

The scope of this report - provided by *IKRP i partneri d.o.o. Beograd* (member of *Rokas* international network) - is to present the legal regime framework related to insurance in the Republic of Serbia, which is as follows below...

1. REGULATION

- Insurance Law (Official gazette RS no 55/2004, 70/2004 61/2005, 61/2005, 85/2005, 101/2007, 63/2009, 107/2009 and 99/2011);
- Law on mandatory traffic insurance (Official gazette RS no 51/2009, 78/2011, 101/2011 and 93/2012);
- Law on road safety (Official gazette RS no 41/2009, 53/2010 and 101/2011);
- Law on National Bank of Serbia (Official gazette RS no 72/2003, 55/2004, 85/2005, 44/2010, 76/2012 and 106/2012);
- Law on consumer protection (Official gazette RS no 73/2010).

2. INSURANCE AND REINSURANCE COMPANIES, BRANCH OFFICES OF FOREIGN INSURANCE COMPANIES AND DIRECT PROVISION OF INSURANCE SERVICES, WHEN APPLICABLE

Insurance services in the Republic of Serbia may be provided by a locally incorporated company that has been granted operating license by the National Bank of Serbia (NBS). Exceptionally the persons and assets can be insured with a foreign company in case of risks which can not be insured in Serbia and in cases prescribed by the Government. Local insurance companies are obliged to obtain reinsurance with local reinsurers. The possibility of reinsurance abroad exists in case an insurance company cannot cover the risk surplus locally.

Insurance companies may be set up as a joint stock companies or mutual insurance companies with the minimum share capital prescribed under the law. Reinsurance services on the other hand may be performed only by such joint stock company that has obtained a licence for the performance of reinsurance activities.

The registration of insurance companies is performed with the Companies registry held with the Business Registers Agency.

According to the law, foreign insurance/reinsurance service providers shall become entitled to provide their services locally through their branch offices upon expiration of 5 year as of Serbia joining the WTO (World Trade Organisation).

3. INSURANCE SUPERVISION

The supervision of insurance/reinsurance companies and intermediaries is entrusted with the NBS. In addition the NBS has a wide authority to perform supervision of supervised entities related persons as well as to inspect the business records of all parties to the particular affair which is the subject matter of supervision.

The NBS issues and revokes operating licences for insurance and related activities, grants approval for qualified participation, for company's operating regulations and certified actuaries. The insurance/reinsurance operating license is issued following the completion of the prescribed procedure by the insurance company founders in which NBS is also vested with the discretion to determine whether the incorporation of the insurance company is justified.

The NBS keeps the data registry of the licensed insurance companies, including the information about the company founders, qualified shareholder, members of the management and members of the supervisory board, their business activities and measures taken against the company in performing supervision.

In addition the NBS keeps data records on licenses brokerage companies, brokers, insurance agencies and agents, records of licenses granted for provision of other insurance services, records of legal entities which perform brokerage and agency according to a separate law, records of licenses issued to certified actuaries.

4. QUALIFICATIONS AND SUPERVISION OF THE MANAGEMENT

The NBS assesses the compliance with the fit and proper requirement for members of the management, supervisory board and grants approval for their appointment. The persons proposed to be nominated members of management (members of the board of directors and general manager) and supervisory board are required to produce:

- Evidence that they meet the requirements in terms of their education, skills and professional experience,
- Evidence that the person has not been a member of management or of the supervisory board, or an individual endowed with special authorizations in a legal entity which is subject of initiated liquidation and/or bankruptcy

proceedings, or which has undergone forced liquidation and/or bankruptcy proceedings, for the past three years,

- Evidence that the person is not subject to limitations according to this Law, regarding elections of the members of the management and supervisory board of a joint stock insurance company,
- Evidence that the person has not been unconditionally sentenced to imprisonment for more than three months,
- Evidence, not more than 6 months old, from the competent administration body on the amount of paid property and income taxes,
- Certified photocopy of the resolution of the competent administration body on tax amount determination and payment of the tax for the current and/or previous year;

5. CAPITAL REQUIREMENTS AND RESERVES

The minimum capital of an re/insurance company depends on the class of insurance provided and amounts between EUR 2 million and EUR 4 million for life insurance companies; between EUR 1 million and EUR 4.5 million for non-life insurance companies; and EUR 4.5 million for reinsurance companies.

Under the law, the insurance company must have a guarantee reserve in order to ensure the constant fulfilment of its obligations which includes:

- Core capital;
- Reserves from bonus and reserves established by the Acts of the company;
- Retained earnings from previous years up to 50%;
- A portion of retained earnings from the current year, maximum 50% provided that the determined amount does not exceed the average value of the gross profit over the past three years and provided it does not exceed 25% of the guarantee reserve;
- Revaluation reserve.

6. INSURANCE INTERMEDIATION

Insurance intermediation services are performed by insurance brokers and agents licensed by the NBS. Insurance brokers and agents may be setup as joint stock or limited liability companies. In addition insurance agent's services may be performed by the physical persons as well. The operating license is issued following the completion of prescribed procedure in which the required documents are submitted to the NBS. Please note that the insurance brokerage provider is required to obtain mandatory insurance cover for the damages occurred in performance of its activities.

7. MARKETING AND SALES PRACTICES (CONSUMER PROTECTION)

In the insurance filed the aspects of consumer protection are governed by the general Law on consumer protection. In addition to this piece of legislation, the NBS has issued guidelines on transparency of information on the insurance market which to some extent covers the issue of the consumer protection as it applies in the insurance law area particularly. In accordance with the general consumer protection law, each "trader" has a pre contractual duty to provide the consumer in a "clear and understandable" manner the following information:

- the main characteristics of the goods or services;
- the address and other data relevant for establishing the identity of the trader, such as his trading name or the name of another trader on whose behalf he is acting;
- the selling price or the manner in which the selling price is calculated if, because of the nature of the product means that the selling price cannot reasonably be calculated, as well as all additional freight, delivery or postal charges; and possibility that such additional charges may be payable;
- the arrangements for payment, manner and time of delivery, performance of other contractual obligations and the complaint handling policy;
- the existence of a right of withdrawal, under conditions defined by this law;
- the support that the trader provides to the consumer after the sale, guarantees and conditions under which a consumer is entitled to a guarantee;
- the duration of the contract where applicable; or, if the contract is open-ended, the conditions for terminating the contract;
- the minimum duration of the consumer's contract obligations, where applicable;
- the existence and the conditions of any form of financial guarantees to be paid or provided by the consumer at the request of the trader.

The burden of proof concerning the fulfilment of this obligation is borne by the “trader”.

The general consumer protection law also provides for the definition of unfair contractual terms and principles for determining the unfairness of a particular contractual term depending on the goods/services which are subject matter of the contract. Furthermore the list of contractual terms which are by default considered unfair and those which are presumed to be unfair unless shown otherwise, is envisaged. In addition entire sections of the law have been dedicated to unfair/misleading practices and are considered to be broadly in line with applicable EU Directives 93/13 and 2005/29.

8. TYPES OF COMPULSORY INSURANCES

The compulsory insurances in the Republic of Serbia are the following:

- accident insurance of passengers in public transportation;
- third party motor vehicle liability insurance;
- third party and passenger liability insurance of aircraft owners;
- third party liability insurance of boat owners;
- insurance against liability for the damage a certified actuary may cause by the given opinion;
- insurance against liability for damages arising from activities of insurance brokers;
- insurance of polluters against liability for possible damage made to third party in an accident;
- holder of a license for the performance of a nuclear activity must conclude and maintain insurance for the coverage of liability for nuclear damage;
- tour operator insurance for damage caused to the passenger by non-performance, partial performance or undue performance of contractual obligations;
- insurance of a participant in hazardous cargo transportation for the damage caused to the persons, property and the environment in the course of hazardous cargo transportation;
- air transport carrier insurance of passengers and/or persons, luggage and goods;
- employer insurance of the employees against work accidents, professional diseases and diseases related to work, for the purpose of ensuring the payment of damages;
- healthcare institution insurance of patient subject to such examination against damage relating to health of the patient, if such damage is caused by medical examination;
- the proposer of the clinical examination insurance of persons subject to such examination against damage relating to health of such persons, if such damage is caused by examination;
- proposer of medical examination insurance against damages that may arise from application of medical device;
- audit firm professional liability insurance;
- certification authority in charge of issuance of qualified electronic certificates insurance against risk and liability for potential damage caused by issuance of electronic certificates;
- ski instruction services in ski resorts insurance of beneficiary of ski instruction services against accident;
- mortgagor insurance of the mortgage object against all common risks;
- insurance of deposits of natural persons, entrepreneurs and small and medium-sized legal entities with banks for the purpose of protecting the deposits of these persons in case of bank's bankruptcy;
- bankruptcy receiver professional liability insurance;
- attorney at law professional liability insurance;
- public notary professional liability insurance;
- executor professional liability insurance.

9. INSURANCE MARKET

According to the National Bank of Serbia report as of June 2012, there are 24 insurance and 4 reinsurance companies operating in the Serbian market. Out of these, 6 insurance companies are involved in both life and non life insurance, 11 companies provide non life insurance services and 7 companies provide life insurance services only.

In addition to the insurance companies, the sales network for insurance services includes 19 banks which are licensed for insurance agency services, 78 companies, 106 physical persons, while the certificate for insurance intermediation services has been issued to 13.378 physical persons.

In the total premium structure as of June 2012, the share of non life insurance premium amounts to 82.8% while the share of life insurance premium amounts to 17,2%.

Report prepared by: Vuk Stankovic – Solicitor