

The proposal of the new Serbian Insurance Law

On 5 December 2014 the proposal of the new Insurance law has been put in the Parliament procedure by the National Bank of Serbia.

The proclaimed aims of the proposal of the Insurance law are to ensure better protection of the users of financial services and improve the insurance undertakings supervision.

In addition the proposed text, if adopted, shall bring a long awaited overhaul in the Serbian regulatory environment, having in mind that previous regulatory amendments were more of formalistic nature. In that regard the proposed Law represents a comprehensive text, however some important points have been left to be resolved by the delegated legislation the adoption of which mainly falls within the jurisdiction of the National Bank of Serbia (the NBS).

In our previous newsletter (July 2014) we have analysed a step by step harmonisation of the domestic insurance market with the EU law. This approach is now being incorporated in the proposed Law with the result that the complete opening of domestic insurance market for foreign licensed insurance undertakings being prolonged until Serbia membership in the EU and WTO.

Also the separation between life and non life insurances businesses is implemented in the text. As concerns the existing composite insurance companies these shall be permitted to maintain the status in accordance with the Directive 2002/83/EC provided that they harmonise with the new law in the transition period.

The particular classes of life and non life insurance have been aligned to the respective EU Directives (Directive 2002/83/EC and Directive 73/239/EEC respectively) with regards to the type of risks, specification of the insurance coverage which shall in the future reflect on the insurance undertaking operating licenses.

The important novelty which is intended to benefit the consumers is the requirement of insurance undertakings, including the insurance intermediaries, to prepare and adequate complaints handling procedure in accordance with the guidance's proposed by EIOPA (European Insurance and Pensions Occupation Authority) which was unregulated until now. Also from the consumers perspective the important novelty is contained in the section of the proposed Law which regulates mandatory provision of information by the insurance undertaking to the insured, which so far has been regulated under the consumer protection legislation. In that regard the proposed Law stipulates only the minimum information to be provided to the insured, before the conclusion and during the currency of the contract, with the additional information prescribed in case if life insurance. In addition the information made through public media by insurance undertakings have to be complete, accurate and clear in terms insurance services offered and based on reliable data and may not be misleading to the consumers.

As we have analysed in our previous newsletter (July 2014), the requirement for at least two physical/legal entities as the founders of the insurance company has been abolished, whereas the notion of stake in the insurance company has been further refined in accordance with the Directive 2007/44/EC introducing the notions of material and controlling stake in the insurance undertaking.

The NBS licensing requirements have been regulated more strictly providing for mandatory elements of the insurance undertaking business plan and expanding the scope of actuary opinion on the elaboration on expected business results for three year period which represents its integral part. In addition insurance companies operating travel insurance plan will have to provide evidence of existence of their technical resources in accordance with the Directive 92/49/EEC.

As regards insurance intermediation providers, the provisions on concerning their registration have been alleviated comparing to the existing law, whereas the provisions regarding their qualified persons and management have been regulated more strictly.

The insurance undertakings capital adequacy and mandatory reserves provisions have been more aligned with the Directive 91/674/EC and the comparative and EU insurance practice in this regard, including the IAS. The National Bank of Serbia as the supervisor will be entitled to further regulate this issue through delegated legislation. The solvency margins requirement has been aligned with the requirement of the Directives 2002/83/EC for life insurances and Directive 2002/13/EC for non life insurance. The

amendments on insurance undertakings permitted investment activities are expected to give further stimulus to such activities on the local financial market and in turn ensure the National Bank of Serbia better supervision and control of their investment risks.

Further under the proposed law the NBS supervisory authorities over insurance undertaking have been significantly increased with entitlement to invoke more preventive supervisory measures not also to issue monetary fines for non compliance. The novelty in that regard is a section on supplementary supervision of insurance undertakings in a group in line with the Directive 98/78/EC which should ensure effective supervision on a group level and overall risk assessment.

The provisions of status changes and changes of insurance companies the legal form provide for mutatis mutandi application of the general provision of the company law with specific provision for mutuals. The status changes and changes of the insurance undertaking legal form remain to be subject to National Bank of Serbia approval.

The proposed law provides for general transition period of 1 year upon coming into force for harmonisation of insurance undertakings organisation and activities with its provisions.

The Parliamentary debate on the proposal of the Insurance Law is envisaged to start on Monday 15 December 2014.

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