

The Changes in Insurance: A Prerequisite for a Stable and Efficient Insurance Market

On 1 January 2016, the new Insurance Code entered in force in Bulgaria.

The Insurance Code is a transposition into the Bulgarian legislation of 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 and insurance and reinsurance, referred to as “Solvency II” and its subsequent amendments with Directives 2011/89/EU, 2012/23/EU and 2014/51/EU, as well as the provisions of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2009 on insurance mediation as amended with Directive 2014/65/EU and of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to ensure against such liability.

The EU Directive Solvency II creates the general legal framework of the European Union in the insurance and reinsurance sector, laying down the solvency and risk requirements that have to be fulfilled by insurance and pension undertakings which conduct insurance business in Europe.

The new Insurance Code improves the legal framework and introduces the standard Community requirements to ensure legal certainty on the insurance market with a view to providing better protection to the interests of insurance service users.

The new legislation sets out a new regime relating to capital requirements, new principles underlying the investment of assets, and much more stringent requirements with regard to risk management and the supervision of insurers as a safeguard for the fulfillment of their obligations to insurance service users. New rules are introduced in the regulation of insurance mediation and the distribution of insurance products. The new Insurance Code further develops the rules concerning the insurance contract which regulates the relationships between insurers and insured persons, including the introduction of new legal institutes and changes in the way in which insurance claims are regulated.

The new Insurance Code improves the system of filing insurance claims so that to strengthen the protection of insurance service users.

1. Thus Article 106 of the Insurance Code sets out the obligation of insurers to make a mandatory registration in writing with details of a bank account under each insurance claim, whereby this obligation consists of the following registration activities: (i) the insurers register the date of each insurance claim; (ii) they register the date of filing of each subsequent document attached to an existing claim; and (iii) each of these circumstances is subject to verification either individually or on a common list before the person who has served the claim.

The objective is to prevent practices in which insurance service users do not have any evidence to prove the submission of documents on their part to the insurer with regard to the grounds and amount of their insurance claim, and to reduce the risk of abuse of compensations by authorized persons through payments from bank transfers to proxies.

2. The new Article 380 of the Insurance Code requires mandatory serving of the claim to the insurer before the claim is filed in court. Claims may be filed with the court or the arbitration tribunal only in the following three cases: (i) the insurer has failed to act within the time limits prescribed by the law; (ii) payment has been refused; or (iii) the person who has served the claim does not agree with the amount of the compensation paid.

3. New time limits have been introduced for the insurer to rule on the claims:

- With regard to insurance policies which are not considered to be cases of large risks (see Article 108 of the Insurance Code), the existing 15-day time limits are preserved and **new definitive time limits** have been introduced for the insurer to rule in the cases in which some evidence has not been made available, i.e. six-months as from the date on which the claim was served for all insurance policies, except for the mandatory insurance against civil liability of motorists to which the existing three-month is applied;

- With regard to insurance policies which are considered to be cases of large risks, the time limit for insurers to rule is six months in the cases in which all the evidence has been made available and the definitive time limit in the cases in which some evidence has not been made available is one year, except for the relevant derogations.

4. The obligation of insurers to provide factual and legal justification of the amount of compensation in writing within seven days of the filing of the complaint by an insurance service user who is not clear about the way in which the insurance compensation is determined is of great practical importance. This provision is without prejudice to the insurer's obligation to make a reasoned decision on the claim and it is an additional guarantee to protect the rights of insurance service users.

5. The Insurance Code sets out a common standard in the protection of all insurance service users through the provisions of Article 290 which requires that arrangements be created and maintained to examine complaints by insurance service users at the level of the Financial Supervision Commission, as well as at the level of individual insurers or brokers of insurance products.

6. The regulation of insurance contracts has also been amended with some new features:

The Insurance Code lays down **new legal institutes and practices** of the European Union Member States. It envisages insurance contracts for future insurance interests (See Article 349). The one-year insurance period is introduced (Article 352) and the relevant new rules specify insurance contracts for an indefinite period, insurance contracts for a period of less than a year, and multiannual insurance contracts in accordance with the needs of the market.

Substantial details are given in Article 353 on the legal option for a single automatic renewal of the insurance contract provided that the contract itself contains such a clause and that no party to the contract has objected to the renewal prior to the expiration of the current insurance period.

The retroactive and *ex ante* coverage are new legal institutes laid down in Part Four, Chapter 36, Section II, which have been used as contractual practices in business relationships.

7. The content of the insurance contract is regulated in detail, whereby insurers are required to give a clear, unambiguous and exhaustive definition of the terms and conditions under which the exceptions to the insurance coverage are applied, including life insurance and sickness insurance.

A very important safeguard of the rights of insurance service users is the new ban on insurers refusing to pay compensation in cases of **divulgence of circumstances of material significance for the risk which existed at the time when the contract was concluded** and which the insurer did not ask about or asked about but did not receive accurate and clear answers (Article 362 of the Insurance Code). Thus it will be impossible in future for insurers to refuse to pay compensation under existing contracts by transferring the consequences of their own responsibility to reveal the risk-related circumstances to insurance service users.

8. The new Insurance Code contains new detailed provisions on the insurance of loan or bank credit security and the insurance of leased property with the option of insuring assets at an agreed value.

When a loan or bank credit security is insured, the debtor is granted the rights of an insured person with a view to the enhanced legal certainty and better protection of the debtor's rights in accordance with Article 382 of the Insurance Code. Thus active action, including active legitimation of the debtor under the bank credit secured with an insurance policy, is possible in claims filed with the court in the event of inactivity on part of the insured creditor.

9. Further details are added in the provisions with regard to the life and sickness insurance, the mandatory professional liability insurance and the mandatory insurance against civil liability of users of motor vehicles.

The Financial Supervision Commission will be the competent authority with regard to the implementation of the Directive Solvency II and the European Commission Regulations in Bulgaria.

The entry into force of the new Insurance Code creates conditions for the development of a stable, transparent and efficient insurance market in Bulgaria as an integral part of the single European insurance market.