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COMPANY LAW AND JOINT STOCK COMPANIES FOR INSURANCE/REINSURANCE

SCIENTIFIC PAPER

Abstract

Specialized companies that perform activities typically requiring establishment permits and operational permits from competent bodies are most often regulated summarily, by special laws. This is also the case with insurance companies in general, and particularly with joint-stock insurance companies. This technique of regulation is primarily applied because, in all countries, including Serbia, there is a general law that regulates all companies. This general law is applied either "accordingly" or directly to specialized companies, including insurance companies, and thus to joint-stock insurance companies for issues and institutes for which there are no specific provisions in the specialized law, i.e. the insurance law.

This paper discusses the relationship between the law regulating companies and the law regulating insurance, with a particular emphasis on joint-stock insurance companies. The relationship in question is between the general law (the Company Law) and the special law (the Insurance Law), which is governed by the maxim *lex specialis derogat lege generali* (special law repeals the general law). It is interesting that the Insurance Law, between the two options of that application, "according application" and direct application, opted for the direct application of the Company Law when it does not contain specific provisions based on the specificity of the insurance activity as compared to other activities covered by the regulatory framework of the Company Law. The paper specifically analyzes issues related to the status of joint-stock companies and their bodies (corporate governance) for which

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there are no special provisions in the law regulating insurance, and to which the law regulating companies cannot be directly applied; instead, it would be necessary to resort to a rule closer to the nature of "according application".

Keywords: *insurance companies, joint-stock insurance companies, corporate governance models, capital adequacy, groups of insurance companies.*

I Instead of an Introduction

The status aspect of insurance companies is not regulated, as one might expect, by the special law governing the insurance activity, but rather by the general law governing companies. However, the special law regulating the insurance activity in Serbia reserves the right to regulate certain deviations from the general provisions of the law that govern the status aspects of companies in Serbia, regardless of their activities. Thus, these deviations, which are inherently considered special provisions, are applied, when there are ones, instead of the general rules on the status of companies – *lex specialis derogat lege generali*. In this sense, the specialized Insurance Law[2] stipulates that the Company Law[3] shall apply to "insurance companies, reinsurance companies, insurance brokerage companies, and insurance agencies, unless otherwise prescribed by this law." This statement of the special law also indicates that this application does not extend to "mutual insurance companies" given that the general law governing companies does not encompass such a legal form of organization that would be generally valid for performing any economic activity, instead, this form exists only in the field of insurance, therefore, it is logical to be regulated solely by the law that specifically regulates the insurance activity, including this status form.

An insurance company is incorporated as a joint-stock or mutual insurance company, while a reinsurance company is incorporated only as a joint-stock reinsurance company, adhering to the rules applicable to this form of company that conducts insurance activities. An insurance brokerage company is incorporated as a joint-stock company or as a limited liability company. An insurance agency company is also incorporated as a joint-stock or as a limited liability company, and these activities can also be performed by a physical person with the status of an entrepreneur in accordance with the law governing companies. This paper will focus only on the specificities of a joint-stock insurance company (which also apply accordingly to a joint-stock reinsurance company) in relation to the general rules that apply to a joint-stock company governed by the law regulating companies, considering that there are particularly pronounced specificities of this form of company which are

[2] Insurance Law - IL, *Official Gazette of the Republic of Serbia*, No. 139/14 and 44/21, art.18.
[3] Company Law - CL, *Official Gazette of the Republic of Serbia*, No. 36/2011-3, 99/11-14, 83/14-15 – other law, 5/15-3, 44/18-27, 95/18-335, 91/19-61, 109/21-15.

not present in insurance companies organized as limited liability companies (some do exist, of course, such as the system of establishment permits, minimum capital requirements, supervision of work and operations, and so on). Therefore, neither this type of insurance company nor mutual insurance companies will be discussed, as they do not exist as a general status form under the law governing companies, but only as a specialized form within the insurance sector, regulated by the special law that governs this activity and this status form for its performance.[4]

II Specificities of Joint-Stock Insurance/Reinsurance Company

1. Business Name and Capital

A joint-stock insurance/reinsurance company engages in financial activities and, corresponding to the special regime governing banks organized as joint-stock companies and the Insurance Law, contains a number of specificities related to the status of these companies for conducting insurance/reinsurance activities, distinguishing them from companies of the same legal form that do not engage in these activities. It is logical that one such specificity is the uniqueness of the business name to distinguish it from other companies of this form that do not engage in this activity. The business name must be registered in the abbreviated form "a.d.o." (joint-stock insurance company). Additionally, only this type of company can perform and register insurance or reinsurance activities (principle of exclusivity, not cumulativeness).

Given that the nature of insurance and reinsurance activities is fundamentally financial, there are key specificities for these companies regarding the regulation of various issues related to their capital. First, the prescribed minimum capital must be in cash and is significantly higher than the capital required for companies engaged in other non-financial commercial activities (the amount depends on the type of life or non-life insurance the company provides and whether it engages in insurance or reinsurance activities).[5] Additionally, there is a requirement to maintain this form of capital at the prescribed level throughout the duration of the company's operations and life, a requirement that is generally not applicable to companies involved in non-financial activities.[6] Finally, in addition to defining the terms "significant" and "controlling" capital participation, similar to the law governing companies, the Insurance Law also defines "qualified capital participation" (directly or indirectly through another person in their own name but on behalf of that person, with a capital stake of 10% or more in ownership or voting rights). In relation to these concepts there

[4] For more details: Nataša Petrović Tomić, *Pravo osiguranja – Sistem,* Belgrade, 2019, pp. 185–212, pp. 242–275.

[5] CL, art. 27; CL, art. 293.

[6] For more details: Mirko Vasiljević, *Komentar Zakona o privrednim društvima*, Belgrade, 2023, pp. 611–662.

is a number of supplementary sub-institutes that further detail the specificities of these companies: firstly, a prohibition on reciprocal capital participation among all forms of companies regulated by Insurance Law; secondly, the requirement for prior approval from the National Bank of Serbia (NBS) as the supervisory authority for insurance companies for acquiring or increasing significant (20%) or controlling (50%) capital participation or voting rights in the company; thirdly, stipulation of specific conditions for acquiring or increasing qualified capital participation (and thus significant or controlling): good business reputation, relevant experience, financial condition, verification of source of funds, and reasons for acquiring or increasing; fourthly, the requirement for prior written notification to the NBS in the case of the disposal or reduction of qualified capital participation (including significant and controlling); and finally, the specification of legal consequences for unauthorized acquisition or increase of qualified (and thus substantial and controlling) capital participation: orders from the NBS to dispose of the acquired or increased capital within a specified period, suspension of voting and property rights until disposal, and nullification of the legal transaction in case of non-disposal or failure to reduce unauthorized capital within the allotted time frame.

A particular specificity regarding the capital of joint-stock insurance/reinsurance companies is *the institute of capital adequacy*. An insurance/reinsurance company is obliged to establish a so-called *guarantee reserve*, in accordance with the Insurance Law, to ensure the continuous fulfillment of obligations and risk management in its operations. The guarantee reserve consists of so-called *primary capital* (comprising elements defined by this Law) and *supplementary capital* (also comprising elements specified by this law), reduced by deductible items defined by the law. The Insurance Law establishes a special *solvency margin* for insurance companies engaged in life insurance, and a special solvency margin for those engaged in non-life insurance. An insurance/reinsurance company is obliged to secure *an available solvency margin*, depending on whether it engages in life or non-life insurance, and this margin is considered secured if the companies have the prescribed guarantee reserve in accordance with the Insurance Law. Unlike the guarantee reserve, the insurance law also recognizes the institute of so-called *guarantee capital*, which is part of the guarantee reserve defined by this law and amounts to at least one-third of the required solvency margin, depending on the insurance group the company is engaged in. The guarantee capital of an insurance company must not be less than the amounts prescribed by this Law, depending on the insurance group in which the company operates, as per the issued operating license. An insurance company meets the conditions for capital adequacy if it satisfies the criteria for the available solvency margin and guarantees capital, in accordance with the insurance law. If an insurance company ceases to meet the required capital adequacy conditions, it must submit *a program of measures* to the National Bank of Serbia within

a prescribed period *to re-establish these conditions*, i.e., the company's solvency, within a maximum period of three months from the determination of the non-fulfillment of these conditions. The NBS may request the insurance company to amend and/or supplement the program of measures, and if no such request is made, it is considered that the proposed measures are approved. To ensure the continuous solvency of the insurance company, the NBS may require the company to submit a *long-term financial consolidation plan*[7] during the implementation of the solvency condition compliance program.

2. Incorporation

Insurance/reinsurance companies are incorporated under a licensing system, as opposed to the free establishment regime which applies to companies under the law regulating Company Law, where the license is issued by the National Bank of Serbia (NBS) through a legally defined administrative procedure, which includes the submission of prescribed documentation. The Insurance Law also regulates the possibility of rejecting the request for a license application, as well as the grounds for the termination of an issued license.

Joint-stock companies incorporated under the Company Law can be either closed (formed without public subscription of shares) or open (formed with public subscription of shares). However, even for open companies, this Law does not recognize the institute of the founding assembly, implying that the legislator does not anticipate the public establishment of these companies, but rather their private formation by the founders (closed company). Such a company can transform into an open (public) company after incorporation and registration by following the procedure defined by the capital market law, through a new public share issuance or the conversion of the initial (private) share issuance into a public issuance, subject to the procedures set by the Securities Commission. On the other hand, the Insurance Law does not differentiate types of joint-stock insurance/reinsurance companies but regulates the institute of the founding meeting. This assembly must be held within a prescribed period after obtaining a license from the NBS, based on a duly submitted application by the founders (with the required documentation). It is interesting that the Insurance Law stipulates that founders have voting rights at the founding assembly "proportionate to their contributions" even though, at this stage, they act as contractual parties who have signed an agreement to incorporate the insurance/reinsurance joint-stock company, and not as shareholders. The company will acquire legal personality only after the prescribed acts are adopted at this assembly and the subsequent registration of the company, which will then have the nature of a capital

[7] Regarding these institutes of capital adequacy for insurance companies: IL, arts. 124–130.

company where shareholders with voting shares have voting rights proportional to their capital contributions. In any case, the founders of this company vote by a qualified majority (2/3), adopt the company's statute, elect the first supervisory board, determine the company's business policy and business plan, adopt the company's general acts and business policy acts, and other acts significant for the commencement of activities and company operations. They also determine the maximum amount of funding expenses to be borne by the company and approve the valuation of non-cash contributions. These adopted acts are then submitted by the founders to the NBS within the prescribed period and to the prescribed register (Business Registers Agency - BRA) for registration and acquiring legal personality.[8]

III Governance Bodies of Insurance/Reinsurance Joint-Stock Company

3.1. Management Models (Boards)[9]

3.1.1. One-Tier Model

The first system (the so-called one-tier model) originates from Anglo-Saxon law which has been adopted by many continental law countries (France, Switzerland, Italy).[10] In this system, the management function is in the hands of one or more individuals (Switzerland, England, the USA), or a board of directors - supervisory board, which is elected by the shareholders' assembly *(*supervisory board - *board of directors*).[11] According to this system, the board of directors elects one or more executive directors from among its members (*executive directors*) or partly from among those who are not members, or from individuals who are permanently employed in the company, for the operational management of the company's operations.[12] Most often, the chairman of the board of directors (elected by the board) is also the

[8] IL, arts. 48-49.

[9] For more details: Mirko Vasiljević, Tatjana Jevremović Petrović, Jelena Lepetić, *Kompanijsko pravo – pravo privrednih društava*, Belgrade, 2023, pp. 537–542.

[10] The French Commercial Companies Act (No. 66-537), art. 89 (hereinafter: FCC...), the Swiss Code of Obligations, arts. 89–117; (1911, 1936, 1984, hereinafter: SCO...), arts. 707–726. For a theoretical legal analysis of the board of directors, See generally Pierre Gilles Gourlay, *Le conseil d' administration de la sociétés anonymes*, thesis, Paris, 1971.

[11] SCO..., arts. 707, 712, and 714; FCC..., arts. 89, 110, and 115. In England, joint-stock companies with public share issuance must have at least two directors, while companies without public share issuance must have at least one director – John Charlesworth (ed. Geoffrey Morse), *Company Law*, London, 1995, pp. 312–315.

[12] See Joseph Hamel, Gaston Lagarde, Alfred Jauffret, *Droit commercial*, Paris 1980, pp. 357–402; René Rodière, *Droit commercia*l, Paris, 1980, pp. 193–212; Maurice Cozian, Alain Viandier, *Droit des sociétés*, Paris, 1998, pp. 235–272; Robert Pennington, *Company Law*, London, 1995, pp. 768–778; John Birds *et*

president of the company and the chief executive officer (*chairman-chief executive officer, president-directeur général*). Members of the board of directors can be, with a range of variations, either full-time employees of the company (*executive directors*) or individuals not employed by the company (*non-executive directors*). Thus, in this system, the function of the board of directors is carried out partly on a collegial basis (meetings, collective representation) and partly on an individual basis (executive functions of the chairman, executive functions of the general manager, executive functions of directors, executive directors). In this system, *the supervisory board is not a mandatory body* in a joint-stock company (the control function is performed by external independent auditors, partly by internal auditors, or special auditors).

The one-tier corporate governance model was developed in the following environment: 1) the dominance of dispersed shareholders — mainly physical persons, 2) strong legal and judicial protection of shareholders, 3) limited shareholding by banks and other institutional investors, 4) the existence of the "one share, one vote" rule, 5) a liquid and developed capital market, 6) a highly developed hostile takeover market, 7) weak union power, 8) poorly developed state social policies, 9) a weak system of social democracy, and 10) developed employee shareholding through tax incentives.

The one-tier corporate governance model developed under the conditions of so-called *shareholder capitalism*. This model was previously characterized as a managerial (profit-oriented) model but is now more frequently referred to as a shareholder-oriented model. The main features of this model are: 1) competition in all areas, 2) dominance of private interest over public interest in management, 3) reducing the role of powerful private institutional investors and promoting public share issuance as the main source of financing, 4) regulating corporate governance with default rules, thereby encouraging market activities, 5) complete separation of management from ownership, so that shareholders do not have the right to directly manage the company's activities, but instead, this is done on their behalf by the board of directors and managers, who have a fiduciary duty to the company (open companies typically predominate), 6) an exceptionally easy ability for shareholders to initiate legal proceedings against non-businesslike and harmful decisions made by the company's management, 7) incentivizing management through contracts tied to company success: linking managers' compensation to the company's performance, 8) developed public oversight of management quality, especially through specialized media and advanced market ratings of managers, 9) developed judicial practice with corporate governance precedents that provides valuable lessons for effective management.

Economic theory cites the following key advantages of shareholder-oriented capitalism: 1) an advantage in starting businesses and introducing new technology,

al., *Company Law*, London, 1995, pp. 415–430; Paul L. Cannu, *La société anonyme à directoire*, Paris, 1979; Robert Hamilton, *The Law of Corporations*, Minnesota, 1991, pp. 218–249.

2) encourages initiative, individuality, and innovation, 3) political neutrality, 4) promotes the professionalization of managers, 5) risk diversification (public issuance of shares – *IPO*), and 6) relatively high returns on stock investments. On the other hand, the key disadvantages of this system of capitalism include: 1) maximizing short-term results at the expense of long-term strategy, 2) the share prices are based on short-term strategies, hindering R&D strategies, 3) weak management oversight by dispersed shareholders (*strong managers, weak shareholders model*), 4) relatively weak shareholder assemblies and relatively powerful boards of directors, 5) linking executive compensation to company performance (share prices) leads to management abuses in "inflating balance sheets" and 6) weak protection of other interests within the company (beyond those of shareholders).

3.1.2. Two-Tier Model

The second system (the so-called two-tier model) is the system of the German law, which is, as an alternative to the one-tier system, also incorporated into the most recent French legislation. In a joint-stock company, this model generally (except in small companies where the function of the management board can be performed by one person) consists of two boards: the management board (*Vorstand*) and the supervisory board (*Aufsichtsrat*).[13] The management board performs its management and operational functions partly on a collective basis (decision-making at meetings, collective representation) and partly on an individual basis (individual representation, individual execution of decisions made at meetings). Exceptionally, in joint-stock companies with smaller capital (as prescribed by the Law), the function of the management board can be performed by a single person – the sole general manager. The management board, in the narrower sense, performs its management and operational functions partly on a collective basis (making decisions at meetings, collective representation) and partly on an individual basis (individual representation, individual execution of decisions made at meetings).[14] In this system, the members of the supervisory board are elected (and dismissed) by the assembly, while the supervisory board elects (and dismisses) the members of the management board. This system is also adopted in Croatia.[15] Naturally, in this system, the control function is performed not only by the supervisory board but also by an external independent auditor, and it can also be performed by an internal auditor and sometimes a special auditor.

The two-tier management model was developed in the following environment: 1) domination of banks as shareholders in company management, either directly as shareholders or through a proxy system or agreements on exercising

[13] German Aktiengesellschaft (1965..., hereinafter: NDZ), arts. 76-117; FTZ..., arts. 118-150.
[14] *Thus* J. Hamel, G. Lagarde *et al.*, p. 420. For more details on the directorate: P. Le Cannu, pp. 33-122.
[15] Croatian Companies Act (HTZ: 1993, 2003), art. 244.

voting rights, 2) a combination of the roles of creditor, significant shareholder, and controller through the exercise of voting rights, 3) concentrated shareholding, 4) legal co-determination (cohesion of labor and capital), 5) infrequent meetings of the supervisory board to minimize the role of employees in co-determination in order to avoid triggering management liability for harmful decisions, thus also protecting the supervisory board from supervisory negligence, 6) a relatively underdeveloped capital market, 7) relatively underdeveloped hostile takeovers, 8) a relatively negligible role of small shareholders, 9) strong unions, and 10) a developed social policy and social democracy.

The two-tier management model in Germany was developed under conditions of *the so-called worker-oriented capitalism model (social democracy model)*. The main characteristics of this model are: 1) insufficient separation of ownership from management in conditions of concentrated shareholding (usually dominated by closed companies), 2) management is relieved from short-term success pressures, typically focusing on long-term strategy, 3) the development of social democracy (distributive justice) and co-determination pressures managers to consider other interests other than those of shareholders (corporate social responsibility), 4) political determination of the model, 5) the quality of management depends more on the assessment of success by major shareholders (usually banks) than on the market, 6) concentrated shareholding and weak dispersion weaken shareholder rights but increase job security (social security), 7) developed discretionary power of controlling shareholders, 8) weak protection of minority shareholders and an underdeveloped practice of shareholder lawsuits (derivative lawsuits).

Economic theory identifies the following key weaknesses of this model of capitalism (originally belonging to Germany, but also fundamentally present in Japan, with certain specificities): 1) insufficiently developed competition and market (particularly the capital market due to restrictions on the transfer of shares, and the labor market due to social democracy), 2) non-transparent management and potential conflicts of interest between the dominant shareholder and their duty of loyalty to the company, 3) weak protection of the interests of small shareholders (often due to high capital thresholds for exercising minority shareholders' rights), 4) potential conflict of interests between shareholders and management (limited use of management ownership participation) due to management's duty to work particularly in the interest of employees under conditions of social democracy and co-determination, 5) heterogeneity of interests between capital representatives in management and employee representatives, leading to potentially poor-quality management decisions, especially from the standpoint of competitiveness (constant tensions between capital interest and labor interest).

The advantages of the role of banks, on the other hand, as key shareholders (in the German-Japanese management model) are fundamentally as follows: 1) the cost

of credit is generally cheaper compared to the cost in the USA, where bank-company relationships are market-based, 2) conflicts of interest between credit and capital are more easily resolved, 3) compared to small dispersed shareholders, banks as creditors or shareholders generally enjoy better legal protection. On the other hand, the weaknesses of the role of banks as key shareholders (in the German-Japanese management model) are as follows: 1) due to close relationships with companies (significant shareholders), banks often provide subsidies or lower interest rates on loans, resulting in higher costs for banking services, 2) when there are no restrictions on placements, bank funds may be over-invested in shares instead of credit capital, 3) long-term ownership in companies leads to close ties with management and the loss of a professional relationship.

3.1.3. The Japanese One-Tier Model – Combination of Anglo-Saxon and German

The Japanese model of corporate governance is primarily one-tier model, yet it incorporates characteristics of both the American-British one-tier model and the German two-tier model: 1) significant role of banks, i.e. banks act as controlling shareholders and monitors, 2) negligible role of other small shareholders, 3) unlimited *cross-shareholding*, 4) underdeveloped hostile takeover, 5) lifetime employment system - known as humane capitalism, 6) closed internal labor market - the recruitment and selection of employees and managers are conducted within the company, 7) continuous consultation between employees and managers, 8) developed corporate unionism rather than national unionism, 9) external oversight where instead of a supervisory board, external auditors perform the oversight function, 10) executive board (board of directors) which is typically large and operates in the company's interest without external (independent) members and without pressure from shareholders.

The Japanese corporate governance model was developed primarily in the same environment as the German governance model, with certain specificities. These include a reduced role for national labor unions (and thus co-determination), but also an increased role for tradition and culture (humane capitalism) and the state. Therefore, the Japanese model of capitalism is referred to as *a state-oriented model* (for some time, France also attempted to implement this model).

3.1.4. Mixed Model – Freedom to Choose

Lastly, the third system, adopted by the Statute of the European Company, allows a joint stock company to choose (*system of freedom of choice*) either a so-called *one-tier model* (*monistic*) — an executive (management) board of directors elected by the general assembly of shareholders, or a so-called *two-tier (dual) model* — a management board and a supervisory board, where the supervisory board is elected

by the general assembly, which then elects the management board (although the possibility is still left for member states to stipulate that the supervisory board can also be elected by the general assembly of shareholders).[16] That system is essentially *a combination of the first and second models* and has been adopted in France (as an alternative to the unitary model), in the variant where both bodies are elected by the general assembly of shareholders (with the possibility to separate the functions of the chairman of the board of directors and the general director, when the aim is to separate management and provide stronger control through the board of directors, which is conditionally referred to as the "third model of governance" in France, Serbia, Montenegro, North Macedonia, and Slovenia.[17] *The High-level group of company law experts on a modern regulatory framework for Company Law in Europe* also advocates for the system of free choice for joint-stock companies i.e. allowing the choice between the so-called unitary system and the two-tier system of corporate governance bodies in joint-stock companies.[18]

3.1.5. Insurance Law – Two-tier Management Model

The nature of the governance model of a joint-stock company is not determined by the existence of the general assembly as a mandatory body in every such company, not even in a single-member company. The reason is natural and sensible: the assembly consists of the shareholders who hold ownership rights arising from the types of shares they possess. The nature of the governance model for such a company is determined by the legal stipulations regarding the existence of other mandatory bodies. Since Serbian law regulating insurance mandates that, in addition to the general assembly, the mandatory bodies of such a company include the supervisory board (elected by the general assembly) and the executive board (elected by the supervisory board), it follows unambiguously that the mandatory governance model for such a company is a two-tier model. Therefore, there are two collective bodies: the supervisory board and the executive board, which the law collectively refers to with a single term - the company's management. Thus, *ex lege*, joint-stock insurance companies must adopt a two-tier management model, without the option to choose a one-tier management model or an alternative between

[16] Council Regulation (EC) No. 2157/2001, arts. 38-51.

[17] FTZ..., arts. 90 and 120. In the literature, it is noted that, unlike the classic system with a board of directors, the new system with a supervisory board and directorate in France is unpopular, as twenty years after its introduction, it has been adopted in only about 2.61% of capital companies - See M. Cozian, A. Viandier, p. 291; Serbian Company Law, art. 198 (limited liability company), arts. 326, 383, 417 (joint-stock company); Slovenian Companies Act (STZ: *Official Gazette of the Republic of Slovenia*, 30-1298/93 and 45-2548/2001), art. 250; Macedonian Companies Act (2002, hereinafter: MTZ...), art. 301.

[18] See Report of the High Level Group of Company Law Experts on a Modern Regulatory Framework for Company Law in Europe, Brussels 2004.

one-tier and two-tier governance models. In any case, concerning the organization of bodies within such an insurance/reinsurance company, Serbian law reiterates the general norm from the general part of the law, stating that in the absence of specific rules in this special law, the rules governing commercial companies apply (both general rules valid for all forms of commercial companies and specific rules related to the same form of company organization). This also applies to the company's governing bodies (which would apply even if this norm were not reiterated in the section on the company's governing bodies, as it is included in the general part of the insurance law).[19]

Essentially, the two-tier management model differs from the one-tier management model by having a second body with supervisory functions within the company (supervision of the work of executive directors and oversight of the implementation of the company's adopted business strategy). In the one-tier model, these supervisory functions should, at least in part, be performed by non-executive directors and independent directors (in the case of public joint-stock companies). The one-tier model is characteristic of Anglo-Saxon countries and those that base their regulations on these countries. In contrast, the two-tier management model is typical of Germanic countries and those that structure their legislation based on the regulations of these countries.

Reforms of the one-tier corporate governance model have fundamentally highlighted its weaknesses and vulnerabilities. Consequently, the two-tier model has proven to be more stable and resilient in the face of economic crises. This stability is largely due to the presence of a second collective body within this management model—the supervisory board, which, along with other reformed elements of the one-tier model, plays a crucial role. The supervisory board monitors the work of the "executive sphere of authority within the company" and has numerous supervisory powers distinct from those of the executive board (or board of directors in the one-tier model). As a result, it can provide effective and timely oversight, offering shareholders early warning signals to review the performance of executive directors and the executive board - something that non-executive and independent directors (or partly the general assembly) in the one-tier model cannot do efficiently for various reasons.

IV Bodies of the Joint-Stock Insurance/Reinsurance Company[20]

4.1. General Assembly – Special Rules

The general assembly of a joint-stock insurance company is essentially regulated in the same manner as the general assembly of a joint-stock company

[19] IL, arts. 18 and 50.

[20] See Nataša Petrović Tomić (2019), pp. 203–212.

governed by the Company Law. Therefore, the following rules of this Law apply on the assembly of such a company: composition of the assembly and shareholders' rights, conveners, notice of meeting (traditional, electronic, internet publication), types of meetings (regular, extraordinary, and special meetings for preferential shareholders), location of the assembly, the shareholders' day, the president of the assembly, rules of procedure, agenda (the right to propose and determine the agenda, minority shareholders' rights to supplement the agenda, and court-ordered additions if minority shareholders' requests are not accepted), holding a meeting by court order (when it is not held in response to a request by minority shareholders), meeting formats (physical and non-physical (virtual) meetings), the right to ask questions and obligation to respond (providing answers as ordered by the court), voting (direct voting, absentee voting, participation via electronic means or proxies — rules regarding proxy voting, who can be a proxy, proxy voting for multiple shareholders, special rules for proxies proposed by the company, and special rules for banks managing collective or custodian accounts, as well as rules for changing and revoking proxy voting), access to the meeting, quorum for the first and repeated meetings with the same agenda, voting committee, majority for decision-making(-simple, absolute, and qualified), voting results, method of voting (public or secret), voting rights based on pledged shares, voting of special classes of shares, voting agreements, exclusion of voting rights and conflict of interest, minutes, statement on the application of the corporate governance code, meeting materials, publication of annual reports, approval of financial and other reports, nullity and challenging of decisions (the right to challenge decisions, consequences of challenge, proceedings for challenges, consequences of court ruling, special rule for challenging the approval of annual financial statements, and rules for when a decision will not be invalidated).[21]

Special rules of the Insurance Law concerning the shareholders' assembly of an insurance/reinsurance joint-stock company are primarily related to the specific supervisory role of the National Bank of Serbia (NBS) over insurance organizations. These include the obligation to notify the NBS about the meeting and the possibility for an NBS representative to attend the meeting, as well as the ability of the NBS to request that certain issues be included in the assembly's agenda. Additionally, there is a special rule granting shareholders who hold at least 1% of the voting capital the right to directly exercise their voting rights, and this right cannot be excluded by the company's statute (in contrast, for companies governed by the company law, there is an autonomous right for the company to grant such direct participation rights in the shareholders' assembly to shareholders holding 0.1% of the "total number of shares of the relevant class").[22] Ultimately, the Insurance Law regulates the scope of authority and the conduct of meetings of the general assembly in a manner similar

[21] CL, arts. pp. 377–381.

[22] IL, art. 51, para. 3; CL, art. 328. para. 3.

to the Company Law, with an explicit prohibition on delegating statutory authority to other bodies within the company, as well as specific provisions regarding meetings of the assembly in the context of relations with the National Bank of Serbia (NBS).

4.2. Supervisory Board – Special Rules

Similarly to how the Insurance Law regulates the general assembly of a joint-stock insurance/reinsurance company (as well as the executive board), it also governs the supervisory board of this company. In summary, there are only a few provisions that grant the supervisory board a special nature, which apply prior to the general norms referring to this body within the two-tier management model accepted in insurance/reinsurance companies. These specific provisions are encompassed in the company law. First, the insurance law stipulates the minimum number of members for the supervisory board (the maximum number is determined by the company's statute)—three members (including the chairman). Notably, it requires that *"at least one-third" of its members be independent* in the sense defined by the Company Law (while Company Law generally requires at least one independent member, and this applies only to public joint-stock companies). The remaining members of the supervisory board must be *non-executive members* (i.e., not employed by the company, under any form of employment contract, as the law does not specifically require full-time employment). Furthermore, the Insurance Law specifically regulates the scope of authority of the supervisory board. This scope is fundamentally similar to that of the supervisory boards of joint-stock companies with a two-tier management system under the Company Law. The purpose of this specific regulation lies in the peculiarities of certain duties within the supervisory board's scope that arise from the unique nature of the insurance business (e.g. appointing and dismissing the authorized actuary, establishing an internal control system, determining risk management strategies, adopting the internal audit plan, etc.), as well as the specific supervisory role of the National Bank of Serbia (NBS) over insurance companies (e.g. reporting identified irregularities in the company's operations, reviewing the findings of NBS during the supervision of insurance activities, etc.), which do not apply to companies governed by the company law.[23] Lastly, the insurance law includes special provisions regarding supervisory board meetings, particularly from the standpoint of the need

[23] *Cf.* CL, art. 441; IL, art. 55. Duties within the jurisdiction of the supervisory board: 1) cannot be transferred to the company's executive directors (this management model does not include non-executive directors); 2) can be transferred to the jurisdiction of the general assembly only by a decision of the supervisory board (delegation of authority), unless otherwise specified by the statute (exclusion of transfer, limitation of issues for which delegation is allowed, consent of the general assembly to the delegation, etc.). This delegation of authority is precisely what the Law refers to when it mentions the jurisdiction of the general assembly of a joint-stock company by stipulating decisions on "other matters that are in accordance with this law placed on the agenda of the general assembly meeting".

for communication with the National Bank of Serbia (NBS). This includes requirements for at least one meeting every three months, the obligation to notify the NBS of scheduled meetings to enable the possible attendance of its representative and potential addressing to the supervisory board members, the possibility for the NBS to request meetings of this body, and the annual obligation to submit a report to the NBS on the supervisory board's activities, including the number of meetings held.

Aside from the issues regulated by the Insurance Law concerning the supervisory board (such as the minimum number of members, independent members, scope of authority, and meetings) under the specific regime of this Law, all other matters concerning this body are thoroughly regulated by the Company Law. This includes provisions that the Company Law regulates uniformly for both the supervisory and executive boards ("management of the company"), such as requirements for prior approval from the NBS to serve as a board member, the conditions and qualifications necessary for serving as a board member, the obligation to inform the company's assembly about the "income of a board member", and the duties and responsibilities of a board member. Issues related to this body that are not covered by the Insurance Law are not left unresolved, as they are directly governed by the Company Law as mandated by this legislation.

In this context, the following provisions from the Company Law governing joint-stock insurance/reinsurance companies "apply" (directly, rather than accordingly)[24] to the supervisory board of such entities under the two-tier management system: conditions and restrictions for membership on the supervisory board (such as criminal convictions for certain offenses, while the legal consequences of the conviction are in effect, any imposed security measures, as long as such measures remain in force; serving as a member of the executive or supervisory board in more than five companies; employment within the company, with the exception of individuals employed in a related company - such employees are considered non-executive members and must meet the independence criteria but are not required to satisfy the additional criteria for independent member);[25] composition (executive directors of the company or procurators cannot be members of the supervisory board - this is due to the need for the board members' independence from those whose work they oversee, which is one of their key responsibilities). Executive directors and procurators represent the company and have corresponding powers, which implies separation between executive/management functions and supervisory functions - executive directors also act as representatives of the company, and procurators represent the company and have corresponding powers, thus, *the oversight of executive directors extends to procurators* as well; members can be both *physical and legal persons,* the latter through their representatives; supervisory board members *cannot have*

[24] IL, art. 50 para. 2.

[25] CL, art. 432 in relation to arts. 382 and 391.

substitutes, emphasizing personal responsibility and accountability; members can be domestic or foreign individuals; members of the board must be registered, and an odd number is required);[26] appointment (candidates may be proposed by the existing supervisory board, a nomination committee (if one exists), or shareholders holding at least 5% of voting shares);[27] term (the term is generally four years, though statutes or general meetings may specify a shorter term, reappointment is possible without limitation on the number of terms);[28] the board may co-opt up to two missing members;[29] independent members (at least one-third) of the board must be independent, meeting specified criteria for independence 1) in relation to the company in which the individual is a member of the supervisory board, 2) in relation to the executive directors of the company, and 3) in relation to affiliated persons with that company and those directors[30] (including employment, ownership, property, and functional relationships);[31] remuneration for board members (procedures for establishing proposals and making decisions, including fixed and variable components (but not profit-sharing), establishing and defining the remuneration policy, ensuring transparency in reporting on remuneration policy, which must be made available for review, voting on the remuneration policy and the remuneration report);[32] termination of mandate prior to the end of the appointed period and removal (termination of fulfilling conditions, non-approval of annual financial statements at the regular assembly, removal without stated reasons);[33] resignation (members can resign at any time, the resignation takes is effective immediately unless a later date is specified, resignation must be registered);[34] reporting to the assembly (the obligation to report on accounting practices, financial statements, legal compliance, auditor qualifications, and contracts concluded between the company and members of the governing body, as well as with affiliated entities);[35] the chairman of the board (the chairman is elected by the board and holds specific responsibilities and powers as defined by the board; the chairman can be removed at any time without specifying reasons; in the event of the chairman's absence, any board member has the authority to schedule meetings; registering);[36] board operations (regulated by the statute and the rules of procedure adopted by the board) and board meetings

[26] CL, art. 433.
[27] CL, art. 434 in relation to art. 337.
[28] CL, art. 435 in relation to art. 385.
[29] CL, art. 436 in relation to art. 386.
[30] CL, arts. 391–392.
[31] CL, art. 437 in relation to art. 392.
[32] CL, art. 438 in relation to arts. 393 and 463a-463v.; IL, art.60.
[33] CL, art. 439 in relation to arts. 394 and 395.
[34] CL, art. 440.
[35] CL, art. 442 in relation to art. 399.
[36] CL, art. 443 in relation to art. 400.

(calling and notice period, quorum for holding and conducting meetings, attendance of other persons at the meeting, decision-making processes, the majority required for decision-making, including the chairman's deciding vote in case of a tie, preparation of minutes from the meetings and their distribution to board members);[37] board committees - *committees of the supervisory board are not decision-making bodies of the company but are working bodies* established by the supervisory board's decision. *They cannot make decisions on matters within the supervisory board's jurisdiction* (the obligation of the audit committee and the possibility of the nomination committee, compensation committee, and other board committees - if these optional committees are not established, their functions are performed by the supervisory board; composition of committees - the audit committee must include one independent board member who serves as the chair of the committee, as well as one authorized auditor; committees operate and make decisions by majority vote, with the committee chair having a deciding vote in the event of a tie);[38] board members are liable to the company for the damage resulting from their decisions (this liability extends to members who voted in favor of a decision, equivalent liability of members who abstained from, or equivalent liability of members who did not vote for the decision if they did not oppose it within a statutory period after its adoption; there is a statute of limitations for the company's claims for damages, the company may or may not waive its right to claim damages).[39]

Additionally, the Company Law stipulates *the analogous application of several provisions* related to the management board (i.e. directors or board of directors) and the supervisory board *of a joint-stock company with the one-tier management system*. These provisions also apply to the supervisory board of a joint-stock insurance company in a two-tier management system, in accordance with the specific law. This includes, in particular, liability (property liability and status liability in cases of removal)[40] for directors in the one-tier management model, which accordingly applies to members of the supervisory board in the two-tier management model of joint-stock companies.

The property liability of directors in a joint-stock company arises from the performance of duties within the jurisdiction of the directors and the board of directors. Similarly, the property liability of members of the supervisory board must stem from the performance of duties within the scope of this body's jurisdiction, rather than as a result of failures in the performance of the duties of executive directors and the executive board in the two-tier management model (whose liability is also regulated in accordance with the liability of directors and members of the board of directors in the one-tier management model).[41]

[37] CL, art. 445 in relation to arts. 402–407.
[38] CL, arts. 408–414.
[39] CL, art. 447 in relation to art. 415.
[40] CL, art. 439.
[41] CL, art. 427 and art. 430 in relation to art. 415.

Members of *the supervisory board*, just like directors (including legal representatives and procurators, and the liquidator for the company's liquidation), *are also individuals with legally prescribed duties towards the company*. This includes special duties of care (such as the care of a prudent businessman and/or expert). In accordance with the Law, for breaches of these duties, they can be liable for damages to the company based on a lawsuit filed by the company or shareholders with the prescribed capital threshold for derivative actions on behalf of the company (and/or to the shareholders of the company – individual or collective lawsuits). The liability of supervisory board members, and in terms of the according application of the rules governing the liability of directors (in the one-tier or the two-tier management systems), can be based solely on a breach of the prescribed duty of care and failing to act "in the best interest of the company" while performing their duties within their jurisdiction. This includes the "supervision of the work of executive directors" as well as numerous other duties within the scope of this body's jurisdiction as defined by law, the company statute, and the decisions of the shareholders' assembly. Therefore, it is always a matter of liability for damage caused to the company (and/or its shareholders) *by their actions or non-actions*, which includes a breach of the duty of care *in the performance of this supervision – liability for their own "fault"* (and not for the unlawful and/or harmful decisions of other company bodies). Due to the nature of their function and duties, members of the supervisory board are often in a position to bring attention to a decision by the executive directors or the executive board (comprising executive directors) that could cause harm to the company (and/or its shareholders). If they fail to do so and there is a breach of the prescribed duty of care, they are also liable for the damage resulting from the execution of such a decision (*partial liability for the "fault of others"*). It is necessary to determine the extent of the damage causally linked to the fault of the other body and the extent linked to the breach of the duty of care by the supervisory board members.

The according application of the rules regarding the property liability of directors and members of the board of directors in the one-tier management model, and on the property liability of supervisory board members and executive directors (individually or as members of the executive board and decisions of the executive board) in the two-tier management model of a joint-stock company, whether public or private, encompasses the same principles of liability. This involves the same underlying principles, the active legitimacy of individuals to initiate proceedings and file lawsuits, the passive legitimacy of individuals, the liability of members who voted for the decision and those who were absent from the meeting but did not oppose the decision in writing within the legally prescribed period, the liability of members who abstained from voting, the statute of limitations, the possibility of release from liability through a decision of the company assembly, and joint liability to the company and/or shareholders with the possibility of recourse - a specificity

regarding the circle of subjects of joint liability concerning the liability of directors in the one-tier management model due to the presence of the supervisory board in the two-tier management model. The same applies to liability towards third parties, in addition to the liability of the company as a legal entity, based on acceptance in corporate law and the direct liability of members of company bodies (a specific "piercing of corporate veil").[42]

4.3. Executive Board – Special Rules

The Insurance Law regulates only the minimum status-related issues concerning the executive board of a joint-stock insurance/reinsurance company, specifically addressing matters that deviate as special rules from the application from the application of this body under the general provisions of the Company Law. Firstly, regarding composition: the executive board consists of at least two members, with the maximum number determined by the company's statute (including the president of the executive board, who, by law, represents and acts on behalf of the company and is required to ensure the co-signature of another board member when representing the company). Joint-stock companies that are subject to the Company Law are required to have an executive board of at least three members (the maximum number is determined by the statute) if they are public (open) companies and have three or more executive directors in a two-tier management system. If they have one or two executive directors, they do not have an executive board. *Co-signature (joint representation)* is not compulsory for these companies but can be established by the statute, and it takes effect when registered and against third parties (the same applies to insurance companies as there are no specific provisions in the Insurance Law).[43] It is a common legal solution under both Company Law and Insurance Law, stipulating that a member of the executive board (or executive directors) cannot have a deputy *(due to the personal nature of the status),* as well as the provision that the supervisory board appoints the executive board of the company (or executive directors - *the two-tier model does not have non-executive directors or independent directors in the executive board*) and is obligated to register the members of this board (as well as the termination of mandate and resignations). Additionally, the scope of duties (jurisdiction), with logical specificities arising from the nature of insurance activities, of the executive board (including the scope of executive directors) is fundamentally regulated in the same manner under both laws.[44]

When there is no specific rule established by the Insurance law, the general provisions of the Company law that apply to executive directors and the executive

[42] See FCC, arts.754–761; *see also* G. Viney, *La responsabilité civile*, Paris, 1982, p. 555; Ph. Merle, A. Fauchon, pp. 494–495; M. Cozian, A. Viandier, F. Deboissy, p. 286.
[43] CL, arts. 419-420 and 33; IL, art. 57.
[44] CL, arts. 422 and 427; IL, art. 58.

board are also applicable to the executive board of a joint-stock insurance/reinsurance company. This applies to the following institutes governed by the Company Law: restrictions on the appointment of executive board members not covered by the restrictions specified by the Insurance Law (e.g. convictions for specified offenses while the legal consequences of the conviction are still in effect, security measures prohibiting business activities while such measures are in force, and multiple memberships (over five) on supervisory or executive boards of other companies - over five);[45] Proposal for appointment (by the nomination committee of the supervisory board if it exists, or, if not, by any member of the supervisory board[46] – in our opinion, it could also be another individual designated by the company's bylaws (e.g. any shareholder or a shareholder with a specified percentage of capital participation); mandate of directors (analogous to the mandate of supervisory board members – the presumed maximum statutory term or a shorter statutory term, with the possibility of reappointment);[47] the jurisdiction of the executive board and the jurisdiction of executive directors as members of the board (if there are any issues not regulated by the insurance law but regulated by the Company Law – e.g. certain executive board responsibilities requiring supervisory board approval)[48] – the Insurance Law introduces *the presumption of the executive board's jurisdiction* (deciding on all issues not decided by the general assembly and the supervisory board under the law and possibly the statute of the company), while the Company Law establishes the rule for insurance joint-stock companies that "issues within the jurisdiction of the executive board cannot be transferred to the supervisory board"[49]: the working method of the executive board (in managing the company's affairs, the executive board acts independently and generally makes decisions and takes actions outside of meetings. If there is no agreement among the executive directors as members, the president of the executive board "may call a meeting" to make decisions by a majority vote, with the president's vote being decisive in case of a tie – this is why the insurance law does not specifically regulate meetings of this company body, while it does regulate the institution of supervisory board meetings);[50] authorities of the president of the executive board appointed by the supervisory board (application of rules contained in the Company Law concerning the institute of the general director as the first executive officer, with the exclusion of individual representation due to the requirement for co-signature by one member of the executive board);[51] remuneration for members of the executive board – executive directors (fixed and

[45] CL, art. 418 in relation to art. 382.
[46] CL, art. 420.
[47] CL, art. 421 in relation to art. 385.
[48] IL, art. 58 and CL, art. 422.
[49] IL, art. 58 para. 2 item 13; CL, art. 427 item 2.
[50] IL, art. 56; CL, art. 429.
[51] CL, art. 423.

variable remuneration, but not in the form of participation in the company's profits, which may depend on the company's business results; remuneration policy, report on remuneration – transparency of remuneration, voting at the general assembly of the company on the remuneration policy and the report on remuneration);[52] termination of mandate and dismissal (according to the rules applicable to members of the supervisory board, but excluding the possibility of co-option by the executive board itself);[53] resignation (according to the rules applicable to the resignation of supervisory board members, but without the possibility of co-option in this case);[54] possibility of appointing a temporary representative by the court if the company has no executive director registered within the prescribed period (due to the co-signature obligation regulated by the Insurance Law, we believe two temporary representatives should be appointed);[55] company with two executive directors (including the president – provisions on the executive board apply except for provisions on board meetings);[56] reports by executive directors as a general rule under Company Law, with specific provisions from Insurance Law regarding the executive board's reporting to the company's assembly;[57] liability (property liability to the company or to shareholders) of executive directors as members of the executive board (according to the rules governing such liability for members of the supervisory board, considering the jurisdiction of both bodies within the company).[58]

The property liability of executive directors (or the executive board) in a two-tier management system *for damages* caused *to the company* by their business decisions, as well as *to the company's shareholders* (individual or collective lawsuits), and exceptionally *to third parties*, is governed accordingly by the rules that apply to directors and the board of directors in a one-tier management system.[59] Thus, the provisions regarding the liability of the board of directors in one-tier management model (including rules on collective decision-making, voting against a decision, abstaining from voting, the liability of non-attending members, joint liability, actively and passively legitimized parties, the statute of limitations, the possibility of relief from liability by decision of the assembly and similar) are accordingly applied to the executive board in a two-tier management system.[60]

[52] CL, art. 424, 393, 463a-v.
[53] CL, art. 425.
[54] CL, art. 426 items 1–3.
[55] CL, art. 426 items 3–6.
[56] CL, art. 428.
[57] CL, art. 431 in relation to art. 416.
[58] CL, art. 430 in relation to art. 415.
[59] CL, arts. 63–64 and 415.
[60] For more details, see N. Petrović Tomić (2019), pp. 209–212.

4.4. Joint-Stock Insurance Company Management

Unlike the law governing companies, which does not recognize the concept of "company management", the Insurance Law establishes this concept and explicitly defines that "management of a joint-stock insurance/reinsurance company includes both the supervisory board and the executive board." The establishment of this concept has enabled the insurance legislator to introduce some common principles that apply to the members of both bodies (the supervisory and executive boards).

First, the regulation of positive conditions for the appointment of members of these bodies (good business reputation, appropriate professional qualifications, necessary knowledge and experience as determined by the company's statute), as well as the regulation of negative conditions (prohibitions, impediments) that prevent an individual from being appointed to the management of such a company (convictions for criminal offenses specified by this Law, and on a broader basis than Company Law, certain protective measures imposed, revocation of a company's license to operate while the individual was a member of its management at that time or for a certain period prior, initiation of bankruptcy or forced liquidation proceedings against a company while the individual was a member of its management at that time or for a certain period prior, individuals who have had their consent to be a member of the management revoked by the NBS in the last three years, individuals dismissed from their management duties by NBS order in accordance with the law; individuals who are prohibited by the company law from being appointed as a member of these bodies, individuals connected with a legal entity in which the insurance joint-stock company holds a certain percentage of capital or voting rights, individuals who are members of the management or procurators in another insurance/reinsurance joint-stock company). Finally, it is also necessary to regulate additional appointment conditions by law (such as active knowledge of the Serbian language, residence or domicile in Serbia, full-time employment contract with the company for executive directors – *the two-tier model does not have non-executive directors, and not have independent directors in the executive board*) and by special NBS regulation.

Second, the system of prior approval by the National Bank of Serbia (NBS) for the appointment of members to the management of insurance/reinsurance companies (including the grounds for withholding such approval and the prohibition on submitting a new request for a period of one year from the date of such withholding). In contrast, there is also the possibility of revoking previously granted approval for such appointments if it is determined that there are legal grounds for such revocation (with a prohibition on granting new approval for such appointments for three years from the date of the NBS decision to revoke the approval).

Third, the Insurance Law prescribes specific rules for the duties and responsibilities of members of the management board of insurance and reinsurance

companies compared to the rules for members of the governing bodies of joint-stock companies regulated by the company law. These rules are dual: first, the establishment of a general rule – members of the management board of insurance/reinsurance companies are required to "take measures to prevent unlawful or inappropriate actions and influences that are harmful or not in the best interests of the insurance company and its shareholders, carried out by persons closely related to the company – for the protection of insurance service users",[61] in accordance with "regulations, professional rules, and good business practices."[62] This rule slightly modifies the general rule of liability for members of the governing bodies of joint-stock companies, known as the "Business Judgment Rule".[63] This general rule of liability for members of the management board of insurance and reinsurance companies is accompanied by several specific rules that clarify the grounds for this liability, focusing on the obligation to report along the lines of the executive board – supervisory board, and supervisory board – NBS. Specifically, in the first instance, the executive board is required to immediately inform the supervisory board in three cases: liquidity or solvency issues of the company, reasons for the revocation of the company's operating license, or reasons for discontinuing certain types of insurance, or inadequacy of the company's core capital. In the second instance, upon receiving this information from the executive board, the supervisory board is also required to immediately notify the NBS. For all these grounds of legal violations, both general and specific, damages may arise to the insurance/reinsurance company for which the management member is liable under the company law, given that there are no further specific provisions in the inusurance law.[64]

Finally, fourthly, the Insurance Law includes a specific common rule for informing the company's assembly about the remuneration of management members (both executive and supervisory boards).[65] Specifically, the assembly of the joint-stock insurance/reinsurance company must review, at least once a year, a written report from the management detailing all earnings, remunerations, and other earnings of the members, as well as all contracts concluded between the company and these individuals or their related parties,[66] which result in financial benefit for these individuals, as well as the supervisory board's proposal regarding the salaries, remunerations, and other financial benefits for these individuals for the upcoming year.[67]

[61] IL, art. 59 item 2.

[62] Under the term "insurance user" it denotes "insured, policyholder, insurance beneficiary, and third-party injured parties": IL, art. 15, para. 1. See Nataša Petrović Tomić, *Zaštita potrošača usluga osiguranja*, Belgrade, 2015, pp. 47–137.

[63] See Mirko Vasiljević, "Civil Law and Business Judgment Rule", *Anali Pravnog fakulteta Univerziteta u Beogradu*, No. 3/2012, pp. 7–38.

[64] CL, art. 415 and 447.

[65] IL, art. 60.

[66] The term "related party" as defined by the Insurance Law: IL, art. 30.

[67] IL, art. 60.

V Business Management System in Insurance Joint-Stock Company

Unlike commercial (profit-oriented) companies regulated by laws applicable to such enterprises, where the protective subject of the company's duties and liability (including financial liability for business decisions) is typically limited to the company itself (and potentially other risk-bearers like shareholders and company members), insurance/reinsurance joint-stock companies (as well as other insurance entities) engage in a specific economic activity for which the management of the company (both supervisory and executive boards) has particular duties and financial liability. These duties extend not only to the company and its members (as per the company law) but also to other protective subjects - insureds, policyholders, third-party injured parties, and insurance beneficiaries in general. This fact required that insurance legislation establish a distinct institute in insurance management - the company management system. This system includes 1) risk management, 2) internal control systems, 3) internal audit, and 4) actuarial practices.

The risk management system, as a segment of managing a joint-stock insurance/reinsurance company, encompasses: risk underwriting and reserving, asset and liability management, investments, liquidity and risk concentration management, operational risk management, reinsurance, and other risk mitigation methods. To ensure an effective risk management system, insurance legislation regulates the rules for risk management and the methods of managing risk.[68] The Insurance Law also provides detailed regulations for other segments of the comprehensive company management system: *internal control system, internal audit system, and actuarial practices*.[69] The National Bank of Serbia (NBS) establishes more detailed rules for all these systems.

VI Groups of Companies and Groups of Insurance Companies – Special Rules

The Insurance Law defines both the general concept of "group of companies" and the specific concept of "group of insurance companies". According to this Law, a group of companies consists of the parent company, its subsidiaries, and legal entities in which the parent company or its subsidiaries hold a capital share (capital participation), as well as companies that are interconnected through joint management. *A parent company* is a legal entity that holds a controlling interest in another legal entity. *A subsidiary* is a legal entity in which the parent company

[68] IL, arts. 149 and 150.
[69] IL, arts. 151–174.

holds a controlling interest. *Companies connected through joint management* are those that are not related as parent and subsidiary companies or through capital participation but are characterized by 1) managing in a unified manner according to an agreement between these companies or provisions of their founding acts or statutes (*management agreement*), or 2) having the same individuals as the majority members of the governing or supervisory bodies (*personal union*). This conceptual definition corresponds substantively to the definition of a group of companies, holding companies, companies with reciprocal capital participation, and control and management agreements as defined in the Company Law.[70]

A group of insurance companies is a group of companies as defined by the insurance law in which *an insurance company*, or a reinsurance company, is *the most significant entity within that group*. The most significant company in the group, according to this law, is considered to be *the ultimate parent company* within the group or the company that holds a substantial or controlling capital participation in another entity or effectively influences the management of that entity (significant holder), or the company with the largest balance sheet total if two or more companies within the group meet the criteria of a significant holder.[71]

VII Instead of a Conclusion

Analysis of the nature of the relationship between the law governing companies in general (general law) and the law governing insurance (special law), even though this concerns the relationship between special and general laws, where the special law takes precedence over the general law, and despite the fact that this special law opts, in cases where it has not provided a specific norm, for direct application of the general law by stating "applies," and this in two places (regarding the forms of special companies and common company institutions and company organs), thereby excluding the other possible option—"appropriate application"—shows that for a range of issues not regulated by the special norm, such application is not feasible and that "appropriate application" must be sought. Otherwise, it could result in undermining the purpose of certain existing norms within the special law, whose specificity has its own *ratio*.

[70] *Cf.* IL, art. 218(1–4) and CL, Articles 551–554.
[71] IL, art. 218. pp. 5–6.

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