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Videoberatung

occupational pension schemes: gaps in insurance cover for intermediaries, initiators and trustees

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Practical gaps in the intermediary's VSH protection:
A short story starts with the statement of an insurer that only the advice of the employer in the occupational pension scheme is insured in the scope of coverage – but not the advice of employees. The insurer's offer is: Just take out an additional VSH policy for management consultancy, then employee consultancy is also covered. The offer seemed tempting – but then came the further question: Does the intermediary then also have protection with regard to product advice and resulting damages? The answer was: No, because the management consultant policy only covers fee-based consulting but not brokerage. The solution was, as so often, a very practical approach: the insurer was informed that it was agreed with the employees that they should only sue the employer in the event of a claim (since the intermediary was classified by the insurer as an agent or vicarious agent of the employer). The employer can then in turn sue the intermediary – and thus there is no need for an additional policy, because now the insurer again has to provide coverage. Based on these discussions and after some consultation time, the insurer eventually included employee counseling in its VSH terms and conditions.

VSH gaps by concepts and products:
Intermediaries must also note that not all forms of BAV are automatically insured in every VSH policy. VSH offers and VSH policies must be reviewed, especially with regard to special solutions such as lump-sum U-funds, pension allowances and also time value accounts. A professional VSH insurance broker will specifically ask about these things with risk assessment forms and in personal conversations with agents. Incidentally, the various VSH offers from different providers do not cover all products by a long shot – examples of frequent exclusions are hedge funds, leverage transactions, participation rights and often also entrepreneurial participations.
VSH Gaps at Initiator:
Some initiators declare that they are well insured and may even exempt the intermediaries from liability to a certain extent. Without a disclosure of the current VSH policy and confirmed payment to the insurer (e.g., on your own website), this assurance may be deceptive. This is also likely to play a role if the concepts are offered without a so-called IDW-S4-WPG expert opinion. Heinz Gerlach informs about the increased duty of clarification and examination of the intermediary on his CDROM or in the Internet under www.direkteranlegerschutz.de by a comprehensive collection of judgements.
VSH gaps at the trustee:
Now, one might think that honorary professionals – such as tax advisors and lawyers – are always fully VSH insured. But even these appearances can be deceptive, especially if the aforementioned group takes on additional fiduciary duties. In the case of occupational pension schemes or time value account processing, this regularly involves so-called "managing trusteeship". This is regularly not covered by VSH insurance. If the honorary professional (if he is aware of the gap at all!) inquires with the insurer, the insurer will answer accordingly "… we refer to the above-mentioned inquiry and inform you that the activities listed there are not considered to be covered by the pecuniary loss liability insurance. Insurance cover can be provided for these activities within the scope of a so-called property cover. For a more precise risk assessment, we require the completed risk questionnaire enclosed as an attachment to be returned to us, as well as meaningful information and documents relating to the risk…".
Uninsurable VSH gap:
Whenever a contract or activity violates penal laws, there is almost never insurance coverage by condition. VSH cover is not usually available for such cases either. An example from Phantasialand: Professor Listig registers a business as an initiator and designs a time value account model. An initial trust agreement is concluded – so that the intermediaries can "safely" get their money. A tax advisor is appointed as trustee. The clou with this construction is not only that the tax adviser has of course only his "normal" VSH, thus without insurance protection as a trustee works. In recent years, the Federal Court of Justice has repeatedly had occasion to state (inter alia in connection with the purchase of junk real estate) that certain fiduciary activities of tax advisors regularly violate the Legal Advice Act, unless § 57 III StBG intervenes. Thus, in case of doubt, the "safe" trust agreement is null and void, and consequently not insurable. The conclusion is that there are numerous risks that are not automatically covered by VSH. Agents working on such special cases as time value accounts would do well to have the attorney or tax advisor acting as trustee show them proof of VSH.
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Courtesy of www.experten.de.

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