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Slobodan N. Ilijić, MA[1]

BOOK REVIEW

INSURANCE LAW IMPLEMENTATION GUIDELINES

Authors: ***Blagoje Golubović, Ljiljana Stojković, MA, Branko Pavlović***
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1. The co-authors of the Insurance Law Implementation Guidelines (hereinafter: the Guidelines) set before themselves the task of closer acquainting the entire insurance business with the implementation of the Insurance Law, first published in the *Official Gazette of the Republic of Serbia*, No. 139, of December 18th , 2014. The Insurance Law (hereinafter: the Law) entered into force at 26th December 2014 and started to apply as of 27 June 2015. In a time period starting from the date of entry into force until the first day of application of the Law, the co-authors worked intensively on preparing the Guidelines and published them in April 2015. In the preface, the co-authors stated that their original intention had been to draft a comment to the Law, but they became aware that such work was time-consuming and required consultation of theoretical-legal and comparative-legal literature as well as the incorporation of insurance and court practice attitudes into the comments on the articles of the Law. They, therefore, decided to comment on some articles of the Law only by comparing the wording with the provisions of the previous Law, which had ceased to apply as of 26th December 2014 (hereinafter: the 2004 Law). What is lacking is only an analysis of several provisions of the 2004 Law relating to the process of insurance business privatization. Sometimes, a comment on a particular article of the Law included comparisons with the provisions of other previous laws. Moreover, the co-authors specially emphasized that legal attitudes and opinions expressed in

[1] Author is a member of the Presidency of the Association of Jurists of Serbia
E-mail: slobodanilijic@yahoo.com
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the comments on the articles of the Law resulted from their own interpretation and legal understanding of these provisions, but that it might be that subsequently, in the application of the Law, insurance and judicial practice would come to different legal attitudes and opinions. With regard to this distancing, it should be noted that in the Guidelines it was not indicated which articles were commented by which authors. The biographies of all three co-authors were printed at the end of the Guidelines.

2. The Guidelines introductory pages contain abstracts from two reviews. Prof. Predrag Šulejić, PhD, emphasized that the Guidelines could be used for the implementation and studying the provisions of the Law. He praised the co-authors for their well-developed style of presentation in commenting on the provisions of the Law and using the unambiguous and clear language. The abstract of the second review came from the pen of the judge of the Constitutional Court, Dragiša B. Slijepčević, PhD. In this review abstract, it was pointed out that the co-authors recognized the controversial issues and identified the future Law implementation problems, publicly presenting their legal attitudes and proposing solutions to the issues and problems. The Guidelines were published as an independent edition of the co-authors but generally sponsored by the Association of Insurers of Serbia.

3. The laws usually begin by presenting basic or general provisions in the first chapter. Their purpose is to serve to understand and construe all subsequent provisions and/or legal institutes of the particular law. This was also the case with this Law, which included 19 articles in the first chapter. **3.1.** The comment on the Article 2 of the Law caused more attention than others, since it listed the activities which constitute the insurance business. More precisely, the Law envisaged that the insurance business comprises the activities of insurance, reinsurance, brokerage and agency. In short, the cited regulation defined that only four types of activities constitute the insurance business. Comparing the above mentioned activities, referred to under the Article 2 of the Law, with the corresponding articles of the 2004 Law and the on the 1996 Property and Personal Insurance Law, the co-authors noted that the cited Article 2 of the Law somewhat differed from the corresponding articles of previous laws. The difference was that the cited Article 2 of the Law did not mention the activities of providing other insurance services, such as risk and damage assessment, salvaged items sale representation and transaction as well as the provision of other insurance-related intellectual and technical services. The co-authors observed that these services were actually provided through the organizational form of the Agencies for other insurance services and/or that, at the moment of coming into force of the cited Article 2 of the Law, a total of nine such agencies were registered with the National Bank of Serbia (hereinafter: the NBS). The co-authors of the Guidelines drew attention to those provisions of the Law (Articles 24, 86 and 98) where the performance of the insurance directly and indirectly-related activities was regulated in a "certain way". Having in mind that the provision of other insurance services was

not mentioned under the cited Article 2 of the Law, the Guidelines also examined whether the NBS would have the right to supervise the work of agencies for providing other insurance services in future. In the comment, it was concluded that the solution of the presented problem in the implementation of the Law would depend on the executive delegated general act, to be adopted by the NBS. **3.2.** Unlike the previous example, where the co-authors sought a way to solve a practical problem arising from the insurance practice, the Guidelines, in their basic provisions, presented the new possibilities for construing the Law. Namely, one of the reviewers stated that the Guidelines can serve as an inspiration for further study of the Law. Indeed, the comment on the Article 4 of the Law can serve this purpose. Article 4 of the Law regulates that the property and personal insurance is in principle voluntary (paragraph 1), being mandatory only in such cases as provided by law (paragraph 2). This solution also existed in some previous statutory insurance laws and, in itself, is nothing new. However, in the comment on paragraph 2 of Article 4 of the Law, the co-authors presented a long list of laws and delegated general acts, envisaging various mandatory insurance forms. This list is, in fact, a result of a detailed study of the legal system in Serbia and a spur for its research, with a view of establishing various forms of mandatory insurance. **3.3.** Starting from the method of comparing the provisions of the new Law with the provisions of the 2004 Law and earlier, the co-authors carefully compared the statements of Art. 8 and 9 of the Law with the provisions of the previous laws. Article 8 of the Law lists the types of life insurance. The comment on this Article indicated seven changes, compared to previous laws - some major and some minor, but all relatively clearly explained in this comment. Article 9 of the Law lists types of non-life insurance. Compared to the 2004 Law, this comment in detail pointed to four changes in the new Law. The presentation method, in this case, was consequential.

4. The name of the second chapter is the Insurance Company and Reinsurance Company - with a total of 62 articles in nine sections. After a section with common provisions on performing insurance and reinsurance activities, there is the section on the shareholding insurance and reinsurance company and the section on investment into subordinated entities, followed by the section on eligible participation, the section regulating the issuance of a license for practicing insurance activities, the founding assembly meeting and entering into the register, as well as the section on the organization and management of the insurance shareholding company, the section including other provisions relating to insurance and reinsurance shareholding companies and, ultimately, the section regulating insurance activities performed by an insurance company in a foreign country. The underlying organizational structure of the provisions of nine mentioned sections relies, as pointed out in the Guidelines, upon the fact that the Companies Act is *lex generalis* for insurance companies, whereas the observed Law is *lex specialis.* **4.1.** According

to the Guidelines, one of the characteristic articles is the Article 20 of the Law, on performing the insurance and reinsurance activities, included in the section with common provisions of the named chapter. Paragraph 1 of this Article prescribes that the insurance or reinsurance activities shall be performed by an insurance and/or a reinsurance company referred to in Article 3 of the Law. The purpose of referring to the Article 3 of the Law was to point out that those activities can only be performed by a company that had been issued an operational license by the NBS. The presentation of the co-author in the Guidelines is directed towards the paragraphs 2 and 5 of the mentioned Article, the focus of the co-author's remarks or " a likely omission " referring to paragraph 2 of Article 20 of the Law. The paragraph 2 of the mentioned Article provides that the insurance/reinsurance activities can be practiced by no one but the company referred to under the paragraph 1 of this Article, except in the case provided under the Article 7, paragraph 6 of the said Law. The rule of legal norm in the first part of the formulation of paragraph 2 of this Article is limited by reference to Article 7, paragraph 6 of the Law. For claiming the exception in the Article 7, paragraph 6 of the Law, the co-authors are of the opinion that the legislator has made "a likely omission". The co-authors explain the "likely omission" by the fact that the legislator should have included the paragraph 2 of Article 20 of the Law in the Articles that will enter into force when Serbia accedes to the WTO and the EU. In order for the reader to understand why the co-authors of the Guidelines consider the paragraph 2 of Article 20 of the Law "a likely omission", it was necessary to clarify the provisions of the Article 7 of the Law. The subject of the Article 7 of the Law is the performance of reinsurance activities and the main rule of law in the provisions of this article is that the insurance company is obliged to reinsure the obligations from the insurance contract exceeding the level of self-retention with a reinsurance company. Article 7, paragraph 6 of the Law provides for the exemptions from the main legal rule referred to in the Article 7 of the Law. These exceptions relate to an insurance company that insured its overall risk under the coverage of property against natural disasters (hail, frost and other perils and/or natural disasters such as earthquake, flood and drought), as well as to an insurance company that maintains a coverage against financial loss due to bad weather. In other words, the insurance companies that provided insurance coverage against the two listed risk groups could reinsure their overall insured risk in Serbia or abroad without keeping any of the risk in self-retention. Hence, the assessment in the Guidelines that the wording of paragraph 2 of Article 20 of the Law is a "likely omission" relies on the fact that, in the co-authors' opinion, a parallel legal system is created for insurance business. This parallel legal system regulating the performance of the activities obliged a number of insurers to reinsure all risk in excess of their self-retention, while other insurers were allowed not to determine their level of self-retention, i.e. to transfer the entire risk to reinsurance in case they issued coverage against overall above mentioned risks

of natural catastrophies and financial losses due to bad weather. Thus, according to the co-authors of the Guidelines, "a likely omission" lies in the establishment of two legal regimes for insurance companies, one group of companies being obliged to determine the excess over the self-retention, while the other not being obliged so, all in connection with the transfer of risk into reinsurance. **4.2.** The subject matter of regulations referred to in the Article 42 of the Law refers to the content of the application submitted to the NBS for the issuance of an operating license to an insurance company. The co-authors pointed out that the number of business policy acts supporting an opinion delivered by a certified actuary was reduced by this Law (point 5, paragraph 3). Moreover, a significant novelty introduced by the said Article of the Law (in the co-authors opinion) was that the application must be supported by an evidence of the possession of the statutory amount of pecuniary fixed capital (item 3, paragraph 3). For comparison, the 2004 Law regulated that the application had to be supported by an attached evidence that a pecuniary fixed capital had been paid at a provisional bank account. The co-authors consider that the new solution of the Law is more desirable because it does not engage significant funds in advance. **4.3.** The Article 47 of the Law provides for the basis for terminating the validity of the license issued to the shareholding insurance company. The new reason for the termination of validity of the license is the fact that the insurance company, to whom the license was previously issued, did not hold the founding assembly within 30 days from the date of receipt of the decision on issuing an operation licence. In their review of the Article 47 of the Law, the co-authors also included the general information on the termination of insurance companies' operation licences. They stated that from the entry into force of the 2004 Law until the end of 2013, operation licences for 25 insurance companies were terminated, whereas only in 2014, one insurance company operation licence was terminated. **4.4.** In the comments to a number of Articles in a few sections, it was pointed out that the Law introduced a compulsory bicameral system of company's organization and management and that such a system is in force in Germany. In support of introducing such a system, the Guidelines referred to the OECD rules (in the footnotes) and to the article written by one of the leading domestic legal company law authors. As regards the 2004 Law provision for the possibility that the insurance company chooses between a bicameral or unicameral system, the co-authors of the Guidelines referred to the "known" weaknesses of the previous system, but did neither specify nor concretize such weaknesses, neither did they support them by administrative or judicial practice during the ten-year implementation of the 2004 Law.

5. One of the most important novelties of the Law, compared to earlier laws, is introduced by the Chapter III of the Law, titled the Information for the Policyholder. It comprises only three articles. **5.1.** First of all, Article 82 of the Law regulates the minimum information that the insurer is obliged to convey to the policyholder,

with somewhat broader list of information for life insurance contracts. The Guideline explains that, until now, the insurer was, as well, obliged to provide preliminary information to the insurance beneficiary pursuant to the laws regulating the area of consumers rights (with reference to 2010 and 2014 Consumer Laws). **5.2.** The Article 83 of the Law stipulates which information the Insurer is to provide to the policyholder during the validity of the insurance contract (especially with regard to life insurance contracts). **5.3.** Finally, the Article 84 of the Law specifies the content and method of informing the policyholder, with reference to the previous two articles. **5.4**. Since all three articles bring important novelties, the following features have been noted: first, the subject of regulation under this chapter is the relation between the insurer and policyholder, meaning that the insurer-insured relation is not in the foreground. Second, when commenting on the clauses of these three articles in the Guidelines, instead of the term from the title of this chapter – the policyholder – the authors used synonyms: the client, the insurance beneficiary, the recipient of the information, the informed, etc. Third, the provisions of the Article 82 of the Law enabled the co-authors to determine that these clauses also applied to the conclusion of a group insurance or "insurance that represents a related contract or contract that is a precondition for the use of another financial service. Under the Law, a related contract is deemed a contract for the sale of goods or the provision of services between the consumer and the trader or in connection therewith." So, commenting on the novelties in the second chapter of the Law, the co-authors closed one or two while opening several new issues.

6. The fourth chapter of the Law regulates the status issues of insurance agency and brokerage and comprises a total of 29 articles. **6.1.** The first section of this chapter of the Law regulates the insurance brokerage, with the first article of that section (or Article 85 of the Law) regulating insurance brokerage and reinsurance activities. The co-authors pointed out the novelty that this Law regulated the activities of reinsurance brokerage, unlike the previous ones. **6.2.** The Article 88 of the Law foresees a different census for deciding upon the application for founding an insurance brokerage company. In other words, it was regulated that the pecuniary fixed capital may not be less than 25,000 euros in dinar counter value at the mean exchange rate of the NBS as at the day of payment, in case of an application for the establishment of a shareholding brokerage business and, in the case of an application for the establishment of a limited liability brokerage business, the pecuniary portion of the fixed capital may not be less than EUR 12,500. In their comments to the aforementioned articles, the co-authors retelled the content, but did not explicate the reason why the Law stipulated different census. **6.3.** Among the conditions for issuing an insurance brokerage license, one alternative was retained, as in the 2004 Law. Namely, the founder of an insurance brokerage business is obliged to submit, along with an application, an amount of at least EUR 200,000 - or a contract on professional

liability insurance against damages arising from the performance of an activity, or unconditional guarantee of a bank that would be accepted by the NBS (Article 89). The comment to the Article 89 of the Law begins with the statement that there were no significant changes of the conditions for issuing a license for carrying out insurance brokerage activities in comparison to the requirements of the 2004 Law. This statement may be challenged by the fact that in the 2004, the required condition, i.e. the amount was 100,000 Euros in RSD equivalent as of the day of payment. This means that the requirement i.e. the amount was increased under the new law by 100 percent. Hence, it is difficult for the reader to agree with the initial statement in the comment to the Article 89 of the Law that the new prescribed conditions did not substantially change the conditions of the previous law. **6.4.** The Article 95 of the Law regulates, in particular, the protection of interests of parties in an insurance transaction. **6.5.** The second section of this chapter included the provisions on insurance agency. The Guidelines underlined that insurance agency activities may be carried out as an exclusive or sole activity, but also as an additional activity for particular economic entities coming from financial sector, in accordance with the Law. As a sole activity, agency is performed by an entity or individual - entrepreneur – appropriately registered, naturally, on the basis of license issued by the NBS. As an additional activity, agency can be performed by legal entities (in addition to their main activity), registered for performing activities in the financial sector, provided the prior consent of the NBS to perform agency as an additional activity. These are the banks based in Serbia and established in accordance with the law governing banks, the financial leasing companies based in Serbia established in accordance with the law regulating financial leasing and finally the public postal operator based in Serbia, founded in accordance with the law regulating the provision of postal services (Article 98). After presenting the wording of the aforementioned articles, the co-authors pointed out that the important novelty of this Law, compared to the previous laws, was to introduce the possibility for the insurance agency to be performed by both permanently employed persons and persons not employed with the insurance agency, insurance agents and entities engaged in insurance agency, in addition to their core registered activities (banks, leasing companies, postal operators), but they must have the licence of the NBS for performing the insurance agency. In this way, as estimated in the Guidelines, conditions are met for a more flexible engagement of authorized agents, without the obligation of employment. The co-authors mentioned identical possibility for flexible employment in insurance brokerage (Article 105). **6.6.** Article 107 of the Law specifies in particular the agency-related liability.

7. The fifth chapter of the Law, comprising 33 articles, governs the property, liabilities, capital and business transactions of an insurance company. In commenting on the provisions of the fifth chapter of the Law, the co-authors consistently applied the method of comparing the wording of the provisions of the new Law with the

provisions of the previous Law. There is a characteristic and neat graphical presentation of the differences between the new and the old Law, used for presenting the provisions of this chapter of the Law.

8. Under 28 articles in the Chapter 6, the Law regulated the insurance company management system. The provisions of this Chapter are divided into the following sections: on the insurance company management system, risk management, the internal control system, internal audit and the actuarial. In the comment to the provisions of this Chapter, it was recommended that the delegated general acts of the insurance company be drafted in such a way as to ensure that the company's management is ready to eliminate possible business irregularities which presupposes the company's ability to identify, evaluate and monitor the company operational risks. **8.1.** In this chapter, more than in others, the co-authors paid attention to the provisions of the Article 160 of the Law. In the comment to that article, it has been pointed out that the legal obligation of the internal audit is to notify the management of the company if it determines that the company does not comply with the risk management rules and that it is therefore jeopardized by illiquidity or insolvency, or if it finds that the safety of the company's operations or rights and the interests of the insured and other insurance beneficiaries are endangered. According to the interpretation of the provisions of the relevant article, the Guidelines underline that the new legal obligation of internal audit consists in informing the company Assembly and the National Bank of Serbia, forthwith, if the members of the company management fail to take measures to eliminate the spotted irregularities, following the advice of the internal audit. **8.2.** In the comment to the Article 165 of the Law, it was pointed out that the new obligation of the actuary was to promptly send the NBS a written notice if the company's management did not take steps to eliminate the irregularities, as proposed by the actuary. As emphasized in the Guidelines, such an obligation of an actuary did not exist under the 2004 Law.

9. Data confidentiality has been regulated under two articles in the seventh chapter of the Law. The topic of the Article 176 of the Law regulates the collection, maintenance and use of personal data, whereas the paragraphs 1, 2 and 3 of this Article primarily refer to all insurance companies and their associations. The subsequent paragraphs of the same article prescribed the period for data storage, which is all a novelty introduced by this Law. In the paragraph 4, it is foreseen that "the data on the insured or the insurance beneficiaries and other data relevant for the exercise of the right to indemnity, i.e. payment of the contractual amounts shall be kept ten years after the expiration of the insurance contract, and in case of occurrence of a loss event, that is, the insured event - ten years after the assessment of loss or amounts agreed upon." Paragraph 5 provides that after expiry of the deadlines referred to in paragraph 4 of this Article, the data from the said paragraph shall be deleted. Therefore, the Law adequately considered the collection, maintenance and use of personal data.

10. In the 8th Chapter of the Law, only five articles regulate the issues of reporting to the NBS by insurance companies. Having analysed the provisions of the Article 177 of the Law (the subject of which is regular reporting), the co-authors made an important conclusion in their comment. Namely, they pointed out that the novelty of the Law was that the insurance company was no longer obliged to submit the NBS the tariff and "terms and conditions", which can be understood as a termination of the obligation of the company towards the NBS to deliver tariffs, but also general and special business terms and conditions.

11. The subject matter of the regulation in the ninth chapter of the Law is reviewing the financial statements. Out of the total of five articles, the co-authors drew attention to the Article 184 of the Law. The reason is that, for the first time in our country, in this area, the obligations of the auditing company in performing an audit in the insurance company have been specified and more closely defined.

12. One of the most important chapters of the Law is the Chapter 10. The 33 articles of this Chapter of the Law govern the supervision of the NBS over the performance of the insurance activity. **12.1.** The Article 187 of the Law defines the concept of the subject of supervision as well as the cooperation between the NBS and other bodies and organizations, and it includes four paragraphs. In the Guidelines, the co-authors specifically emphasized paragraphs three and four of the said Article. Namely, the paragraph 3 of the Article envisages that in carrying out activities in accordance with this Law, the NBS shall cooperate with the supervisory and other competent authorities in the Republic of Serbia and abroad, as well as with the international organizations, whereas the paragraph 4 of the Article foresees that the NBS may, with bodies, that is, the organizations referred to in paragraph 3 of this Article, conclude cooperation agreements or exchange data obtained in carrying out the supervision over the performance of insurance and other activities provided for under this Law, in order to carry out tasks within its competence, provided that these bodies and/or organizations are obliged to keep the confidentiality of such obtained information in the manner set forth under the Article 196 of the Law. In the opinion of the co-authors, these two paragraphs should have been incorporated into the basic provisions of the Law. **12.2.** The subject matter of the Article 197 of the Law includes the types of measures that the NBS may impose during supervision. Paragraph 1 of this Article stipulates nine supervisory measures that the NBS can impose. In paragraph 2 of this article, it is envisaged that the NBS shall impose all measures in the form of a Decision, except in case of a written warning. Paragraph 3 of this Article stipulates that, upon determining that the insurance company acted in accordance with the measure referred to under paragraph 1 of this Article, the NBS shall suspend the control procedure or impose a new measure under this Law to the company, in accordance with the criteria referred to under the Article 198 of the Law. Furthermore, the co-authors noted that the 2004 Law stipulated that the

NBS can impose seven measures, whereas the new Law envisages that the NBS can impose nine measures. As specified in the Guidelines, the new adopted measures represent a written warning and public disclosure of information on the failure to fulfil or untimely fulfilment of the company's obligations or of the company's business transactions contrary to the regulations. Also, it is specified that the measure of taking control over the company's business was omitted, but that a new one was established: the introduction of compulsory administration. Regarding the newly introduced measure - a written warning - the co-authors pointed to different attitudes towards how to implement this measure in practice, since the type of legal deed for imposing this measure is not stipulated under paragraph 2 of the Article 187 of the Law. In the discussion that was being held, two opinions were formed, as specified in the Guidelines. In one opinion, the NBS would decide on a written warning in the form of a conclusion, and in another opinion, the NBS would decide on a written warning in the form of a decision. The co-authors did not favourise any of these opinions. They are for the third solution, i.e. think that this measure cannot be decided upon in the form of plain text, but must be resolved in the form of an act against which an administrative dispute can be brought. **12.3.** In addition to the measures from the previous subparagraph, the Article 197, paragraph 4 of the Law envisaged the imposition of a fine. Namely, the Law stipulates that, irrespective of imposing the measures referred to in paragraph 1 of this Article, the NBS may impose a fine on the insurance company and/or other subject of supervision, as well as on the responsible person from within such entity, in accordance with the provisions of this Law. The co-authors stated that such fine was a major novelty in the Law, compared to the 2004 Law, as well as compared to the Law on Compulsory Insurance in Traffic, where the fine was envisaged as a supervisory measure. Moreover, the co-authors stressed that the legislator did not specify the reasons for imposing a fine and that the fine did not constitute a supervisory measure. However, the co-authors point out that the fine is explained by the appropriate application of the criteria for imposing supervisory measures under the Article 198 of the Law. **12.4.** Considering the authority of the NBS to impose a fine on the basis of Article 197, paragraph 4 of the Law, the co-authors construed this authority as "a second job" pursuant to the Law. Such construing "could be accepted if a fine was defined as a measure of control". In construing the legal status of fine, they added: "In any case, a fine is imposed due to a violation of provisions of this Law set forth in the Art. 260 to 263 of this Law." Since the Articles 260 to 263 are included in Chapter XV of the Law, under the heading of the penal provisions, as well as in Section 2, under the heading - fines, and that the co-authors did not comment on the provisions of the Chapter XV of the Law, it is only necessary to remind the reader of the theme of Art. 260 to 263 of the Law. The Article 260 of the Law provided for the fines to be imposed on the insurance / reinsurance company. The Article 261 of the Law

provided for fines to be imposed on parties performing insurance brokerage / representation activities. The Article 262 of the Law provided for fines to be imposed after the accession of the Republic of Serbia to the World Trade Organization. The Article 263 of the Law provided for the fines to be imposed after the accession of the Republic of Serbia to the European Union. **12.5.** In addition to Article 197, paragraph 4 of the Law, or considering the authority of the NBS to impose fines, the co-authors made the following comparable legal opinion: "We state that the fines for violation of regulations are (almost identically) stipulated in particular laws regulating court proceedings, for example, in the Article 75 of the Law on Administrative Disputes ("Official Gazette of the Republic of Serbia", No. 119/2009). **12.6.** The Article 198 of the Law provided for a few novelties compared to the 2004 Law, as was pointed out in the Guidelines. In paragraph 1 of the Article 198 of the Law, it is stipulated that the decision on introducing the supervisory measure by the NBS is to be made with regard to the insurance company with irregularities in business transactions based on the assessment of: (1) the severity of the identified irregularities; (2) demonstrated readiness and ability of the management to remove the identified irregularities; (3) the degree to which the company jeopardises the financial discipline in the insurance market. Moreover, the paragraphs 2, 3 and 4 of this Article elaborate in detail the minimum criteria for the NBS to objectively explain the supervisory measure. **12.7.** The co-authors consider the third Section, on the additional supervision, as one of the most important novelties in this Chapter of the Law. Namely, in Art. 218 and 219 of the Law, the terms "group of companies" and "group of insurance companies" are provided for as well as exercising of an additional supervision.

13. The 11th Chapter of the Law contains provisions on termination of operation, liquidation and bankruptcy of subjects of supervision and comprises two articles. The co-authors noted that, when referring to the subjects of supervision in the Article 220 of the Law, the legislator omitted from the list the insurance/reinsurance company. The legislator considered that the provisions of this Chapter referred to the Law regulating the business of economic entities.

14. The rules for transferring the portfolio are prescribed under five articles in the twelfth Chapter of the Law. **14.1.** The Article 222 of the Law stipulates the terms and conditions that should be fulfilled when applying for a consent for transferring the insurance portfolio. With this regard, the co-authors emphasized that the applicant is obliged to submit a list of assets acquired by technical reserves that are the subject of the transfer of the insurance portfolio, stating the values and data, on the basis of which it is possible to verify the method of calculating the values in question. This was particularly pointed out by the authors since the supporting evidence represented a novelty compared to the 2004 Law. **14.2.** The Decision of the NBS on the application for obtaining the consent for the transfer of the insurance portfolio is regulated under the Article 223 of the Law, whereas the Article 224 of

the Law regulates the obligations of the company in the insurance portfolio transfer process. The novelty in the process is the 90-day period for the completion of the transfer of the portfolio, starting from the receipt of the NBS Decision- otherwise, the consent of the NBS shall terminate.

15. The 13th Chapter of the Law regulates the status changes, changes in form and association of insurance companies. The five articles mostly comprise of the referring provisions of this Law to the corresponding provisions of the law regulating the business of economic entities.

16. The 14th Chapter of the Law regulates the provisions that shall apply after the accession of the Republic of Serbia to the World Trade Organization and the European Union. The first Section of this Chapter comprises six articles and refers to the provisions that will apply after the accession of the Republic of Serbia to the World Trade Organization. The second Section, comprising much more articles, refers to the provisions that shall apply after the accession of the Republic of Serbia to the European Union. This section also provides for special provisions relating to the branch of the insurance company of the Swiss Confederation.

17. The 15th Chapter of the Law includes penalty provisions. The first Section prescribes three criminal offenses, whereas the second Section includes five articles under the title – Fine. The third Section refers to violations, in three articles. It is characteristic that the Guidelines included no comment to any of the provisions of the fifteenth chapter.

18. The transitional and final provisions of the Law are given in the sixteenth Chapter of the Law. **18.1.** The Article 268 of the Law regulates a whole range of practical issues of the transition from the old to the new legal regime for all types of control subjects, including agencies for the provision of other insurance services and legal entities that provide other services in a specifically organized department. According to the co-authors' construing, these legal entities are not susceptible to NBS licensing regime, but are obliged to comply with the Law. In case of failure to do so within the legally prescribed time, the NBS will issue a Decision by which such entities will either be deprived of the issued operating licence or determined the cessation of the validity of the issued operating license. The co-authors believe that the legal solution presented is not the most desirable.

19. The Guidelines for the Insurance Law implementation are a useful implementation manual for the new Law. Since the 2004 Insurance Law was not subject to a comprehensive commentary of the insurance profession and the insurance legal science, these Guidelines became even more important and valuable. The fact that the Guidelines were composed in a short time may be inspiring for the co-authors to re-take the pen and prepare the second edition, since they proved to be valuable and successful in the work they started.

Translated by: ***Bojana Papović***