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Slobodan Ilijić, M.A.

member of the Presidency of the Association of Jurists of Serbia

POSITION OF INSURANCE ACTUARIES IN LEGAL SOURCES IN SERBIA

In this paper, the provisions of the following legal acts are analysed: the Law on Insurance, the Decree on the Manner of Acquiring the Title of Certified Actuary, and the Decision on the Conditions for Acquiring the Title of Certified Actuary. The first chapter deals with the position of a certified actuary in an insurance company whereas the second chapter views the position of a certified actuary from a broader perspective. The third chapter analyses general and special conditions for examination procedure in acquiring the title of a certified actuary, and particularly item 12 of the Decision on the Conditions for Acquiring the Title of Certified Actuary. From the full analysis of the provisions of the aforementioned legal sources, the author drew five conclusions and, for each of them, he made suggestions for the future law on insurance the passing of which is announced in 2014. In the first conclusion, the author advocates the formulation of rules of actuarial profession, sound business practices and business ethics, in accordance with the law, which would bridge the legal gap in the Law on Insurance. The other conclusion included the suggestions to formulate the rule according to which an insurance company would be obliged to employ a certified actuary as well as the rule according to which the certified actuary

would be elected at the Company General Meeting. In the third conclusion, it was proposed that the future law on insurance should stipulate clear conditions and unambiguous criteria for special election of a legal entity registered for conduct of actuarial activities and special election of a certified actuary. The fourth conclusion proposes that the future law on insurance should stipulate the legal basis for establishment of the Chamber of Certified Actuaries. This conclusion also includes concrete suggestions for public authorities which, initially, could be transferred onto a newly-formed Chamber of Certified Actuaries of Serbia. In the fifth conclusion, it is concluded that item 12 of the Decision on the Conditions for Acquiring the Title of Certified Actuary regulates an unequal position of candidates in the course of taking examination for acquiring the title of a certified actuary and thus, it is suggested that item 12 of the Decision is deleted from the legal system of Serbia.

Key words: *certified actuary; insurance company; acquiring title of certified actuary.*

1. Introduction

1.1. In insurance industry, the main task of an actuary is to calculate tariffs i.e. prices for particular types of insurance based on the risk modelling and uncertainty. This main task speaks about the fact that the price of insurance service in the market is not set simply as the result of supply and demand but based on actuarial, mathematical and statistical calculations. Thus, it can be concluded that the price setting of insurance service is by no means simple.¹ In addition to this main task, the actuaries do many other tasks which are important in the insurance industry. Actuaries provide opinion on formation of technical reserves, business policy instruments (from adoption procedure through amendments and supplements to their application), financial statements and annual statement of company operations, implementation of coinsurance and reinsurance policy, calculation of mathematical reserve, transfer of insurance

¹ Professor Jelena Kočović, Ph.D.: The Role and Importance of Actuarial Profession in the Development of Insurance Market, *Proceedings of the Association for Insurance Law of Yugoslavia* from the conference held in April 2003 in Palić, with the topic Insurance Law in Transition, Palić, 2003, pp. 221–229.

portfolio, solvency margin and many other actuarial activities. Starting from the aforementioned subject matter and method of actuarial work in insurance industry, only their legal position in this area will be described below, despite the fact that actuaries may be engaged in numerous finance-related fields, institutions, judicature and the like.

1.2. In the first half of 2014, the legal position of actuaries in Serbian insurance was defined in more detail by three legal sources. Among the highest ranked legal sources are the Law on Insurance (hereinafter: „LoI“)² as well as a smaller number of provisions on property and personal insurance lines (hereinafter: „LoPPI“)³. Their legal validity was extended by the LoI. Additional legal sources for actuarial legal position in the insurance in Serbia were, in the past decade, the provisions of the Law on Companies and the provisions of the two Laws on Business Companies having the same name. However, there is not much room for more detailed analysis of these laws and their impact on the legal position of actuaries. The second place in the hierarchy of legal sources of actuarial legal position in insurance belongs to the Decree on the Manner of Acquiring the Title of Certified Actuary (hereinafter: „Decree“).⁴ This Decree was passed by the Federal Government of the FRY. In the adoption of the LoI and also in subsequent amendments, this Decree was omitted to be declared null and void, meaning that even today, for certain aspects of legal position of actuaries in Serbia, it represents a positive regulation (for example, the composition of the Certified Actuary Professional Exam Committee). The third place in the hierarchy of legal sources is notably taken by the Decision on the Conditions for Acquiring the Title of Certified Actuary (hereinafter: „Decision“).⁵ Legal position of actuaries is also, to a smaller extent, addressed by some other general by-laws of the National Bank of Serbia (hereinafter: „NBS“),⁶ but the aforementioned Decision is the most direct legal source regarding this subject. The original text of the Decision was passed by the Governor of the National Bank of Serbia

² *Official Gazette of RS*, No. 55/2004, 70/2004 – correction, 61/2005, 61/2005 – state law, 85/2005 – state law, 101/2007, 63/2009 – Decision of the Constitutional Court, 107/2009, 99/2011, 119/2012 and 116/2013.

³ *Official Gazette of FRY*, No. 30/1996, 57/1998, 53/1999 and 55/1999, and *Official Gazette of RS*, No. 55/2004.

⁴ *Official Gazette of FRY*, No. 24/1997 and 17/1998.

⁵ *Official Gazette of RS*, No. 104/2006 and 3/2011.

⁶ For example, the Decision on the Content of the Opinion of the Certified Actuary (*Official Gazette RS*, No. 19/2005) etc.

(hereinafter: „NBS“), Radovan Jelašić, but it was subject only to minor amendments in 2011. Taking into account this concept of legal sources, it should be borne in mind that any Decree of executive power represents a general legal regulation which is superior to the Decision as such regulation, provided that such Decision may be adopted by both executive and administrative power (NBS is closer to administrative power). This is generally accepted legislative and legal position in Serbia. For these reasons, the Decree of the Federal Government takes the second place in the legal sources hierarchy relating to the position of actuaries in the insurance industry in Serbia, whereas the Decision of NBS takes the third place. Each of these three legal sources sheds light on the legal position of actuaries in the insurance industry in Serbia.

2. Actuaries in an insurance company

2.1. After examining the current status and legal matters of actuaries in comparative insurance law it was shown that the prevailing form of organisation of actuaries in the world is a legal entity.⁷ Now, Serbia also stipulates the possibility to establish a legal entity for carrying on actuarial activities, provided that such legal person must be previously registered for actuarial activities (Article 39 paragraph 2 item 11 of the Lol).⁸ In other words, according to the positive insurance law, actuarial activities in Serbia may be carried out by both a certified actuary and a legal entity registered for conduct of actuarial activities. However, the wording of the majority provisions of the LoPPI, and today, of the Lol, has notably related to the certified actuary as an individual, a professional i.e. a natural person. In the comparative business law the right of citizenship was acquired by specific companies of liberal professions⁹ and thus, in develo-

⁷ Slobodan Ilijić, M.A.: Forms of Mandatory Insurance in the Beginning of 2008 (II part), journal for insurance theory and practice *Insurance Trends Journal*, No. 1–2/2009, pp. 26–40; Slobodan Ilijić, M.A.: „Status and Legal Issues of Actuaries in the Insurance of Serbia“, *Proceedings of the Business Lawyers Association of Serbia* from the 21st Congress in Vrnjačka Banja, May 2012 with the main topic Laws and Economy, journal for commercial law theory and practice *Law and Economy*, Beograd, god. 49, No. 7–9/2012, pp. 450–463.

⁸ More details on the Decision on Implementation of the Provisions of the Insurance Law Relating to the Issuance of licenses and Approvals of the National Bank of Serbia (*Official Gazette of RS*, No. 45/2005, 106/2006 – US).

⁹ Professor Dragana Knežić Popović, Ph.D.: „Liberal Profession Businesses: specific characteristics, advantages, disadvantages, perspectives“, *Proceedings of the Union of Lawyers of*

ped economies, this specific characteristic related to actuarial firms. Therefore, domestic legislation treated a certified actuary primarily as an individual, an insurance professional, with the option to engage a legal entity registered for conduct of actuarial activities.

2.2. The legal position of an actuary in an insurance company is characterised by the provision of the Lol according to which a certified actuary is appointed by the General Manager of an insurance Company (Article 181 paragraph 4 of the Lol). On the one hand, the intention of the Lol was to delegate to the insurance company (management, supervisory board) the obligation to ensure for the certified actuary a permanent and free access to the business information necessary and required by a certified actuary for its actuarial activities (Article 185 in connection with Article 182 of the Lol). The intention underlying this legal obligation was to make an insurance company realize that the fulfilment of this obligation is, in fact, the fulfilment of public interest in the insurance business. This is why the legislator delegated this duty to the company management. On the other hand, the Lol defined that a certified actuary is autonomous and independent in carrying on its activities in the company and thus it is obliged to conduct its activities in accordance with the Law, the actuarial profession, sound business practices and business ethics (Article 183 of the Lol). Due to a public interest expressed in the conduct of actuarial activities in an insurance company, the legislator has given to a certified actuary the attributes of being *independent and autonomous in its work* i.e. conduct of actuarial activities. In the comparative business law the status of certified actuaries was considered based on the law of the countries in transition (former SFRY)¹⁰ and the conclusion was drawn that the aforementioned provision of the Lol on the manner of appointment of a certified actuary may be found in the laws of other analysed countries in transition. However, the objection that the legislator in Serbia did not stipulate the sanction in the event that the insurance com-

Republika Srpska from the 9th Conference, „October Legal Days“, held in October 2012 in Banjaluka, on the main topic „Building and Functioning of Legal System“, journal for legal theory and practice „Legal Word“, Banjaluka, year 9, No. 32/2012, pp. 589–600 etc.

¹⁰ Professor Ljubiša Dabić, Ph.D.: „Legal Status of Certified Actuaries in the Countries in Transition“, *Proceedings of the Union of Lawyers of Republika Srpska from the 4th Conference „October Legal Days“, held in October 2007 in Banjaluka, on the main topic „Building and functioning of Legal System“, journal for legal theory and practice „Legal Word“, Banjaluka, year 4, No. 10/2007, pp. 469–493.*

pany General Manager fails to fulfil this legal obligation was well founded.¹¹ Therefore, the legal position of a certified actuary in an insurance company in Serbia is characterised by its independence from the General Manager of an insurance company.

2.3. In the legal regulations of the analysed countries in transition, comparative business law has found the set of common principles relating to actuaries. Among these principles, the focus is placed on the principle of independence and autonomy of a certified actuary.¹² From the perspective of the comparative business law, all the laws of the countries in transition,¹³ including the Lol, received a well-founded criticism that they failed to define the conduct of actuarial activities in more detail. This criticism included the wording of the Lol according to which certified actuaries conduct their activities in accordance with the law and actuarial profession, sound business practices and business ethics. According to the author of this paper, the wording „according to the law, the actuarial profession, sound business practices and business ethics“ is constructed in the Lol as an opening benchmark for getting down to the evaluation or actual evaluation of conduct of each certified actuary in an insurance company. Accordingly, the Lol authorises NBS to evaluate each certified actuary in terms of whether its conduct is in accordance with such benchmark i.e. if it is contradictory to such benchmark, emphasizing all of that by the fact that rules, practices and ethics are preceded by the syntagm „according to the law“. Within this evaluation, the Lol offered to NBS a certain set of measures along with the right that NBS may withdraw the previously acquired authorisation from the actuary (as the strictest measure) if it establishes that in practice, actuary fails to act in accordance with the law, actuarial profession, sound business practices and business ethics (Article 188 of the Lol). In other words, the Lol threatens the certified actuary that NBS will sanction its conduct which contradicts the law or opposes the law and the rules, practices and ethics. There is no doubt that through such broad discretionary authorisation the Lol authorised NBS to determine whether a certified actuary has violated the rules, practices and ethics in any particular case. In addition, there is no doubt that in accordance with the law, such rules, practices and ethics have not been previously stipulated in any document in the last decade of the Lol effectiveness, nor have they been

11 Ibidem

12 Ibidem

13 Ibidem

published in any legal source (whether government or autonomous). Thus, the actuarial profession, sound business practices of actuaries and business ethics require, precisely – in accordance with the law – to be defined and passed as a code and subsequently published in the official gazette, all with the end goal to strengthen both legal position of a certified actuary in an insurance company in Serbia and limit the discretionary authorisation i.e. the level of legal work of NBS in insurance industry. The effectiveness of the aforementioned code would bridge one of the legal gaps in the Law on Insurance.

3. Place and role of actuaries in Serbian insurance

3.1. The comparative insurance law shows that in the world, particularly in the developed insurance industry, in practice there are two systems relating to the place and role of actuaries in an insurance company.¹⁴ In a nutshell, according to one system, the place and role of actuaries in an insurance company is characterised by the status of an expert, a professional in an insurance company (Anglo-Saxon practice), whereas according to the other system, the same person, actuary, in practice may be both a member of a company management and an expert, a professional of such company (continental practice). Which system is closer to the place and role of actuaries in Serbia? The answer to this question may be obtained if we start from the positive legal norms. The Lol stipulates that an individual acting in the capacity of a member of management and/or of the supervisory board and internal auditor in the insurance company, is not entitled to be nominated as a certified actuary (Article 186 of the Lol), and if, following the nomination of a certified actuary, NBS withdraws the certificate from the nominated person for the reasons stipulated by the law, and/or if the General Manager discharges the actuary, for example, because such actuary was appointed a member of the company management i.e. supervisory board and internal auditor - the General Manager of the insurance company shall nominate a new certified actuary (Article 190 of the Lol). These provisions speak about the fact that in Serbia, the same natural person – a certified actuary – may not have the status of a company expert and member of the management i.e. supervisory board and internal auditor at the

¹⁴ See the footnote No. 7.

same time. In addition, these provisions speak about the fact that there are no legal obstacles for an insurance company to elect in its management a person with the title of a certified actuary, however, provided that it employs another person as a certified actuary i.e. an expert. In connection with this everyday life situation, it should be noted that in Serbia, ever since the Lol has come into effect to date (2004–2014) no information has been published or, at least, such information is not known to the author of this paper, that a certified actuary has become a General Manager, president of the Board of Directors, in a word, head of an insurance company.¹⁵ The lack of such information represents an additional argument that the place and role of an actuary in Serbia are, in practice, closer to the first mentioned system. Therefore, the place and role of an actuary in Serbia are closer to the practice of Anglo-Saxon system.

3.2. The Lol has incidentally regulated the conditions and criteria for the election of an actuary following the foundation of an insurance company. Namely, the Lol has regulated the content of the application for license for engagement in insurance and reinsurance activities submitted by the founders of each of these companies (Article 39 of the Lol). Prescribing the application requirements for natural persons proposed for the members of the management (Board of Directors and the General Manager) and supervisory board, the Lol has quite incidentally stipulated the evidence submitted by a legal entity registered for conduct of actuarial activities and evidence submitted by a certified actuary. The author of this paper is of the opinion that the future law addressing the area of insurance should define the conditions and criteria for the appointment of a certified actuary in a new way, not only after the foundation but also during the operation of an insurance company. To that extent, it is necessary that the future law addressing the area of insurance particularly defines clear and unambiguous criteria, both for legal entity registered for conduct of actuarial activities and for a certified actuary. Through the analogy with the evidence required for natural persons proposed as members of the Board of Directors and Supervisory Board, following the foundation of the company, the Lol sought to define the conditions and criteria both for the election of a legal entity registered for conduct of actuarial activities and for the election of a certified actuary. These provisions are not sufficiently clear in the Lol, particu-

¹⁵ In Croatia, for example, it was published that the B.Sc. in Mathematics and certified Actuary, Neven Tišma, was appointed the President of the Board of Directors of KD „Life Insurance“. Editorial: „Specialised for Life Insurance Lines“, *Svijet osiguranja*, No. 6/2008, pp. 7.

larly when had in mind that they regulate only the matters of company establishment and not the conditions and criteria in an already founded company. The co-authors of a study in the area of insurance law¹⁶ advocate the rule according to which the election of a candidate for a certified actuary of an insurance company should be made according to the same conditions and criteria applied to the election of a candidate for the management of an insurance company. Thus, the future law regulating the area of insurance should particularly define clear conditions and unambiguous election criteria both for legal entity registered for conduct of actuarial activities and a certified actuary. The Law on Insurance has failed to do so.

3.3. Place and role of each independent profession in the European continental law, including the actuaries in Serbia, is created by a legislator. Namely, Serbia is just beginning its way toward EU membership and thus, the effective legal regulations on the place and role of actuaries in an insurance company need to be modernised. Following the path of former SFRY countries, now EU members, toward EU, it could be seen how EU perceives the place and role of actuaries in an insurance company. In an unofficial version of a questionnaire of the European Commission sent to Croatia (with over 4.000 questions)¹⁷ there were also questions about insurance industry. In about 90 questions and subquestions relating to the entire insurance industry in Croatia, two¹⁸ questions were related to the special place and role of an actuary. One of these two questions in insurance industry was: what are the conditions in relation to the establishment of technical reserves? In this area, only one subquestion was asked, as follows: are life and non-life insurance companies obliged to employ actuaries? According to the author of this paper and taking into account this analysis of the place and role of actuaries, the following two suggestions can be made for the future law which regulates the area of insurance business in Serbia: firstly, instead of the legal rule stipulated in the Lol, which has been

16 Professor Zoran R. Tomić, Ph.D. and Junior Lecturer Nataša Petrović Tomić, Ph.D.: „On Licensing the Candidates for Members of the Insurance Company Bodies (Review of the Decisions of the Constitutional Court of Serbia)“, *Proceedings of the Business Lawyers Association of Serbia* from 20th Congress held in May 2011 in Vrnjačka Banja, on the main topic Economy and Legality, journal for legal theory and practice *Law and Economics*, Beograd, year 48, No. 4–6/2011, pp. 91–111.

17 „Questions of the European Commission for Insurance Sector“, Croatian journal for insurance theory and practice *Osiguranje* No. 7–8/2003, pp. 24–26.

18 The other question involved the character of relationships between a certified actuary and insurance supervisory authority.

applied to date and according to which the General Manager of an insurance company appoints a certified actuary, a legal rule should be stipulated¹⁹ that an insurance company is obliged to employ a certified actuary i.e. engage a legal entity registered for conduct of actuarial activities. The other suggestion would relate to the fact that the provisions of the future law addressing the subject of insurance should stipulate the rule that a certified actuary i.e. legal entity registered for conduct of actuarial activities is elected at the General Meeting of an insurance company. Both of these suggestions correspond with the EU insurance law. In support of the proposal for the election of a certified actuary at the General Meeting of an insurance company, the acceptance of such solution in the future law addressing the area of insurance would equate a certified actuary appointment with the election of an external insurance company auditor which is, according to the positive regulations of Serbia, subject to the adoption at a Company General Meeting.

3.4. The place and role of a certified actuary, as a liberal profession, is marked by the manner in which actuaries are organised at the level of the state. SFRY was characterised by the existence of the Society of Actuaries of Yugoslavia. However, in subsequent analyses, it was predominantly established that the existence of this Society was only of a formal nature. Actuarial associations and similar bodies in the Great Britain, USA, France, Belgium etc. represented important factors in insurance industry of these countries. As a rule, these associations organised examinations for acquiring the title of a certified actuary. According to the Decree, the then Ministry of Finance formed a committee before which examinations for the title of a certified actuary are taken, whereas according to the Decision, this is done by NBS, which is perceived as an isolated example in the world. It is considered that in Serbia, the actual centre of actuarial profession and science is the Faculty of Economics of the University of Belgrade, for it educates actuaries and regularly organises international congresses and conferences.²⁰ According to the author of this paper, one should be reminded that the Serbian Association of Actuaries, in one of its former mandates, made public the information that NBS had not organised a unique

¹⁹ According to the Draft Law on Amendments to the Insurance Law which entered the Parliamentary procedure on 18 December 2013. The Draft Law on Insurance is currently in the inter-departmental procedure. In the first half of 2014, the Draft Law was subject to debate in the Belgrade Chamber of Commerce.

²⁰ See footnote No. 1.

statistical service in insurance industry for Serbia and Montenegro.²¹ Prior to the passing of the Lol, interesting proposals were coming from the insurance practice toward modernisation of the place and role of actuaries in insurance industry.²² However, they were not accepted by the legislator. Meanwhile, in the legal system of Serbia, major changes have occurred in terms of organisation of liberal professions. The changes were reflected in the fact that the laws stipulated the formation of chambers instead of associations as voluntary associations of individuals or members of liberal professions. The legislator transferred the appropriate public authority onto the chambers which, until then, belonged to the state. These are numerous chambers²³ of liberal professions (doctors, dentists, health care staff, biochemists, veterinarians, notaries, private enforcement agents and the like), along with already long affirmed chambers of liberal professions (lawyers, certified auditors and the like). In the spirit of modern legal system of Serbia and a new organisation of liberal professions, the future law dealing with the insurance business should stipulate the establishment of the Chamber of Certified Actuaries. There are no legal and constitutional obstacles for the legislator to firstly transfer only some of the public authorities onto the Chamber of Certified Actuaries e.g. to be a mediator between a certified actuary and company management in the event of a dispute in an insurance company as well as to make the Chamber competent to act as an arbiter in the event of a dispute between an opinion of a certified auditor and an opinion of a certified actuary in the same insurance company. So far, the resolution of these disputes was within the supervisory activities of NBS, whereas in the countries in transition on their way toward accession to EU, such disputes were subject to different forms of alternative dispute resolution in insurance business. By founding the Chamber of Certified Actuaries, the legislator in Serbia would make up

21 Professor Jelena Kočović, Ph.D.: Actuarial Analysis of By-Laws, *Proceedings of the Association for Insurance Law of Serbia and Montenegro* from the conference held in April 2005 in Palić, with the main topic Insurance in Light of New Legislation, Palić, 2005, pp. 294–298.

22 See footnote No. 9; Katarina Ivančević, „Polis osiguranje“ a.d.: Acquiring the Title of a Certified Actuary, Education and Professional Organisation of Actuaries, *Proceedings of the Centre for Scientific Research of the Faculty of Economics of the University of Belgrade* from the congress held in May 2003 in Vrnjačka Banja, on the general topic Privatisation and Insurance Perspectives in the Countries in Transition, pp. 237–242.

23 Professor Ljubiša Dabić, Ph.D.: Chambers of Commerce (comparative legal approach), *Proceedings of the Union of Lawyers of Republika Srpska from the Conference „October Legal Days“*, held in October 2011 in Banjaluka, on the main topic Building and Functioning of Legal System, journal for legal theory and practice *Legal Word*, Banjaluka, year 8, No. 28/2011.

for its decade-long lagging behind European trend relating to the application of an alternative form of dispute resolution in insurance industry. In the comparative insurance law, the 1998 case of supervisory authority of Slovenia is well-known. Namely, just before the liberalisation in the compulsory motor insurance, a few years before Slovenia joined the European Union, the supervisory authority had to engage foreign neutral actuaries to develop actuarial studies on the adequacy of premium rates in compulsory motor insurance and insurance industry of Slovenia.²⁴ According to the author of this paper, if, at the time, Slovenia had had the Chamber of Certified Actuaries acting as a mediator or arbitration tribunal, insurance supervisory authority could have avoided massive expenses for such study. Finally, the future law dealing with insurance business could entrust to the Chamber of Certified Actuaries – the foundation of which is hereby proposed – to originally formulate and pass the rules of actuarial profession, sound business practices and business ethics. This could bridge a legal gap mentioned in the previous chapter of this paper. Subsequently, the legislator could entrust to the Chamber of Certified Actuaries of Serbia to take over from NBS the organisation of examinations for acquiring the title of a certified actuary i.e. the actuarial certification, keeping of the Register of Certified Actuaries and the like. Thus, it seems that the time is ripe to modernise the place and role of actuaries at the level of the Government of Serbia through the legislator which will stipulate the grounds for the establishment of the Chamber of Certified Actuaries with gradual transfer of some of the aforementioned public authorities from NBS to such Chamber, provided that the Ministry in charge of finance or NBS could act as a second-instance administrative jurisdiction.

4. Acquiring the title of certified actuary

4.1. Legislation, theory and practice of insurance clearly differentiates between an actuary who acquired an adequate level of higher education and a certified actuary.²⁵ Acquiring the title of certified actuary represents a step after

²⁴ Sergej Simoniti, LL.B, Director of the Insurance Supervisory Agency of Slovenia: Insurance Market in Slovenia and its Regulation – Selected Questions, *Proceedings of Dunav Insurance Company a.d.o.* from the regional conference held in March 2012 in Belgrade, on the main topic Development of Insurance Market in South-Eastern Europe, journal for insurance theory and practice *Insurance Trends – special edition* No. 1/2012, pp. 14–24.

²⁵ Katarina Ivančević, LL.B: Role of Actuaries in the Procedure of Insurance Supervision,

which a person becomes professionally qualified for independent and autonomous work while performing actuarial tasks and activities. The title of certified actuary permanently enables the conduct of independent actuarial profession. A certified actuary is a licensed actuary, a person who acquired professional²⁶ qualification in actuarial science according to the law. Therefore, regulatory rules applied to the procedure for acquiring the title of certified actuary are crucial for the legal status of an insurance actuary in Serbia.

4.2. The procedure for acquiring the title of certified actuary in Serbia is provided for by the by-laws.

By-laws regulate an array of issues concerning the procedure for acquiring the title of certified actuary before the Certified Actuary Professional Exam Committee formed by the enacting authority. The candidate for acquiring the title of certified actuary is required to meet general and special conditions. According to the Decree, the first general condition was that the candidate acquiring the title of certified actuary is a Yugoslav citizen (Article 2 item 1 of the Decree). However, this condition was excluded from the Decision. The Decision stipulates the residence at the territory of the Republic of Serbia (item 2 subitem 1 of the Decision), as the first general condition for the candidate acquiring the title of certified actuary. That general condition of the Decision should be interpreted as an expression of European political orientation of Serbia towards EU and application of the European principle of Free Movement of Goods and Services. That general condition relates to the establishment of one of the special conditions prescribed by the Decision. Namely, NBS assessed that the Decision shall stipulate that a foreign natural person, who has acquired one of the six specified specialized actuarial titles, can under more favourable conditions than the rest of the candidates – domestic and foreign natural persons – acquire the title of certified actuary in Serbia. Such group of foreign natural persons is specified in the item 12 of the Decision by the names of international institutions and abbreviated titles acquired therein. That group is comprised of the following: (1) title FIA (Fellow of the Institute of Actuaries, United Kingdom); (2) title FFA (Fellow of the Faculty of Actuaries, United Kingdom); (3) title

Legal Informer No. 12/2004, pp. 43–46.

²⁶ Professor Ljubiša Dabić Ph.D.: Concept and Characteristics of Liberal Professions, *Proceedings of Kopaonik School of Natural Law*, 21st meeting held in Kopaonik in December 2008, on general topic „Law and International Integrations“, journal for legal theory and practice of the Association of Jurists of Serbia *Legal Life*, Belgrade, Vol. 4, year 57, book 522, No. 12/2008, pp. 473–489.

FSA (Fellow of the Society, USA); (4) title FCAS (Fellow of the Casualty Actuarial Society, USA); (5) title FIAA (Fellow of the Institute of Actuaries of Australia, Australia); (6) title FCIA (Fellow of the Canadian Institute of Actuaries, Canada). In order to fulfil a special condition for acquiring the title of certified actuary, the person meeting the requirements for such group of foreign natural persons had the advantage of having to pass only the exam from local legal framework, according to the exam syllabus printed with the Decision. In other words, the foreign natural person in question is not obliged to pass all the other exams specified in the syllabus printed with the Decision; all other domestic natural persons and all foreign natural persons who did not acquire specialized titles specified in item 12 of the Decision have to study and pass such (extensive) syllabus in the form of an exam.²⁷ It is up to actuarial profession and science to examine if, anywhere else in the world, there are other reputed institutions of actuarial science where specialized titles, not specified in the Decision, can be acquired, or the institutions specified in the item 12 of the Decision are the only ones in the world. According to the opinion of the author of this paper, in terms of actuarial profession and science, the selection of foreign actuarial institutions and titles stipulated in the Decision is disputable. Moreover, it cannot be disputed that the Decision specifies exact foreign actuarial titles which, in the exam for acquiring the title of certified actuary puts foreign natural persons in the possession of such titles in a more favourable position than all other candidates, since the exam syllabus of such person does not include numerous (extensive) theoretical and practical disciplines (courses) included in the exam syllabus for acquiring the title of certified actuary in Serbia. Also, it is indisputable that passing of this Decision left the candidates for acquiring the title of certified actuary in unfavourable position - both any foreign natural person with the specialised title acquired in actuarial institutions specified in the Decision and all domestic natural persons. If NBS decided to favour some candidates

²⁷ French-speaking countries have institutions specialized in actuarial science with the tradition as long as 120 years. This also applies to Russian-speaking countries, as well. According to the Croatian Ordinance on the Conditions for Granting Authorization to Conduct Actuarial activities (certified actuary status) (*Official Gazette*, No. 40/1996 and 10/2000), the education of an actuary's is organized by the Faculty of Science, University of Zagreb, while the Government Actuary's Department from London is the external associate of the Faculty in Zagreb. The name of this British actuarial institution is clearly different from the names of the two institutions from the United Kingdom referred to in item 12 of the Decision. Therefore, the matter of choice between foreign institutions specialized for actuarial science, which title will be favoured in item 12 of the Decision, falls within a subjective decision of the decision-maker.

over the others regarding the exam for acquiring the title of certified actuary, a question can be raised as to what regular and lawful manner could have been used by the Governor in the legal system of Serbia.

4.3. Upon the enactment of the Lol, regular and lawful method for NBS was to normatively and legally include its own selection of foreign specialized actuarial titles in some of the amendments to the Lol. According to its constitutional position, NBS had the right and obligation to propose not only the laws within its competence, but also to amend the Lol so that some candidates for the title of certified actuary have more favourable status than the others. NBS is not obliged to seek prior opinion or approval from the executive or administrative authorities to propose to the legislative body a new law or amendment to the effective law within its constitutional competence. Since its passing, the Lol has been amended eight times and thus, there have been no legal obstacles to include in one of its amendments the statutory provision which stipulates a more favourable position for a foreign natural person with a certain international title in actuarial science seeking to acquire the title of certified actuary in Serbia before the Examination Committee of NBS. There is no doubt that the provisions i.e. the amendments of the Lol stipulating more favourable or unequal position of one group of candidates for acquiring the title of certified actuary over the others would definitely create controversy in Parliamentary debates and would be challenged before the Constitutional Court of Serbia.

4.4. Therefore, it was left to NBS to use the Decision, as a by-law, to stipulate the provisions that would enable a more favourable or unequal position for one group of candidates for acquiring the title of certified actuary before the NBS Examination Committee. Namely, in adopting the Decision, the decision-maker referred to the statutory bases in Article 181 Paragraph 3 and Article 143 of the Lol. Article 181 Paragraph 3 of the Lol stipulates that NBS prescribes the conditions for acquiring the title of certified actuary. Such stipulation implies that when taking the exam for acquiring the aforementioned title, all candidates are in an equal position. According to Article 181 Paragraph 3 of the Lol, when it comes to the syllabus for the exam taken before the NBS Committee, the stipulation of general and special conditions which ensure an equal or fair position to all candidates is the only lawful stipulation. Article 181 Paragraph 3 of the Lol was undoubtedly sufficient or regular statutory basis for adoption of the Decision, except for the provision of Article 12 of the Decision. Due to Article 12 of the Decision, the decision-maker included the additional

statutory basis as Article 143 of the Lol. Article 143 of the Lol stipulates that NBS renders regulations to enforce the provisions of this Law. The appendix (to the statutory basis) in connection with the Decision, in the form of Article 143 of the Lol, is redundant in comparison to Article 181 Paragraph 3 of the Lol. The purpose of such redundancy was to enable the Decision to regulate more favourable or unequal position of one group of candidates for acquiring the title of certified actuary in Serbia over the others. Regarding this matter, there is full consensus among the authors in Serbia who analysed Article 143 of the Lol²⁸ that such Article stipulates the general authorisation of NBS to pass all by-laws (regulations). This means that to pass by-laws, NBS does not need any other individual authorizations stipulated in the Lol. Thus, the authorization of NBS under Article 143 of the Lol may replace or is replacing all and any other authorization of NBS for passing by-laws. In fact, general authorization for passing by-laws stipulated in Article 143 of the Lol allows NBS to amend the Lol in any by-law, wherever this may become necessary in its implementation. This means that upon the reference to Article 143 of the Lol, no by-law of NBS has to be technical and detailed elaboration of a Lol provision on the basis of which it is passed. This further means that upon the reference to Article 143 of the Lol, no NBS by-law needs to take into account the aim and purpose of a Lol provision on the basis of which it is passed. Finally, this means that upon the reference to Article 143 of the Lol, the decision-maker, at its own discretion, may amend or supplement the LOI by the by-laws of NBS. Therefore, further amendments to the Lol are redundant. According to the Constitution of the Republic of Serbia, the Government of the Republic of Serbia does not have general authorization to pass a by-law (regulation), unless when it is authorized to do so according to a particular law or the Law on RS Government. Therefore, according to the author of this paper, NBS may not have the general authorization to pass the by-laws in the form of Article 143 of the Lol, given that such authorization is contrary to the principles of the rule of law and separation of powers in the Republic of Serbia. In other words, according to the Constitution

²⁸ For more details see Slobodan Ilijić, M.A.: Glossary to the new Law on Insurance, *Insurance Law Review*, No. 1–2/2004, pp. 28–33; Bosa Nenadić, Ph.D, judge of the Constitutional Court of Serbia: Powers of Government Authorities in the Procedure of Foundation of Insurance Companies in Comparative Law, with Particular Focus on the Powers of the National Bank of Serbia, *Proceedings of the Association of Insurance Law of Serbia and Montenegro* from the conference held on April 2006 in Palić, on the general topic Insurance Approaching the Process of EU Accession of Serbia and Montenegro, Palić, 2006, pp. 261–280.

of the Republic of Serbia, the legal capacity of NBS m to pass by-laws may not exceed that of the Government of the Republic of Serbia i.e. the Lol cannot grant more powers for passing by-laws than the Government of the Republic of Serbia. There is full consensus among the authors in Serbia who, within the insurance law, particularly analysed Article 143 of the Lol²⁹, that Article 143 of such Law should be reconsidered in terms of its constitutionality. Since it is obvious that by referring to the disputable Article 143 of the Lol, the Decision was passed with the intention to justify the fact that one group of candidates for acquiring the title of certified actuary in Serbia was put in a more favourable or unequal position, Article 12 of the Decision should be left out from such by-law due to its disputable constitutional and legal basis. This would provide for equal position of all candidates for acquiring the title of certified actuary, whereas the principle of prohibition of discrimination would be observed, which, so far, has not been the case.

Conclusions

1. Legal position of a certified actuary and level of lawfulness in insurance industry in Serbia call for immediate enforcement of the provisions of the Law on Insurance and formulation of the rules of actuarial profession, sound business practices and actuarial business ethics, in accordance with the law. So far, not only that this has not been formulated and published as a code but has also represented a gap in the legal position of certified actuaries, according to the Serbian Law on Insurance.

2. It is proposed that the future law on insurance formulates the rule according to which an insurance company is obliged to employ a certified actuary i.e. engage a legal entity registered for conduct of actuarial activities as well as the rule that a certified actuary i.e. legal entity registered for the conduct of actuarial activities is elected at the General Meeting of an insurance company.

3. It is proposed that the future law on insurance stipulates clear and unambiguous criteria for special election of a legal entity registered for the conduct of actuarial activities and special election of a certified actuary.

4. In the legal system of Serbia, the time is ripe to incorporate in the

²⁹ Ibidem

future Law on Insurance the legal basis for the establishment of the Chamber of Certified Actuaries of Serbia. In the beginning, under this Law, the Government would transfer onto this Chamber a particular smaller number of public authorities. Such public authorities could include, within an insurance company, the dispute resolution by the Chamber, between the company management and a certified actuary (mediation) and the resolution of disputes between the opinions of a certified actuary and a certified auditor (arbitration), whereas the second-instance administrative jurisdiction could belong to the Ministry in charge of finance or NBS. In the future Law on Insurance, one of the public authorities of the Chamber of Certified Actuaries could include the passing of the Code of Professional Conduct of Actuaries, sound business practices and business ethics.

5. In reviewing the provision of item 12 of the Decision on the Conditions for Acquiring the Title of Certified Actuary it was concluded that an unequal position is stipulated for one group of candidates taking the examination for acquiring the title of certified actuary and thus, it was proposed that the item 12 is left out from such Decision and therefore from the legal system.

*Translated into English by: **Zorica Simović***