

LEGAL UPDATE

AFM interpretation provides more guidance on authorisation requirements around group insurance

Date: 8 April 2024

The Netherlands Authority for the Financial Markets ("**AFM**") has recently published an [interpretation](#) that provides more guidance on whether a policyholder is mediating under a group insurance policy. If mediation is involved, an authorisation is in principle required under the Financial Supervision Act ("**Wft**"). In the Legal Update "[EU Court of Justice: is a group insurance policyholder a mediator?](#)", we already discussed a ruling of the Court of Justice of the European Union (the "**Court**") on this subject. The AFM builds on this ruling in its interpretation.

What is group insurance?

Group insurance is an insurance contract entered into between an insurer and a policyholder, where one or more third persons may count as insured persons under the policy. In practice, group insurance policies come in many shapes and sizes. Consider, for example, social organisations and sports clubs that take out accident or liability insurance for the benefit of their members.

Which activities lead to an authorisation requirement?

A policyholder may potentially engage in activities that lead to a requirement for authorisation as an intermediary. This may be the case, for example, if a policyholder registers a third person as an insured person under a group insurance policy.

The AFM states that, according to the Court's ruling, there is intermediation in group insurance, and therefore an authorisation requirement, if the following two cumulative conditions are met:

1. optional nature; and
2. compensation.

The AFM elaborates on these conditions in the interpretation. However, facts and circumstances are decisive on a case-by-case basis when determining whether mediation (requiring authorisation) has taken place.

Optional nature

This condition is met if the customer does not automatically join the insurance contract. This is the case if the customer has a choice to join a group insurance policy. If there is no choice, there is automatic group insurance, and this condition is not met.

Compensation

This condition is met when the policyholder receives compensation for services rendered. The AFM is of the opinion that there is a compensation if a financial benefit is obtained by the policyholder. Passing on premium and (administrative) costs do not fall under the concept of financial benefit.

If an authorisation obligation possibly exists, an exception or exemption may still offer a solution. The AFM stresses that market participants can, for example, make use of Section 7 Exemption Regulation Wft. Under this exemption, some ancillary insurance intermediaries are exempted from the authorisation requirement under certain conditions.

For the sake of completeness, we note that the AFM excludes master agreements from its interpretation. This is because the AFM does not consider master agreements as an insurance contract.

How to proceed?

The AFM's interpretation may have implications for policyholders who currently are not authorized, but do carry out activities around group insurance. The AFM gives market participants the opportunity to apply for an authorisation if it turns out that activities require an authorisation. No later than 1 October 2025, these market parties must be authorised.

Do your activities fall under the authorisation requirement?

Do you need help in making an assessment of whether your activities are subject to authorisation requirements? We would be happy to be of assistance. Important preliminary questions in this assessment are whether there is a group insurance and there are intermediation activities. If this is the case, we can work with you to explore options to avoid an authorisation requirement. This could include invoking an exemption or other options that suit your business operations. Would you like more information on this topic or do you have a question? Feel free to contact one of our specialists from the Banking & Finance team.

This is a Legal Update by Frank Richel, Dennis Apperloo and Micky Peters.

For more information:

Frank Richel
+31 30 25 95 652
frankrichel@vbk.nl

Dennis Apperloo
+31 30 25 95 616
dennisapperloo@vbk.nl

Micky Peters
+31 30 25 95 616
mickypeters@vbk.nl