

# Group insurance contracts AIDA Europe Conference 2022

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# Prudential aspects and applicable law

## **Prudential issue :**

- Is the insurer allowed to accept the risk in view of its location or does it need authorisation?
- **Risk:** Prudential sanctions imposed by the competent authorities, including the supervisory authority.

## **Question of applicable law :**

- What law applies to the insurance contract?
- **Risk:** exposure to contractual risk arising from non-compliance with applicable law (e.g. non-enforceability of exclusions)

# Reminder: basis of the European passport

**Source:** several decades of insurance directives now consolidated in the Solvency II Directive - European Economic Area

## Basic concepts :

- **Home Member State:** Member State where the insurer is authorised
- **Host Member State:** Member State where the insured risk is located - for group contracts, the relevant criterion may be the insured and not the policyholder (discussed below)

## Competencies

- **Home Member State:** prudential supervision
- **Host Member State:** conduct of business, general good, applicable public policy provisions, contract law (subject to the Rome I Regulation within the EEA), jurisdiction (subject to the Brussels I Regulation within the EEA)

# Risk situation

**Location of risk criteria** - Solvency II Directive (Article 13(13)) as transposed :

- Member State where the building and its contents are located
- Member State of registration for vehicles
- Member State in which the contract was taken out for contracts of a duration of four months or less, relating to risks incurred during a journey or holiday, whatever the branch concerned
- In all other cases the Member State in which either of the following is located:
  - the policyholder's habitual residence; or
  - if the policyholder is a legal person, the establishment of the policyholder to which the contract relates;

**Scope:** definition specific to the European Economic Area, third countries may have a different definition of the exercise of insurance activity in their territory

**Group contracts:** it may be the member/insured, not the policyholder, who determines the risk situation with certainty in optional insurance

# Applicable law

**Applicable law:** Rome I Regulation (not applicable in Denmark)

**For large risks:** the parties are free to choose the applicable law, in the absence of choice, the law of the country where the insurer is established, unless the contract is clearly more closely connected with another country.

# Applicable law

## **For mass risks :**

- the law of any Member State where the risk is situated at the time the contract is concluded;
- the law of the country in which the policyholder has his habitual residence;
- in the case of a life insurance contract, the law of the Member State of which the policyholder is a national;
- in the case of an insurance contract covering risks limited to claims arising in a Member State other than that in which the risk is situated, the law of the Member State of occurrence;
- where the holder of an insurance contract carries on a commercial, industrial or liberal profession activity and the insurance contract covers two or more risks relating to these activities and situated in different Member States, the law of one of the Member States concerned or the law of the country of habitual residence of the policyholder.

# Group insurance contracts

## **Definition of group insurance :**

- Not all countries have a definition of group insurance but most seem to have at least a general concept
- This is generally an insurance contract taken out by a person for the benefit of third parties who usually have a specific relationship with the policyholder
- Some distinctions depending on whether the policyholder or the insured is liable for the premium (e.g. Portugal) or on the nature of the insurance (voluntary or compulsory, e.g. Sweden)
- The policyholder is not necessarily an insured

# Group insurance contracts

## Insurance contract law :

- There is no EU-wide definition of insurance or insurance contracts, some countries have adopted a definition or this definition may be case law
- Policyholders' rights generally end automatically when the contract between the policyholder and the insurer is terminated. This principle can be reversed (e.g. in Spain or the UK), either by contract or on the basis of the policyholders' obligations (e.g. payment of the premium)
- Existence of a contractual relationship between the insured and the insurer: With the exception of a few countries (e.g. Poland, Finland), there is generally a contractual relationship between the insured and the insurer. Even if this relationship is not qualified as contractual, the insured will always benefit from the rights (such as the right to be compensated in case of a claim) arising from the contract between the insured and the insurer
- non-payment of the premium usually allows the insurer to terminate the contract (sometimes after the expiry of a suspension period of the insurance contract, during which the insured is allowed to pay)

# DISCUSSION

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Partners

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