

New Insurance Law – conditions for liberalizing the insurance services market and additional harmonization with European Union law

On 18 December 2014 the National Assembly of the Republic of Serbia adopted a new Insurance Law ("Official Gazette of RS", No. 139/2014), continuing the reformative process of improving the market of financial services in Serbia and harmonizing with European Union law, and ensuring the necessary conditions for additional liberalization of the market of insurance services, whereby significant changes were made as compared to the legislative solutions so far: (a) more detailed regulation of the types of life and non-life insurance, (b) specifying conditions relating to exceptions from incapacity to deal in life and non-life insurance, particularly in the part relating to capital adequacy, keeping books and financial statements, as well as forming separate investment portfolios for life and non-life insurance, (c) defining different minimum capital limits for insurance/reinsurance companies as compared to the legislative solutions so far (EUR 3.2 million – life insurance and a number of non-life insurances, EUR 2.2 million for certain non-life insurances, and EUR 3.2 million – reinsurance), (d) specifying mandatory bodies of insurance companies (General Meeting, Supervisory Board and Executive Board) and regulating their competences, (e) regulating requirements and necessary documents for obtaining prior consent from the National Bank of Serbia at incorporating insurance companies and carrying out all subsequent changes, which were previously regulated by lesser legal acts, (f) extending deadlines for decisions of the National Bank of Serbia on submitted applications in the procedure of granting prior consent, (g) regulating insurance business that an insurance company may conduct in a foreign country, as well as the requirements for and manner of conducting such business, (h) detailed and precise regulation of the issue of capital adequacy (guarantee fund, required solvency margin for life and non-life insurance, guarantee capital, measures for ensuring solvency) as well as the issue of investing insurance funds, (i) improving the system of governance in insurance companies through more precise provisions relating to risk management, system of internal control, internal auditing and actuarial activities, (j) detailed regulation of obligation of and procedure for safekeeping sensitive data, (k) additional specifications relating to insurance companies' obligation of notifying the National Bank of Serbia, (l) expanding the list of measures the National Bank of Serbia is entitled to pronounce in the procedure of control over the business of insurance companies (for instance, the measure of public announcement of information on a company's default or tardiness in fulfilling obligations or on a company's non-compliance, the measure of removing or suspending members of management) and specifying conditions and adequacy of individual measures with regard to the type of offence reviewed in each individual case, (m) additional supervision, etc.

Particularly important novelties introduced by the new Insurance Law relate to provisions to be applied after Serbia's accession to the WTO, or the EU, when it will be possible: (a) for insurance activities in Serbia to be conducted by a branch of a foreign insurance company, upon receiving a license

from the national Bank of Serbia to establish a branch office, and local natural or legal entities will be able to conclude insurance contracts with a branch office of a foreign insurance company, (b) to reinsure liabilities under insurance contracts above the retention limit with a foreign reinsurance company as well, i.e. with a branch of that company that conducts reinsurance activities on the basis of a license from the National Bank of Serbia for establishing a branch office, (c) for insurance brokerage/agency activities to be conducted by a branch of a foreign company dealing in insurance brokerage/agency holding a license from the National Bank of Serbia for establishing a branch office. The Insurance Law has regulated in detail the requirements that a branch office of a foreign insurance company, foreign reinsurance company and foreign insurance brokerage/agency company will have to meet in order to obtain a license from the National Bank of Serbia for establishment in Serbia.

The new Insurance Law contains a separate chapter with provisions to be applied after accession to the EU regarding conditions for: (a) conducting insurance/reinsurance activities in another member state, (b) conducting insurance/reinsurance activities in another member state through a branch office, (c) directly conducting insurance/reinsurance activities in another member state, (d) supervision over the conducting of insurance/reinsurance activities in another member state, (d) reporting on insurance activities in another member state, (e) conducting insurance/reinsurance activities of another member state in the Republic of Serbia, directly or through a branch office, (f) carrying out supervision over conducting insurance/reinsurance activities which an insurance/reinsurance company from another member state is conducting in the Republic of Serbia through a branch office or directly, and specifying supervision measures which the National Bank of Serbia can pronounce in order to rectify any unlawfulness and/or incorrectness it finds, (g) carrying out non-life insurance activities by a branch office of an insurance company from the Swiss Confederation, (h) conducting insurance brokerage/agency activities in another member state, (i) manner of harmonizing the amount of initial capital, (j) coinsurance in the EU, etc.

Insurance companies, reinsurance companies, insurance brokerage companies, insurance agency companies, insurance agents, agencies for other services in insurance, as well as legal entities that conduct activities of providing other services in insurance in specially organized units are obligated to harmonize their business, capital, obligations, bodies, organization and acts with the provisions of the new Insurance Law within one year, starting from the date when the Law comes into force.

Transitional and final provisions specify that, until the day of Serbia's accession to the WTO, risks for which reinsurance cannot be provided in the Republic of Serbia, i.e. those for which reinsurance is not carried out in the Republic of Serbia can be reinsured with a foreign reinsurance company, as can other risks as specified by the Serbian Government, and that risks for which insurance is not provided in Serbia can be insured with a foreign insurance company, as can other risks as specified by the Serbian Government.

Bylaws that will enable the implementation of the new Insurance Law will be enacted within six months from the date when the Law comes into force; the bylaws enacted on the basis of the previous Insurance Law will continue to be applied until then.

Procedures for issuing licenses, granting consents and authorizations that have been commenced up to and including the date when the Law starts to be applied but have not yet been completed will be continued in compliance with the provisions of the new Insurance Law.

The new Insurance Law came into force on the eighth day following its publication in the "Official Gazette of the Republic of Serbia", and will begin to be applied after six months from the date of its coming into force, except for the provisions relating to foreign reinsurance companies or branches thereof, which will be applied as from the date of Serbia's accession to the WTO, and the provisions relating to foreign insurance companies or branches thereof, which will be applied after the expiry of four years following Serbia's accession to the WTO, or the EU.

JPM Janković Popović Mitić

Jelena Gazivoda, Senior Partner