Highlights of the Amendment to Enforcement Decree of the Insurance Business Act Effective on January 24, 2011

The Enforcement Decree of the Insurance Business Act has been amended in light of the Insurance Business Act (the "Act") promulgated on July 23, 2010. The amended Enforcement Decree and the amended Act took effect on January 24, 2011.

The key highlights of the amendments to the Enforcement Decree of the Act are summarized as below:

1. Duty to explain insurance policy upon solicitation

The existing Act did not expressly require insurance sales agents or solicitors to explain the insurance policies that they intend to sell. However, the amended Act and its Enforcement Decree expressly imposes such duty on insurers and their sales agents or solicitors. As such, insurance sales agents and solicitors will be obligated to explain to prospective insurance purchasers information regarding the insurance policy such as premiums and insurance proceeds per each rider, insured risks, premium payment period, insured period, conditions of payment of insurance proceeds, terms related to termination of subscription, effect of breaching an insured's obligation to notify the insurer of material facts, amount to be returned upon termination prior to expiry etc. Further, insurers and their sales agents or solicitors must confirm that the prospective insured has fully understood the information he/she has been given by obtaining from such insured an acknowledgement in writing or through a voice recording.

Such duty to explain the terms of the insurance policy is similar to the duty to explain financial investment products when soliciting purchasers under the Financial Investment Business and Capital Market Act and is only applicable to purchasers other than sophisticated purchasers, such as financial institutions, listed companies, etc.

Any violation of the above duty may expose the relevant insurer to a fine of up to 20% of the premiums it received with respect to the relevant insurance policy.

2. Application of the Suitability Rule

Another duty newly imposed by the amended Act and its Enforcement Decree on insurers and insurance sales agents or solicitors is the duty to investigate into whether the prospective insured has ever purchased other insurance products or collective investment securities, the ratio of insurance premium to his/her monthly income, the amount of such monthly income and expected subscription period and to recommend an insurance policy that is suitable or appropriate to such prospective insured in light of such obtained information. Further, insurers and their sales agents or solicitors are also required to obtain information on the age, the extent of assets of the prospective insurer and the purpose of subscription of the insurance policy and obtain confirmation on the accuracy of such information by obtaining their acknowledgement in writing or through a voice recording.

The duty to recommend suitable insurance policy to prospective insureds appears to be also comparable to the duty to recommend suitable financial investment products when soliciting purchasers under the Financial Investment Business and Capital Market Act and is only applicable when purchasers other than sophisticated purchasers are solicited to purchase variable insurance policies.

3. Duty to verify whether the purchaser has subscribed an overlapping insurance policy

Under the Korean Commercial Code, an insured is obligated to notify its insurer of when it has already subscribed for an insurance policy that overlaps with the insurance policy it intends to purchase. However, the amended Act and its Enforcement Decree provides that when an insurer sells a cost-based health insurance, the insurer is required to verify, with consent of the prospective insured, whether he/she has subscribed for an insurance policy that secures the same type of risks covered by the insurance policy that he/she desires to purchase. If the prospective insured already has coverage under other cost-based health insurances, the insurer and its sales agent or solicitors must explain to such purchaser that the insurance proceeds will be paid by sharing the cost of provision thereof among the relevant insurers and must obtain an acknowledgement from such purchaser in writing or through voice recording.

Moreover, the insurer which has sold a cost-based health insurance is required to submit, with consent of the insured, personal information, the insured amount and other terms of the purchased insurance to the General Insurance Association of Korea or Korea Life Insurance Association (collectively “Insurance Association”) day following the date of execution of such insurance, so as to enable other insurers to check and verify whether such reported insurance overlaps with the policies that they sold to the same insured. In this regard, the Insurance Association is required to maintain and operate a “cost-based health insurance policyholder inquiry system” to which the provided information will be stored and be made available to insurers for search and verification of the existence of any overlapping insurances.

4. Strengthened Restriction on False or Exaggerated Advertisements

In order to protect prospective insureds, the amended Act and its Enforcement Decree stipulates the type of information that is required to set forth in the advertisements for insurance products and certain prohibitions when advertising insurance products.

Information that must be provided in the insurance advertisements include language recommending consumers to read policy manuals and the terms and conditions of insurance policies prior to their purchase, warnings on the potential loss of the principal if variable insurance product is purchased, the names of the insurer and the insurance product, major coverage items, and description on the premiums and corresponding insurance proceeds. Insurers are prohibited from advertising in the way that may mislead prospective insureds. For instance, insurers may not mislead prospective insureds to believe that insurance proceeds are fully guaranteed without any restrictions, by failing to sufficiently explain or omit to explain the maximum amount of insurance proceeds, any restrictions on payment of insurance proceeds, immunity clauses etc. Also, insurers may not advertise insurance products by combining insurance proceeds that can be payable based on different insured risks, or advertise through show hosts of homeshopping channels who do not have insurance sales license.

Any violation of the above may expose the relevant insurer to a fine of up to 20% of the premiums it received with respect to the relevant insurance policy.

5. Allowance of Credit-Linked Notes

The existing Act has banned insurers to provide guarantees of debt of a third party, unless permitted under the Act. The amended Enforcement Decree expressly provides an exception to such general prohibition by permitting a purchase of derivative-linked securities based on a contract whereby the transferor of credit risks pays consideration to the acquirer of the credit risks and the acquirer compensates the transferor for any losses incurred pursuant to the credit event.

The foregoing amendment represents a loosening of the restrictions on the asset management of insurers, as it will allow insurers to invest in various types of credit-linked notes.

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