziemiak, “Ustawa reklamacyjna...”.

18. E. Kowalewski, M.P. Ziemiak, “Ustawa reklamacyjna...”.

19. Complaints relating to postal services are another example of the legal framework for a complaints procedure in Polish law. See the Regulation of the Minister of Administration and Digitisation of 26 November 2013 on complaints relating to postal services [Journal of Laws 2013, item 1468] and the Postal Law Act of 23 November 2012 [Journal of Laws 2012, item 1529].

20. Cf. art. 819 CC which sets a three-year limitation period for claims under an insurance contract.

21. For a more extensive discussion, see E. Kowalewski, M.P. Ziemiak, “Ustawa reklamacyjna...”.

22. See art. 819 (4) CC.

## 2. Persons entitled to submit complaints

According to the definition discussed above, it is a client who is authorised to submit a complaint. Since the Complaints Act is a one-off regulation applicable to the whole sector, the statutory description of the client has been drawn in very broad terms in order to cover a diverse range of organisations that operate and offer services on the financial market. The Act applies to various clients, including those of banks, financial institutions, credit institutions, shareholders of investment funds and members of pension funds. Art. 2 (1) (a) of the Complaints Act provides a separate definition of a client for the purposes of the insurance market (which, in any case, is a part of the financial market). According to this definition, a client is a natural person with the status of:

- a policyholder,
- an insured,
- a beneficiary,
- a person entitled to indemnification under a insurance policy.

Moreover, the Act expands the category of clients of financial market organisations to natural persons who assert claims<sup>23</sup> against the Polish Motor Insurers' Bureau under separate applicable laws, and those who assert claims against the Insurance Guarantee Fund (Art. 2 (1) (b) of the Complaints Act).

The drafters of the Act wanted it to become a measure that would close a specific gap in the Polish legal system that became present through the discretionary approach of the financial sector to complaints procedures. Considering the above, and also the strictly pro-consumer nature of the Complaints Act, it could be well argued that the purpose of the Act was to introduce another, additional measure of consumer protection in Poland. However, a problem still arises due to the absence of full concurrence between the wide subjective scope of the Complaints Act and the more narrow definition of "a consumer" included in the Civil Code. Under art. 22<sup>1</sup> CC, a consumer is defined as a natural person who enters into a transaction with an entrepreneur provided that the transaction is not directly connected with the person's economic or professional activity. The Complaints Act, using the term "a client of a financial market organisation", indicates that the client must be a natural person but does not provide a criterion differentiating between persons who carry out economic or professional activity and those who do not. Further, the Act makes no reference whatsoever to art. 22<sup>1</sup> CC. In light of the above, the Complaints Act defines a client of an insurance company as a policyholder, an insured, a beneficiary, a person entitled to indemnification under an insurance policy or a person who asserts claims under the Compulsory Insurance Act (the aggrieved party), irrespective of whether they are consumers within the meaning of art. 22<sup>1</sup> CC. Considering the above discussion, it should be argued that the accepted approach seems inappropriate<sup>24</sup>.

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23. Namely the Act on compulsory insurance, the Insurance Guarantee Fund and the Polish Motor Insurers' Bureau of 22 May 2003 (uniform text published in the Journal of Laws 2013, item 392 as amended, hereinafter the "Compulsory Insurance Act").

24. E. Kowalewski, M.P. Ziemiak, "Ustawa reklamacyjna...".

### 3. Recipients of complaints

Article 2 (3) of the Complaints Act provides for a list of financial market organisations whose operations may be subject to a complaint. These are, among others, domestic and foreign banks, payment institutions, investment fund companies and pension funds. In the context of the insurance market, the Act enumerates domestic and foreign insurance companies, main branches of foreign insurance companies, branches of foreign insurance companies, as well as the Insurance Guarantee Fund (IGF) and the Polish Motor Insurers' Bureau.

Notably, the IGF is named, in art. 2 (3) (i) of the Complaints Act, as a financial market organisation, this should be seen as a controversial decision. This is firstly because statutory law affords the IGF a hybrid status, which combines measures of both public and private law,<sup>25</sup> and also because of the specific regime of the IGF's liability, which is different from typical insurance liability and results from a separate legal regulation<sup>26</sup>. For the reasons given above, the literature emphasises that the IGF is merely a quasi-insurance institution; the Fund pays indemnification to certain types of entities but is not an insurance company<sup>27</sup>.

Article 3 (1) of the Complaints Act states that a complaint may be submitted at any unit (department) of a financial market organisation that provides services for clients. For insurance companies, "units that provide services for clients" should be understood as units providing services for natural persons. The above interpretation is a consequence of the legal definition of a customer in the Complaints Act, as discussed above. This means that organisational units that provide services to, say, corporate clients, or those who are not involved at all in handling clients' matters (e.g. those involved in managing archives) are excluded from the scope of the regulation. On the other hand, a comprehensive analysis of the meaning of the term "unit" under Polish law and the wording of art. 3 (1) of the Complaints Act suggest that the category of units to which complaints can be made includes branches and regional offices of insurers, information desks or even sales stands located in public places (e.g. at shopping centres), provided that such facilities provide services to clients within the meaning of art. 2 (1) (a) and (b) of the Complaints Act<sup>28</sup>.

In the context of the above discussion, a matter of a crucial importance from insurance companies' perspective is the determining of whether or not insurance agents should be considered units providing services to clients within the meaning of the Complaints Act. This is a valid question because under art. 16a of the 2003 Insurance Activity Act, any notices and statements made in relation to a concluded insurance contract to an insurance agent are deemed as having been made to the insurance company for which, or on behalf of which, the agent acts; moreover, an insurance company may not exclude or limit an agent's authority to receive such statements. Thus it must be assumed that since a complaint may include a specific claim against an insurance company, it constitutes such a statement; this is also because a complaint is clearly intended to effect certain

25. See D. Maśniak [in:] Z. Brodecki, M. Glicz, M. Serwach (Eds.), *Prawo ubezpieczeń gospodarczych. Komentarz. Tom I. Komentarz do przepisów prawnych o funkcjonowaniu rynku ubezpieczeń*, LEX/EI. 2010 [commentary to art. 96 of the Compulsory Insurance Act, side note reference I].

26. See the judgment of the Supreme Court of 19 July 2012, case no. II CSK 653/11 [LEX 1230055].

27. E. Kowalewski (Ed.), *Prawo Ubezpieczeń Gospodarczych* (Third Issue), Bydgoszcz-Toruń 2006, p. 136.

28. E. Kowalewski, M.P. Ziemiak, "Ustawa reklamacyjna...".

legal consequences. **Does this mean that complaints can also be submitted to insurers' agents?** It would be difficult to argue otherwise. The cited art. 16a of the 2003 Insurance Activity Act is the basis for awarding agents wide authority to perform acts for and on behalf of insurers. It would be difficult to argue that an agent cannot receive a complaint where they have a statutory authority to receive statements, such as a contract termination or withdrawal notice, which may relate to the very same insurance contract as the one referred to in the complaint. Furthermore, agents should also be treated as units providing services for clients after the entry into force of the new Insurance and Reinsurance Act of 11 September 2015.<sup>29</sup> The above conclusion results from the wording of art. 30 (1) of the above Act, which states that notices and statements made in relation to a concluded insurance contract to an insurance agent are deemed as having been made to the insurance company for which, or on behalf of which, the agent acts, provided that the same have been made in writing or in any other tangible medium (the effectiveness of the notice made will thus be limited on account of its form, but the *ratio legis* behind the new regulation remains unchanged).

#### 4. Complaints procedure before a financial market organisation

Pursuant to article 3 of the Complaints Act, a complaint may be submitted at any unit (department) of a financial market organisation that provides services for clients, in the following form:

- in writing – personally, at a unit of a financial market organisation that provides services for clients, or by post;
- orally – by phone or personally for the record, during a client's visit to the unit;
- electronically – with the use of means of electronic communication, provided that a financial market organisation has designated such means.<sup>30</sup>

**The Act does not define specific rights that a client can pursue through a complaint.** It is therefore possible that clients will make different demands, not necessarily payment requests – for instance, requests for termination of a contract. The legislator has not set forth any minimum statutory requirements regarding the content of a complaint. Still, in order to be considered, a complaint needs to describe the client's demands (claims) together with a justification. Finally, and quite surprisingly, the Complaints Act does not set any time limit for the submission of a complaint or a time-frame after the expiry of which the right to make a complaint lapses. The absence of such time-frames leads to the conclusion that clients may submit complaints without any temporal limitation. This arrangement should be regarded as a mistake. A time limit given to a client for submitting a complaint would ensure that an insurance company processes the complaint in an effective way. Furthermore, such a time limit would encourage clients to behave with discipline.

After a client submits a complaint, the financial market organisation considers the complaint and responds to the client in writing or through another tangible medium of information. The response may be delivered by email, but only at the request of the client<sup>31</sup>. **The response should be given without undue delay, not later than within 30 days from the date the complaint is received.**

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29. I.e. from 1 January 2016.

30. The language of the article thus suggests that the electronic form is available only if an insurance company has so decided.

31. See art. 5 (2) of the Complaints Act.

The above time limit will be kept if the response is sent before the limit expires. In exceptional circumstances that prevent a complaint from being considered and responded to within 30 days, a financial market organisation may extend the time limit for response to a maximum of 60 days.

**Pursuant to article 8 of the Act, if the above time limits are not kept, a complaint will be deemed accepted, as requested by the client.** In light of the above concerns as to e.g. the content or scope of a complaint, the aforementioned article may be considered highly controversial. This is because one cannot exclude the possibility that this article will induce the practice of mass complaints on the part of clients, who will “flood” insurance companies with complaints, expecting that at least some of them will be accepted merely due to insurance companies’ failure to provide a timely response to all complaints made.

In the case of a response to a complaint, the legislator has taken a completely different approach than to a complaint itself and has described an extensively broad scope of information that must be provided<sup>32</sup>. Under article 9 of the Complaints Act, a response should specifically include:

- A factual and legal justification, unless a complaint has been accepted according to a client’s wishes;
- Exhaustive information on the position of a financial market organisation regarding the reported objections, which must include a designation of relevant sections of a contract template or contract;
- Full name and official role of the person responding to the complaint;
- A time limit within which the claim asserted in an accepted complaint will be satisfied, which in no circumstances may be longer than 30 days from the date of the response.

The expression “specifically”, used by the legislator in art. 9 means that a financial market organisation may also include other information in a response to the complaint. If a complaint is considered and denied, the response must also include information about further measures available to a client, who may:

Ask for a review of the position expressed in the response (where a financial market organisation maintains a review procedure);

Engage in mediation or arbitration, or use another mechanism of amicable dispute resolution, provided that the financial market organisation allows for this;

Apply to the Financial Ombudsman for reconsideration of the case;

Bring an action before a court of general jurisdiction; such an action must name the defendant and the court with territorial jurisdiction to hear the case.

A financial market organisation is obliged to notify a client of the client’s right to apply to the Ombudsman and to bring a court action. The information on a client’s right to ask for a review or engage in amicable dispute resolution must be provided only if an insurer provides for such a possibility.

## 5. Proceedings before the Financial Ombudsman

The Complaints Act has introduced the office of the Financial Ombudsman, who is to replace the Insurance Ombudsman, a regulatory body that has been functioning in Poland since 1995<sup>33</sup>. Until now

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32. See arts. 9 and 10 of the Complaints Act.

33. Pursuant to arts. 54–57 of the Act, upon the Act’s entry into force, the Insurance Ombudsman becomes the Financial Ombudsman, and the Office of the Insurance Ombudsman becomes the Office of the Financial Ombudsman. Moreover, any proceedings that have been initiated and are pending before the Insurance Ombudsman prior to the Act’s entry into force are now pending before the Financial Ombudsman.

there has been no institution in Poland to which a client of a financial market organisation could apply or complain to and request a review of an individual complaint that had been processed, considered and denied. For this reason, the jurisdiction of the Financial Ombudsman was defined in relatively broad terms, extending to all entities understood by the Act as financial market organisations and to their clients. The Polish legislator seems to have styled the new office after the British Financial Ombudsman Service<sup>34</sup>, yet the powers of the Polish Financial Ombudsman vis-a-vis financial market organisations are much stronger when compared to its UK counterpart. For example, the UK Ombudsman does not have authority to impose financial penalties on banks or insurers, while the Polish Financial Ombudsman was given such a competence<sup>35</sup>.

The Financial Ombudsman is appointed, for a term of four years, by the President of the Council of Ministers (the Prime Minister) upon the request of a minister competent for supervising financial institutions. The Financial Ombudsman performs his tasks assisted by the Ombudsman's Office in Warsaw. The Ombudsman's tasks include working for the protection of clients of financial market organisations whose interests the Ombudsman represents, and in particular<sup>36</sup>:

- Considering applications submitted in individual cases due to a financial market organisation's denial of a client's claims under a complaints procedure;
- Considering applications concerning a failure to perform an act under an accepted client complaint within a statutory time limit (30 or 60 days);
- Presenting opinions on draft legislative enactments related to the organisation and operations of financial market organisations.

The operation costs of the Financial Ombudsman and the Ombudsman's Office are paid by financial market organisations, i.e. banks, insurance companies, investment fund companies, pension funds, etc. The Ombudsman acts ex officio or upon request, submitted by either a client of a financial market organisation – in a situation where the client's claims are denied by the financial market organisation under a complaints procedure – or a competent supervisory or regulatory authority, or other public authority<sup>37</sup>. Having considered a received application, the Ombudsman may take any of the following actions:

- Perform an act;
- Advise the applicant of their rights and remedies;
- Refer the case for the consideration of a competent authority;
- Refer the case to be settled out of court in proceedings designed to resolve disputes between clients and financial market organisations;
- Refrain from performing an act – if this is the case, the Financial Ombudsman must communicate his position, together with a justification, to the applicant and the person whom the case affects.

Moreover, the Ombudsman may bring an action for clients of financial market organisations in cases of unfair market practices and also in cases that involve the determination of whether or not provisions of standard contracts are inadmissible.

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34. See <http://www.financial-ombudsman.org.uk/default.htm>, accessed on 7 November 2015.

35. See art. 32 (1) of the Complaints Act, which provides that the Ombudsman may, in a decision, impose a financial penalty of up to PLN 100,000 or a violation of the Act's provisions.

36. See art. 17 of the Complaints Act.

37. See art. 24 of the Complaints Act.

All financial market organisations are obliged to deliver, at the Ombudsman's request, standard contracts for the provision of services that they provide in their business, and also other documents and forms used during the conclusion and performance of such contracts, within 14 days from the receipt of the request<sup>38</sup>. Furthermore, the financial market organisation that receives the Ombudsman's request in a case falling within the Ombudsman's jurisdiction, is obliged to notify the Ombudsman immediately, but no later than within 30 days from the date of receipt of the request, of any actions taken or position adopted and to transfer requested documents<sup>39</sup>. Finally, financial market organisations are required to present to the Ombudsman, within 45 days from the end of a calendar year, an annual report on any considered complaints and the number of court cases brought by the organisations' clients due to any denied complaints submitted by such clients<sup>40</sup>.

**The key aspect of the Financial Ombudsman's operations is out of court proceedings designed to resolve disputes between clients and financial market organisations (hereinafter: the "proceedings")<sup>41</sup>.** Every dispute between a client and a financial market organisation may be concluded by way of these proceedings. Detailed rules governing the proceedings are to be established in a regulation from the minister responsible for supervising financial institutions<sup>42</sup>. **The Ombudsman conducts the proceedings solely upon request of a client of a financial market organisation<sup>43</sup>.** The Ombudsman may refuse to initiate the proceedings only in the following cases:

- If a client has not yet exhausted a complaints procedure;
- If a request is designed to cause nuisance to the other party;
- If a request is or has been examined by a court, other body appointed to examine cases of a given type or an entity authorised to resolve disputes out of court;
- If examination of a dispute would substantially interfere with the effective conduct of proceedings before the Ombudsman;
- If a client did not pay a fee for the request to initiate the proceedings (PLN 50) unless they were exempted from payment of the fee.

Financial market organisations are legally required to participate in the proceedings. In the course of the proceedings, the Ombudsman communicates a client's claim to a financial market organisation, and presents to the parties law applicable to the case and a proposal aimed to resolve the dispute.

In the event that the proceedings are not resolved in an amicable manner, the Ombudsman drafts an opinion in which the Ombudsman must include a legal assessment of the facts relevant to the proceedings. The Act does not expressly refer to a settlement, but it should be assumed that the concept of an amicable resolution of a dispute ought to be understood as nothing other than a conclusion of a settlement.

A report on the course of the proceedings must be prepared within 14 days from the closure of the proceedings; it should include information about the place and time of the conduct of the proceedings, full names and addresses of the parties, the matter in dispute, proposed ways to resolve the dispute and also information on the manner in which the dispute was actually resolved. A copy

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38. See art. 30 of the Complaints Act.

39. See art. 31 of the Complaints Act.

40. See art. 33 of the Complaints Act.

41. These proceedings may be launched from 1 January 2016.

42. As of 7 November 2015 no draft version of this regulation was available.

43. See art. 36 of the Complaints Act.

of the report must be served on the parties within 7 days from the date of its preparation. The report that is referred to in subsection 1 is an official document within the meaning of art. 244 of the Code of Civil Procedure of 17 November 1964 (CCP). The fact that the report is recognised as an official document is of material significance, both for clients and financial market organisations. Scholarship correctly argues that the language of art. 244 CCP suggests that official documents are afforded two presumptions of law: the presumption of authenticity (a document is presumed to originate from a person or body identified as its issuer, in other words, it is presumed not to be forged), and the presumption of veracity (a document is presumed to present the truth)<sup>44</sup>. Such a document may be crucial as a piece of evidence in a future judicial dispute between a client and a financial market organisation. Furthermore, the report must be accompanied by the Ombudsman's opinion, if such an opinion was drafted.

The out of court proceedings designed to resolve disputes between clients and financial market organisations is a novelty in Polish law, and also an additional rights protection mechanism for clients of insurance companies. However, practice will show whether the mechanism will be effective and utilise its positive potential.

## 6. The complaints procedure versus other procedures for asserting claims under insurance contracts

Quite disappointingly, the Complaints Act does not include any provisions that would regulate in detail the relations between the Act and other procedures for asserting claims under insurance contracts. This is above all the relationship that exists between complaints procedures and claims settlement processes conducted by insurance companies upon a client's notification of claims, and also between complaints procedures and court proceedings. As regards the claims settlement process, one should distinguish between a policyholder's (an insured's or a claimant's) notification of a claim or an occurrence, which initiates the claims settlement process, and the submission of objections against such a process or its consequences expressed in the form of a complaint. In the first case, a notification of a claim obliges an insurer to perform a number of technical and insurance acts, which are to determine the extent of a loss, a manner of remedying the loss, etc. In the second example, notification of a claim has already been made and a client of an insurance company only questions the amount of the claim or the manner in which the claim was satisfied (i.e. the client expresses their objections). Due to the absence of provisions distinguishing between the complaints, claims settlement and court procedures, we are able to designate at least several situations where clients may initiate complaints procedures:

- A complaint can be submitted in the course of a claims settlement process in the event that a client receives the undisputed portion of the indemnification (or is only notified of the initiation of the claims settlement process) while an insurer – in order to examine the remainder of the claim – requests additional documents, or, for instance, an examination by a medical panel;
- A complaint may be submitted after the conclusion of a claims settlement process, as the alternative to a lawsuit;

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44. See K. Knoppek [in:] H. Dolecki, T. Wiśniewski (Eds.), *Kodeks postępowania cywilnego. Komentarz*. Tom I. Artykuły 1–366, LEX/EI. 2013 (commentary to art. 244, side note reference 15).

- A complaint may be submitted after the conclusion of a claims settlement process, simultaneously with a lawsuit (or during a court case);
- A complaint may be submitted after the conclusion of a claims settlement process, but also after the end of a case tried in court.

In all four scenarios, an insurer will be obliged to respond to the complaint, in accordance with arts. 5–6 and 9–10 of the Complaints Act.

Finally, apart from the Complaints Act, the Polish regulator of the financial market, the Financial Supervision Authority (FSA), has issued a guidance document, entitled *The Principles of Corporate Governance for Supervised Institutions*<sup>45</sup>, an Annex to the FSA's resolution no. 218/2014 dated 22 July 2014 which became effective on 1 January 2015. In many aspects, the FSA's *Principles* differ from the provisions of the Complaints Act: above all, they have a different subjective scope of application (the Principles do not narrow down the client's definition to natural persons), establish a different manner of complaints submission or, finally, a different procedure for communicating information as part of the complaints process. The FSA's guidance documents are not a source of universally applicable law, but the FSA examines in its control procedures whether or not insurance companies comply with these sets of rules. This begs the question as to whether it is reasonable to adopt a measure that should provide assistance for clients but that instead, through its adoption, significantly complicates the situation of clients and at the same time obliges insurance companies to comply with two, different and parallel, complaints procedures.

## Summary

The Polish Complaints Act, which entered into force on 11 October 2015, is a groundbreaking and unique solution, in the context of the whole EU, that applies to the entire financial services market, including to the services delivered by insurance companies. Despite its brevity and a number of doubts arising from its provisions, the Complaints Act – as described in this paper – attempts to achieve its principal objective, namely a significant improvement of the legal and factual situation of all clients (natural persons) using so-called “financial services” that are provided not only by insurance companies, but also by banks and other financial market organisations operating in Poland.

All these clients are given brand new tools to assert their claims and other, broadly defined, requests from financial market organisations in a procedure that is fast, free and, as it seems, more effective than the existing measures and procedures for asserting claims under contracts concluded with financial market organisations. Time will tell whether the hopes and expectations raised by the Complaints Act will actually strengthen the position of clients receiving financial services towards organisations that provide such services.

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45. Available at [https://www.knf.gov.pl/Images/Kanon%20C5%82adu%20korporacyjnego%20wersja\\_tcm75-36761.pdf](https://www.knf.gov.pl/Images/Kanon%20C5%82adu%20korporacyjnego%20wersja_tcm75-36761.pdf), accessed on 7 November 2015.

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# Ustawa reklamacyjna – nowy element ochrony konsumenta na polskim rynku ubezpieczeń

*W dniu 5 sierpnia 2015 r. Sejm uchwalił ustawę o rozpatrywaniu reklamacji przez podmioty rynku finansowego i o Rzeczniku Finansowym. Przedmiotowy akt został podpisany przez Prezydenta RP dnia 25 sierpnia 2015 r., a wszedł w życie (za wyjątkiem art. 62 oraz rozdziału 4) dnia 11 października 2015 r. Nowe regulacje prawne zostały przyjęte w celu podniesienia poziomu ochrony osób (w szczególności konsumentów) korzystających z usług finansowych. Cel ten ma zostać osiągnięty poprzez określenie trybu, jak i terminów rozpatrywania reklamacji przez podmioty rynku finansowego.*

*Efektom wdrożenia ustawy reklamacyjnej ma być szybkie, pozasądowe załatwianie reklamacji klientów rynku finansowego, a więc i zakładów ubezpieczeń. Ponadto z uwagi na fakt, iż mamy do czynienia z aktem stosunkowo krótkim oraz uniwersalnym dla całego sektora usług finansowych, to zawiera on szereg norm cechujących się dużym stopniem ogólności. Może doprowadzić do różnorodnych trudności interpretacyjnych, nieuwzględniających charakterystyki danego rodzaju usług czy działalności.*

*Celem artykułu jest prezentacja i analiza najważniejszych regulacji ustawy reklamacyjnej.*

**Słowa kluczowe:** reklamacja, polski rynek ubezpieczeń, Rzecznik Finansowy, ochrona konsumenta

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