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ZAKONODAVNI OKVIR POSLOVANJA DRUŠTVA ZA OSIGURANJE

Rezime

Donošenjem Zakona o osiguranju i drugih odgovarajućih podzakonskih akata, stvoren je zakonodavni okvir za poslovanje društva za osiguranje, zasnovan na međunarodnoj praksi. Zakon je donet u postupku harmonizacije domaćeg zakonodavstva sa propisima Evropske unije, tako da on sadrži rešenja savremenih, evropskih zakona i prava Evropske unije. Pitanje nadzora je regulisano velikim brojem direktiva Evropske unije. Narodna banka Srbije je u periodu od 2004. godine, od kada joj je poverena funkcija nadzora nad obavljanjem delatnosti osiguranja, saglasno ovlašćenjima iz Zakona, donela veći broj podzakonskih akata iz ove oblasti koji imaju za cilj da unaprede taj proces i da ga približe savremenim sistemima supervizije, u skladu sa međunarodnim standardima i trendovima.

Ne treba posebno isticati značaj nadzora nad osiguranjem, jer je očigledna nužnost ove vrste kontrole iz više razloga, a pre svega, zbog prirode delatnosti osiguranja, zaštite interesa korisnika osiguranja, sprečavanje nelojalne konkurencije u ovoj oblasti, kao i zbog obezbeđenja i zaštite opštih interesa, u obavljanju delatnosti značajne za zaštitu i bezbednost lica i imovine. Zakon o osiguranju obavljanje nadzora nad osnivanjem i poslovanjem društva za osiguranje, stavlja u nadležnost Narodne banke Srbije.

Ključne reči: društvo za osiguranje, Zakon o osiguranju, Narodna banka Srbije

LEGAL FRAMEWORK FOR INSURANCE COMPANIES' OPERATIONS

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Summary

The adoption of the Insurance Law, along with other relevant by-laws, created the legal framework for the operation of insurance companies, based on international practice. This Law was passed within the process of harmonization of domestic legislation with the European Union's regulations, hence it contains the solutions of the modern, European laws and the EU law. The issue of supervision was regulated by a large number of the European Union Directives. Starting from 2004, when it was entrusted with the supervision of insurance operations, the National Bank of Serbia, in accordance with its rights granted by the Law, passed a large number of by-laws in this field, with a view to enhancing the concerned process and bringing it closer to the modern supervisory systems, in line with the international standards and trends.

There is no need to particularly emphasize the importance of insurance supervision, since the necessity of this type of control is obvious for several reasons, first and foremost due to the nature of insurance activity, protection of interests of insurance users, prevention of unfair competition in this field, as well as for safety and protection of common interests in conducting this activity important for safeguarding and wellbeing of people and property. According to the Insurance Law the supervision over the establishment and operation of insurance companies is within the competence of the National Bank of Serbia.

Key words: insurance company, Insurance Law, National Bank of Serbia

Delatnost osiguranja u Srbiji

Delatnost osiguranja čine poslovi osiguranja, saosiguranja, reosiguranja, kao i poslovi neposredno povezani sa poslovima osiguranja. Poslovi osiguranja su zaključivanje i izvršavanje ugovora o osiguranju i preduzimanje mera za sprečavanje i suzbijanje rizika koji ugrožavaju osiguranu imovinu i lica, dok u poslovima saosiguranja učestvuje više društava za osiguranje koja su se sporazumela o zajedničkom snošenju i raspodeli rizika. Poslovi reosiguranja se odnose na zaključivanje i izvršavanje ugovora o reosiguranju osiguranog viška rizika iznad samoprdržaja jednog društva za osiguranje kod drugog društva za osiguranje.

Neposredno povezani poslovi sa poslovima osiguranja su posredovanje i zastupanje u osiguranju, utvrđivanje i procena rizika i šteta, posredovanje radi prodaje i prodaja ostataka osiguranih oštećenih stvari i pružanje drugih intelektualnih i tehničkih usluga u vezi sa poslovima osiguranja.

Sva pravna lica koja se bave delatnošću osiguranja u Srbiji su pod nadzorom i kontrolom Narodne banke Srbije. Delatnost osiguranja je delatnost društva za osiguranje, kao i društva za posredovanje u osiguranju i društva za zastupanje u osiguranju, odnosno zastupnika u osiguranju, agencije za pružanje drugih usluga u osiguranju, preduzeća i drugih pravnih lica koja imaju posebno organizovan deo za pružanje drugih usluga u osiguranju i pravnih lica koja poslove posredovanja i zastupanja u osiguranju obavljaju na osnovu posebnog zakona, zatim nad pravnim licima koja su povezana putem kapitala ili upravljanja u društvima osiguranja. Delatnost osiguranja i zakonitost rada svih pravnih subjekata i svakog pojedinačno u delatnosti osiguranja je predmet nadzora koji se sprovodi nad njima.

Prema postojećoj zakonodavnoj regulativi,¹ delatnost osiguranja u Srbiji može da obavlja društvo za osiguranje kao akcionarsko društvo i društvo za uzajamno osiguranje.

Akcionarsko društvo za osiguranje posluje uz fiksnu premiju, koju ne može menjati posle

zaključenja ugovora o osiguranju. Akcionarsko društvo se može baviti svim vrstama osiguranja, ili samo nekim vrstama (kao što su obavezno osiguranje od autooodgovornosti ili reosiguranje).

Akcionarsko društvo za osiguranje se osniva ugovorom koji zaključuju najmanje dva pravna ili fizička lica. Strana pravna i fizička lica mogu pod uslovom uzajamnosti osnivati akcionarsko osiguravajuće društvo ili ulagati sredstva u akcionarsko osiguravajuće društvo.

Osnivači ulažu sredstva u početni fond sigurnosti društva čija je minimalna visina određena je zakonom, u zavisnosti od toga koje će vrste osiguranja društvo obavljati.

Društvo za uzajamno osiguranje je pravno lice koje obavlja delatnost osiguranja u interesu svojih članova po principu uzajamnosti i solidarnosti. Ono može obavljati sve poslove osiguranja, ali ne i poslove reosiguranja. Osnivaju ga pravna i fizička lica. Društvo za uzajamno osiguranje naplaćuje od svojih članova doprinose. Visina doprinosa se posle zaključenja ugovora može menjati, u zavisnosti od odnosa između prikupljenih doprinosa i nastalih obaveza društva.

Društvo za uzajamno osiguranje može se osnovati kao:

- društvo sa neograničenim doprinosom (premijom)
- društvo sa ograničenim doprinosom.

Društvo sa neograničenim doprinosom može od svakog člana zahtevati uplatu dodatnog doprinosa potrebnog za izmirenje nepokrivenih šteta i ostalih rashoda, bez ograničenja.

Društvo sa ograničenim doprinosom može od svakog člana zahtevati uplatu dodatnog doprinosa koji nije veći od njegovog prethodnog uplaćenog doprinosa u celini iz iste poslovne godine ako su štete i ostali rashodi veći od prethodno uplaćenih doprinosa i ostalih prihoda društva.

Novčani deo osnovnog kapitala društva za uzajamno osiguranje ne sme biti manji od iznosa propisanog za akcionarsko osiguravajuće društvo.

¹ Zakon o osiguranju, "Službeni glasnik RS", broj 55/04

Insurance Activity in Serbia

Insurance activities include insurance, coinsurance and reinsurance operations, as well as the operations directly linked to insurance operations. Insurance operations include concluding and executing insurance contracts, and taking measures to prevent and mitigate risks jeopardizing the insured property and persons, whereas coinsurance operations involve more than one insurance company that have agreed on the joint assumption and allocation of risk. Reinsurance operations include concluding and executing the contract on reinsuring the insured excess of risk above the self-insured retention limit of one insurance company with another insurance company.

The operations directly linked to insurance activities are insurance intermediation and representation, defining and assessing risk and damage, sale mediation, and sale of the damaged goods remnants, along with the provision of other intellectual and technical services in relation to insurance operations.

All legal entities conducting insurance activities in Serbia are under the supervision and control of the National Bank of Serbia. Insurance activity is an activity conducted by an insurance company, as well as by an insurance intermediation company and an insurance representation company, i.e. insurance representatives, agencies providing other insurance services, companies and other legal entities that have a separately organized unit for the provision of other insurance services, legal entities which conduct insurance intermediation and representation operations on the basis of a separate Law, and also legal entities linked through capital or insurance companies management. Insurance activities and the legality of operations conducted by all legal entities and each individual dealing with insurance are the subject of relevant supervision.

According to the existing laws and regulations¹, insurance activities in Serbia can be conducted by an insurance company as a joint stock company, and a mutual insurance company.

A joint stock insurance company operates with a fixed premium, which cannot be altered once the insurance contract is concluded. A joint stock company may deal with all types of insurance or only some of them (such as the obligatory car liability insurance or reinsurance).

A joint stock insurance company is established by an agreement concluded by at least two legal entities or individuals. Foreign legal entities and individuals may establish a joint stock insurance company under the condition of mutuality, or they can invest their funds in a joint stock insurance company.

The founders deposit their funds in the initial safety fund of the company, whose minimal amount is prescribed by the Law, depending on the type of insurance the concerned company will conduct.

A mutual insurance company is a legal entity conducting insurance activities in the interest of its members based on the principles of mutuality and solidarity. Such a company may conduct insurance, but not reinsurance operations. It can be established by legal entities and individuals. A mutual insurance company charges contributions from its members. The amount of contribution can be changed once the contract is concluded, depending on the ratio between the collected contributions and the existing liabilities of the company.

A mutual insurance company can be established as:

- An unlimited contribution (premium) company; and
- A limited contribution company.

An unlimited contribution company may ask from each of its members to pay an additional contribution necessary for settling the uncovered damage and other expenditures, without limitation.

A limited contribution company may ask from each of its members to pay an additional contribution in the amount not higher than the contribution previously paid within the same business year, if the damage and other expenditures are higher than the previously paid contributions and other company's profits.

¹ Insurance Law, Official Gazette of the RS, No. 55/04

Kontrola nad osnivanjem i poslovanjem društva za osiguranje²

Narodna banka Srbije sprovodi kontrolu nad osnivanjem društva za osiguranje. Da bi akcionarsko društvo za osiguranje dobilo saglasnost i moglo obavljati poslove osiguranja i reosiguranja, njegovi osnivači ili lice koje oni ovlaste podnose zahtev Narodnoj banci Srbije za dobijanje dozvole za osnivanje društva sa propisanom dokumentacijom. Dozvola se izdaje za obavljanje jedne ili više vrsta osiguranja kojima će se akcionarsko društvo za osiguranje baviti. O zahtevu za izdavanje dozvole za obavljanje poslova osiguranja, na osnovu ocene ispunjenosti zakonskih uslova i opravdanosti osnivanja akcionarskog društva za osiguranje, Narodna banka Srbije odlučuje rešenjem, i to u roku od 60 dana od dana prijema zahteva.

U dispozitivu rešenja se navode vrste osiguranja za koje se izdaje dozvola. Ako se rešenje izdaje za sve vrste osiguranja iz jedne grupe osiguranja, u dispozitivu rešenja navodi se samo ta grupa osiguranja. Osnivači akcionarskog društva za osiguranje, su dužni da prijavu za upis u registar nadležnog organa, podnesu u roku od 30 dana, od dana dobijanja dozvole za obavljanje poslova osiguranja. Uz prijavu za upis u registar podnosi se i dozvola za obavljanje poslova osiguranja. Akcionarsko društvo za osiguranje dužno je da rešenje o upisu u registar, dostavi Narodnoj banci Srbije, u određenom roku od prijema tog rešenja.

Akcionarsko društvo za osiguranje, radi obavljanja određene vrste osiguranja koja nije navedena u dozvoli, odnosno za prestanak obavljanja neke vrste osiguranja za koju ima dozvolu, podnosi Narodnoj banci Srbije, zahtev za promenu dozvole za obavljanje poslova osiguranja.

Ukoliko postoji neki od navedenih razloga u zakonu, Narodna banka Srbije će odbiti zahtev za izdavanje dozvole za obavljanje poslova osiguranja uz navođenje razloge za to i donošenje rešenja o prestanku važenja dozvole za obavljanje poslova osiguranja. Dozvola za obavljanje poslova osiguranja, akcionarskom

društvu za osiguranje prestaje da važi: ako društvo, u roku od 30 dana od dana izdavanja dozvole, ne podnese prijavu za upis u registar, ako društvo ne otpočne sa poslovanjem u roku od šest meseci od dana upisa u registar, ako društvo ne obavlja poslove osiguranja duže od jedne godine neprekidno, prenosom portfelja osiguranja na drugo društvo za osiguranje, otvaranjem postupka likvidacije i pokretanjem stečajnog postupka. Na izdavanje dozvole za obavljanje poslova reosiguranja, shodno se primenjuju odredbe ovog zakona koje se odnose na izdavanje dozvole za obavljanje poslova osiguranja.

Po dobijanju dozvole osnivači će sazvati osnivačku skupštinu društva.

Organi akcionarskog društva za osiguranje su skupština akcionara, upravni odbor, nadzorni odbor i direktor. Upravu čine upravni odbor i direktor. Za izbor člana uprave ili člana nadzornog odbora je potrebna saglasnost Narodne banke Srbije, a u suprotnom izbor se smatra ništavim. Narodna banka Srbije će odbiti zahtev za dobijanje saglasnosti za obavljanje funkcije člana uprave, odnosno člana nadzornog odbora akcionarskog društva za osiguranje ukoliko lice ne ispunjava zakonom propisane uslove ili ako zbog poslova i radnji koje obavlja može ugroziti poslovanje akcionarskog društva za osiguranje. Predviđena je mogućnost oduzimanja date saglasnosti od strane Narodne banke Srbije, u zakonom preciziranim slučajevima.

Obaveze i odgovornosti članova uprave akcionarskog društva za osiguranje su obezbeđivanje poslovanja u skladu sa pravilima upravljanja rizikom, praćenje rizika i preduzimanje odgovarajućih mera za njihovo otklanjanje, obezbeđivanje vođenja poslovnih knjiga i sastavljanje računovodstvenih izveštaja, sastavljanje izveštaja koji se dostavljaju Narodnoj banci Srbije, obavljanje interne revizije.

Uprava akcionarskog društva za osiguranje je u obavezi da obavesti nadzorni odbor društva u slučajevima ako je ugrožena likvidnost društva, ako nastupe razlozi za prestanak važenja ili oduzimanje dozvole, ili ako se garantne

² Član 18. Zakona o osiguranju

The pecuniary part of the core capital of the mutual insurance company must not be lower than the amount prescribed for a joint stock insurance company.

Supervision over Establishment and Operation of Insurance Companies²

The National Bank of Serbia performs supervision over the establishment of insurance companies. In order for an insurance company to gain approval and start conducting insurance and reinsurance operations, its founders or the person they authorize submit a request, accompanied with the prescribed documentation, to the National Bank of Serbia for obtaining a license for the establishment of an insurance company. The license is issued for one or several types of insurance that the joint stock insurance company will be conducting. Based on the assessed level of fulfillment of legal conditions and justifiability of a joint stock insurance company establishment, the National Bank of Serbia passes a decision on the request for issuing a license for conducting insurance operations, within 60 days from the date of the receipt of the request.

The body of the decision states the types of insurance that the license is issued for. If the decision is issued for all types of insurance within a certain group of insurance operations, the body of the decision states only the concerned group of insurance operations. The founders of a joint stock insurance company are bound to file an application for entry into the competent body's register within 30 days from obtaining the license for conducting insurance operations. Along with the registering application, they are also to submit the license for insurance operations. A joint stock insurance company is bound to submit the decision on registration to the National Bank of Serbia within a certain deadline after the receipt of the concerned decision.

If a joint stock insurance company wishes to conduct a certain type of insurance not stated in the license, or to cease conducting a certain type of insurance for which it is licensed, it is to

submit a request to the National Bank of Serbia for the modification of the license for insurance operations.

If there are any of the reasons prescribed by the Law, the National Bank of Serbia will reject the request for issuing the license for insurance operations, stating these reasons, and issuing a decision on the termination of the insurance operations license.

The license for conducting insurance operations of a joint stock insurance company stops being valid in the following cases: if the company fails to file a registration application within 30 days from the date of license issuance; if the company fails to start its operations within six months from the registration date; if the company does not conduct insurance operations for a period longer than one year continuously; if the insurance portfolio is transferred into another insurance company; if the liquidation or bankruptcy proceedings are launched.

The provisions of the Law relating to the issuance of insurance operations license are applied accordingly to the issuance of reinsurance operations license.

Upon obtaining the license, the founders are convening the founding assembly session of the company.

The bodies of a joint stock insurance company are the following: Shareholders' Assembly, Board of Directors, Supervisory Board, and the CEO. The management consists of the Board of Directors and the CEO. The election of a member of the Board of Directors or a member of the Supervisory Board needs to be approved by the National Bank of Serbia; otherwise the election is considered null and void. The National Bank of Serbia shall reject the request for approval of the election of a member of the Board of Directors or a member of the Supervisory Board of a joint stock insurance company if the concerned person does not meet the conditions prescribed by the Law, or if the person, due to their position and operations they conduct, may jeopardize the operations of the relevant joint stock insurance company. There is the possibility for the once

² Article 18 of the Insurance Law

rezerve smanje ispod margine solventnosti. Isto tako, član uprave je dužan da obavesti nadzorni odbor akcionarskog osiguravajućeg društva i Narodnu banku Srbije o imenovanju, prestanku funkcije u drugom pravnom licu i ako član uprave ili članovi njegove uže porodice steknu akcije u drugom društvu.

Nadzorni odbor akcionarskog društva za osiguranje ima funkciju praćenja rada interne revizije, razmatranja nalaza Narodne banke Srbije u postupku kontrole, razmatranja finansijskih izveštaja i godišnjih izveštaja o poslovanju društva, kao i izveštaja o sprovođenju politike osiguranja i reosiguranja.

Kao i za akcionarsko osiguravajuće društvo, tako i za društvo za uzajamno osiguranje, zahtev Narodnoj banci Srbije za dobijanje dozvole za obavljanje poslova osiguranja podnose osnivači ili ovlašćeno lice. Uz zahtev za dobijanje dozvole podnosi se i potrebna dokumentacija propisana zakonom.

Zakonodavna regulativa je ista kod društva za uzajamno osiguranje i akcionarskog osiguravajućeg društva kod pitanja njegovog osnivanja, zahteva za izdavanje dozvole, organima upravljanja, posebnim ograničenjima uprave i nadzornog odbora, nadležnostima uprave i nadzornog odbora.

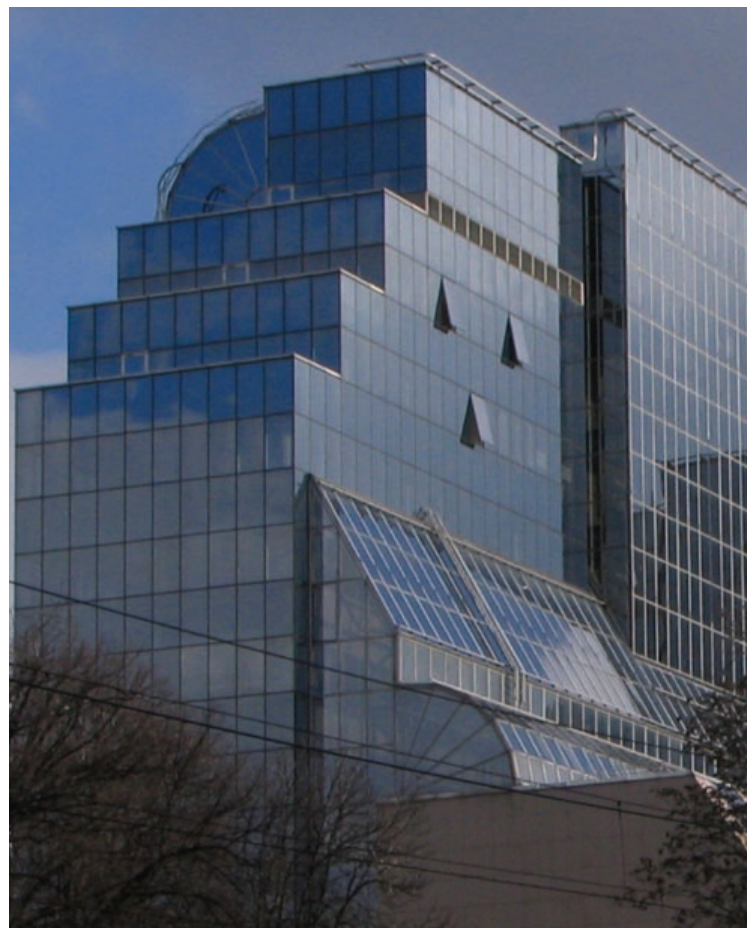
Narodna banka Srbije vrši nadzor nad poslovanjem društva za osiguranje. Posredna kontrola Narodne banke Srbije nad radom društava za osiguranje obuhvata prikupljanje, praćenje i proveravanje izveštaja i obaveštenja društva za osiguranje.

Društvo za osiguranje ima obavezu da dostavlja Narodnoj banci Srbije: finansijski izveštaj i godišnji izveštaj o poslovanju, kopiju izveštaja o obavljenoj reviziji, izveštaj o sprovođenju politike saosiguranja i reosiguranja, poslovni plan društva, statut i druge opšte akte, akte poslovne politike, obaveštenje o promenama u strukturi kapitala društva, obaveštenje o promeni ovlašćenog aktuara, dokaze o izmenama podataka koji se upisuju u registar, obaveštenje o sazivanju skupštine i zapisnik sa sednice skupštine kao i druga obaveštenja, izveštaje i podatke propisane zakonom.

Društvo za osiguranje dužno je da tromesečno izveštava Narodnu banku Srbije, o strukturi kapitala, o promenama akcionara,

saosiguranju i reosiguranju viškova rizika iznad maksimalnog samopridržaja, visini i strukturi ostvarenih premija, po vrstama osiguranja, broju i visini prijavljenih i rešenih šteta i šteta u sporu, tehničkim rezervama i deponovanju i ulaganju sredstava tehničkih rezervi, stanju i promenama na ostaloj imovini, likvidnosti društva, garantnoj rezervi i deponovanju i ulaganju sredstava garantne rezerve, margini solventnosti, nalazima interne revizije kao i drugim propisanim podacima. Zatim, društvo za osiguranje dužno je da, na zahtev Narodne banke Srbije, dostavlja i druge izveštaje, informacije i podatke koji su od značaja za vršenje nadzora, kao i statističke i druge podatke po grupama i vrstama osiguranja.

Neposredna kontrola Narodna banka Srbije nad poslovanjem društva za osiguranje, se obavlja putem inspektora osiguranja, koji ličnim uvidom u određena isprave, utvrđuju zakonitost poslovanja društva za osiguranje. Inspekcijski nadzor je najautorativnija vrsta nadzora nad nadziranim pravnom subjektom, pa su stoga Zakonom o osiguranju propisani obim i mere koje inspektor osiguranja može



granted approval by the National Bank of Serbia to be revoked in the cases precisely defined by the Law.

Duties and responsibilities of the joint stock insurance company management members are the following: securing operations in accordance with the risk management rules, risk monitoring and conducting appropriate measures for risk avoidance, securing business bookkeeping and preparation of accounting reports, preparation of reports for the National Bank of Serbia, and internal audit.

The management of a joint stock insurance company is obliged to inform the company's Supervisory Board if the company's liquidity is jeopardized, if the reasons for the expiry or termination of the license occur, or if the level of guarantee provisions falls below the solvency margin. Also, a management member is obliged to inform the Supervisory Board of a joint stock insurance company and the National Bank of Serbia, about their appointment, the cessation of their function in another legal entity, and if a management member or the members of their nuclear family acquire shares in another company.

The Supervisory Board of a joint stock insurance company performs the function of monitoring the internal audit operations, examining the findings of the National Bank of Serbia in its supervision procedure, examining financial reports and annual reports on the company's operations, as well as the reports on conducting the insurance and reinsurance policy.

Both in case of a joint stock insurance company and a mutual insurance company, the request to the National Bank of Serbia for obtaining the insurance operations license is to be submitted by the founders or the authorized person. The license request is to be accompanied by the required documentation prescribed by the Law. The Law does not differentiate between a mutual insurance company and a joint stock insurance company when it comes to the issues of establishment, license request, management bodies, special restrictions to management and Supervisory Board, as well as the competencies of management and Supervisory Board.

The National Bank of Serbia supervises the operations of insurance companies. The indirect supervision of the National Bank of Serbia over the operations of insurance companies includes collecting, monitoring and checking reports and notifications of insurance companies.

Insurance companies are obliged to submit the following to the National Bank of Serbia: financial report and annual report on operations, copy of the report on conducted audit, report on coinsurance and reinsurance policy implementation, the company's business plan, statute and other general by-laws, business policy by-laws, notification on changes in the company's capital structure, notification on the change of the authorized actuary, evidence on changes in data entered into the register, notification on convening the assembly, and the minutes from the assembly session, along with other notifications, reports and data prescribed by the Law.

An insurance company is obliged to inform the National Bank of Serbia on a quarterly basis about the following: capital structure, changes of shareholders, coinsurance and reinsurance of excess risks above the maximum self-insured retention limit, amount and structure of sold premiums, by type of insurance, number and amount of reported and resolved cases

Narodna banka Srbije
National Bank of Serbia



preduzeti. U tom pogledu naročito su važni uslovi i mere za otklanjanje nezakonitosti i nepravilnosti, kao i mere zbog nepostupanja u skladu sa pavilima o upravljanju rizikom.

U vršenju nadzora nad poslovanjem društva za osiguranje, Narodna banka Srbije, pod u ovom zakonu propisanim uslovima, da preuzme kontrolu nad poslovanjem društva za osiguranje i da rešenjem imenuje vanrednu upravu, čija je dužnost da preduzme mere neophodne za povratak stabilnosti i likvidnosti društva za osiguranje. Odluke vanredne uprave podležu saglasnosti Narodne banke Srbije.

Pored toga, Narodna banka Srbije ima na raspolaganju privremene mere i predlaganje mere prema članovima uprave, članovima nadzornog odbora, licima sa posebnim ovlašćenjima i kvalifikovanim imaicima.

Ako pak Narodna banka Srbije oceni da do tada njene preduzete navedene i druge mere nisu dale željeni rezultat, Zakon o osiguranju je predvideo pravo Narodne banke Srbije da društvu za osiguranje naloži prenos portfelja osiguranja ili da Narodna banka Srbije rešenjem imenuje vanrednu upravu i time preuzme kontrolu nad poslovanjem dotičnog društva za osiguranje. Ako pak te dve mere nadzora ne budu dale očekivani rezultat, Zakonom o osiguranju predviđeno je pravo Narodne banke Srbije da oduzme dozvolu za rad i pokrene postupak likvidacije ili stečaja.

Interna kontrola i upravljanje rizicima u poslovanju društva za osiguranje

Narodna banka Srbije je u periodu od 2004. godine, od kada joj je poverena funkcija nadzora nad obavljanjem delatnosti osiguranja, u skladu sa ovlašćenjima iz Zakona o Narodnoj banci Srbije³ donela određen broj podzakonskih akata iz oblasti kontrole i upravljanja rizicima. Njihov osnovni cilj je bi unapređenje i približavanje samog procesa savremenim sistemima supervizije, u skladu sa međunarodnim standardima i trendovima.

Odlukom o sistemu internih kontrola i upravljanju rizicima u poslovanju društva za osiguranje⁴ je bliže propisan sistem internih kontrola koji su društva za osiguranje dužna da uspostave u funkciji upravljanja rizicima različitog porekla, kojima u svom poslovanju bivaju izložena.

Učinjen je važan korak ka postepenoj transformaciji nadzora nad obavljanjem delatnosti osiguranja, orijentisane na ispravljanje uočenih nepravilnosti, u pravcu supervizije osiguranja, uz primarni cilj - zaštitu interesa osiguranika i drugih korisnika osiguranja, odnosno sredstava osiguranja.

U društvima za osiguranje uvodi se obaveza da samostalno razvijaju upravljanje rizicima, odnosno sisteme internih kontrola, kojima će pratiti i sprovoditi to upravljanje. Prilagođavanjem načina organizacije i upravljanja, poslovne svesti i kulture, društva za osiguranje treba da se dovedu do stanja u kome će sama, u interesu osiguranika, odnosno u sopstvenom interesu, kontrolisati rizike u poslovanju.

Sa druge strane, Narodna banka Srbije će u postupku supervizije vršiti procenu adekvatnosti upravljanja rizicima u društvima za osiguranje i u slučaju identifikacije prekomernih izloženosti rizicima, odnosno područja poslovanja koja potencijalno mogu biti uzrok tih izloženosti, izricati preventivne i korektivne mere, u skladu sa Zakonom.

Sistem internih kontrola

Interna kontrola je sistem, ugrađen u sve aktivnosti i poslovne procese društva za osiguranje, dok je interna revizija služba, poseban organizacioni deo, čiji je zadatak, između ostalog, revizija uspostavljenog sistema internih kontrola.

Kao deo korporativnog upravljanja u društvima za osiguranje, definisana su tri nivoa odgovornosti za uspostavljanje i funkcionisanje sistema internih kontrola, a to su odgovornost:

³ Zakon o Narodnoj banci Srbije "Službeni glasnik RS", br. 72/2003, 55/2004 i 85/2005.

⁴ Odluka o sistemu internih kontrola i upravljanju rizicima u poslovanju društva za osiguranje, "Službeni glasnik RS", br. 12/2007".

of damage and cases of damage in litigation, technical provisions and depositing and investing technical provision funds, position and changes in other assets, company's liquidity, guarantee reserve and depositing and investing guarantee provision funds, solvency margin, internal audit reports and other prescribed data. In addition, an insurance company is obliged to, at the request of the National Bank of Serbia, submit other reports, information and data, relevant for the supervision function, along with statistical and other data, by group and type of insurance.

The direct supervision of the National Bank of Serbia over the insurance companies' operations is conducted by insurance inspectors, who determine the legality of insurance company's operations based on the personal insight into certain documents. Inspection supervision is the most authoritative type of supervision over the supervised legal entity, hence the Insurance Law prescribes the scope and measures that the insurance inspector may undertake. Particularly important in this respect are the conditions and measures for eradicating illegalities and irregularities, along with the measures for not following the risk management rules.

In its supervision over the insurance companies' operations, the National Bank of Serbia, pursuant to the terms prescribed by the Insurance Law, may take the control over the insurance company's operations and issue a decision appointing the caretaker administration, whose task is to implement the measures necessary for regaining the stability and liquidity of the concerned insurance company. The decisions of the caretaker administration are to be approved by the National Bank of Serbia.

In addition, the National Bank of Serbia may implement some temporary measures and propose certain measures to the members of management, members of the Supervisory Board, persons with special authorizations and qualified owners.

If, however, the National Bank of Serbia estimates that its abovementioned and other measures taken so far have failed to yield the desired result, the Insurance Law prescribes the right of the National Bank of Serbia to propose the insurance portfolio transfer, or to issue the decision appointing the caretaker administration thus taking the control over the concerned insurance company's operations. If none of the two supervisory decisions yield the expected result, the Insurance Law prescribes the right of the National Bank of Serbia to revoke the operating license and launch the liquidation or bankruptcy proceeding.

Internal Control and Risk Management in Insurance Companies' Operations

Starting from 2004, when it was entrusted with the supervision of insurance operations, the National Bank of Serbia, in accordance with its rights granted by the National Bank of Serbia Law³, passed a certain number of by-laws in the field of control and risk management. Their primary objective was to enhance the process, bringing it closer to the modern supervision systems, in line with the international standards and trends. The Decision on internal controls system and risk management in insurance companies' operations⁴ closely regulates the internal controls system that the insurance companies are bound to establish with a view to managing risks of different origin that they will be exposed to in their operations.

A significant step was made towards the gradual transformation of supervision over insurance operations, focused on correcting observed irregularities, directed at insurance supervision, with the primary goal - to protect the interests of the insurance policy holders and other insurance users, i.e. to protect the insurance funds.

Insurance companies now have the obligation to independently develop risk management, i.e. internal controls systems,

³ National Bank of Serbia Law, Official Gazette of the RS, No. 72/2003, 55/2004, 85/2005

⁴ Decision on internal controls system and risk management in insurance companies' operations, Official Gazette of the RS, No. 12/2007

- upravnog odbora,
- direktora sa ostalim izvršnim rukovodiocima (menadžment) i
- zaposlenih.

Odgovornost upravnog odbora društva za osiguranje predstavlja uspostavljanje osnova sistema internih kontrola, putem donošenja, odnosno usaglašavanja odgovarajućih internih akata. Ovaj organ obavezan je da utvrđuje listu procedura neophodnih u poslovanju radi kontrole rizika, definiše strategiju poslovanja u uslovima izloženosti rizicima, kao i da vrši odgovarajuća prilagođavanja organizacione strukture i informacionih sistema.

Odgovornost menadžmenta društva za osiguranje su operativne aktivnosti na uspostavljanju sistema internih kontrola. Pod time se podrazumeva izrada, revizija i izmena procedura, redovno izveštavanje upravnog odbora o bitnim pitanjima vezanim za rizike u poslovanju, preduzimanje preventivnih i korektivnih mera u cilju sprečavanja prekomerne izloženosti rizicima, odnosno nemogućnosti ostvarivanja operativnih ciljeva, kao i praktična primena pravila o upravljanju rizicima putem određivanja obima i strukture rizika koje društvo za osiguranje može preuzeti bez ugrožavanja svog poslovnog i finansijskog rezultata i položaja.

Odgovornost zaposlenih je integracija sistema internih kontrola u sve aktivnosti društva, putem poštovanja procedura prilikom obavljanja operativnih aktivnosti, praćenja tog poštovanja od strane drugih lica, kao i razumevanja svoje uloge u sistemu internih kontrola, odnosno svog doprinosa ostvarivanju ciljeva društva za osiguranje.

Upravljanje rizicima

Rizik se određuje kao verovatnoća nastanka negativnih efekata na poslovni i finansijski rezultat društva i položaj društva. Upravljanje rizicima je proces stalnog identifikovanja rizika kojima se u poslovanju izlaže društvo za osiguranje, merenja, odnosno kvantifikacije tih rizika, njihove procene u smislu mogućnosti da se podnesu (odnosno u smislu procene adekvatnosti raspoloživog kapitala za podnošenje rizika), kao i kontrole u cilju trajnog održavanja stepena izloženosti rizicima na nivou koji je moguće

podneti. S obzirom da ne postoji jedinstvena, odnosno opšte prihvaćena klasifikacija rizika za finansijske organizacije koje se bave delatnošću osiguranja, Odlukom o sistemu internih kontrola i upravljanju rizicima u poslovanju društva za osiguranje se nastojalo da se obezbedi načelna usaglašenost sa preporukama relevantnih međunarodnih tela, pre svega Međunarodne asocijacije supervizora osiguranja (International Association of Insurance Supervisors - IAIS), kao i sa Solvency II principom, ali uz odgovarajuća neophodna prilagođavanja stepenu razvoja domaćeg tržišta osiguranja.

Zaključak

Zakon o osiguranju je trebao da otkloni prepreke za razvoj tržišta osiguranja, tako da ono bude zasnovano na finansijskoj stabilnosti i disciplini u izvršavanju ugovornih obaveza, na zdravoj konkurenciji i jednakim uslovima privređivanja, odnosno pružanja usluga osiguranja.

Stvaranjem odgovarajućeg zakonodavnog okvira, reformisano srpsko tržište osiguranja se danas dinamičnije razvija. Na čelu reforme se nalazila Narodna banka Srbije sa ulogom strogog nadzora i kontrole nad osnivanjem i poslovanjem osiguravajućih društava.

Značaj nadzora nad osiguranjem je veliki, jer je očigledna nužnost ove vrste kontrole iz više razloga, a pre svega, zbog prirode delatnosti osiguranja, zaštite interesa korisnika osiguranja, sprečavanje nelojalne konkurencije u ovoj oblasti, kao i zbog obezbeđenja i zaštite opštih interesa, u obavljanju delatnosti značajne za zaštitu i bezbednost lica i imovine.

Narodna banka Srbije nastavila je sa započetim aktivnostima na stabilizaciji tržišta osiguranja i zaštiti interesa klijenata kroz organizovanje nadzora, kroz insistiranje na jačanju korporativnog upravljanja i transparentnosti rada društava, kroz procenu načina upravljanja rizicima, kao i kroz oduzimanje dozvole za rad društava za osiguranje koja su ugrozila, ili su sa svojim neadekvatnim osiguranjem mogla ugroziti sredstva osiguranja. Aktivnosti Narodne banke Srbije na vraćanju poverenja u sektor osiguranja dale su vidljive rezultate, jer je sektor osiguranja stabilizovan.

that would monitor and implement that management. Readjustment of organization and management methods, business awareness and culture should bring insurance companies to the level at which they would control business risks on their own, in the interest of insurance policy holders, and in their own interest.

On the other hand, within its supervision process, the National Bank of Serbia will be assessing the adequacy of risk management in insurance companies, and, if it identifies excessive risk exposures, i.e. fields of activity that are a potential cause of these exposures, it will initiate precautionary and corrective measures, pursuant to the Law.

Internal controls system

Internal control is a system integrated into all activities and business processes of an insurance company, whereas internal audit is a function, i.e. a separate organization unit, whose task is to, among other things, audit the established internal controls system.

As a part of corporate governance in insurance companies, the following three levels of responsibility for establishing and functioning of internal controls system were defined - the responsibility of:

- the Board of Directors;
- the CEO along with the other executive heads (top management); and
- the employees.

The responsibility of the insurance company's Board of Directors is to establish the foundations of the internal controls system by means of adopting, or adjusting the relevant internal by-laws. This body is bound to compose the list of procedures necessary for risk control in business, define the business strategy for risk exposure conditions, and conduct the appropriate adjustments of organizational structure and IT systems.

The responsibility of the insurance company's management is to conduct operative activities in respect of establishing the internal controls system. This includes the preparation, review and modification of procedures, regular reporting to the Board of Directors on the relevant issues related to business risks, undertaking of precautionary and corrective

measures in order to prevent excessive risk exposures, i.e. the inability to achieve the operative goals, along with the practical implementation of risk management rules by means of determining the scope and structure of risks that the insurance company may take without jeopardizing its business and financial results and position.

The responsibility of employees is the integration of internal controls system into all activities of the insurance company, by following the procedures for conducting operative activities, monitoring whether other persons are following the same procedures, as well as by understanding one's role in the internal controls system, i.e. one's own contribution to the achievement of the insurance company's goals.

Risk Management

Risk is defined as the probability of adverse effects impacting the business and financial result of a company and the company's position. Risk management is a process of constant identification of risks that an insurance company is exposed to in its operations, measurement, i.e. quantification of those risks, their assessment in terms of capability to endure them (i.e. in terms of assessing the adequacy of available capital for risk endurance), as well as control in order to permanently maintain the risk exposure at the level that is feasible to bear. Given that there is no uniform and generally accepted classification of risks for financial organizations which perform insurance operations, the objective of the Decision on internal controls system and risk management in insurance companies' operations was to provide the principal harmonization with the recommendations of the relevant international bodies, first and foremost the International Association of Insurance Supervisors - IAIS, as well as with the Solvency II principle, taking into consideration the appropriate necessary adjustments to the level of development of the domestic insurance market.

Odlukom o sistemu internih kontrola i upravljanju rizicima u poslovanju društva za osiguranje, reguliše se okvir sistema internih kontrola i upravljanja rizicima u kome bi društva za osiguranje trebalo da se kreću, ostavljajući pri tom prostora da ona sama, interno, urede dosta pitanja. Ovakva fleksibilnost i odsustvo konkretnih imperativno-normativnih rešenja, posledica je

činjenice da je ovo prvi podzakonski akt koji reguliše upravljanje rizicima u društvima za osiguranje i da se njome čini značajan korak ka modernizaciji sistema supervizije osiguranja i njegovom usmeravanju ka rizicima i kontroli rizika u poslovanju društava za osiguranje, a sve u cilju zaštite sredstava osiguranja kao i interesa osiguranika i drugih korisnika osiguranja.

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Conclusion

The Insurance Law was intended to remove the obstacles for the development of insurance market, so that it is based on financial stability and discipline in fulfilling contractual obligations, sound competition and equal conditions for business, i.e. provision of insurance services.

The establishment of the appropriate legal framework enabled the reformed Serbian insurance market to develop more dynamically. The reform was lead by the National Bank of Serbia which conducted the strict supervision and control over the establishment and operation of insurance companies. The importance of insurance supervision is large, since the necessity of this type of control is obvious for several reasons, first and foremost due to the nature of insurance activity, protection of interests of insurance users, prevention of unfair competition in this field, as well as for safety and protection of common interests in conducting this activity important for safeguarding and wellbeing of people and property. The National Bank of Serbia continued the initiated activities on the stabilization of insurance market and protection of clients' interests through organizing supervision,

insisting on the strengthening of corporate governance and transparency of companies' operations, through assessing risk management methods, and through revoking operating licenses from those insurance companies that jeopardized, or could have jeopardized, insurance funds by inadequate insurance. The activities of the National Bank of Serbia in respect of regaining the confidence in the insurance sector have yielded tangible results, since the insurance sector is now stabilized.

The Decision on internal controls system and risk management in insurance companies' operations regulates the framework of the internal supervision and risk management system within which insurance companies should operate, leaving the room for them to regulate a lot of issues on their own, internally. Such flexibility and the absence of concrete, imperative and normative solutions comes as a result of the fact that this is the first by-law regulating risk management in insurance companies, making a significant step towards the modernization of the insurance supervision system and its directing towards risks and risk control in insurance companies' operations, with a view to protecting insurance funds and the interests of insurance policy holders and other insurance users.