

GENERAL GOOD PROVISIONS

The **Law 26/2006 of insurance and reinsurance intermediation** (published on the Boletín Oficial del Estado -Spanish Government Official Publication- 18th July 2006, coming into force the next day) devoted its first part to the intermediaries' general rules', including prohibitions.

As **prohibitions**:

- 1) to carry out the activity related to variable premium mutual insurance companies and variable premium cooperatives;
- 2) to assume directly or indirectly the risk's cover;
- 3) to realise the activity in favour of entities that do not obey the legal requirements for acting in Spain or transgressing the granted authorization;
- 4) to impose the insurance contract's execution;
- 5) to add an extra charge on the premium receipt issued by the insurance company;
- 6) to sign, in the name of the customer, a contract without his consent;

The general intermediaries' **obligations** are:

- 1) to offer truthful and sufficient information about the insurance contract (promotion, offer and subscription);
- 2) to be the depository of all the amounts received from their customers;
- 3) to mention in all commercial documents their inscription register number and their identification name (including the category of IIM as it's defined by the Law);
- 4) before beginning its activity, the intermediary must be registered in the special administrative register of the DGSFP, supervisor of the system;
- 5) the bancassurance operators should inform the customer that the advice they provide is intended for dealing with an insurance contract and no other financial instrument;
- 6) brokers (natural or legal person), the intermediaries' branches and EEA intermediaries who act in Spain in FOS, should deal with and resolve the customer claims related with their interests and rights;
- 7) brokers (natural or legal person) and intermediaries resident in other MS who act in Spain in FOS or FOE should have a **customer service** (accountable to the directorate-general, having full independence to guarantee autonomy in order to avoid conflicts of interest) to deal with and to solve their customer

claims or entrust this service with the insurance company who could designate an **ombudsman** (who would act with total independence in relation to companies and with total autonomy as for the value judgements and guidelines applied in the exercise of his function, being a person outside insurer companies organization). The ombudsman favourable decision to the customer will bind the intermediary or the company in case of tied agents or bancassurance operators. Without prejudice to any other actions for exercising the customer's own rights, the system would not hinder the resolution of other procedures; not interrupting stated period for exercising them. The customer service and the ombudsman are developed in the ORDEN ECO/734/2004, 11th march 2004, on customer's departments and attention services and customer's ombudsman of the financial entities (published on the Boletín Oficial del Estado 24th march 2004);

8) brokers and clients could decide, in writing, that the broker's payment includes professional fees directly billed to the client, in which case they must draw up an invoice separately from the premium receipt issues by the insurer company. If, in addition to the professional fees, part of the broker's payment will be paid to the insurer jointly with the premium, the premium receipt has to indicate the amount and the broker's name which should match up;

9) brokers shall not receive any payment from the insurer companies apart from their commissions;

10) to establish the financial capacity and the liability of the insurance's coverage;

11) special observance of the law related to the personal data protection;

12) brokers' advice must be facilitated on the basis of an objective analysis of a sufficiently large number of insurance contracts available on the market, to enable him to make a recommendation, in accordance with professional criteria, regarding which insurance contract would be adequate to meet the customer's needs. In any case, the objective analysis will be presumed when the broker has analyzed insurance contracts offered by at least **three insurers** which run business in that market or when the contract has been created specifically by the broker and negotiated with, at least, **three insurers** which run business in that market, to offer it exclusively for his client.

In any case, the establishment of a code of good practice in the corporate sector is a task for the intermediaries' most representative organizations.