



# Significant changes to the Norwegian Insurance Contracts Act



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As part of Norway's implementation of the Insurance Distribution Directive 2016/97 ("IDD"), the Norwegian Ministry of Justice has proposed significant amendments to the Norwegian Insurance Contracts Act (the "ICA"). These involve a restructuring of the Act itself and the introduction of new rules on insurers' – and now also insurance intermediaries' – pre-contractual duties to provide information and assess an individual insured's insurance needs. Although amendments to the Norwegian Insurance Distribution Act have also been proposed as part of the implementation of the IDD, we haven't discussed these in this briefing.

As explained in our recent briefings, the ICA is of mandatory application to most Norwegian non-marine insurance contracts and can only be contracted out of in limited circumstances. These changes will therefore also be relevant for foreign insurers writing risks in Norway. We discuss the most important changes to the ICA in this briefing.

## **Giving advice and assessing an insured's needs**

Insurers will have to comply with stricter duties when giving advice and recommendations in the underwriting process. If an insurer gives a "personal recommendation" – essentially advice as defined in the IDD – in connection with the distribution of an insurance product, it must also give the insured a written explanation of how the product recommended best meets the insured's wishes and needs. Further, when distributing insurance based investment products (e.g. unit-linked insurance products), the insurer must always provide a personal recommendation.

Key duties to provide information to insureds will be moved from the Insurance Distribution Act to the ICA and insurance distributors will be under greater obligations to obtain customer information and carry an assessment of the insured's individual requirements *before* entering into an insurance policy. The duties of insurance intermediaries in this regard will now be regulated by the ICA rather than the Insurance Distribution Act.

### **Professional conduct and an insurer's liability for breach of duty**

Insurers will have a general duty to act in an honest, proper and professional manner. An insurer will be obliged to act in accordance with good business practice as required and expected of an insurance distributor. A failure to act in accordance with good business practice will entitle the insured to damages for any loss suffered, although an insurer's liability will be limited to reasonably foreseeable losses.

The amendments to the ICA will also impose a duty on insurers to identify possible conflicts of interest and to explain which measures will be introduced to reduce the risk of such conflicts.

### **Increased information and disclosure obligations**

For non-life insurance, a standard "insurance product information document" (IPID) will need to be given to an insured *before* a policy is issued. In addition, the insurer must provide the insured with a number of specific details before a policy is issued. These include information about the insurance company, any conflicts of interest, remuneration received in connection with the policy and any other costs – in addition to premium and planned payments – that will be charged to the customer.

### **System for complaints**

Under the proposed amendments, insurers will have a duty to maintain an appropriate and effective complaints handling system. Complaints and claims regarding an alleged breach of an insurer's duties, must be answered in writing within a reasonable period of time depending on the extent and complexity of the complaint and whether there has been any previous correspondence between the parties.

If insurers are unable to provide the insured with a conclusive answer within 15 business days, a preliminary answer must be given explaining why a final answer has not been given. The insurer must also give an indication of when the insured will receive a final answer. This deadline can be extended to 35 days under exceptional circumstances.

### **New rules on burden of proof**

The insurance company will have the burden of proving that it has complied with statutory and regulatory duties owed to the insured.

### **Use of electronic communication**

Currently the ICA provides that an insured must expressly agree to an insurer's use of electronic communications. The proposed amendments will provide more comprehensive legislation, including making electronic communications the default choice without the need for an insured's express prior agreement.

Instead, an insured would need to actively opt out of electronic communications. The opportunity to do so must be given on formation of the contract or at the first electronic approach from the insurer.

### **Consequences for insurers**

The proposed amendments will significantly change the structure of the ICA. It will be important for insurers to comply with their pre-contractual information duties as well as implement effective complaints procedures. An insurer may face damages claims for a failure to comply with such duties where this is not in accordance with good business practice. Any advice or "personal recommendations" must be based on an individual insured's needs and must be clearly explained before entering into a policy. The default choice of electronic communications will give more certainty to insurers where before insureds could argue that notices etc. had not been provided based on a formality – i.e. that these should have been sent in paper form.

*Over the coming months, DLA Piper Norway's insurance team will (every other month) publish a series of briefings on the most relevant provisions of the ICA which foreign insurers should be aware of. Learn more [here](#).*

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