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## **SPECIAL BANKRUPTCY REGIME FOR INSURANCE COMPANIES**

SCIENTIFIC PAPER

### **Abstract**

In this paper, the author analyzes the legal regime of bankruptcy for insurance companies under Serbian law. At the beginning of the paper, domestic and foreign legal sources relevant to this topic are presented. It highlights that the application of a special legal regime for bankruptcy of insurance companies is justified and common in comparative law. The author notes that the terminology used in domestic laws is inadequate and that incorrect terminology leads to dilemmas regarding the determination of subjects under the special bankruptcy regime, which is addressed in the following section of the paper. Regarding the dilemma of whether the special legal regime also applies to reinsurance companies, the author provides an affirmative answer. After presenting statistical data that clearly indicate the need for improvement in the legal framework, the paper analyzes solutions related to the function of the bankruptcy administrator in bankruptcy proceedings involving insurance companies. The paper concludes with recommendations on how to improve the current solution for performing this function.

**Keywords:** *bankruptcy, insurance companies, reinsurance companies, Deposit Insurance Agency.*

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## I Introduction

The bankruptcy of financial institutions, including insurance companies, is an important topic within bankruptcy law that is often unjustifiably overlooked. The bankruptcy of financial institutions can have a negative impact on the entire economy and, in the case of insurance companies, can undermine the trust of policyholders and insurance beneficiaries in service providers as well as in the regulatory authorities overseeing the insurance sector. The systemic risk associated with these institutions justifies the special legal regime for their bankruptcy. Generally speaking, this refers to the risk or possibility that the failure of a financial institution or a market shock could cause widespread losses or uncertainty, significantly affecting the cost and availability of capital.<sup>2</sup> In this context, it is important to note that it is almost impossible to predict and eliminate systemic failure.<sup>3</sup>

Given that such a possibility cannot be excluded, the collapse of financial institutions must be safe for the surrounding environment.<sup>4</sup> Therefore, the bankruptcy of insurance companies and other financial institutions is, at least in part, regulated by special rules compared to the general legal regime. These rules may be part of general legislation in the specific field, or they may be contained in a special law, or be part of the general legislation regulating bankruptcy.

At the European Union level, the bankruptcy of insurance companies is regulated by Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).<sup>5</sup> Title IV of this Directive pertains not only to bankruptcy but also to reorganization and other procedures that do not involve the insolvency of a company, regardless of whether they are compulsory or voluntary procedures.<sup>6</sup> In modern bankruptcy law, the emphasis is precisely on prevention and early intervention, which also applies to insurance companies. In this context, it is significant to note that the adoption of the Proposal for a Directive establishing

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<sup>2</sup> Ben Klaber, "Bankruptcy Insurance: A Modular Approach to Systemic Risk," *University of Pittsburgh Law Review*, Vol. 74, No. 2/2012, p. 335.

<sup>3</sup> See *ibid.*, p. 333.

<sup>4</sup> *Ibid.*

<sup>5</sup> Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (Recast), OJ L 335/2009, 17.12.2009, pp. 1–155.

<sup>6</sup> See Gabriel Moss, Ryan Perkins, "Commentary on Title IV of Directive 2009/138/EC on the Taking Up and Pursuit of the Business of Insurance and Reinsurance (Solvency II)," *EU Banking and Insurance Insolvency* (eds. Gabriel Moss, Bob Wessels, Matthias Haentjens), Oxford, 2017, p. 145. The Solvency II Directive defines reorganization measures as "involving any intervention by the competent authorities which are intended to preserve or restore the financial situation of an insurance undertaking and which affect pre-existing rights of parties other than the insurance undertaking itself, including but not limited to measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims." See Solvency II Directive, Article 268(1) (c).

a framework for the recovery and resolution of insurance and reinsurance undertakings from 2021 is expected soon.<sup>7</sup> Given that Serbia is a candidate for European Union membership, changes in Serbian law regarding the bankruptcy of insurance companies can also be expected.

In domestic law, the bankruptcy of insurance companies is regulated by the Law on Bankruptcy and Liquidation of Banks and Insurance Companies.<sup>8</sup> It is important to note that this Law stipulates that the provisions on reorganization from the Bankruptcy Law do not apply to the bankruptcy proceedings of insurance companies.<sup>9</sup> Additionally, financial restructuring cannot be conducted over an insurance company.<sup>10</sup> On the other hand, a reorganization outside of bankruptcy in the strict legal sense, or at least reorganization measures in a broader sense, are provided for by the Insurance Law.<sup>11</sup> Due to the scope of this paper, the analysis will henceforth be limited exclusively to the bankruptcy of insurance companies, which means it will not cover reorganization (which does not refer to bankruptcy in the context of domestic law), nor the restructuring and recovery of insurance companies in financial distress. For the same reason, and considering that there are numerous specific rules governing the bankruptcy of insurance companies that differ from the general bankruptcy rules, this paper will focus solely on the specific rules related to the bankruptcy administrator in the bankruptcy proceedings of an insurance company, excluding other special rules.

The structure of the paper is as follows: after the introduction, the sources of law relevant to the bankruptcy of insurance companies are presented. Next, the paper highlights the issues related to the determination of the bankruptcy debtor in our legal system, which are largely caused by incorrect and incomplete terminology in legal sources. Following this, statistical data related to the implementation of bankruptcy proceedings for insurance companies are presented, indicating the

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<sup>7</sup> European Commission, Proposal for a Directive establishing a framework for the recovery and resolution of insurance and reinsurance undertakings and amending Directives 2002/47/EC, 2004/25/EC, 2009/138/EC, (EU) 2017/1132 and Regulations (EU) No. 1094/2010 and (EU) No. 648/2019, Brussels, 22.9.2021 COM(2021) 582 final, 2021/0296 (COD).

<sup>8</sup> Law on Bankruptcy and Liquidation of Banks and Insurance Companies – LBLBIC, *Official Gazette of the Republic of Serbia*, Nos. 14/2015 and 44/2018 – other law.

<sup>9</sup> See LBLBIC, Art. 22. According to the Bankruptcy Law, reorganization represents the settlement of creditors according to an approved reorganization plan by redefining debtor-creditor relations, through changes in the company's legal status, or in another manner provided by the reorganization plan. See Bankruptcy Law – BL, *Official Gazette of the Republic of Serbia*, Nos. 104/2009, 99/2011 – other law, 71/2012 – Constitutional Court decision, 83/2014, 113/2017, 44/2018, and 95/2018, Art. 1, Para. 4.

<sup>10</sup> See Law on Consensual Financial Restructuring, *Official Gazette of the Republic of Serbia*, No. 89/2015, Art. 2, Item 1.

<sup>11</sup> See Predrag Šulejić, „Neka pitanja stečaja i likvidacije društava za osiguranje s posebnim osvrtom na dejstva u pogledu dvostranoteretnih ugovora“, *Pravo i privreda*, Nos. 5-8/2009, p. 176; Insurance Law – IL, *Official Gazette of the Republic of Serbia*, Nos. 139/2014 and 44/2021.

necessity to improve the legal framework. The paper then analyzes the specificities of performing the function of the bankruptcy administrator in these proceedings. Finally, the conclusion is provided.

## **II Legal Sources**

Generally speaking, the need for special rules in business law is dictated by the specificities of the activities carried out by business entities. In the context of company law, this applies to the establishment of these entities, rules on corporate governance, as well as their dissolution. Certain industries, such as the insurance industry, require special state oversight, including supervision related to the dissolution of these entities. One of the ways in which insurance companies can cease to exist is through bankruptcy. This refers to a judicial proceeding of collective settlement of creditors by achieving the highest possible value of the bankruptcy debtor or their assets.<sup>12</sup> According to general rules, this proceeding is conducted through liquidation or reorganization. The importance of regulating the bankruptcy of insurance companies has also been recognized by European legislators, as the bankruptcy of insurance companies is regulated under European Union law. The bankruptcy of insurance companies is typically governed by special rules in comparative law, including U.S. law.

### **1. Domestic Law**

In our country, the bankruptcy of insurance companies is regulated by a special law (*lex specialis*). Serbia's decision to regulate the bankruptcy of insurance companies through a special law is not an innovation. Before the current Law on the Bankruptcy and Liquidation of Banks and Insurance Companies came into force, the bankruptcy of insurance companies was regulated by a Law of the same name from 2005.<sup>13</sup> Prior to the adoption of this Law, the situation was different. Namely, the Insurance Law of 2004 stipulated that the law regulating liquidation and bankruptcy would apply to the bankruptcy proceedings of insurance companies unless specific issues were otherwise addressed by the Insurance Law.<sup>14</sup> The same was stipulated by the Property and Personal Insurance Law of 1996.<sup>15</sup> Thus, until 2005, the provisions

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<sup>12</sup> Mirko Vasiljević, Tatjana Jevremović Petrović, Jelena Lepetić, *Kompanijsko pravo – Pravo privrednih društava*, Beograd, 2023, p. 883.

<sup>13</sup> Law on the Bankruptcy and Liquidation of Banks and Insurance Companies, *Official Gazette of the Republic of Serbia*, Nos. 61/2005, 116/2008, and 91/2010.

<sup>14</sup> See the 2004 Insurance Law, *Official Gazette of the Republic of Serbia*, Nos. 55/04 and 70/04, art. 208.

<sup>15</sup> See the Law on Property and Personal Insurance, *Official Gazette of the FRY*, Nos. 30/96, 57/98, 53/99, and 55/99, art. 137.

regarding the bankruptcy of insurance companies were included in the law governing insurance. Both approaches to regulating the bankruptcy of insurance companies are acceptable, meaning that it does not particularly matter whether the bankruptcy provisions are stipulated in a special law or in the law governing the insurance sector. For example, the Croatian Insurance Law contains provisions on bankruptcy.<sup>16</sup> The same case is in Bulgaria, where the bankruptcy of insurance companies is governed by the Insurance Code.<sup>17</sup> The approach of including bankruptcy provisions within the substantive law for the insurance sector allows for all or nearly all special rules related to insurance companies in financial distress to be found within the same law. Nevertheless, our legislator has not opted for this model. In any case, regardless of where certain norms are found, the key issue is whether the general or special bankruptcy rules apply to the bankruptcy of an insurance company.

Considering that in our legal system, the bankruptcy proceedings for insurance companies are regulated by a special law, this process falls under the category of special bankruptcy proceedings.<sup>18</sup> More precisely, it is viewed as a special proceeding because it is governed by specific rules. Meanwhile, the provisions of the Bankruptcy Law (*lex generalis*) apply to issues not regulated by the special law.<sup>19</sup> Although most of the rules regarding the bankruptcy of insurance companies are contained in the regulations governing bankruptcy (*lex specialis* and *lex generalis*), certain rules can also be found in other regulations. Therefore, the legal sources for the bankruptcy of insurance companies also include the Law of Contract and Torts and the Law on Compulsory Traffic Insurance.<sup>20</sup> Both laws contain specific rules regarding the consequences of initiating bankruptcy proceedings, while the Law on Compulsory Traffic Insurance also includes a special rule on the filing of claims in bankruptcy proceedings.

When it comes to secondary legislation, it is important to highlight that the national standards for managing the bankruptcy estate do not apply in bankruptcy proceedings involving insurance companies.<sup>21</sup> According to the general legal regime, a total of eight national standards are typically applied.<sup>22</sup> Instead, in the case of an

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<sup>16</sup> See the Croatian Insurance Law, *Official Gazette*, Nos. 30/2015, 112/2018, 63/2020, 133/2020, and 151/2022, section IX.

<sup>17</sup> Deloitte Legal, *A guide to pre-insolvency and insolvency proceedings across Europe*, July 2023, p. 9.

<sup>18</sup> See Vuk Radović, *Osnovi stečajnog prava*, Belgrade, 2020, p. 253.

<sup>19</sup> See LBLBIC, Art. 22.

<sup>20</sup> Law of Contract and Torts, *Official Gazette of the SFRY*, No. 29/78, 39/85, 45/89 – Decision of the Constitutional Court, and 57/89, *Official Gazette of the FRY*, No. 31/93, *Official Gazette of SCG*, No. 1/2003 – Constitutional Charter, and *Official Gazette of RS*, No. 18/2020; Law on Compulsory Traffic Insurance, *Official Gazette of RS*, No. 51/2009, 78/2011, 101/2011, 93/2012, and 7/2013 – Constitutional Court Decision.

<sup>21</sup> See the Answers and Questions of Commercial Courts established at the session of the Commercial Appellate Court's Department for Commercial Disputes held on November 19 and 20, 2019, and at the session of the Department for Economic Offenses held on November 20, 2019.

<sup>22</sup> See the Rulebook on Establishing National Standards for Bankruptcy Estate Management, *Official Gazette of the Republic of Serbia*, No. 62/2018. The national standards are part of this Rulebook.

insurance company bankruptcy, the Regulation on the Liquidation of Assets of Financial Institutions in Bankruptcy or Liquidation, which provides more detailed rules on the sale of the debtor's assets, is applied. This Regulation was issued by the Deposit Insurance Agency in 2018.<sup>23</sup> The application of this Regulation is necessary given that the rules on asset sales stipulated by the Bankruptcy Law are relatively general.<sup>24</sup>

## **2. EU Law**

As previously mentioned, the key legal source of the European Union for the insolvency of insurance companies is the Solvency II Directive.<sup>25</sup> Insolvency is one of the processes regulated under Title IV of this Directive. However, it is important to note that the Solvency II Directive does not harmonize insolvency law rules—it contains provisions that facilitate understanding and cooperation between member states.<sup>26</sup> Essentially, it functions as an instrument of private international law. Previously, this matter was regulated in nearly the same manner by Directive 2001/17/EC on the reorganization and winding up of insurance undertakings.<sup>27</sup> Therefore, the insolvency of insurance companies has long been governed by specific rules. In this context, it should also be noted that the Regulation on Insolvency Proceedings (in effect since 2015, and previously in 2000) provides a complementary solution, excluding insurance companies from its scope of application.<sup>28</sup>

## **3. U.S. Law**

While the exclusion of insurance companies from the general bankruptcy regime is widely accepted in European legal theory, there are opinions that their exclusion as bankruptcy subjects under U.S. federal bankruptcy law is unjustified. Specifically, U.S. Bankruptcy Code does not apply to insurance companies, and federal

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<sup>23</sup> Rulebook on the Liquidation of Assets of Financial Institutions in Bankruptcy or Liquidation, July 2018. The rulebook is available on the Deposit Insurance Agency's website: [www.aod.rs](http://www.aod.rs), 18. 7. 2024.

<sup>24</sup> See *ibid.*

<sup>25</sup> For more information on Solvency II Directive and Serbian law, see Milo Marković, „Izazovi tržišta osiguranja u Srbiji na putu ka Solventnosti II“, *Tokovi osiguranja*, No. 2/2024, pp. 333-361.

<sup>26</sup> Kyriaki Noussia, Peter Underwood, Stergios Frastanlis, „Restructuring, Winding-Up & Portfolio Transfer of Insurance Companies in Distress“, *The Governance of Insurance Undertakings – Corporate Law and Insurance Regulation* (eds. Pierpaolo Marano, Kyriaki Noussia), Sham, 2022, pp. 186 and 189.

<sup>27</sup> Directive 2001/17/EC of the European Parliament and of the Council of 19 March 2001 on the reorganization and winding up of insurance undertakings, OJ L 110/2001, 20.4.2001, p. 28-39. The directive ceased to be in force in 2015. See G. Moss, R. Perkins, p. 122.

<sup>28</sup> See Regulation (EU) No 848/2015 on insolvency proceedings (Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast), OJ L 141, 5.6.2015, pp. 19–72), Article 1 (2)(a), and Regulation (EC) No 1346/2000 on insolvency proceedings (Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings, OJ L 160, 30.6.2000, pp. 1–18), Article 1(2).

bankruptcy courts do not have jurisdiction over their bankruptcies.<sup>29</sup> However, it should be noted that the existence of varying state rules and court jurisdictions is one of the reasons why the special legal regime for insurance company bankruptcies has been criticized in U.S. legal theory.<sup>30</sup> In other words, while it is not disputed that these entities require a special set of rules for their dissolution, the current regime itself is subject to criticism. The regulations governing bankruptcy differ among states because they are based on one of two available model acts: the Uniform Insurers Liquidation Act, adopted by the National Conference of Commissioners, and the Rehabilitation and Liquidation Model Act, developed by the National Association of Insurance Commissioners.<sup>31</sup>

### **III Entities Subject to Special Bankruptcy Regime**

The Bankruptcy Law uses an inadequate term to denote entities in the insurance sector concerning the exclusion of certain entities from the application of this Law. Specifically, the application of the Bankruptcy Law is excluded for certain entities, including “insurance organizations,” except in matters not regulated by special legislation.<sup>32</sup> The term “insurance organizations” is broader than the term “insurance companies” and could potentially encompass reinsurance companies as well as companies engaged in insurance brokerage and agency activities.

#### **1. Insurance Companies**

The Law on Bankruptcy and Liquidation of Banks and Insurance Companies regulates the conditions and procedures for the bankruptcy of these companies, but it does not define them. The definition of insurance companies is provided in the current Insurance Law. According to this Law, insurance companies are defined as legal entities with headquarters in the Republic of Serbia that conduct insurance activities, for which the approval of the National Bank of Serbia is required.<sup>33</sup> Additionally, an insurance company may be established either as a joint-stock company

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<sup>29</sup> The U.S. Bankruptcy Code does not apply to domestic insurance companies. See U.S. Code, Title 11, Chapter 1, § 109(b) (2).

<sup>30</sup> See, for example, Laura S. McAlister, “The Inefficiencies of Exclusion: The Importance of Including Insurance Companies in the Bankruptcy Code,” *Emory Bankruptcy Developments Journal*, Vol. 24, No. 1/2008, p. 129, and Wm. Carlisle Herbert, “When Jurisdictions Collide: Determining Judicial Roles When Bankruptcy Court and Insurance Receivership Court Responsibilities Overlap,” *Tort Trial & Insurance Practice Law Journal*, Vol. 42, No. 4/2007, p. 941.

<sup>31</sup> See L. S. McAlister, p. 131.

<sup>32</sup> BL, Article 14, Paragraph 2.

<sup>33</sup> IL, Article 3, Paragraph 1.

or as a mutual insurance company.<sup>34</sup> It is evident from the provision regarding the order of payments in the Law on Bankruptcy and Liquidation of Banks and Insurance Companies that these specific types of insurance companies are subject to a special bankruptcy regime. Namely, in the last rank of bankruptcy claims, there are the claims of creditors who are shareholders of a joint-stock insurance company and members, or insured persons of a mutual insurance company.<sup>35</sup> Thus, the bankruptcy entities to which the *lex specialis* applies are insurance companies, regardless of their form of establishment.

A mutual insurance company is a legal entity headquartered in the Republic of Serbia that can conduct all insurance activities except reinsurance and is established as a limited liability company based on the approval of the National Bank of Serbia.<sup>36</sup> Unlike domestic law, where the special bankruptcy regime applies to all mutual insurance companies, the scope of the Solvency II Directive is somewhat narrower. Specifically, the Solvency II Directive does not apply to those mutual insurance companies that engage in non-life insurance activities and have entered into an agreement with another mutual insurance company for the full reinsurance of the insurance policies they have issued, or where the other company has committed to assuming the obligations arising from the issued policies.<sup>37</sup> This difference has no practical significance in the context of domestic law, as this form of insurance company has not taken root in practice. Currently, there are no active mutual insurance companies registered in Serbia.<sup>38</sup>

## **2. Reinsurance Companies**

Reinsurance companies are legal entities based in the Republic of Serbia that are established by registration in the registry upon obtaining a permit from the National Bank of Serbia.<sup>39</sup> Unlike insurance companies, reinsurance companies are established for the purpose of conducting reinsurance activities and can only be established in the form of a joint-stock company.<sup>40</sup> The Law on Bankruptcy and Liquidation of Banks and Insurance Companies does not mention reinsurance companies. Reinsurance companies are also not mentioned in the Law on the Deposit Insurance Agency. Therefore, it must be determined whether this omission is a legislative oversight

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<sup>34</sup> IL, Article 20, Paragraph 4.

<sup>35</sup> Law on Bankruptcy and Liquidation of Banks and Insurance Companies, Article 21, Point 7.

<sup>36</sup> See IL, Article 70.

<sup>37</sup> See Solvency II Directive, Article 7.

<sup>38</sup> Information available on the website of the Business Registers Agency indicates that the Mutual Insurance Company MG Beograd, established in 1998 for life insurance activities, ceased to exist in 2005 following a successful liquidation process. See [www.apr.gov.rs](http://www.apr.gov.rs), 17. 7. 2024.

<sup>39</sup> See IL, Art. 3, para. 2.

<sup>40</sup> See IL, Art. 3, para. 2 and art. 20, para. 4.



or if the legislator did not intend to include reinsurance companies as subjects of a special bankruptcy regime. Resolving the issue of whether reinsurance companies are subject to general or special bankruptcy regimes has practical significance, as there are currently four such companies operating in Serbia.<sup>41</sup> Unlike the domestic solution, which leaves room for doubts, Croatian legislation explicitly states that the provisions of the Insurance Act related to the bankruptcy of insurance companies apply accordingly to reinsurance companies.<sup>42</sup>

On the other hand, our legislator has not entirely neglected reinsurance in the Law on Bankruptcy and Liquidation of Banks and Insurance Companies, which further obscures the status of reinsurance companies as bankruptcy subjects. Specifically, the Law grants priority to creditors from reinsurance contracts in the event of an insurance company's bankruptcy. In other words, the claims of reinsurers receive preferential treatment, along with other insurance-related claims, compared to other claims of insurance company creditors that are not related to insurance activities.

It is important to note that insurance companies do not include reinsurance companies, meaning that insurance companies are not a broader term in this sense. The legal regime for insurance companies and reinsurance companies is regulated by the provisions of Chapter II of the Insurance Law, with Section 2 referring to joint-stock insurance/reinsurance companies. Since both types of companies are mentioned together, it is clear that there is no narrower or broader term. Moreover, reinsurance companies are not mentioned in the provision of the Insurance Law concerning the application of provisions on bankruptcy and liquidation. Specifically, the Law stipulates that the bankruptcy of insurance companies is conducted in accordance with the law governing the bankruptcy and liquidation of banks and insurance companies, while the bankruptcy of insurance brokerage and agency companies is governed by the bankruptcy law.<sup>43</sup> On the other hand, the title of Chapter XI, which contains the mentioned provisions, is: "Termination of operations, liquidation, and bankruptcy of supervised entities." From this, it can be concluded that the provisions of this chapter also apply to reinsurance companies, as they are also supervised entities under the National Bank of Serbia.<sup>44</sup> Moreover, the Insurance Law stipulates that provisions related to insurance companies apply accordingly to reinsurance companies.<sup>45</sup> Although the title of this article is "Accordingly Application of the Law to the Operations of a Joint-Stock Reinsurance Company," which may raise questions about the application of the provision to the dissolution of the company, such

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<sup>41</sup> This number is based on information available on the website of the Business Registers Agency as of July 17, 2024. See [www.apr.gov.rs](http://www.apr.gov.rs), 17. 7. 2024.

<sup>42</sup> See Croatian Insurance Law, Art. 284, para. 3.

<sup>43</sup> See IL, Article 221.

<sup>44</sup> See IL, Article 187, paragraph 1.

<sup>45</sup> See IL, Article 69.

a conclusion cannot be drawn from its content. Interpretation of the Insurance Law concludes that the special legal regime also applies to reinsurance companies. The same can be concluded from the provision of the Bankruptcy Law, which excludes the application of its provisions to “insurance organizations”. The term “insurance organizations” could certainly include reinsurance companies.

Generally speaking, there are several arguments in favor of including reinsurance companies in the special bankruptcy regime. Specifically, the bankruptcy of a reinsurance company could negatively impact the insurance sector as a whole. Reinsurance risk is considered a significant risk regarding its legal regime under European Union law.<sup>46</sup> Additionally, since reinsurance is a specialized activity, bankruptcy administrators in bankruptcy proceedings managing a reinsurance company should have specific expertise in the field of reinsurance. On the other hand, an argument against applying a special regime might be that the bankruptcy of a reinsurance company could directly affect only insurance companies. Specifically, the bankruptcy of a reinsurance company does not necessarily impact other market participants, except for the insurance companies with which it has entered into a reinsurance agreement. Reinsurance agreements are concluded between commercial entities – the insurer and the reinsurer, while insurance agreements are made between insurers and individuals, commercial entities, and other organizations not engaged in insurance activities.<sup>47</sup> Moreover, Title IV of the Solvency II Directive does not apply to reinsurance companies.<sup>48</sup> The only exception pertains to cases where a reinsurance company is also registered for insurance activities.<sup>49</sup>

Considering the provisions of the Insurance Law regarding the accordingly application of rules for insurance companies to reinsurance companies, the terminology of the Bankruptcy Law, as well as the arguments for including reinsurance companies in a special bankruptcy regime in general, it can be concluded that domestic law applies the bankruptcy provisions of the Bankruptcy and Liquidation of Banks and Insurance Companies Law to reinsurance companies. Specifically, the omission of reinsurance companies in that Law, as well as in the Deposit Insurance Agency Law, should be considered an oversight rather than an intention by the legislator to exclude these companies from the special bankruptcy regime. To eliminate all doubts, the Bankruptcy and Liquidation of Banks and Insurance Companies Law should explicitly list reinsurance companies as bankruptcy subjects to which the Law applies. Additionally, the Bankruptcy Law should be amended to replace the term “insurance organizations” with “insurance companies” and “reinsurance companies” as subjects excluded from the general bankruptcy regime.

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<sup>46</sup> Nataša Petrović Tomić, *Pravo osiguranja – Sistem*, Volume I, Belgrade, 2019, p. 727.

<sup>47</sup> See *Ibid.*

<sup>48</sup> See Solvency II Directive, Article 1(3) and 2(1), second paragraph.

<sup>49</sup> G. Moss, R. Perkins, p. 129.

### **3. Exclusion of Insurance Brokerage and Agency from the Special Bankruptcy Regime**

The Insurance Law regulates not only the establishment and operation of insurance and reinsurance companies but also, among other things, the activities of insurance brokerage and agency.<sup>50</sup> In domestic literature, there are opinions suggesting that the legal term “insurance companies” should be changed to “insurance undertakings.” Specifically, the term “insurance undertakings” is used in practice to denote companies engaged in insurance activities, while the term “insurance companies” is criticized for potentially including firms engaged in insurance brokerage and agency.<sup>51</sup> Therefore, a dilemma may arise as to whether the special bankruptcy regime provided by the Law on Bankruptcy and Liquidation of Banks and Insurance Companies also applies to those companies.

By interpreting the provisions of the Law on Bankruptcy and Liquidation of Banks and Insurance Companies and the Insurance Law, it can be unequivocally concluded that the special legal regime does not apply to these companies. Specifically, not only are insurance brokerage and agency companies not mentioned in the Law on Bankruptcy and Liquidation of Banks and Insurance Companies, but the Insurance Law also specifies that the bankruptcy proceedings for insurance brokerage and agency companies are conducted in accordance with the law governing bankruptcy.<sup>52</sup> Additionally, Title IV of the Solvency II Directive does not apply to these companies, but only to insurance companies and branches of insurance companies from third countries that are located within the Community’s territory.<sup>53</sup>

### **IV Duration of Special Bankruptcy Proceedings for Insurance Companies – Inconsistency with the Principle of Urgency**

To fully understand the significance of special bankruptcy regimes for insurance companies, it is essential to consider relevant statistical data concerning bankruptcy proceedings conducted for these companies in Serbia. According to publicly available data from the Deposit Insurance Agency’s website, between, 2004 to, 2024, seven bankruptcy proceedings were conducted over joint-stock insurance companies, three of which involved liquidation proceedings followed by bankruptcy proceedings.<sup>54</sup> On average, these bankruptcy proceedings lasted *more than eight*

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<sup>50</sup> See IL, Article 1.

<sup>51</sup> See Vladimir Čolović, Zdravko Petrović, „Sporna pitanja regulisanja stečaja osiguravajućih društava u Srbiji i usklađivanje sa Direktivom 2001/17/EZ”, *Evropska revija za pravo osiguranja*, No. 4/2015, p. 31.

<sup>52</sup> See IL, Art. 221, para. 2.

<sup>53</sup> See Solvency II Directive, Art. 267.

<sup>54</sup> See data available at: [www.aod.gov.rs](http://www.aod.gov.rs), 19. 7. 2024. Note: The author calculated the average duration of the proceedings based on the data on bankruptcy proceedings available on the website.

years (excluding the duration of liquidation proceedings).<sup>55</sup> When comparing the average duration of these proceedings with the average duration of bankruptcy proceedings under the general bankruptcy regime, it can be concluded that the special bankruptcy proceedings for insurance companies take an unacceptably long time. Specifically, according to data available on the website of the Bankruptcy Supervision Agency, as of July 1, 2024, the average duration of 9,389 bankruptcy proceedings was three years, two months, and six days.<sup>56</sup> The average duration is even shorter for proceedings initiated under the Bankruptcy Law in force. Specifically, a total of 7,812 proceedings initiated under this Law lasted, on average, two years, ten months, and seven days.<sup>57</sup> Considering the duration of both general and special bankruptcy proceedings, it can be concluded that special bankruptcy proceedings lasted more than twice as long as general ones.

Although, at first glance, the number of bankruptcy proceedings conducted against insurance companies may seem small, it should be noted that only a limited number of entities operate in the insurance market, and the significance of this activity is considerable given its contribution to GDP. Specifically, according to data from the National Statistical Office, the insurance, reinsurance, and pension funds sector accounted for 0.5% of GDP in 2021 and 0.4% in 2022.<sup>58</sup> Furthermore, all financial activities, including insurance, contributed 3.2% to GDP in both 2021 and 2022.<sup>59</sup>

In any case, the data on the duration of bankruptcy proceedings against insurance companies indicates that, in order to promote the principle of urgency that applies in bankruptcy law, it is necessary to improve the legal framework governing special bankruptcy proceedings for these companies.<sup>60</sup> Therefore, it is particularly important to consider the differences between the rules applied to these proceedings. There are numerous significant deviations in the implementation and dynamics of bankruptcy proceedings against insurance companies compared to the general legal regime. Among other things, the court does not conduct a preliminary bankruptcy procedure due to the significant role played by the National Bank of Serbia in relation to the bankruptcy of insurance companies. Unlike the general legal rules, bankruptcy proceedings cannot be carried out through reorganization, and the assets cannot be liquidated through the sale of the debtor as a legal person. Special rules regarding costs and payment priorities are also applied. Additionally, significant deviations pertain to the bodies involved in the bankruptcy procedure. Specifically, the number of bankruptcy bodies is smaller, and the function of the bankruptcy administrator is carried out by a legal person – the Deposit Insurance

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<sup>55</sup> See *ibid.*

<sup>56</sup> See [www.alsu.gov.rs](http://www.alsu.gov.rs), 19. 7. 2024.

<sup>57</sup> See *ibid.*

<sup>58</sup> Data available at: [www.stat.gov.rs](http://www.stat.gov.rs), 20. 7. 2024.

<sup>59</sup> *Ibid.*

<sup>60</sup> See BL, Art. 8.

Agency. The following discussion will focus solely on this body as a starting point for investigating and uncovering possible reasons why the average duration of bankruptcy proceedings against insurance companies is disproportionately longer than the average duration of general bankruptcy proceedings.

## **V Deposit Insurance Agency as Bankruptcy Administrator**

Under the special legal regime of bankruptcy that applies to insurance companies, the bankruptcy bodies are the bankruptcy judge, the bankruptcy administrator, and the creditors' committee. In contrast, under the general regime, the bodies include the bankruptcy judge, the bankruptcy administrator, the creditors' assembly, and the creditors' committee. Compared to the general rules regarding bankruptcy bodies, the Law on Bankruptcy and Liquidation of Banks and Insurance Companies prescribes three key exceptions. The first concerns the performance of the bankruptcy administrator's duties, the second pertains to the number of creditor bankruptcy bodies, and the third involves the powers of the bankruptcy bodies.

### **1. Special Knowledge (Not) Required for Performing the Function of Bankruptcy Administrator**

In domestic law, the Deposit Insurance Agency performs the function of the bankruptcy administrator in the bankruptcy proceedings of insurance companies, while the duties of the bankruptcy administrator are carried out by the Agency's appointed commissioners. Specifically, commissioners are appointed and dismissed by the Board of Directors with the approval of the Managing Board or at the initiative of the Managing Board of the Deposit Insurance Agency.<sup>61</sup> In addition to its function as a bankruptcy administrator, the Deposit Insurance Agency also handles mandatory deposit insurance and the payout of insured amounts, manages assets transferred during the restructuring of banks, and performs other related tasks, including organizing the Investor Protection Fund.<sup>62</sup> It is important to note that the Agency also fulfills the function of bankruptcy administrator in other special bankruptcy proceedings. Namely, the Deposit Insurance Agency serves this function in bankruptcy proceedings conducted against banks and leasing companies. Under the special legal regime governing the bankruptcy of insurance companies, a commissioner appointed by the Deposit Insurance Agency is not required to pass a professional exam or acquire special knowledge needed to properly fulfill the role

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<sup>61</sup> See the Statute of the Deposit Insurance Agency, *Official Gazette of the RS*, No. 59/2015 and 49/2016, Article 13, Point 12.

<sup>62</sup> See the Law on the Deposit Insurance Agency, *Official Gazette of the RS*, No. 14/2015 and 51/2017, Article 2.

of bankruptcy administrator. Specifically, under domestic law, the commissioner is not required to hold a bankruptcy administrator license.

According to general rules, the function of the bankruptcy administrator is performed by a natural person who holds a license to carry out the duties of a bankruptcy administrator. The bankruptcy administrator is appointed by the bankruptcy judge through a random selection method from a list of active bankruptcy administrators within the court's jurisdiction. To obtain a license, a natural person must, among other requirements, pass a professional exam. Knowledge of special bankruptcy proceedings is also required to obtain a license for performing bankruptcy administrator duties. According to the Regulation on the program and method of taking the professional exam to perform the duties of a bankruptcy administrator, knowledge in this area must be detailed (relevant sources include the Law on Bankruptcy and Liquidation of Banks and Insurance Companies, the Law on the Deposit Insurance Agency, and the Insurance Law), and among other things, a good understanding of insurance contracts is required.<sup>63</sup> Considering that licensed bankruptcy administrators do not perform the function of a bankruptcy administrator in special bankruptcy proceedings, it is unclear why it is necessary for them to have detailed knowledge in the area of bankruptcy law related to special bankruptcy proceedings. A possible explanation might be that the general legal regime applies to the bankruptcy of reinsurance companies, but there are not enough arguments to support this. Namely, bankruptcy administrators must have detailed knowledge about the bankruptcy of banks, even though there is no doubt that the Deposit Insurance Agency performs the function of bankruptcy administrator in those proceedings.

The deviation from general rules concerning the bankruptcy administrator is not limited only to bankruptcy proceedings involving financial institutions, including insurance companies. In domestic law, the function of the bankruptcy administrator is also performed by a legal person in bankruptcy proceedings involving majority socially-owned or state-owned legal entities, as well as in cases where the bankruptcy debtor becomes a majority state-owned legal entity during the bankruptcy proceeding. In these cases, the function of the bankruptcy administrator is performed by the Bankruptcy Supervision Agency.<sup>64</sup>

Assigning the role of bankruptcy administrator to a specific organization is not uncommon in comparative law. For example, in U.S. law, the management of an insurance company in bankruptcy is entrusted to the relevant supervisory authority for insurance. Specifically, if an insurance company is in financial distress (impaired), the competent supervisory authority or commissioner (each state has its supervisory authority) files a petition with the court to impose a receivership, deciding whether

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<sup>63</sup> See Regulation on the Program and Method of Passing the Professional Examination for Performing the Duties of a Bankruptcy Administrator, *Official Gazette of RS*, No. 47/2010, Art. 4.

<sup>64</sup> See M. Vasiljević, T. Jevremović Petrović, J. Lepetić, p. 890. See BL, Art. 22.

the company should be reorganized or liquidated.<sup>65</sup> Once the court approves this process, the supervisory authority manages the insurance company.<sup>66</sup>

On the other hand, there are solutions where deviations from the general legal regime regarding the function of the bankruptcy administrator in the bankruptcy proceedings of insurance companies are minimal. For instance, under Croatian law, the bankruptcy administrator in such proceedings is a natural person — a licensed bankruptcy administrator. Specifically, the bankruptcy administrator can be a person who, in addition to meeting the requirements for appointment as a bankruptcy administrator, has knowledge and experience in the field of insurance, with the court consulting the Croatian Financial Services Supervisory Agency regarding the appointment of this individual.<sup>67</sup> In this context, it would be useful to create a specific list of bankruptcy administrators who have knowledge and expertise in the field of insurance. Some domestic authors advocate for the adoption of such a solution in our legal system.<sup>68</sup>

Generally speaking, it is not significant whether the function of the bankruptcy administrator is primarily assigned to a specific legal person, such as an agency, as is the case in our law, or to licensed bankruptcy administrators. What is essential is that those persons, who perform specific duties, have sufficient knowledge to do so in the best possible manner. In this regard, it is justified to set specific conditions that the commissioners of the Deposit Insurance Agency must meet to perform the duties of a bankruptcy administrator in special bankruptcy proceedings. The current solution, where commissioners are not required to pass a professional exam or acquire the necessary knowledge to fulfill the role of a bankruptcy administrator in special proceedings, is inadequate, especially considering that detailed knowledge of special bankruptcy proceedings is required of licensed bankruptcy administrator who do not perform this function in those proceedings.

If the domestic legislator does not intend to change the current arrangement, under which the Deposit Insurance Agency performs the role of bankruptcy administrator in bankruptcy proceedings involving insurance companies, then the Agency's commissioners should undergo appropriate training and pass a professional exam that would need to be organized for this purpose. However, if the legislator changes its approach and assigns the role of bankruptcy administrator to licensed bankruptcy administrators, a certain number of licensed bankruptcy administrators would need to specialize in specific bankruptcy proceedings if they do not have prior experience in the relevant areas. Specialization could focus solely on the insurance sector or

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<sup>65</sup> See L. S. McAlister, pp. 130–131.

<sup>66</sup> See *ibid.*, p. 131.

<sup>67</sup> See Croatian Insurance Act, Article 286.

<sup>68</sup> See Vladimir Čolović, „Osnovne pretpostavke za regulisanje stečaja osiguravajućih društava“, *Godišnjak Fakulteta pravnih nauka*, No. 9/2019, p. 18.



cover multiple areas associated with specific bankruptcy proceedings. Considering the total number of bankruptcy proceedings involving insurance companies over the past twenty years, the number of licensed bankruptcy administrators specialized in the insurance sector would not need to be large.

## **2. Duties of the Bankruptcy Administrator under the Special Legal Regime**

Significant differences from the general bankruptcy regime also pertain to the powers of the bankruptcy administrator. Since there is no creditors' assembly in bankruptcy proceedings against an insurance company, but only one creditors' body — the creditors' committee — the appointment of creditors who will be members of this body becomes particularly important. The Deposit Insurance Agency is entrusted with the authority to propose the appointment and dismissal of members of the creditors' committee. Specifically, the bankruptcy judge, based on the Agency's proposal, selects and dismisses members of the creditors' committee according to the amount of claims.<sup>69</sup> Although it is undisputed that the judge must use this criterion when appointing members of the creditors' committee, it is important to note that this is not the only or decisive criterion in the selection process, as might be incorrectly concluded from a language interpretation of the relevant provisions of the Law on Bankruptcy and Liquidation of Banks and Insurance Companies. The judge must also consider the general rules regarding who may be a member of the creditors' committee.<sup>70</sup> Additionally, when dismissing members of the creditors' committee, the judge does not consider the extent of claim held by the creditor who is a member of the committee but must take into account the reasons for the dismissal. The Agency also has another authority related to this body. Specifically, the creditors' committee consists of five members but can have more on the Agency's reasoned proposal. Thus, the role of the Deposit Insurance Agency is very significant in terms of influencing the course of the bankruptcy proceedings. Its powers, in this regard, differ from the powers of the bankruptcy administrator under the general rules of bankruptcy law.

In addition to its duty concerning the creditors' committee, the Deposit Insurance Agency also has specific powers related to the process of transferring the insurance portfolio, which are not present in the general bankruptcy regime.<sup>71</sup> The insurance portfolio represents the rights and obligations of the insurance company under insurance contracts, and transferring it allows these contracts to remain in

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<sup>69</sup> See LBLBIC, Article 8, Paragraph 3.

<sup>70</sup> See Responses to Questions from Commercial Courts, as established in the session of the Department for Commercial Disputes of the Commercial Appellate Court on November 8, 2018, and November 9, 2018, and in the session of the Department for Economic Offenses held on December 5, 2018.

<sup>71</sup> See LBLBIC, Article 13.



force.<sup>72</sup> The provisions regarding the transfer of the insurance portfolio do not stipulate special rules for specific types of insurance; rather, the process is conducted in accordance with the available financial resources of the bankruptcy debtor and the ranking of bankruptcy claims, which has been criticized in legal theory.<sup>73</sup> The provisions on portfolio transfer from the Insurance Law apply similarly to the transfer of the insurance portfolio of a company in bankruptcy. It can be assumed that the implementation of this process is one of the reasons for the delay of bankruptcy proceedings against insurance companies. In this context, it should be noted that the National Bank of Serbia also plays a significant role in the portfolio transfer process. Specifically, it is the National Bank that approves the choice of the insurance company that will take over the insurance portfolio. On the other hand, the bankruptcy judge does not have authority regarding the portfolio transfer. This arrangement is typical in countries with a civil law system, whereas, in common law systems, such authority is usually entrusted to the court rather than administrative bodies.<sup>74</sup>

The Law on Bankruptcy and Liquidation of Banks and Insurance Companies also stipulates additional special rules regarding the powers of the Deposit Insurance Agency. For instance, the Agency may decide to temporarily cover the costs of the bankruptcy proceedings from its own funds, with the right to reimbursement after the bankruptcy estate is established.<sup>75</sup> This decision is discretionary and entirely within the Agency's powers, as the Law does not prescribe any conditions or guidelines concerning this possibility. Additionally, the Law provides specific deadlines for the Deposit Insurance Agency's obligations related to asset inventory and the preparation of the initial bankruptcy balance sheet, including a report containing data on the assets and liabilities of the bankruptcy debtor, significant transactions conducted by the debtor in the 180-day period prior to the onset of the consequences of the bankruptcy proceedings, and activities carried out by the debtor on behalf of other legal persons. The Agency must complete the asset inventory and initial bankruptcy balance sheet within 60 days from the onset of the bankruptcy proceedings or from the date of assuming control of the debtor's assets and rights. In contrast, according to general rules, the deadline for preparing the initial bankruptcy balance sheet, which includes data on assets and liabilities, is 30 days (which can be extended by up to five days), starting from the date of taking over of the debtor's assets and rights.<sup>76</sup> Additionally, under general rules, the bankruptcy administrator must start the inventory of assets within 10 days of appointment and complete it within 30 days

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<sup>72</sup> Vladimir Čolović, Magdalena Makiela, „Ispltni redovi u stečajnom postupku protiv osiguravajućih društava“, *Prouzrokovanje štete, naknada štete i osiguranje* (ed. Zdravko Petrović, Vladimir Čolović), Belgrade-Valjevo, 2019, p. 438.

<sup>73</sup> V. Čolović, Z. Petrović, p. 33.

<sup>74</sup> K. Noussia, P. Underwood, S. Frastanlis, p. 184–185.

<sup>75</sup> See LBLBIC, Article 18.

<sup>76</sup> Compare LBLBIC, Article 16, Paragraph 1, and BL, Article 109, Paragraphs 1 and 2.

of appointment.<sup>77</sup> The Deposit Insurance Agency is required to update and publish a report on the status of the bankruptcy estate and the progress of the proceedings quarterly on its website. The guidelines for preparing the quarterly report on the status of the bankruptcy/liquidation estate and the progress of the proceedings were issued by the Agency in 2015.<sup>78</sup>

The law also requires the Agency to determine the validity and amount of claims within six months from the expiration of the claims submission deadline.<sup>79</sup> The deadline for submitting claims cannot be shorter than 30 days or longer than 90 days from the date of publication of the notice of the initiation of bankruptcy proceedings against the insurance company in the *Official Gazette of the Republic of Serbia*.<sup>80</sup> The hearing at which the claims are examined must be held no later than 60 days after the expiration of the deadline within which the Agency must determine the validity and amount of the submitted claims.<sup>81</sup> According to general rules, the bankruptcy administrator must submit the list of claims to the bankruptcy judge no later than ten days before the date of the hearing at which the claims are examined.<sup>82</sup> This hearing is held within a period of no less than 30 days and no more than 60 days from the expiration of the deadline for submitting claims.<sup>83</sup> The deadline for submitting claims cannot be shorter than 30 days or longer than 120 days from the date of publication of the notice of the opening of bankruptcy proceedings in the *Official Gazette of the Republic of Serbia*.<sup>84</sup> Considering the deadlines provided by the special regime related to the examination of claims and the role of the Deposit Insurance Agency in this process, it can be concluded that the legal provisions regarding the dynamics of the bankruptcy procedure cannot significantly affect its duration, nor be a reason for a longer duration of bankruptcy proceedings against an insurance company compared to bankruptcy proceedings conducted under the general legal regime.

Finally, the Law provides that avoidance proceedings may be commenced by the Agency regarding the debtor's legal acts which are preferential to certain creditors. This concerns transactions and other legal acts carried out within six months from the day of the occurrence of legal consequences of the initiation of bankruptcy proceedings, or within one year if these legal acts were conducted with

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<sup>77</sup> See BL, Article 27, Paragraph 1, Item 3.

<sup>78</sup> The guidelines for preparing the quarterly report on the status of the bankruptcy/liquidation estate and the progress of the proceedings are available on the Deposit Insurance Agency's website: [www.aod.rs](http://www.aod.rs), 17. 7. 2024.

<sup>79</sup> See LBLBIC, Article 17, Paragraph 1.

<sup>80</sup> See LBLBIC, Article 7.

<sup>81</sup> See LBLBIC, Article 17, Paragraph 2.

<sup>82</sup> See BL, Article 113, Paragraph 4.

<sup>83</sup> See BL, Article 72, Paragraph 2.

<sup>84</sup> See BL, Article 70, Paragraph 1, Item 5.

related parties as defined by the Insurance Law.<sup>85</sup> In this case, it does not involve specific powers of the Agency, as bankruptcy administrators can commence avoidance proceedings regarding the debtor's legal acts under general rules if the conditions specified by law are met.

Regarding the differences between the powers of bankruptcy administrators under the general and special regimes, it is significant to note that the Deposit Insurance Agency does not have certain powers that bankruptcy administrators have under the general legal regime of bankruptcy. These differences arise from the fact that certain rules apply only if the bankruptcy procedure is conducted under the general legal regime. For example, the Agency does not have powers related to reorganization, as insolvency proceedings of an insurance company cannot be conducted in that manner.

It can be concluded that the existing legal framework regarding the powers of the Deposit Insurance Agency could be slightly improved by clarifying certain provisions (for example, those related to covering bankruptcy procedure costs), but that the rules are well grounded. Similarly, it is clear that minor differences in terms of the deadlines for conducting actions between the general and special legal regimes cannot lead to significant delays in bankruptcy proceedings against an insurance company.

## **VI Conclusion**

In Serbia, the bankruptcy proceedings for insurance companies are regulated by the Law on Bankruptcy and Liquidation of Banks and Insurance Companies, with certain rules also found in other regulations. The existence of a special bankruptcy regime for insurance companies is generally considered justified. Therefore, it is common in comparative law as well. In our law, the special bankruptcy regime applies not only to insurance companies but also to reinsurance companies. However, it does not apply to companies engaged in insurance brokerage and agency activities.

Although the legislator made an oversight by not mentioning reinsurance companies in the Law on Bankruptcy and Liquidation of Banks and Insurance Companies as subjects of bankruptcy, an interpretation of the Insurance Law and the Bankruptcy Law leads to the conclusion that the special legal regime of bankruptcy also applies to them. For the sake of precision, the Law on Bankruptcy and Liquidation of Banks and Insurance Companies should clearly state that it applies to these companies as well. Additionally, the term "insurance organizations" used in the Bankruptcy Law should be replaced with the terms insurance companies and reinsurance companies, thereby eliminating any ambiguities regarding the designation of entities subject to the special bankruptcy regime.

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<sup>85</sup> See LBLBIC, Article 14, Paragraphs 1, 2, and 4.

The problems related to the bankruptcy of insurance companies are not only tied to the determination of the bankruptcy debtor. Statistical data regarding the implementation of bankruptcy proceedings over insurance companies indicate that these proceedings are not conducted in accordance with the principle of urgency, which is one of the key principles of bankruptcy according to general legal rules. The reasons for the delay of bankruptcy proceedings for insurance companies, which on average last more than twice as long as those conducted under the general legal regime, should be sought in the specificities of the special legal regime. The Law on Bankruptcy and Liquidation of Banks and Insurance Companies specifies which provisions of the Bankruptcy Law do not apply in bankruptcy proceedings involving insurance companies. Namely, certain rules are not applicable due to the specific nature of the entities undergoing bankruptcy proceedings, as well as due to the role of the National Bank of Serbia, which supervises the operations of insurance companies.

One of the key differences between the general and special bankruptcy regimes concerns the function of the bankruptcy administrator. Since this function in bankruptcy proceedings over insurance companies is performed by the Deposit Insurance Agency, the commissioners of the Agency who carry out this work must have the knowledge necessary for the proper execution of their duties. They should undergo appropriate training and pass a professional exam. If the legislator were to change the approach and opt for licensed bankruptcy administrators to perform this role, inclusion on a special list or lists related to special bankruptcy proceedings should require thorough knowledge of the relevant field or fields if they do not have prior experience. On the other hand, obtaining a license as a bankruptcy administrator should not require detailed knowledge of special bankruptcy proceedings but only basic or potentially good knowledge.

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## **SUBROGACIJSKI ZAHTJEVI INOZEMNIH NOSILACA SOCIJALNOG OSIGURANJA PREMA DOMAĆIM OSIGURATELJIMA OD AUTOODGOVORNOSTI**

ORIGINALNI NAUČNI RAD

### **Apstrakt**

U ekonomski snažnijim zemljama Europe uspostavljeni su kvalitetni mehanizmi socijalnog osiguranja koji, u slučaju tjelesnih povreda ili smrti u prekograničnim saobraćajnim nezgodama, njihovim osiguranicima omogućavaju različite vrste naknada u cilju bržeg oporavka i lakšeg snošenja posljedica nemilih događaja. Po isplati naknada, inozemni nosioci zdravstvenog i penzionog osiguranja potražuju refundaciju isplaćenih davanja putem instituta zakonske subrogacije prema domaćem društvu za osiguranje kod kojega je zaključen ugovor o obaveznom osiguranju od odgovornosti štetnika za štete prouzročene trećim osobama. S obzirom na to da se radi o zahtjevima s međunarodnim elementom, u radu će se najprije analizirati mjerodavno pravo za aktivnu legitimaciju i utvrđivanje sadržaja prava inozemnog nosioca. Imajući u vidu da je obim obaveze osiguratelja od autoodgovornosti definiran ugovorom o osiguranju zaključenom u skladu s odredbama Zakona o obaveznim osiguranjima u saobraćaju, dat će se odgovor na pitanje ima li inozemni nosilac socijalnog osiguranja pravo na potpunu naknadu isplaćenih iznosa u skladu s propisima države svoga sjedišta ili u granicama ugovora o osiguranju od autoodgovornosti štetnika.

**Ključne riječi:** *subrogacija, zdravstveno osiguranje, penziono osiguranje, inozemni nosilac, osiguranje od autoodgovornosti*

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