

## SUMMARY

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### **INSURANCE AGREEMENT AS AN INSTRUMENT FOR SECURING LOAN DEBT**

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The main research problem covered by this work is the possibility of separating the category of loan repayment insurance within the Polish system and legal transactions due to a functional criterion. The catalogue of these insurances could include both property insurance, which directly covers the risk of the borrower's insolvency, and other insurance (both property and life), which, thanks to the parallel use of civil law instruments, may secure loan repayment. Within the latter group, the subject of the insurance protection provided will not be the risk of the borrower's insolvency and, from the point of view of their function, they may also be qualified as loan repayment insurance.

In the first chapter, the issue of loan repayment insurance distribution is presented. The fact that banks offer their customers to conclude insurance contracts or cover under group insurance is characterized by a significant, from a legal point of view, specificity. Such a conclusion leads to a specific content - in the context of this particular distribution situation - of the general rules of conduct arising, in particular, from the Act on Insurance Distribution. This is due to the specific distribution situation in which the bank plays a triple role. The first chapter describes the phenomenon of bancassurance, with particular emphasis on its role in the process of concluding loan agreements. Using research from the field of economic sciences, the essence of the risk of credit activity and the processes of managing this risk are described. Forms of the bank participation in the broadly understood provision of insurance services are presented - taking into account empirical observations as to the actual involvement of these institutions in distribution processes. The considerations on the Polish legal order are supplemented with the results of a comparative law research on the distribution of payment protection insurance (PPI) in Great Britain. Observation of the British experience and the way in which the problem is dealt with by both local courts and supervisory authorities and law enforcement authorities provides many valuable conclusions.

Chapter II is devoted to the construction of loan repayment collateral with the use of an insurance contract. The purpose of this part is to find the sources of the loan collateral relationship with the use of an insurance contract, and then to reconstruct the content of the rights and obligations of the parties to this relationship. The basis for reconstructing the mechanism of using insurance to secure loan claims are general considerations regarding the nature of the loan relationship and collateral for loan repayment. Next, the model of the legal relations between the client, the bank and the insurer, which make up the construction of the loan repayment security using the insurance contract, is recreated. The features distinguishing insurance from other legal methods of debt security are presented. It is indicated how this specificity determines the manner of proper performance of the obligations of the parties to the loan agreement and the agreement on the establishment of collateral. This part of work describes the effect of the occurrence of an insurance accident and the emergence of a claim for the payment of benefits for the rights and obligations of the parties to the loan agreement. The bank's liability as a lender with a due claim related to the established collateral is also described. This research is supplemented by an analysis of German doctrine and jurisprudence regarding the institution of *datio solutionis causa*. Reference is also made to the South African legal system.

In the next two chapters (III and IV), the life insurance contract and the non-life insurance contract as loan repayment collateral instruments are characterized in turn. The conditions for the effectiveness of insurance cover in the case of life insurance are described as crucial for the implementation of the intended purpose of this agreement in bancassurance relations. The institution of indicating the policy holder as appropriate for establishing legal security with the use of a life insurance contract is characterized in detail. The aim of the work in this area was to find *de lege lata* solutions to the problems that result from the lack of regulations directly relating to the security nature of the emolument (security indication).

Chapter IV presents the most typical types of property insurance used on the market to secure loan repayment. The possibility of creating a new product that would meet the specific needs of real estate loan market participants is proposed. The subsequent section describes a group of so-called loan repayment insurance - i.e. low own contribution insurance, transitional (mortgage) insurance and loss of source of income insurance. In the following, the institution of transfer of receivables as a method of establishing legal collateral for loan repayment with the use of property insurance is discussed in detail. Considerations concerning Polish law are supplemented with the results of comparative law research on the basis of South African law.

The last subchapter describes the specificity of insurance recourse and the conditions for its effective implementation by the insurer that provided protection under the so-called recourse insurance the bank's own risks.

The summary presents *de lege ferenda* conclusions regarding the postulated changes in Polish law. They are the result of, among others, comparative law research. They concern the designation of the policyholder and changes in the bankruptcy law. The postulates of conduct directives for the financial market participants themselves are also presented - in particular, regarding the explicit regulation of the rights and obligations of the parties in the content of loan agreements related to the use of insurance to secure loan repayment. The use (in its current form) of a mechanism to make the amount of the insurer's benefit dependent on the amount of the borrower's current debt is also questioned.