

# Polish Financial Supervision Authority

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## **Recommendations**

regarding the process of determining and paying compensation for non-pecuniary damage  
from contracts of third-party insurance of vehicle owners

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Warsaw, June 2016

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## **I. Introduction**

The supervisory authority, in order to ensure compliance of insurance companies with the provisions of law, prevent violation of rights of insurers, the insured or those entitled based on insurance contracts and reduce the risk inherent in the activity of insurance companies, on the basis of Article 365(1)(2) (a)-(c) of the Act of 11 September 2015 on the insurance and reinsurance activity (Dz. U. item 1844, as amended) made Recommendations regarding the process of determining and paying compensation for non-pecuniary damage from contracts of third-party insurance of vehicle owners (hereinafter: Recommendations).

The Recommendations are also intended to achieve the objectives of supervision over the financial market, as defined in Article 2 of the Act of 21 July 2006 on financial market supervision (Dz. U. of 2016 item 174, as amended), such as ensuring the proper functioning of the market, its stability, security and confidence in the financial market, and ensuring protection of the interests of its participants, as well as taking actions specified in Article 4(1)(2) of the Act on financial market supervision, which are to serve the proper functioning of the financial market.

The Recommendations indicate supervisory expectations regarding sound and stable management of the process of determining and paying compensation for non-pecuniary damage, including the risk associated with this process. This risk can be defined as the uncertainty associated with the proper and effective functioning of the process of determining and paying compensation for non-pecuniary damage in insurance companies. It should also be noted that the irregularities in the process of determining and paying compensation for non-pecuniary damage expose the insurance companies to a specific financial loss associated with the need to incur the costs of the legal service of the dispute before the court and, in the case of losing, payment of the court costs and legal representation, as well as interest for the delay in the payment of compensation.

The Recommendations meet the need to ensure predictability in the process of determining and paying compensation for non-pecuniary damage, due to the fact that the provisions of law do not contain any criteria which must be followed when determining (abridging) the amount of compensation. The insurance companies do not present a unified approach to the catalogue of circumstances which should be taken into account when assessing the non-pecuniary damage, and to the valuation of these circumstances, which in turn leads to unjustified discrepancies in the amounts of compensation awarded in similar cases. Moreover, there are large disparities between the amounts of compensation paid by the insurance companies and the amounts of compensation awarded in the same cases by common courts. Therefore, there is undoubtedly a need to standardise the process of determining and paying compensation for non-pecuniary damage, with particular emphasis on the acceptance of solutions by the insurance companies which would ensure that the injured parties receive amounts of compensation that fully compensate for the non-pecuniary damage suffered.

The Recommendations are also intended to increase in the transparency of the process of determining and paying compensation for non-pecuniary damage.

The Recommendations are addressed to the national insurance companies within the meaning of the Act on insurance and reinsurance activities. In respect of the way of conducting the procedures for determining and paying compensation and the method of determining the amount of compensation, the Recommendations should also be used by foreign insurance companies which carry on insurance activity in the territory of Poland on the principles specified in the Act on insurance and reinsurance activities, in the field of civil liability insurance of motor vehicle owners for damages caused in connection with the movement of these vehicles, as referred to in Article 4(1) of the Act of 22 May 2003 on compulsory insurance, the Insurance Guarantee Fund and the Polish Motor Insurers' Bureau (Dz. U. of 2013 item 392, as amended).

This document includes 21 Recommendations which are divided into the following areas:

- organisation, management, supervision and control over the process of determining and paying compensation,
- the way of conducting the procedure for determining and paying compensation,
- the method of determining the amount of compensation.

The Recommendations were issued to highlight the importance which the supervisory authority attaches to the proper functioning of the process of determining and paying compensation in the insurance companies. This process is functionally part of the process of adjustment of claims of motor vehicle insurance, in relation to which the expectations of the supervisory authority are expressed in the Guidelines for the adjustment of claims of motor vehicle insurance, adopted by the Financial Supervision Authority on 16 December 2014. Therefore, the Recommendations should be applied taking into account the functioning principles of the above-mentioned Guidelines and the specifics of the process of determining and paying compensation.

It should be emphasised that the Recommendations included in the area concerning the method of determining the amount of compensation take into consideration the case-law of the Supreme Court and the settled case-law of common courts.

The supervisory authority expects that decisions on the way of implementation of the solutions identified in the Recommendations will be preceded by in-depth analysis and supported by an adequate reasoning.

Moreover, the supervisory authority recommends that in the case of implementation of outsourcing, the insurance company should make every effort for the service providers to perform the assigned tasks in accordance with the scope of the Recommendations. The supervisory authority indicates that the insurance companies should include appropriate clauses in contracts with the service providers to ensure that the activities of the insurance companies, also within the area entrusted to the providers, meet the standards defined in the Recommendations.

The supervisory authority expects that the standards indicated in the Recommendations will be implemented by the supervised entities no later than 31 December 2016. The Recommendations are applied according to the principle “comply or explain.” In accordance with Article 365(5) of the Act on insurance and reinsurance activities, the insurance

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companies which do not comply with the recommendations or do not intend to comply with them inform the supervisory authority how they intend to achieve the objectives for the implementation of which the supervisory authority issued the recommendations.

Information on the application of the Recommendation should be submitted on a form which the insurance companies will complete within own assessment of compliance with the Recommendations, and which will serve as a form of verification by the supervisory authority whether and how the insurance companies implemented the Recommendations. The insurance company is responsible for meeting the standards contained in the Recommendations.

## II. Glossary

**Managing staff** – people managing the areas of activity of the insurance company (including members of the Management Board) which use knowledge related to the process of determining and paying compensation, and directing the organisational units involved in this process.

**Civil Code** – the Act of 23 April 1964 Civil Code (Dz. U. of 2016 item 380, as amended).

**Liquidator** – a person performing activities in the course of the procedure for determining and paying compensation, in particular such as: collecting the necessary documentation in the procedure, determining the scope of responsibility of the insurance company, determining the amount of compensation, contacting the entities in the course of the procedure for determining and paying compensation (e.g. the injured party, the perpetrator of damage, courts, public prosecution, police, medical institutions), within the scope necessary to conduct the procedure. Whenever the Recommendations refer to the liquidator it should be understood also as a team of people performing the activities in the procedure for determining and paying compensation, if in a given insurance company this procedure is carried out by a team of people.

**Supervisory authority** – the Financial Supervision Authority.

**Outsourcing** – an agreement between the insurance company and a service provider, based on which the service provider performs a process, a service or an activity which would otherwise be performed by the insurance company, as well as an agreement under which the service provider entrusts other entities with the execution of such a process, service or activity, through which it performs a given process, service or activity.

**The process of determining and paying compensation** – all activities of the insurance company undertaken for the proper performance of the insurance activity by this company in the area of determining and paying compensation related to third-party insurance of vehicle owners.

**The procedure for determining and paying compensation** – activities aimed at clarifying the circumstances necessary to establish the responsibility of the insurance company for a random event and possibly the amount of compensation and payment or refusal to pay compensation within the period required by law in relation to third-party insurance of vehicle owners.

**The injured party** – a person who made a claim for payment of compensation or on whose behalf such a claim was made.

**Procedure** – internal document regulating the course of action, adopted by the competent authority of the insurance company, ensuring unambiguous determination of its scope and duration, distributed in the manner specified in the insurance company.

**Internal control system** – a system covering, in particular, administrative and accounting procedures, organisation of internal control, appropriate arrangements for reporting at all levels of the organisational structure of the insurance company and the compliance function.

**Management system** – a system including the risk management function, the compliance function, the internal audit function and the actuarial function, which provides for the proper and prudent management of the insurance company.

**Third-party insurance of vehicle owners** – civil liability insurance of motor vehicle owners for damages caused in connection with the movement of these vehicles, as referred to in Article 4(1) of the Act on compulsory insurance.

**The Act on insurance and reinsurance activity** – the Act of 11 September 2015 on insurance and reinsurance activity (Dz. U. item 1844, as amended).

**The Act on compulsory insurance** – the Act of 22 May 2003 on compulsory insurance, the Insurance Guarantee Fund and the Polish Motor Insurers' Bureau (Dz. U. of 2013 item 392, as amended).

**Accident** – in the third-party insurance of vehicle owners, a random event the consequence of which is death, bodily harm or impairment of health.

**Compensation** – financial compensation for non-pecuniary damage suffered, claimed on the basis of Articles 445 § 1, 446 § 4 and 448 in conjunction with Article 24 § 1 of the Civil Code.

**Insurance company** – a domestic insurance company and a foreign insurance company which carries insurance activity on the territory of Poland in the field of third-party insurance of vehicle owners.

**The principle of full compensation** – in the third-party insurance of vehicle owners, the principle defined in Article 361 § 2 of the Civil Code, according to which, within the limits of an adequate casual connection, the compensation should, in principle, correspond to the size of damage suffered by the injured party and compensate for the harm done to his/her legally protected goods or interests.

**Making claim** – notifying the insurance company of the occurrence of a non-pecuniary damage to the injured party from the third-party insurance of vehicle owners.

### **III. List of Recommendations**

#### **Organisation, management, supervision and control of the process of determining and paying compensation**

##### **Recommendation 1**

*The insurance company must have an organisational structure serving the proper functioning of the process of determining and paying compensation.*

##### **Recommendation 2**

*The Management Board should ensure effective management of the process of determining and paying compensation.*

##### **Recommendation 3**

*The Supervisory Board should supervise the functioning of the process of determining and paying compensation within the scope adapted to the scale of activity and the size and risk profile associated with this activity.*

##### **Recommendation 4**

*The insurance company should develop, adopt and ensure the functioning of the procedures involving the process of determining and paying compensation.*

##### **Recommendation 5**

*The insurance company should ensure the functioning of an effective internal control system and an effective internal audit function, including the process of determining and paying compensation, designed and managed in such a way so as to support the managing staff and the Supervisory Board in fulfilling the obligations related to the management of and supervision over the process.*

##### **Recommendation 6**

*The insurance company should develop, adopt and ensure the functioning of the management information system related to the process of determining and paying compensation, adapted to the scale of conducted activity and the size and risk profile of this activity, being an integral part of the insurance company's management system allowing identification of the risks involved in this process.*



### **Recommendation 7**

*The insurance company should ensure that the outsourcing does not lead to a deterioration of the functioning of the process of determining and paying compensation and the management system of the insurance company, in particular excessive exposure to operational risk and reputational risk, as well as impairing the supervisory authority's ability to monitor performance of the obligations by the insurance company in this respect.*

### **Recommendation 8**

*The insurance company should develop, adopt and ensure the functioning of the remuneration system for the liquidators, providing for an effective course of the process of determining and paying compensation.*

### **Recommendation 9**

*The insurance company should ensure that the employees carrying out activities within the process of determining and paying compensation have competence in and knowledge of the activities performed, in particular through access to training in this process.*

## **The way of conducting the procedure for determining and paying compensation**

### **Recommendation 10**

*The insurance company should conduct a procedure for determining and paying compensation in a way that ensures payment of compensation or taking a final position on the refusal to pay compensation in whole or in part on dates specified by law.*

### **Recommendation 11**

*Communication of the liquidator with the entities in the course of the procedure for determining and paying compensation (in particular, with the injured party, the perpetrator of damage, courts, public prosecution, police, medical institutions) should take place with due diligence related to the professional nature of the insurance activities carried out by the insurance company.*

### **Recommendation 12**

*The insurance company should develop, adopt and ensure functioning of the procedures specifying the method of contacts between the liquidator and the entities in the course of the procedure for determining and paying compensation (in particular, the injured party, the perpetrator of damage, courts, public prosecution, police, medical institutions), being part of the management system of the insurance company.*

### **Recommendation 13**

*The insurance company should collect documentation on the procedure for determining and paying compensation, including in particular documentation collected in the course of this procedure and justification of the amount and the update of the reserve made for outstanding compensation and benefits, with due diligence related to the professional nature of the insurance activities carried out by it.*

### **Recommendation 14**

*The insurance company should provide full and understandable information on the method of determining the amount of compensation for the injured party.*

### **Recommendation 15**

*While putting forward a proposal to reach a settlement, the insurance company should provide full and understandable information on the method of determining the amount of compensation proposed to be paid for the injured party.*

## **Recommendation 16**

*In the procedure for determining and paying compensation, the insurance company should be guided by objectivity, considering all circumstances of the case, respecting the life situation in which the injured party found himself/herself.*

## **The method of determining the amount of compensation**

### **Recommendation 17**

*The insurance company should consider individually the circumstances affecting the amount of compensation and apply the criteria of their assessment.*

### **Recommendation 18**

*While determining the amount of compensation the insurance company should, considering the whole of the circumstances of the case, take into account the factors relevant in assessing the size of non-pecuniary damage.*

### **Recommendation 19**

*While determining the amount of compensation the insurance company should assess individually the existence of emotional ties which would justify obtaining compensation and its amount.*

### **Recommendation 20**

*The insurance company may reduce compensation due to the injured party by a relevant amount resulting from the determination that the injured party or the deceased contributed to the creation of non-pecuniary damage or increase of its size.*

### **Recommendation 21**

*The insurance company should pay, at the request of the injured party, interest for a delay in the payment of compensation.*

## **IV. Recommendations**

### **Organisation, management, supervision and control of the process of determining and paying compensation**

#### **1. Recommendation 1**

*The insurance company must have an organisational structure serving the proper functioning of the process of determining and paying compensation.*

1.1. The insurance company should have documentation defining the organisational units responsible, in particular, for the process of determining and paying compensation, with an indication of responsibility and the rules of subordination to the managing staff.

1.2. Employees of the insurance company responsible for filing declarations of intent on behalf of the insurance company on allowing or refusing a claim in whole or in part should have a power of attorney, unequivocally specifying the scope of their authorisation.

#### **2. Recommendation 2**

*The Management Board should ensure effective management of the process of determining and paying compensation.*

2.1. The Management Board should take measures necessary for the proper and prudent management of the process of determining and paying compensation, including for identifying, measuring, monitoring and managing risks associated with this process.

2.2. Provided that it is justified by the scale of conducted activity and the size and profile of risk associated with this activity, a person responsible for supervision over the process of determining and paying compensation, who has competence in this area stemming from knowledge and professional experience, should be appointed from among the managing staff.

2.3. The Management Board should regularly bring itself up to date with the current situation in the process of determining and paying compensation, in particular, it should analyse the reports containing aggregated information, important from the point of view of the activity profile of the insurance company.

#### **3. Recommendation 3**

*The Supervisory Board should supervise the functioning of the process of determining and paying compensation within the scope adapted to the scale of activity and the size and risk profile associated with this activity.*

3.1. The Supervisory Board should monitor and supervise the actions taken by the Management Board necessary for identifying, measuring, monitoring and managing risks associated with the process of determining and paying compensation.

3.2. The Supervisory Board should receive reports of the Management Board with information on important issues occurring in the process of determining and paying compensation, along with aggregated data on this process, important from the point of view of the activity profile of the insurance company, with a frequency adapted to the scale of activity and the size and risk profile associated with this activity.

#### **4. Recommendation 4**

*The insurance company should develop, adopt and ensure the functioning of the procedures involving the process of determining and paying compensation.*

4.1. The procedures, drawn up in Polish, should be sufficiently clear, precise and comprehensive to ensure compliance of the activity of the insurance company with the provisions of law. The procedures should include, in particular:

- the method of receiving notification of a claim,
- the method of determining the facts of an event covered by the insurance protection,
- the method of contacts between the liquidator and the entities in the course of the procedure for determining and paying compensation (in particular, the injured party, the perpetrator of damage, courts, public prosecution, police, medical institutions),
- the method of fulfilling obligations to provide information by the insurance company in the course of the procedure for determining and paying compensation,
- the method of regular monitoring of entities in the course of the procedure for determining and paying compensation (in particular, the injured party, the perpetrator of damage, courts, public prosecution, police, medical institutions), in the case of delays on the part of these entities in providing the documentation necessary to determine the liability of the insurance company and the amount of compensation,
- the method of determining liability of the insurance company,
- the method of determining the amount of compensation,
- the way of ensuring timely conduct of the procedure for determining and paying compensation,
- the process for handling complaints in connection with the course of the procedure for determining and paying compensation,
- the method of collecting and archiving documentation.

4.2. Procedures related to the method of determining the amount of compensation should include in particular:

- the circumstances taken into account by the insurance company when determining the size of harm, resulting from the case-law of the Supreme Court and settled case-law of common courts,

- the circumstances taken into account by the insurance company when determining contribution of the injured party or the deceased to the creation of non-pecuniary damage or increase of its size, resulting from the case-law of the Supreme Court and settled case-law of common courts,
- the evidence which the insurance company is basing on when determining the circumstances taken into account in determining the size of harm and contribution of the injured party or the deceased to the creation of non-pecuniary damage or increase of its size,
- the method of valuing the circumstances taken into account by the insurance company when determining the size of harm,
- the method of determining the amount which the compensation is reduced by as a result of determination of contribution of the injured party or the deceased to the creation of non-pecuniary damage or increase of its size.

4.3. The procedures should be designed in a way ensuring that the competencies of organisational units of the insurance company and workstations are not overlapping, and that there are no areas not covered by responsibility.

4.4. The insurance company should supervise the application of procedures, in particular it should ensure that the employees of the insurance company are familiar with and understand these procedures, the control of their correct application and development of their modifications in order to ensure an optimal course of the process of determining and paying compensation, from the point of view of activity of the insurance company, requirements of the provisions of law and the protection of interests of the injured parties.

4.5. In order to ensure correct application of the procedures, the insurance company should apply measures allowing to fix and control the course of the procedure for determining and paying compensation, e.g. recording telephone calls in the course, using the institution of “mystery shopper.”

4.6. The procedures and their application should be subject to regular reviews and verification by the Management Board as part of the internal control system, at least once a year and each time in the case of significant changes in the activity of the insurance company. The course of the review or verification should be documented.

## **5. Recommendation 5**

***The insurance company should ensure the functioning of an effective internal control system and an effective internal audit function, including the process of determining and paying compensation, designed and managed in such a way so as to support the managing staff and the Supervisory Board in fulfilling the obligations related to the management of and supervision over the process.***

5.1. As part of the internal control system the insurance company should have an effective system to identify irregularities in the process of determining and paying

compensation, and a system of reporting these irregularities adequate to the scale of activity, which should specify in particular the frequency, the recipients and the minimum content of the reports.

5.2. The insurance company should have tools for ongoing monitoring of the course of the process of determining and paying compensation for, among others: timeliness, occurrence of catastrophic events, occurrence of claims of non-standard amount of non-pecuniary damage in relation to which there is a suspicion of attempting to extort compensation.

5.3. The insurance company should ensure, in the process of determining and paying compensation, implementation of the function of compliance with the provisions, also taking into account the case-law of the Supreme Court, settled case-law of common courts, recommendations/guidelines of the supervisory authority and the procedures and standards of conduct adopted by the insurance company. This function should include in particular:

- assessment of the possible impact of any changes in the legal environment on the process of determining and paying compensation,
- definition and assessment of the risks associated with not taking into account the provisions of law in the process of determining and paying compensation,
- assessment of the adequacy of measures taken to prevent non-compliance with the provisions of law,
- advising the managing staff in this respect.

5.4. Provided that it is justified by the scale of activity and the size and risk profile associated with this activity, the insurance company should ensure that internal audits of the process of determining and paying compensation are performed by people specialised in this field.

5.5. Persons referred to in Recommendation 5.4 should act in an objective and independent way. Limitation of objectivity or independence occurs, in particular, when these people perform an examination related to operational activities in the process of determining and paying compensation for which they were responsible during the year preceding the examination.

5.6. If in connection with the possibility of performance of the consulting services by the persons referred to in Recommendation 5.4 there may be a limitation of their objectivity or independence, information of such a limitation should be disclosed and properly reported by these persons, in accordance with the principles laid down in the relevant procedures.

5.7. The process of determining and paying compensation should be a permanent part of internal audit plans, built in particular on the basis of a documented risk assessment methodology in this area. While constructing the plans for internal audits on the process of determining and paying compensation, the insurance company should take into account in particular: the degree of centralisation of this process and technological advancement of the insurance company, as well as the scope of granted authorisations and the scope of activities entrusted to service providers.



5.8. Reports from internal audits should be communicated to the management of the audited organisational units of the insurance company after each conducted internal audit, regardless of whether any irregularities were identified.

5.9. Results of the internal audit should always be documented and reported to the Management Board and the Audit Committee or the Supervisory Board. Measures taken by the insurance company following the results of the internal audit should be monitored and adequately supervised.

## **6. Recommendation 6**

*The insurance company should develop, adopt and ensure the functioning of the management information system related to the process of determining and paying compensation, adapted to the scale of conducted activity and the size and risk profile of this activity, being an integral part of the insurance company's management system allowing identification of the risks involved in this process.*

6.1. The basis for the operation of an adequate management information system, functionally linked with the internal control system, should be written procedures. These procedures should take into account the organisational structure of the insurance company, the tasks carried out in the process of determining and paying compensation, the IT systems used in this process, the human resources and the division of tasks within the managing staff.

6.2. The management information system should be designed and managed in a way ensuring support for the Management Board.

6.3. The management information system should provide, at different levels of management, access to accurate and reliable information about the process of determining and paying compensation, relevant from the point of view of the profile activity of the insurance company for the managing staff, including in particular:

- the number of claims for payment of compensation made,
- the timeliness of fulfilling the statutory obligations to provide information,
- the timeliness of payment of compensation,
- data on payments of compensation,
- data on denials to pay compensation,
- the number of complaints submitted to the insurance company regarding the process of determining and paying compensation,
- the number of court proceedings conducted against the insurance company relating to compensation,
- risks identified in the process of determining and paying compensation,
- data on the created reserves and their adequacy,
- publicly accessible market data on the amounts of compensation paid,

– information on the amounts of compensation granted by courts.

6.4. Management information directed to the managing staff at various levels of management of the insurance company should be submitted with a frequency adjusted to the scale of activity and the size and risk profile associated with this activity, in order to make optimum use of data included in it in the current management, monitoring and supervision of the process of determining and paying compensation and risks occurring in this process.

6.5. The procedures defining the management information system and the functioning of this system should be reviewed at least once a year.

## **7. Recommendation 7**

***The insurance company should ensure that the outsourcing does not lead to a deterioration of the functioning of the process of determining and paying compensation and the management system of the insurance company, in particular excessive exposure to operational risk and reputational risk, as well as impairing the supervisory authority's ability to monitor performance of the obligations by the insurance company in this respect.***

7.1. The insurance company should notify the supervisory authority, at least 30 days in advance, of the implementation through outsourcing of the critical or important activities related to the process of determining and paying compensation, as well as of a significant change in outsourcing of these activities.

7.2. Outsourcing does not exclude liability of the insurance company for damage caused to the injured parties as a result of non-performance or improper performance of an agreement by a service provider.

7.3. The insurance company should have current and complete procedures consistent with the provisions of law and appropriate to the nature, scale and complexity of the activity for outsourcing, specifying in particular the method of selecting a service provider, information to be included in the agreement with the provider, model agreement, as well as detailed conditions of performing the assigned activities and the process of analysing the risks associated with outsourcing.

7.4. The procedure for selecting a service provider should take into consideration the risk associated with the assigned activities and include in particular the evaluation of the level of safety ensured by the service provider and the quality of performed activities.

7.5. The insurance company should analyse the risk associated with the bankruptcy of the service provider or its sudden withdrawal from the cooperation and have effective emergency plans associated with the occurrence of such situations.

7.6. The insurance company should monitor the quality of performance of the activities by the service provider assigned through outsourcing and related to the process of determining and paying compensation, and important findings of this monitoring should be presented periodically to the Management Board as part of the management information system. The scope, frequency, methods of monitoring and reporting should take into account the

specificity of activities assigned through outsourcing and their importance from the point of view of continuity and safety of operations of the insurance company.

7.7. The agreement concluded by the insurance company with a service provider, whose subject is the delegation of the performance of activities related to the process of determining and paying compensation through outsourcing, should include in particular:

- commitment of the service provider to perform the activities assigned by outsourcing in a way ensuring compliance of the process of determining and paying compensation with the provisions of law, as well as the procedures governing this process,
- commitment of the service provider to inform the insurance company of any events which may have significant impact on the ability to perform activities assigned through outsourcing or compliance of the activities of the insurance company with the provisions of law within the assigned scope,
- the principles of the service provider's liability for non-performance or improper performance of outsourcing (including, e.g., provisions concerning contractual penalties),
- clearly defined control mechanisms of outsourcing (i.e., the principles for evaluation of cooperation with the service provider, specifically defined principles for control of the service provider by the insurance company, including the scope of control, rules and deadlines for the implementation of its conclusions by the service provider),
- the scope of information and documentation submitted to the insurance company by the service provider in connection with the performance of activities assigned by outsourcing,
- the rules of reporting by the service provider to the insurance company with respect to the activities assigned by outsourcing, including, e.g., the rules of producing statistics on carrying out the assigned activities to enable insurance company's assessment of efficiency and quality of activities assigned to the service provider in the process of determining and paying compensation,
- provisions ensuring that the conflict of interests between the service provider and the insurance company is identified and properly managed,
- clearly defined system of mutual claims between the insurance company and the service provider,
- clearly and precisely defined conditions of termination of agreement, including in particular deadlines for its termination adequate to the scale of the assigned activities,
- the conditions of further outsourcing, including provisions to ensure that it does not violate the obligations of the service provider to the insurance company,
- commitment of the service provider to cooperate with the supervisory authority in the performance of activities assigned by outsourcing; in particular, the service provider should:

- ✓ provide the supervisory authority with a real access to data related to the activities assigned by outsourcing,
- ✓ enable the supervisory authority to carry out inspection of the activity and material status in relation to the activities assigned by outsourcing.

## **8. Recommendation 8**

***The insurance company should develop, adopt and ensure the functioning of the remuneration system for liquidators, providing for an effective course of the process of determining and paying compensation.***

8.1. The procedures defining the remuneration system for liquidators should specify in a clear, transparent and precise way:

- the method of determining the amount of base remuneration based on objective criteria and taking into account the type of work performed, the qualifications required for its performance, the quantity and quality of work,
- the method of determining the amount of variable remuneration components (e.g. task bonuses, quarterly, annual rewards, premium, etc.) based on quantitative and qualitative criteria related to the work performed, if such components function in the insurance company in the system of remuneration of liquidators,
- the method of verifying whether the objective criteria being the basis for the acquisition of the right to variable remuneration components are met.

8.2. The insurance company should not make the remuneration of the liquidator dependent on the amounts of compensation determined by the liquidator.

8.3. The procedures determining the remuneration system for liquidators should include elements motivating the liquidators to perform their tasks in a manner characterised in particular by:

- high quality of work,
- the speed of conducted procedure for determining and paying compensation,
- compliance with laws and procedures, in particular requiring the insurance company to respect the principle of full compensation,
- conducting the procedure for determining and paying compensation in a way that results in reduction of complaints,
- care about the reputation of the insurance company.

8.4. The insurance company should supervise implementation of the procedures determining the remuneration system for liquidators, ensuring, among others, control of the correctness of implementation of the adopted remuneration system of liquidators and development of modifications of the above procedures, in particular, in order to provide for the optimal course of the process of determining and paying compensation from the point of

view of the activity of the insurance company, the requirements under the law and the protection of interests of the injured party.

8.5. The procedures determining the remuneration system of liquidators and their application should be reviewed at least once a year.

## **9. Recommendation 9**

*The insurance company should ensure that the employees carrying out activities within the process of determining and paying compensation have competence in and knowledge of the activities performed, in particular through access to training in this process.*

9.1. The insurance company should organise regular training for employees performing activities within the process of determining and paying compensation, covering issues relevant to ensure compliance of the insurance company with the law, the case-law of the Supreme Court and the settled case-law of common courts based on it, as well as recommendations/guidelines of the supervisory authority.

9.2. The insurance company should select from among the managing staff a person responsible for defining the scope of knowledge related to the process of determining and paying compensation, appropriate to the position held and forms of sharing this knowledge.

9.3. Forms of sharing knowledge related to the process of determining and paying compensation can be, e.g., a dedicated training, presentations, reports. The person indicated in Recommendation 9.2 should be involved in defining the scope of training and preparing its plan.

## **The way of conducting the procedure for determining and paying compensation**

### **10. Recommendation 10**

*The insurance company should conduct a procedure for determining and paying compensation in a way that ensures payment of compensation or taking a final position on the refusal to pay compensation in whole or in part on dates specified by law.*

10.1. The insurance company, after receiving notification of a claim, should independently and actively take any objectively possible actions to end the procedure for determining and paying compensation (e.g. referring the injured party to a medical or diagnostic examination in order to obtain the opinion of specialists, obtain information based on the community interview or the relevant forms/questionnaires, obtain information from the police units, accounts of witnesses, available evidence referred to in Recommendation 19.2), in particular, it should not wait for the verdict of the court when it is objectively possible for the insurance company to determine its responsibility or the amount of compensation, or make the date of payment of compensation dependent on the end of the treatment the injured party.

10.2. The insurance company should, in every case when it is justified, within deadlines resulting from the law, pay the indisputable part of compensation in the amount corresponding to the size of non-pecuniary damage determined at the day of taking a position on the payment of the indisputable part of compensation.

10.3. Each claim should be considered taking into account the obligations under the law, in particular as regards the deadlines and the obligations to provide information.

10.4. The insurance company must not shift the burden to obtain and provide the documents needed to establish the responsibility of the insurance company or the amount of compensation on the injured party, if the insurance company can obtain them on its own based on the law, which does not release the injured party from the obligation under Article 16(3) of the Act on compulsory insurance.

## **11. Recommendation 11**

*Communication of the liquidator with the entities in the course of the procedure for determining and paying compensation (in particular, with the injured party, the perpetrator of damage, courts, public prosecution, police, medical institutions) should take place with due diligence related to the professional nature of the insurance activities carried out by the insurance company.*

11.1. Passing information on documents required to determine responsibility of the insurance company by the insurance company to the injured party in a form other than in writing requires the express consent of the injured party.

11.2. Written notification of the insurance company sent to the injured party under Article 14(2) second sentence of the Act on compulsory insurance should include an indication of:

- the specific reason preventing the settlement of claims in a given case,
- the likely date when taking the final position with respect to the claims of the injured party will be possible,
- and, if this is a reason related to the injured party, how he/she should cooperate with the insurance company in order to end the procedure for determining and paying compensation.

11.3. Information that the injured party is not entitled to compensation or entitled to a different amount than specified in the claim should include an indication of the specific circumstances and the legal basis justifying the total or partial refusal to pay compensation.

11.4. In the case of taking a position on the payment of the indisputable part of compensation, the insurance company should inform the injured party in writing of the circumstances on which it relied in determining the indisputable part of compensation. Information on determining the indisputable part of compensation provided by the insurance company to the injured party should take into account the principles set out in Recommendations 14.1, 14.2, 14.3.

11.5. In the case of refusal to pay interest for delay in payment of compensation, the insurance company should inform the injured party of the reasons for the refusal to pay demanded interest.

11.6. The insurance company should immediately make information and documents collected to establish its responsibility or the amount of compensation available to lawfully authorised persons, at their request.

11.7. The insurance company should record or document every time that access to information and documents referred to in Recommendation 11.6 was granted and the scope of this access.

11.8. When the injured party is acting in the procedure for determining and paying compensation by a proxy, the insurance company should send correspondence in this procedure, in particular correspondence related to the payment made or denial to pay compensation, to the proxy, as well as to the injured party.

## **12. Recommendation 12**

*The insurance company should develop, adopt and ensure functioning of the procedures specifying the method of contacts between the liquidator and the entities in the course of the procedure for determining and paying compensation (in particular, the injured party, the perpetrator of damage, courts, public prosecution, police, medical institutions), being part of the management system of the insurance company.*

12.1. In accordance with the procedures, the injured party should receive, immediately after filing a claim, contact details of the liquidator conducting the procedure for determining and paying compensation initiated by filing a claim, allowing for a direct contact with the liquidator. If in a given insurance investigation this procedure is carried out by a team of people (liquidators), it is sufficient to provide contact details of one liquidator.

12.2. The procedures should provide for:

- the speed and ease of access to the liquidator handling the claim,
- exhaustive explanations given by the liquidator,
- the high quality of provided information and its objectivity, accessibility and comprehensibility,
- immediate access for authorised persons to information and documents relating to the conducted procedure for determining and paying compensation.

12.3. The procedures should ensure the possibility of direct contact with the liquidator by the entities during the procedure for determining and paying compensation (in particular, the injured party, the perpetrator of damage, courts, public prosecution, police, medical institutions), via phone or e-mail, and– if justified by the scale of conducted activity and the size and risk profile associated with this activity – the insurance company may also allow other forms of contact with the liquidator, e.g. personal contact or contact through the website of the insurance company.

12.4. In accordance with the procedures, if as a result of contact of the liquidator with the entities in the course of the procedure for determining and paying compensation (in particular, the injured party, the perpetrator of damage, courts, public prosecution, police, medical institutions) any arrangements related to further course of the procedure are made, they should be recorded in a form which ensures the possibility of rendering them later.

12.5. In accordance with the procedures, in the course of the procedure for determining and paying compensation, the liquidator conducting the procedure should avoid any situations likely to give rise to a conflict of interest. In the event of a conflict of interest, the liquidator should notify the insurance company, and should be able to exclude himself/herself from the conducted procedure.

### **13. Recommendation 13**

*The insurance company should collect documentation on the procedure for determining and paying compensation, including in particular documentation collected in the course of this procedure and justification of the amount and the update of the reserve made for outstanding compensation and benefits, with due diligence related to the professional nature of the insurance activities carried out by it.*

13.1. In the case the documentation of the procedure for determining and paying compensation is kept in a digitised form, the method of collecting this documentation should provide for an immediate access to all the documents collected by the insurance company in this procedure, on terms identical as in the case of keeping documentation of the procedure for determining and paying compensation in a paper form.

13.2. Documentation related to the procedure for determining and paying compensation should include evidence of sending and receipt of individual letters by the insurance company in the course of correspondence in this procedure.

13.3. Documentation related to the procedure for determining and paying compensation should include, in addition to the declaration of the insurance company on awarding compensation, also confirmation of payment of compensation in a given day.

13.4. Documentation related to the procedure for determining and paying compensation should be numbered in order the documents appear in this procedure, regardless of whether the documentation is kept in paper or digitised form.

### **14. Recommendation 14**

*The insurance company should provide full and understandable information on the method of determining the amount of compensation for the injured party.*

14.1. The insurance company should on its own initiative provide the injured party with a calculation on the basis of which the amount of compensation was determined.

14.2. The calculation referred to in Recommendation 14.1 should include in particular:



- a detailed description of the circumstances which the insurance company took into account when determining the size of non-pecuniary damage, together with an indication of the evidence being the basis for determining these circumstances,
- valuation of individual circumstances which were taken into account by the insurance company when determining the size of non-pecuniary damage.

14.3. In the case of abridgement of the amount of compensation by the insurance company in connection with determining that the injured party or the deceased contributed to the creation of non-pecuniary damage or increased its size, the insurance company should indicate also:

- the circumstances taken into account when determining contribution of the injured party or the deceased to the creation of non-pecuniary damage or to the increase of its size, with an indication of the evidence being the basis for determining these circumstances,
- the reasons for the abridgement of compensation as a result of determining contribution of the injured party or the deceased to the creation of non-pecuniary damage or to the increase of its size,
- the amount by which the compensation was reduced as a result of determining contribution of the injured party or the deceased to the creation of non-pecuniary damage or to the increase of its size, along with the reasons for the application of the reduction in the amount specified.

## **15. Recommendation 15**

***While putting forward a proposal to reach a settlement, the insurance company should provide full and understandable information on the method of determining the amount of compensation proposed to be paid for the injured party.***

15.1. The proposal to reach a settlement made by the insurance company to the injured party should include a draft settlement, together with the calculation referred to in Recommendations 14.1, 14.2, 14.3.

15.2. While making the proposal for a settlement, the insurance company should propose a date for signing it, allowing the injured party analysis of this proposal.

15.3. The proposal to reach a settlement made by the insurance company to the injured party should be formulated in a clear, precise and understandable way.

15.4. If the proposal for a settlement submitted by the insurance company includes a waiver of claims for compensation by the injured party, the content of the settlement should clearly indicate that the injured party waives a claim of Article 445 § 1 or Article 446 § 4 or Article 448 in conjugation with Article 24 § 1 of the Civil Code over the settled amount.

## **16. Recommendation 16**

***In the procedure for determining and paying compensation, the insurance company should be guided by objectivity, considering all circumstances of the case, respecting the life situation in which the injured party found himself/herself.***

16.1. Forms/questionnaires used by the insurance company to determine the circumstances which influence determination and assessment of the size of non-pecuniary damage, determine the existence of an adequate causal connection between the event and the non-pecuniary damage, and determine the amount of compensation, should include questions appropriate to the life situation of the injured party.

16.2. The insurance company should, in justified cases, offer the injured party, with his/her consent and at the expense of the insurance company, medical examination by a specialist or diagnostic examination, if it is necessary to determine the effects of the accident for the state of health of the injured party and establishing an adequate causal connection between the state of health of the injured party and the accident.

## **The method of determining the amount of compensation**

### **17. Recommendation 17**

*The insurance company should consider individually the circumstances affecting the amount of compensation and apply the criteria of their assessment.*

17.1. The amount of compensation paid by the insurance company should correspond to non-pecuniary damage suffered and represent economically the sensible value for the injured party, however, it should also be kept within reasonable limits and not lead to unjustified enrichment of the injured party.

17.2. The insurance company should prevent glaring disparities in the amount of compensation paid by it in similar cases, taking into account the case-law of the Supreme Court and the settled case-law of common courts.

17.3. While determining the amount of compensation the insurance company should take into account that it fulfils the compensatory function.

17.4. The amount of compensation should be the sum of valuations of individual circumstances made by the insurance company, taken into account in a given case.

17.5. While determining the amount of compensation the insurance company can, in the alternative, take into account the level of living standard of the society across the country and publicly accessible market data in terms of the amounts of compensation paid, which, however, cannot undermine the compensatory function of the compensation.

17.6. The living standard of the injured party should not affect the amount of compensation.

### **18. Recommendation 18**

*While determining the amount of compensation the insurance company should, considering the whole of the circumstances of the case, take into account the factors relevant in assessing the size of non-pecuniary damage.*

18.1. While determining the amount of compensation for the injured party in connection with an injury or impaired health claimed on the basis of Article 445 § 1 of the Civil Code, the insurance company should take into account in particular:

- irreversibility of the consequences of the injury or the impairment of health,
- duration and intensity of physical and mental suffering,
- age of the injured party,
- loss of future prospects,
- a sense of social uselessness,
- life helplessness,

- inability to actively participate in family affairs,
- the need of assistance of others in matters of everyday life.

18.2. While determining the amount of compensation for the immediate family of the deceased claimed on the basis of Article 446 § 4 of the Civil Code, the insurance company should take into account in particular:

- the intensity of pain suffered by the injured party, moral suffering and mental shock after the death of a member of the immediate family,
- the occurrence of mental disorders in the injured party caused by death of a member of the immediate family,
- adaptive difficulties of the injured party associated with finding himself/herself in a new reality after the incident and accepting it,
- age of the deceased and the role performed in the family,
- age and life situation the injured party,
- type and intensity of ties between the injured party and the deceased.

18.3. While determining the amount of compensation in connection with the infringement of personal rights of the injured party as a result of death of a close relative, claimed on the basis of Article 448 in conjunction with Article 24 § 1 of the Civil Code, the insurance company should take into account in particular:

- pain, suffering,
- sense of injustice.

18.4. While determining the amount of compensation in connection with an injury or impaired health, the insurance company should take into account not only the harm existing at the moment of paying compensation, but also harm that the injured party will certainly feel in the future and harm which can be predicted in all likelihood.

18.5. The insurance company should not determine the amount of compensation solely on the basis of the percentage degree of bodily harm.

## **19. Recommendation 19**

***While determining the amount of compensation the insurance company should assess individually the existence of emotional ties which would justify obtaining compensation and its amount.***

19.1. In order to determine the circle of those entitled to compensation pursuant to Article 446 § 4 and Article 448 in conjunction with Article 24 § 1 of the Civil Code, the insurance company should determine whether there was a sufficiently strong emotional bond between the entitled person and the deceased, in particular formed through cohabitation, running a common household or providing each other with mutual assistance. In addition, in order to determine the circle of people entitled to compensation pursuant to Article 448 in conjunction

with Article 24 § 1 of the Civil Code, the insurance company should determine whether as a consequence of the accident resulting in death of a close relative this bond was broken, in particular resulting in violation of personal rights of the entitled person, among others: special family ties between members of the family, ties related to family relationships or between close people, the right to family life and the maintenance of such ties, ties of parents with a child.

19.2. In order to determine the existence of a sufficiently strong emotional bond between the entitled person and the deceased, the insurance company should examine all available evidence, including written correspondence, e-mail printouts, accounts of witnesses, photos.

19.3. Determination of the circle of people entitled to compensation referred to in Recommendation 19.1 should result – in every case – from the existence of an actual relationship between the entitled person and the deceased.

19.4. While determining the circle of those entitled to compensation referred to in Recommendation 19.1, the insurance company should use methods which allow establishing all the circumstances which may be relevant in this respect and should not in a given case depart from the use of a particular method, if it is used in other cases.

## **20. Recommendation 20**

***The insurance company may reduce compensation due to the injured party by a relevant amount resulting from the determination that the injured party or the deceased contributed to the creation of non-pecuniary damage or increase of its size.***

20.1. The insurance company should establish in the first place the existence of an adequate causal connection between the behaviour of the injured party or the deceased and the creation or increase of the size of non-pecuniary damage, based on comprehensive consideration of all the circumstances of a given accident.

20.2. The insurance company, in the case of determining that the injured party or the deceased contributed to the creation of non-pecuniary damage or increase of its size, takes into account, in particular: the fault or inadequacy of behaviour of the injured party or the deceased, comparison of the degree of fault of the parties of the accident, the size of non-pecuniary damage suffered by the injured party, any other circumstances of the accident. Assessment of behaviour of the injured party resulting in determination that the injured party contributed to the creation of non-pecuniary damage or increase of its size should in every case take into account the circumstances of the accident.

20.3. While determining contribution of the injured party or the deceased to the creation of non-pecuniary damage or increase of its size, the insurance company should take into account minority of the injured party or the deceased and the resulting limited scope of his/her perception, which are the criteria for assessing degree of the required and expected correct behaviour as a participant in road traffic.

20.4. Determination by the insurance company that the injured party or the deceased contributed to the creation of non-pecuniary damage or increase of its size should not

automatically cause a reduction of the amount of compensation. Reduction of the amount of compensation due to the established contribution of the injured party or the deceased should be supported by an individualised assessment in terms of the need and the size of the reduction of compensation.

## **21. Recommendation 21**

***The insurance company should pay, at the request of the injured party, interest for a delay in the payment of compensation.***

21.1. The insurance company should, in the case of violation of deadlines for payment of compensation, at the request of the injured party, pay interest due from the date on which compensation should be paid, and in particular:

- if compensation is not paid within 30 days from the date of notification of the claim,
- in a situation when, within 30 days from the date of notification of the claim, the injured party is not able to explain the circumstances necessary to determine his/her liability or the amount of compensation – if compensation is not paid within 14 days from the date on which with reasonable diligence explanation of these circumstances was possible,
- if compensation is not paid within 90 days from the date of notification of the claim, unless determination of its liability or the amount of compensation depends on pending criminal or civil proceedings,
- when the undisputed part of compensation is not paid within 30 days from the date of notification of the claim, unless it was unable to explain the circumstances necessary to determine liability or the amount of indisputable part of compensation – if the insurance company is able to demonstrate the impossibility of determining the amount of the undisputed part of compensation.

21.2. Interest on the amount which increased compensation as a result of new facts in the case is due from the date on which the increased compensation should be paid, owing to the notification of these facts to the insurance company by the injured party. Recommendation 21.1 shall apply accordingly.