

BULLETIN

LIFE INSURANCE BRANCH 23

THREE YEAR TIME BAR APPLICABLE TO INSURANCE CONTRACTS ALSO APPLIES TO LIFE INSURANCES AND DOES NOT CONSTITUTE A DISCRIMINATION AGAINST OTHER INVESTMENTS IN FINANCIAL PRODUCTS - SHOW STOPPER

INTRODUCTION

Over the last couple of years many investors in branch 23 life insurances sought for damages before Belgian courts in misselling claims. These claims often relate to investments made in complex financial products or financial instruments with a complete mismatch with the investment profile of the investors. Losses in those products may only occur after 3 or 4 years. Investors then face the fact that their misselling claims are time barred. The Constitutional Court now confirmed in their judgement of 22 October 2020 that the 3 year time bar also applies to life insurances and that there is no discrimination with direct investments in the same financial products (which are subject to the common limitation periods of 5 and 10 years). Are those investors then completely left out in the cold?

(5 minutes reading)

INVESTING UNDER AN INSURANCE UMBRELLA – BRANCH 23

Customers often opt for investments in branch 23 life insurances for tax reasons – it allows tax efficient succession planning, and generally speaking (if all conditions are met) they are exempt from 30% withholding taxes. Branch 23 life insurances are insurances with an investment component which do not provide any capital protection or guarantee on returns. They invest in financial products such as funds. As it is a life insurance it is governed by the Insurance Law, including the applicable limitation period. We hereby set out the major limitation periods.

LIMITATION PERIODS

1. INSURERS

The limitation period is 3 years as of the start of the policy. This limitation period can be extended to a maximum of 5 years from the discovery or knowledge of an incident relating to the policy. However, the Belgian

Constitutional Court has now clarified that this three-year limitation period also applies in the case of fraud from the moment of the discovery of the incident. In this case the maximum limitation period of five years does not apply. The key here is therefore when the incident has been discovered.

2. INSURANCE INTERMEDIARY

This short 3 year period does not apply to the insurance intermediary. In this case the limitation period of 10 years applies if they fall under the contractual regime. Damages resulting out of tort/non-contractual damages are subject to a limitation period of 5 years.

3. PUBLIC ORDER

Investors are however protected in case of major infringements of rules of public order, such as insurance and financial rules and to rules with respect to consumer protection. In such cases the 3 years limitation period should not apply either but the common limitation periods.

There are many insurance intermediaries active on the Belgian market which are relatively small in size and often remain under the radar of the FSMA. These intermediaries are not always aware of the current, very stringent rules which apply on the sector with sometimes detrimental effects on the consumer.

The three year limitation period may therefore not be a show stopper. In case of further questions please do not hesitate to contact us.

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