COUNTRY UPDATE-Serbia: Insurance

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Suzana Pavlovic, Jelena Pejovic and Mirjana Mladenovic Paripovic, attorneys at law in cooperation with Rokas Law Firm

INTRODUCTION

In the modern business environment insurance plays a vital role in ensuring stability and security, providing essential financial protection not only for individuals but also for companies, their businesses and assets. This article offers a comprehensive analysis of the main legal sources governing the insurance sector in the Republic of Serbia, highlighting the most significant provisions of these regulations and providing key insights for understanding the insurance market in the Republic of Serbia.

INSURANCE REGULATORY FRAMEWORK

Serbia's insurance sector is categorised into life and property insurance. The primary laws governing the field of insurance are the Law on Contracts and Torts ("Official Gazette of the SFRY", br. 29/78, 39/85, 45/89 — decision of the CSY and 57/89, "Official Gazette of the SFRY ", br. 31/93, "Official Gazette of the SM ", no. 1/2003 — Constitutional charter and " Official Gazette of the RS ", br. 18/2020, "Law on Contracts and Torts"and the Insurance Law ("Official Gazette of RS", no. 139/2014 and 44/2021, "Insurance Law"). The Law on Contracts and Torts covers general obligation relations, while the Insurance Law specifically regulates the insurance sector. The following text will outline the basic provisions of the aforementioned laws.

The Law on Contracts and Torts

The Law on Contracts and Torts establishes common provisions for both property and life insurances, including the general principles and rules that apply to insurance contracts as a type of obligation relation contract. The Law defines the key elements of the insurance contract and its conclusion, the rights and obligations of the contracting parties (the insurer and the insured), the duration of the insurance, termination of the contract, the obligation to pay insurance premium, insurance fraud, etc.

The conclusion of an insurance contract is considered completed when the contracting parties sign the insurance policy or the cover note. The insurance policy must contain key elements such as the data of the contracting parties, the insured object or person, the risk, the duration of the insurance, the premium amount, and the signatures of the parties, and it can temporarily be replaced by a cover note, which includes the essential constituent elements of an insurance contract

The Law also governs the authority of insurance agents, i.e., individuals authorised by the insurer to act on their behalf in matters related to insurance contracts. When the insurer does not specify the exact scope of the agent's authority, it is assumed that the agent is authorised to: conclude insurance contracts on behalf of the insurer, negotiate amendments or extensions of the contract's validity, issue insurance policies, collect premiums, receive declarations addressed to the insurer. If the insurer imposes limitations on the agent's authority, but these limitations are unknown to the insured or the negotiator of insurance, such limitations shall be considered as non existent.

The insured's obligations stipulated by the Law are: duty of disclosure (policyholders must inform insurers of all relevant circumstances for risk assessment), insurance premium payment in the agreed terms and notification of the insurer on risk changes (risk increase or decrease, the occurrence of the insured event, etc.). As for the insurer's obligations, the Law defines that upon the occurrence of an insured event, the insurer is required to pay the agreed compensation within the contractually defined period, not exceeding 14 days from the notification of the event. However, if the obligation's existence or amount requires further investigation, the period starts once these are confirmed. Additionally, if the policyholder, insured, or beneficiary has intentionally caused the insured event or committed fraud, the insurer is not obligated to make any payments, and any contrary contractual provision is void. The insurer can also raise any objections regarding the insurance contract against the policyholder or other claimants, except in cases involving voluntary liability insurance and specific rights of third parties under certain conditions prescribed by Article 921 of the Law.

Unless otherwise agreed, the insurance contract takes effect from midnight on the day specified in the policy as the start date and lasts until the end of the final day of the agreed term (Article 922, paragraph 1 of the Law). If the contract does not specify a fixed duration, either party can terminate it upon the due date of the premium, by providing written notice at least three months before the premium's due date. If the insurance contract is for a period longer than five years, either party may terminate the contract after five years, with a six-month notice period. The contract cannot exclude either party's right to terminate the contract as specified above.

1. Property Insurance

Property insurance is crucial element in protecting assets from potential damage caused by insured events.

According to the Law on Contracts and Torts, property insurance may be contracted by any person having an interest that the insured event does not take place, since otherwise such person would suffer a material loss. Namely, property insurance provides compensation for damages that would occur to the property of the insured person due to the occurrence of the insured event. In order to fully benefit from this protection, prior to exercising its right, the insured person must undertake all necessary measures prescribed by the Law on Contracts and Torts to prevent the occurrence of the insured event, and if such event occurs regardless, insured person must undertake every possible measure to limit the consequences of such event. Failure to meet these obligations without a valid reason will result in a reduction of the insurer's payment, proportional to the additional damage caused by this failure.

Furthermore, it is worth mentioning that the insurers are obligated to cover expenses, losses, and other costs from reasonable efforts made by the insured person to prevent or limit damage, even if these efforts do not succeed. This coverage includes paying for these costs even if they, together with the compensation for the damage, exceed the insurance policy limit.

In no case shall the amount of compensation exceed the damage incurred as a result of the insured event.

Regarding property insurance, the Law on Contract and Torts specifically regulates the institutes of:

- ***over insurance*** (a case when insured amount exceeds the value of the insured property, but if the both parties are acting in good faith, the contract remains valid; also, the insurance amount and the premium shall be reduced accordingly in that case);
- ***subsequent reduction of value*** (if the insured value decreases during the term of the insurance, each contracting party has the right to an appropriate reduction of the insured sum and premium, starting from the day when it has communicated its request for reduction to the other party);
- ***multiple insurance*** (if an object is insured with multiple insurers for the same risk, interest, and period, and the total insured amount does not exceed the object's value, each insurer is responsible for covering their share of the claim);
- ***double insurance*** (if the total insurance coverage exceeds the value of the insured object (double insurance) and the insurance was arranged in good faith, all insurance policies remain valid);
- ***co-insurance*** (a case when multiple insurers jointly cover a risk, but each insurer is responsible for the full compensation amount); and
- ***sub-insurance*** (a case when the amount of insurance coverage is less than the actual value of the insured property or risk and the compensation will be reduced proportionally, unless differently regulated by the contract).

2. Personal Insurance

Personal insurance is a crucial element that ensures financial protection of individuals in the case of insured event occurrence.

Considering that this type of insurance provides coverage for individuals rather than property values, personal insurance (including life insurance and accident insurance) is not intended to compensate the damage resulting from the insured event but rather to pay a pre-determined sum of money.

Thereby, the insured amount is not necessarily tied to the potential damage that the insured person or beneficiary might incur; rather, the insurer is obligated to pay the insured amount regardless of any actual damage, such as in cases where the pay-out is, for example, triggered by the insured person reaching a specific age.

The above-mentioned property insurance rules regarding sub-insurance, over-insurance, and double insurance do not apply to personal insurance.

The Law on Contract and Torts precisely outlines specific circumstances under which the payment of the insured amount is excluded, such as suicide by the insured person, intentional murder of the insured person, wilful causing of accident, war risks and contractual exclusion of risk.

The Insurance Law

General provisions

First, the insurance activities in accordance with the Insurance Law are insurance operations, including co-insurance, reinsurance operations, insurance brokerage activities, and insurance representation activities.

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Thereby, the Insurance Law governs the insurance industry in the Republic of Serbia covering the establishment and operation of insurance and reinsurance companies, as well as insurance and reinsurance mediation and representation activities. It outlines the supervision of insurance practices, the protection of rights for insured individuals, policyholders, beneficiaries, and third parties who have incurred damages. Additionally, it addresses the conduct of insurance activities by individuals from European Union member states and foreign countries operating within the Republic of Serbia.

According to Article 4 of the Insurance Law, property and personal insurance are generally voluntary. This means that individuals and businesses are free to decide whether they wish to insure their assets or themselves. However, mandatory insurance is required only in specific cases outlined by the Insurance Law, ensuring that certain risks must be covered to protect broader public interests.

Additionally, Articles 8, 9, and 10 of the Insurance Law outline a detailed list of life and non-life insurance categories, along with specific classes of non-life insurance.

Life insurance (Article 8) types are:

1. **Life insurance**, covering:

- life insurance for survival: provides coverage if the insured survives the policy term;
- life insurance for death: provides coverage in case of the insured's death;
- life insurance for death and survival: covers both scenarios—death and survival;
- life insurance with premium return: returns the premiums paid if the insured survives the policy term.

2. **Insurance for marriage and birth**: covers events related to marriage and childbirth.

3. **Annuity insurance**: provides periodic payments to the insured.

4. **Supplementary life insurance**:

- accident insurance supplement: covers accidents in addition to life insurance;
- supplementary health insurance: provides additional health coverage alongside life insurance.

5. **Investment-linked life insurance**: life insurance products tied to investment funds.

6. **Tontine**: a type of insurance where participants pool their contributions and share the accumulated assets among those who reach a certain age or their heirs if they pass away.

7. **Capitalisation insurance**: based on actuarial calculations, provides payments in exchange for a lump sum or periodic premium payments.

Non-life insurance (Article 9) types are:

1. **Accident insurance** that includes:

- monetary compensation for accidents;
- coverage of accident-related expenses;
- combination of compensation and expense coverage;
- coverage for health damage or death of passengers.

2. **Voluntary health insurance** that includes:

- monetary compensation for illness;
- coverage of treatment expenses;
- combination of compensation and treatment expense coverage.

3. **Motor vehicle insurance**: covers damages to motor vehicles and loss of such vehicles.

4. **Rail vehicle insurance**: covers damages to rail vehicles and loss of such vehicles.

5. **Aircraft insurance**: covers damages to aircraft and loss of such aircraft.

6. **Watercraft insurance**: covers damages to watercraft (marine, river, lake, canal) and loss of such watercraft.

7. **Cargo insurance**: covers damages to cargo and loss of cargo during transportation.

8. **Property insurance against fire and other hazards**: covers property damage from fire, explosions, storms, natural disasters, nuclear energy, landslides, and subsidence, excluding damages covered by other specified insurance types.

9. **Other property insurance**: covers property damage from machinery breakdowns, burglary, glass breakage, hail, frost, or other hazards not covered by other specified insurance types.

10. **Motor vehicle liability insurance**: covers liabilities arising from the use of motor vehicles on land, including transport liabilities.

11. **Aircraft liability insurance**: covers liabilities arising from the use of aircraft, including transport liabilities.

12. **Watercraft liability insurance**: covers liabilities arising from the use of watercraft, including transport liabilities.

13. **General liability insurance**: covers liabilities not included in the above categories.

14. **Credit insurance**, covering:

- risks of non-payment or delays due to insolvency or other events;
- export credits and risks related to trade and investments;
- installment credits;
- mortgage and lombard loans;
- agricultural credits;
- other loans and advances;

15. **Guarantee insurance**: ensures the fulfillment of debtor obligations directly or indirectly;

16. **Financial loss insurance** covers financial losses due to:

- job loss;
- insufficient income;
- bad weather;
- lost profit;
- unplanned general expenses;
- unplanned business expenses;
- loss of market value;
- lost rent or income;
- indirect business losses;
- other financial losses;

17. **Legal expense insurance**: covers legal costs, attorney fees, and other procedural expenses.

18. **Travel assistance insurance**: provides help to individuals encountering problems while traveling or during periods away from their residence.

The Insurance Law stipulates the following groups and subgroups of insurance:

1. Life insurance that includes all types of life insurance listed in article 8.

2. Non-life insurance that is divided into the following subgroups based on the nature of risks and interests covered:

- **accident and voluntary health insuranc**e:
  - covers types of insurance listed in article 9, points 1 and 2.
- **vehicle insurance**:
  - includes insurance for vehicle damage and loss, as well as liability insurance related to vehicles. Covers types listed in article 9, points 1(4), 3, 7, and 10.
- **watercraft and transport insurance**:
  - covers damage to and loss of watercraft and transport-related risks. Includes types listed in article 9, points 1(4), 4, 6, 7, and 12.
- **aircraft insurance**:
  - covers damage to and loss of aircraft and related transport risks. Includes types listed in article 9, points 1(4), 5, 7, and 11.
- **property insurance**:
  - covers property damage from fire and other hazards. Includes types listed in article 9, points 8 and 9.
- **liability insurance**:
  - covers various forms of liability. Includes types listed in article 9, points 10 to 13.
- **credit and guarantee insurance**:
  - covers credit risks and guarantees. Includes types listed in article 9, points 14 and 15.

National Bank of Serbia (NBS)

As stipulated by the Insurance Law, NBS is the primary authority which conducts the supervision over the insurance businesses. It handles the issuance, revocation, and suspension of licenses and consents as well as the issuance, revocation, or suspension of consent under the Insurance Law, i.e. it is the primary authority responsible for overseeing insurance businesses. NBS also determines the measures to be imposed during its supervisory process. Key measures include issuing a written warning, publicly disclosing a company's non-compliance or regulatory violations, requiring corrective actions for illegal or improper practices, enforcing adherence to risk management rules, removing and suspending management members. NBS can also impose temporary measures, place a company under receivership, transfer its insurance portfolio to another insurer, and revoke licenses for specific types of insurance or all insurance activities.

Additionally, NBS also maintains a special register of insurance and reinsurance companies that have been granted licenses to operate, including information about the founders, qualified shareholders, and management members of these companies.

Having said that, NBS plays a crucial role in the financial stability of the insurance market, especially considering that the insurance companies have the statutory obligation to submit to NBS its financial statements and annual reports with opinions and explanations, as well as other financial and corporate documents, reports and data prescribed by the Insurance Law.

Furthermore, any individual wishing to acquire a qualifying share in an insurance joint-stock company, increase their ownership to 20%, 30%, or 50% of the voting rights or share capital, or become the parent company of the insurance company, must obtain prior consent from the NBS.

Organisational matters of the insurance company

An insurance company can be established either as a joint-stock company or as a mutual insurance company, while a reinsurance company can only be established as a joint-stock company. Most insurance companies in the Republic of Serbia are organised as joint-stock companies, meaning they are publicly traded and owned by shareholders.

To establish an insurance or reinsurance joint-stock company, the minimum share capital must be at least the RSD equivalent of €3,200,000 for life insurance, reinsurance, and all types of non-life insurance including the specific ones listed in Article 9, Items 10) to 15) of the Insurance Law, such as motor vehicle liability, aircraft liability, vessel liability, general liability, and guaranty insurance. For certain non-life insurance, the minimum share capital is €2,200,000.

The primary governing authorities of an insurance company are the assembly, supervisory board, and executive board. This organisational structure is governed by the Companies Act ("Official Gazette of RS," no. 36/2011, 99/2011, 83/2014 - other laws, 5/2015, 44/2018, 95/2018, 91/2019, and 109/2021), unless otherwise specified by the Insurance Law.

As required by the Insurance Law, an insurance company must maintain technical reserves, guarantee reserves, and other insurance assets to ensure it can meet its obligations and manage business risks effectively . In the event of the potential losses or deficiencies from previous years, the company is required to cover them in the following order: first from retained earnings or surplus, then from reserves established by the company's statutes and other governing documents, and finally, if it is necessary, from the share capital.

Additionally, the insurance company is obliged to establish and maintain an effective management system, which includes risk management, an internal control system, internal audit, and actuarial functions. This system should ensure that all operational processes are managed efficiently and in compliance with regulatory requirements, providing transparency, accountability, and financial stability.

The Law on Mandatory Traffic Insurance ("Official Gazette of the RS", no. 51/2009, 78/2011, 101/2011, 93/2012 and 7/2013 - decision of the CC")

The Law on Mandatory Traffic Insurance regulates mandatory insurance for vehicles, establishes the Guarantee Fund, defines its scope and funding mechanisms, and grants public authority to the Association of Insurers of Serbia (the "Association"). This law outlines the responsibilities of all parties involved and ensures protection for victims of traffic accidents by providing a framework for compensation.

The following types of insurance are mandatory under Serbian traffic legislation:

- insurance of passengers in public transport against the consequences of an accident;
- insurance of motor vehicle owners against liability for damage caused to third parties;
- insurance of the aircraft owner against liability for damage caused to third parties and passengers; and
- insurance of boat owners against liability for damage caused to third parties.

For the economic protection of passengers in public transport and third parties affected by damages, as well as in cases where damages are caused by uninsured or unidentified vehicles, or when the responsible insurance company is in bankruptcy, the Law on Mandatory Traffic Insurance established the institution of the Guarantee Fund ("Fund"). The Fund, a legal entity based in Belgrade, is funded by the budget of the Republic of Serbia. After disbursing compensation in the aforementioned cases, the Fund retains the right to seek recourse against the party responsible for the damage.

Last but not least, it is crucial to highlight that this law assigns public authority to the Association, which comprises all insurance companies involved in mandatory traffic insurance. The Association is authorised to perform national insurance bureau tasks, issue and print forms, and manage the international motor vehicle owner's insurance card (green card) for liability coverage within the country and abroad. It also handles compensation claims, operates the Information Centre, the Bureau for Compensation, and the Register of Harmful Events, and represents insurance companies before state and other competent authorities, as well as international insurance organisations.

The Law on Bankruptcy and Liquidation of Banks and Insurance Companies ("Official Gazette of RS", no. 14/2015 and 44/2018 — other laws)

This law is essential for ensuring a fair and transparent procedure in the event of bankruptcy or liquidation of banks, insurance companies or providers of financial leasing, thus protecting the interests of all involved parties.

The key authorities in the bankruptcy process are the bankruptcy judge, the bankruptcy administrator, and the creditors' committee. The Deposit Insurance Agency acts as the bankruptcy administrator, as outlined by this law.

If insurance company goes into bankruptcy the payments toward creditors will be prioritised in the following order: life insurance and reinsurance claims, accident insurance claims, other types of insurance claims, reinsurance claims for other insurance types, public revenue claims from the three months before bankruptcy (excluding pension and disability contributions), claims of other creditors and claims from creditors who are also shareholders or members of the mutual insurance company.

ADHERENCE TO EU INSURANCE REGULATIONS

As for the insurance sector, Serbia has made significant progress toward implementation of Directive 2009/138/EC of the European Parliament and of the Council of November 25, 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance, i.e., Solvency II.

Namely, the first stage of implementation, completed in 2017, involved analysing how Serbian insurance laws matched Solvency II. It was determined that all insurers, including small ones, must adhere to the Solvency II.

The second stage, started in 2018, involved assessing the impact of Solvency II on Serbia's insurance sector through continuous studies that evaluated capital adequacy and technical provisions, all in order to ensure the long-term stability of the insurance sector.

The third stage involves updating Serbia's regulatory framework, in particular the Insurance Law and the Law on Bankruptcy and Liquidation of Banks and Insurance Companies, all in order to fully integrate Solvency II requirements.

OTHER REGULATIONS

There are a significant number of laws that address insurance-related matters, as well as other by-laws, such as the Law on the Protection of Financial Service Consumers ("Official Gazette of RS", no. 36/2011 and 139/2014), Health Insurance Law ("Official Gazette of RS" no. 25/2019 and 92/2023), Gender Equality Act ("Official Gazette of RS", no. 52/2021), Capital market Act ("Official Gazette of RS", no. 129/2021), Law on Consumer Protection ("Official Gazette of RS", no. 88/2021), Law on Digital Assets ("Official Gazette of RS", no. 153/2020), Decision on Insurance Funds Investment ("Official Gazette of RS", no. 55/2015, 111/2017, 149/2020 and 137/2022), Decision on Reporting by Insurance/Reinsurance Companies ("Official Gazette of RS", no. 55/2015, 88/2019 and 58/2022), Decision on the Management System in Insurance/Reinsurance Companies ("Official Gazette of RS" no. 51/2015, 29/2018, 84/2020 and 94/2022), Decision on the Implementation of the Provisions of the Insurance Law Related to the Issuance of Licenses for Insurance/Reinsurance Activities and certain Approvals by NBS ("Official Gazette of RS", 55/2015, 69/2015 - corr., 36/2017 and 29/2018), Decision on the Application of Gender Factors in the Insurance Sector ("Official Gazette of RS", no. 58/2022), etc.

It is also important to highlight that the Criminal Code of the Republic of Serbia ("Official Gazette of the Republic of Serbia", no. 85/2005, 88/2005 - corr., 107/2005 - corr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019) incriminates fraud in insurance, as a distinct offence stipulating penalties that include both imprisonment and monetary fines.

NBS 2023 REPORT ON THE INSURANCE SECTOR IN SERBIA (the "Report")

According to the Report, Serbia had 20 insurance and reinsurance companies at the end of 2023, the same number as in 2022, with 15 of these being under majority foreign ownership. The Report also indicates that the percentage of insurance premiums in Serbia's Gross Domestic Product (GDP) remains significantly lower compared with that percentage in European Union member states. Additionally, non-life insurance dominates the Serbian insurance market, followed by life insurance and property insurance.

CLOSING REMARKS

The Republic of Serbia has made notable progress in aligning its insurance market with European regulatory standards, particularly through the implementation of Solvency II. However, full compliance is still a work-in-progress. To further improve the insurance market, the Republic of Serbia should consider amending relevant laws, conducting continuous impact assessments to refine policies, increasing the percentage of insurance premiums in GDP to stimulate market growth, enhancing transparency to build trust and ensure informed decision-making, and improving public understanding of insurance options and obligations.

(This country profile is kindly contributed by Suzana Pavlovic, attorney at law, Jelena Pejovic, attorney at law, and Mirjana Mladenovic Paripovic, attorney at law, all in cooperation with Rokas Law Firm).

Complaints Procedure

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