

Pursuant to the point 2 of the Amendment XL to the Constitution of the Republic of Srpska (“Official Gazette of the Republic of Srpska”, No. 28/94), I hereby issue the

DECREE

PROMULGATING THE LAW ON AMENDMENTS TO THE LAW ON INSURANCE COMPANIES

I hereby promulgate the Law on Amendments to the Law on Insurance Companies, which the National Assembly of the Republic of Srpska adopted at its thirty-fourth session, held on 6, 7 and 8 July 2010, and the House of Peoples confirmed on 16 July 2010 that the adopted Law on Amendments to the Law on Insurance Companies shall not endanger the vital national interest of the constituent peoples in the Republic of Srpska.

Number: 01-020-854/10
22 July 2010
Banja Luka

President
of the Republic
Academician Dr **Rajko Kuzmanović**, m.p.

LAW

ON AMENDMENTS TO THE LAW ON INSURANCE COMPANIES

Article 1

In the Law on Insurance Companies (“Official Gazette of the Republic of Srpska”, Nos. 17/05, 1/06, and 64/06), in the Article 2, fourth indent, after the words “board of directors”, a comma and the following words shall be added: “executive members of the board of directors, members of the company body performing supervision, emergency trustee, temporary trustee, and liquidation trustee”.

In the indent 15, the words: “certified by the RS Insurance Agency for the purpose of this law” shall be replaced by the words: “employed in the insurance company”.

After the indent 15, the new indent 16 shall be added, and shall read:

“**Certified actuary**’ is a professional certified by the Insurance Agency of the Republic of Srpska to perform the duties of a certified actuary;”.

The present indent 30, which shall become the indent 31, shall be amended to read:

“**Guarantee fund**’ shall constitute 1/3 of the solvency margin and may not be lower than the minimum guarantee fund as prescribed in this law for individual types of insurance services;”.

The present indent 31, which shall become the indent 32, shall be amended to read:

“**Solvency margin**’ shall constitute the border value of capital adequacy of the insurance company;”.

Article 2

In the Article 6, paragraph 3), indent 1, after the word “insurance” a comma and the following words shall be added: “voluntary capitalised pension insurance”.

In the second indent, after the word: “intermediaries”, a comma and the following words shall be added: “as well as voluntary pension funds and companies for managing voluntary pension funds”.

In the third indent, after the word: “insurance”, the following words shall be added: “and voluntary pension insurance”.

The fourth indent shall be amended to read: “prevention and detection of financial crime that involves or may involve the entities over which the RS Agency has the authority for supervision and regulation;”.

After the paragraph 3), the new paragraph 4) shall be added and shall read:

“The provisions of this law on supervision and control of insurance companies shall also be appropriately applied to the supervision and control of voluntary pension funds and companies for managing voluntary pension funds.”.

Article 3

In the Article 7, the paragraph 6) shall be amended to read:

“In performing its duties, the RS Agency shall apply the rules of supervision and order measures in line with the regulations governing the field of insurance, as well as the provisions of the law governing the general administrative procedure, unless otherwise prescribed in this law.”.

Article 4

In the Article 10, paragraph 4), in the first sentence, the following words shall be deleted: “upon the opinion given by the Management Board of the RS Agency, and”.

After the paragraph 7), the new paragraph 8) shall be added and shall read:

“The members of the Management Board, Director and employees at the RS Agency shall not be liable for the damage incurred when performing duty within the regulations governing the field of insurance, unless it has been proven that they have completed or failed to complete a certain action intentionally or through serious negligence.”.

Article 5

In the Article 14, after the paragraph 4), the new paragraphs 5) and 6) shall be added and shall read:

“The insurance company shall be required to regularly report to the RS Agency on all elements of business operations in line with the regulations governing the field of insurance, prescribing the contents of the report, the manner, procedure and timelines of reporting.

The insurance company shall be required to notify the RS Agency without delay of the following:

- if liquidity or solvency of the insurance company has been at risk;
- if reasons arise for the cease of validity or for revocation of the business licence;
- if the financial position of the insurance company has been changed to that extent that the insurance company has failed to meet the capital adequacy requirements as established in the regulations governing the field of insurance.”.

Article 6

In the Article 18, paragraph 4), after the word: “may,”, the following words shall be added: “autonomously or”.

Article 7

In the Article 19, paragraph 1), after the sixth indent, the full stop shall be replaced by a semi-colon and the new seventh indent shall be added and shall read:

“ – and other registers in line with the regulations governing the field of insurance.”.

After the paragraph 1), the new paragraph 2) shall be added and shall read:

“The registers referred to in the paragraph 1) of this article shall also use and process personal data, including the unique master number of the natural person.”.

The present paragraphs 2), 3), 4), 5) and 6) shall become the paragraphs 3), 4), 5), 6) and 7) respectively.

In the present paragraph 5), which shall become the paragraph 6), the number “4” shall be replaced by the number “5”, and the words: “in the “Official Gazette of the Republic of Srpska”” shall be replaced by the words: “on the official website of the RS Agency”.

The present paragraph 6), which shall become the paragraph 7), shall be amended to read:

“The RS Agency shall submit the semi-annual reports referred to in the paragraph 5) of this article to the Government of the Republic of Srpska, and through the Government of the Republic of Srpska, it shall submit the annual reports referred to in the paragraph 5) of this article to the National Assembly of the Republic of Srpska.”.

After the present paragraph 6), which shall become the paragraph 7), the new paragraph 8) shall be added and shall read:

“Within 90 days as of the day of entering into force of this law, the Management Board of the RS Agency shall pass the bylaws prescribing the scope and content of the data entered into the registers, the method of keeping the registers, the timelines and procedures for submission, entry and reporting of data changes in the registers.”.

Article 8

In the title of the Article 20, after the word: “Actuaries”, the following words shall be added: “and certified actuaries”.

In the Article 20, paragraph 1), after the words: “certified actuaries”, the following words shall be added: “and the actuaries employed in insurance companies”.

In the paragraph 2), the word: “title” shall be replaced by the words: “approval to provide the services”.

In the paragraph 6), the first indent shall be amended to read:

“- provides the opinion on annual financial statements and the annual performance report of the insurance company,”.

In the same paragraph, the fifth indent shall be deleted, and the present sixth and seventh indent shall become the fifth and sixth indent respectively.

In the present seventh indent, which shall become the sixth indent, after the word: “mathematical”, the following words shall be added: “and technical”.

After the paragraph 7), the new paragraphs 8), 9), 10) and 11) shall be added and shall read:

“The general assembly of the insurance company shall be required to appoint the certified actuary and to notify of this effect the RS Agency within 10 days as of the day of appointment.

In order to provide the actuary services in the insurance company, the insurance company shall be required to hire an actuary, and to inform of this effect the RS Agency within 10 days as of the day of their hiring.

The Management Board of the RS Agency shall prescribe the requirements for the person to perform the jobs of the actuary.

Within 90 days from the date of entering into force of this law, the RS Agency shall pass the bylaws prescribing the content and the timelines for submission of the opinions by the certified actuary.”.

Article 9

In the title of the Article 27, the word: “operation” shall be replaced by the word: “supervision of business operations”.

In the same article, in the paragraph 1) in the first sentence, the word: “decision” shall be replaced by the words: “Decision on Tariffs and Fees”, and the second sentence shall be deleted.

In the paragraph 3), the word: “operation” shall be replaced by the words: “supervision of business operations”.

The paragraph 4) shall be amended to read:

“The Decision on Tariffs and Fees of the RS Agency shall be approved by the Government of the Republic of Srpska, which shall have it published in the “Official Gazette of the Republic of Srpska”.”

Article 10

The title of the Article 29 and the Article 29 itself shall be amended to read:

“Cease of validity and revocation of the business licence

Article 29

The business license of the insurance company shall cease to be valid in the following cases:

- if the insurance company has failed to commence doing business within one year as of the date of issuance of the business licence;

if the insurance company has failed to provide insurance services or services in specific types of insurance for longer than six months;

- if a final verdict has been passed which obstructs provision of services;
- opening of the procedure for liquidation or bankruptcy;
- transfer of all insurance contracts onto another insurance company.

The RS Agency shall revoke the business licence from the insurance company in the following cases:

- if the licence has been issued based on untruthful and incorrect data;

- if the insurance company, within the given period, has not executed the orders of the RS Agency for elimination of illegalities and irregularities or for conducting of the supplementary or other measures, due to which it has ceased meeting the requirements for the insurance activity or the requirements under which the business licence has been issued no longer exist, or such requirements have been changed to such an extent that the RS Agency would not issue the licence having the new circumstances in mind;

- if the insurance company has frequently violated the obligation toward the Green Card Bureau of BiH or the Protection Funds of either entity;

- if the emergency trusteeship has not lead to stability or liquidity of the insurance company.

In addition to the cases stated in the paragraph 3) of this article, the RS Agency may revoke the business licence from an insurance company even if the company, after the decision of the RS Agency on the elimination of illegalities or irregularities or the decision on undertaking of supplementary or other measures, still:

- has violated the provisions referred to in the articles 55 through 58, of this law and the bylaws of the RS Agency related to the prescribed technical and mathematical reserves and investments of funds of insurance companies;

- has failed to meet the requirements concerning capital adequacy and solvency margin pursuant to the articles 49, 52, 52a, 53 and 53a of this law the bylaws of the RS Agency;

- provides services within the type of insurance for which it has not been granted the licence;
 - has failed to apply the adopted terms of insurance and premium tariff when presenting an offer, preparation and conclusion of insurance contracts, as well as other business policy acts;
 - has failed to meet the rules of risk management, rules of management and maintenance of liquidity and solvency, restriction of payments of dividends;
 - has violated the rules on keeping of business books, drafting of financial statements, audit and internal audit;
 - has violated the requirement for timely and truthful reporting and notifying the RS Agency;
 - has violated the rules of appointment of the certified actuary and certified auditor;
 - has failed to fully or timely execute the supplementary measures in order to enforce the rules of risk management and protection for insured persons, as well as the measures referred to in the short-term financial recovery plan;
 - has violated the provisions on the appointment and dismissal of persons holding significant positions referred to in the Article 60 of the Law;
 - has violated the provisions on qualified shares referred to in the Article 61 and Article 62 of the Law;
 - has failed to execute the coverage of loss in the manner as prescribed in this law;
 - has failed to allow the supervision to the RS Agency, the audit to the certified auditor and actuary jobs to the certified actuary in the prescribed manner;
 - transfers of accepts a portfolio without the approval of the RS Agency;
- has violated the rules on the protection of insured persons, beneficiaries of rights arising from insurance contracts, or third injured persons, or if it has failed to pay out insurance claims or if it has failed to meet other obligations arising from the insurance contracts;
- provides inaccurate data on its operations or data that may misguide insured persons, insurers, beneficiaries of the rights arising from insurance contracts or third injured parties.

The RS Agency may revoke the licence for the provision of services in specific types of insurance if the reasons for such revocation pertain only to the services in such types of insurance.

In the case of cease of validity or revocation of the business licence, the insurance company may not conclude new insurance contracts concerning all or those services within such a type of insurance for which it has been established that the business licence has ceased being valid or has been revoked.

The cease of validity or revocation of the business licence from an insurance company shall also pertain to its branch offices established in Bosnia and Herzegovina and outside Bosnia and Herzegovina.

The RS Agency shall notify the FBIH Agency of the cease of validity or revocation of the business licence, as well as the supervisory body of the state in which the branch office of the company from the Republic of Srpska has been registered.

In the event of revocation of the business licence, the RS Agency shall initiate the procedure for liquidation or bankruptcy pursuant to the provisions of this law.

In the event of cease of validity or revocation of the business licence, the RS Agency shall perform the supervision in line with its authority until the finalisation of the procedure for liquidation of the insurance company.

The cease of validity or revocation of the business licence shall not release the insurance company from the obligations arising from the concluded insurance contracts.

After the cease of validity or revocation of the business licence, in the type of insurance services involving mandatory insurance against liability for motor vehicles, all insurance claims based on the mandatory insurance of motor vehicles shall be paid out by the RS Protection Fund, and all the reserves of the insurance company pertaining to the mandatory insurance of motor vehicles shall be transferred onto the RS Protection Fund in line with the regulation governing the field of insurance against liability for motor vehicles and other mandatory insurance against liability.”.

Article 11

In the Article 52, paragraph 1), after the word: “operations”, the comma shall be replaced by a full stop, and the remaining text shall be deleted.

After the paragraph 1), the new paragraphs 2) and 3) shall be added and shall read:

“The solvency margin for services involving direct non-life insurance and reinsurance shall be calculated through application of the premium index or damage index, wherein the higher of the calculated amounts shall be taken as mandatory and authentic.

The solvency margin for services involving direct life insurance shall be calculated as a sum of two results, specifically:

- the first result shall be calculated by multiplying the mathematical reserves with the determined ratio numbers;

- the second result shall be calculated by multiplying the risk exposed capital with the determined ratio numbers, only for life insurance with which the risk exposed capital is not negative.”.

The present paragraph 2) shall become the paragraph 4).

Article 12

After the Article 52, the new Article 52a shall be added, with the title of the Article reading:

“Risk management

Article 52a.

The insurance company shall be required to ensure that it always has available adequate capital in terms of the scope and types of services it provides and given the risks that it is exposed to in providing these services (capital adequacy) and operate so that it is capable of timely meeting its mature liabilities (liquidity and in the manner that it is able to permanently meet all of its liabilities (solvency principle).

If the insurance company is not able to cover a portion of the risks assumed, and the risk exceeds the shares in the compensation of risk according to the tables of maximum coverage (proper self-sustainability), it shall be required to transfer such portion of the risk into reinsurance or co-insure the risk with one or more insurance companies.

The insurance company shall be required to manage the sources and investment in such a manner that at any moment it is able to meet the mature liabilities, to daily calculate the amounts of liquid funds and for the purpose of ensuring liquidity, pass and regularly conduct the liquidity management policy (liquidity management rules).

The insurance company shall be prohibited from paying out the profit in the form of dividends in cash or to make payments based on shares in profit to the management members or employees if:

- it does not meet the capital adequacy requirements as established in the rules governing the field of insurance;
- does not meet the prescribed liquidity and solvency requirements, or if through pay-out it would risk its liquidity or solvency;
- the RS Agency has ordered elimination of irregularities and illegalities in the presentation of data in the financial statements of insurance companies, due to which the financial statements are not correct or truthful, or if the insurance company has failed to proceed as per the orders of the RS Agency.

Within 90 days as of the day of entering into force of this law, the Management Board of the RS Agency shall pass the bylaws to prescribe the rules for identification, measurement and monitoring of risk to which insurance companies are exposed in their operations.

The insurance company may not increase its shareholder equity or issue debt securities or other financial derivatives that constitute an item of capital when assessing capital adequacy without prior approval obtained from the RS Agency.

The insurance company shall be required to cover the uncovered loss from the previous year during the next business year.

If the capital of the insurance company due to the increase of solvency margin or due to other reasons is not sufficient, the management of the insurance company shall immediately be required to adopt and apply the measures for which it is empowered in order to secure the capital, or it shall be required to draft proposed measures for which other bodies of the insurance company are empowered, related to securing the needed capital, and it shall be required to notify of such an effect the RS Agency within eight days as of the date of their adoption.

In order to ensure the protection of insured persons, the RS Agency may request from the insurance company the following:

- to have an increased capital, if it assesses that due to the weakened financial position of the insurance company the rights of the insured persons have been at risk, in which case the amount of capital shall be determined in line with the financial plan, with the proposed measures for at least three business years to come;
- to reduce the value of property of the insurance company which is included into the calculation of the capital of the insurance company or for the coverage of technical and mathematical reserves and the guarantee fund, if there has been a change in the market value of such property;
- to adjust the calculation of the insurance company’s solvency margin by the amount of reinsurance, if the contents of the reinsurance contract in relation to the previous business year have significantly changed or the reinsurance contracts do not allow for a balanced risk transfer.”.

Article 13

The title of the Article 53 shall be amended to read: “Capital and guarantee fund”.

In the same article, the paragraphs 1) and 7) shall be deleted, and the present paragraphs 2), 3), 4), 5) and 6) shall become the paragraphs 1), 2), 3), 4) and 5) respectively.

Article 14

After the Article 53, the new Article 53a shall be added, with the title of the Article reading:

“Capital adequacy requirements

Article 53a

The capital of an insurance company, for the purpose of application of the rules of risk management and meeting the capital adequacy requirements, shall be calculated as a sum of the items of the core capital and additional capital, reduced by deduction items.

The core capital of an insurance company shall be calculated as the sum of the items of the paid in shareholding equity, except on the basis of aggregate preferential shares of stock, capital reserves, except for the reserves related to aggregate preferential shares of stock, statutory and legal reserves, and transferred net profit from previous years.

When calculating the core capital, the sum referred to in the previous paragraph shall be reduced by the items of the acquired own shares of stock, non-tangible investments, losses from the current and previous years, and other items prescribed in a bylaw by the Management Board of the RS Agency.

The additional capital of the insurance company shall be calculated as a sum of items of the paid in shareholding equity, on the basis of aggregate preferential shares of stock, capital reserves related to these shares of stock, subordinated debt financial instruments and other items prescribed in a bylaw by the Management Board of the RS Agency.

Upon the request of the insurance company, with appropriate evidence furnished, the RS Agency may approve the increase of the additional capital by the value of the mathematical reserve which in the calculation does not consider the expense, or part of the costs involved with obtaining insurance from the premium calculation, deducted by the mathematical reserve which in the calculation considers the costs involved with obtaining insurance from the premium calculation.

When calculating the capital of the insurance company, the sum of the core capital and additional capital shall be deducted by:

- the amount of qualified share in other insurance and reinsurance companies, banks and other financial institutions;
- the amount of investment into subordinated debt instruments and other investments into legal persons referred to in the first indent of this paragraph considered when calculating their capital, in which the insurance company has a qualified share;
- the amount of non-liquid funds.

In its operations, the insurance company shall continuously meet the capital adequacy requirements, i.e. it shall ensure that:

- the capital be at least equal to the calculated solvency margin, wherein it must not be lower than the amounts prescribed in the articles 49 and 53 of the Law;
- the core capital be at least equal to the amount of the guarantee fund.

The guarantee fund shall correspond to the higher of the following two amounts, as follows:

- the amount of 1/3 of the calculated solvency margin;
- the amounts prescribed in the articles 49 and 53 of the Law.

The amount of the additional capital of the insurance company may not exceed 50% of the amount of core capital.

Within 90 days as of the day of entering into force of this law, the Management Board of the RS Agency shall pass bylaws prescribing capital items, calculation methods, amounts, scope, types of subordinated debt instruments and non-liquid funds, rules to calculate the capital and capital adequacy of insurance companies.”.

Article 15

The title of the Article 54 shall be amended to read: “Control and supervision measures”.

In the Article 54, paragraph 1), the words: “guarantee fund” shall be replaced by the word: “capital”, and the words: “inspection” and “at least once a year” shall be deleted.

In the paragraph 3), the words: “guarantee fund” shall be replaced by the word: “capital”.

The paragraphs 5), 6), 7) and 8) shall be amended to read:

“While performing supervision of the insurance company, the RS Agency shall pass the decision related to the insurance company which shall:

- order elimination of illegalities and irregularities,
- order the measure to prohibit pay-out of dividends,
- order the undertaking of supplementary measures,

- revoke the business licence.

The RS Agency shall issue a minor offense order or file a motion for institution of the minor offense procedure in the cases foreseen under this law.

If during the supervision of the insurance company the RS Agency establishes that the insurance company has violated legal regulations and bylaws, it shall pass the decision ordering the insurance company to eliminate the illegalities and irregularities in their operations, in particular if:

- the jobs in a significant position are performed by a person for whose appointment the insurance company has not obtained an approval or a person for whom the RS Agency has ordered to the insurance company to introduce the dismissal measure;
- the insurance company has failed to meet the requirements for provision of some or all insurance services;
- the insurance company has violated the rules on risk management, as well as the rules on maintaining liquidity and solvency;
- the insurance company has violated the rules on maintenance of business books, compilation of financial statements, auditing, internal auditing;
- the insurance company has violated the rules of reporting and notifying the RS Agency;
- the insurance company has violated the rules on appointment of certified auditors and certified actuaries;
- the insurance company has failed to adhere to the adopted business policy acts;
- the insurance company has failed to adhere to the other provisions established in the regulations governing the field of insurance.

If the RS Agency has established that the insurance company has violated the rules of risk management (rules of liquidity and solvency, capital adequacy requirements, rules of formation of funds for coverage of technical and mathematical reserves, rules of investing funds for coverage of technical and mathematical reserves, rules of reinsurance, limitations in the payments of dividends, etc.) and protection of insured persons, it shall pass the decision to call for the following supplementary measures in the insurance company:

- Ordering to the insurance company to adopt the plan of measures in order to meet capital adequacy requirements, improve liquidity and solvency, secure investment of funds for coverage of technical and mathematical reserves, improved procedure for collection of mature accounts receivable, which at least includes the assessment of operating expenses, then a detailed assessment of the income and expenses from direct insurance, draft balance, assessment of needed financial funds and their sources, reinsurance policy and programme;
- ordering to the management board to call for the general assembly of shareholders in order to pass the decision on increased capital;
- temporary or permanent prohibition of conclusion of new insurance contracts in some or all types of insurance;
- prohibition of specific types of financial transactions, or financial transactions with certain legal or natural persons;
- prohibition to the insurance company for conclusion of transactions with individual shareholders, director, executive directors, members of the management board or related companies;
- prohibition or restriction in management and investment of funds for coverage of technical reserves, i.e. the funds for coverage of mathematical reserves and other funds of the insurance company;
- ordering to the insurance company to change the types of insurance services, suspend enforcement or amendment to the insurance terms and tariffs, changes of capital structure, regular assessments of value of balance sheet items, improvement of information system, proper keeping of documents from strict records and undertaking of other measures necessary in order to enforce the rules on risk limitation and measures for improvement of risk management procedures;
- ordering the insurance company to dismiss the director, executive directors, executive members of the management board, and members of the body in the company which conducts supervision, and to appoint other persons instead;
- ordering for the measure to protect the rights of the insured persons;
- ordering for the measure of reorganisation.”.

In the paragraph 9), the words: “is lower than the guarantee fund, or when the appropriate guarantee fund has not been established pursuant to the provisions of the Article 53 of this law, the insurance company shall be required to submit for a review” shall be replaced by the words: “does not meet the capital adequacy requirements”, and the word: “programme” shall be replaced by the word: “recovery.”.

In the same article, the paragraphs 10), 11), 12) and 13) shall be amended to read:

“The insurance company shall be required to remove the established illegalities and irregularities in the given period and to proceed upon the supplementary measures, and to submit to the RS Agency the report, as well as the

documents and other evidence showing that the established illegalities and irregularities have been eliminated, or, that it has been proceeded in compliance with the supplementary measures.

Within 90 days as of the day of entering into force of this law, the Management Board of the RS Agency shall pass bylaws prescribing the procedure for submission and completion of the reports on the execution of measures.

On a regular basis and in the manner and within the timeframes established in the regulations governing the field of insurance, the insurance company shall calculate and notify the RS Agency of the following:

- amount and structure of the core capital and capital, solvency margin and guarantee fund;
- amounts of technical and mathematical reserves, funds for coverage of technical and mathematical reserves and types, dispersion, compliance and localisation of investment of the funds for coverage of technical and mathematical reserves;
- amounts and types of investments that are not funded from the technical or mathematical reserves;
- statistical data on insurance;
- liquidity and solvency indicators and other data prescribed in this law and the bylaws of the RS Agency.

On a regular basis, in the manner and within the timelines established in the regulations governing the field of insurance, the insurance company shall submit to the RS Agency the following:

- data kept in the register of insurance companies;
- financial statements and annual performance reports, with an opinion from the certified actuary and the supervisory bodies of the insurance company, with explanations;
- audit report with the letter addressing the management;
- work program and internal audit reports;
- report on the enforcement of the co-insurance and reinsurance policy, with an opinion from the certified actuary;
- business plan, articles of association and other acts, as well as amendments to such acts;
- adopted business policy acts, as well as all amendments to these acts, on which the certified actuary has provided a preliminary opinion;
- notification on the appointment or change of the certified actuary, as well as notification on hiring or replacing of the actuary;
- notification on calling the general assembly of shareholders and the minutes from the general assembly of shareholders;
- other notifications, reports and data set out in the regulations stipulating the field of insurance.”.

In the same article, after the paragraph 13), the new paragraph 14) shall be added and shall read:

“Within 90 days as of the day of entering into force of this law, the Management Board of the RS Agency shall pass bylaws prescribing the type and mandatory contents of the business policy acts for the insurance company, enforcement of the measures undertaken by the RS Agency in the event of protection of the rights of insured persons, and submission of the reports of the insurance company to the RS Agency concerning the enforcement of the measures .”.

Article 16

In the Article 55, paragraph 1), after the word: “technical”, the following words shall be added: “and mathematical”, and after the word: “technical”, the following words shall also be added: “and mathematical”.

In the paragraph 2), after the word: “technical”, the following words shall be added: “and mathematical”.

Article 17

In the Article 59, paragraph 1), in the first sentence, the words: “having the headquarters in the Republic of Srpska to occasionally report their income”, shall be replaced by the words: “information on all services”.

After the paragraph 1), the new paragraph 2) shall be added and shall read:

“An insurance company shall be required to submit to the RS Agency non-audited annual financial statements until the last day of February of the current year for the previous year, and the semi-annual financial statements no later than by 31 July of the current year.”

The present paragraphs 2), 3), 4), 5), 6) and 7) shall become the paragraphs 3), 4), 5), 6), 7) and 8) respectively.

In the present paragraph 4), which shall become the paragraph 5), the word: “shortened” shall be added after the words: “shall be required to publish the”.

After the present paragraph 7), which shall become the paragraph 8), the new paragraphs 9), 10) and 11) shall be added and shall read:

“The insurance company shall organise internal audit as an independent activity with a systematic and disciplined approach to the assessment and improvement of the effectiveness of the risk management process, control and management.

The persons performing internal audit activities in the insurance company shall be selected by the members’ assembly of the insurance company.

Within 90 days as of the day of entering into force of this law, the Management Board of the RS Agency shall pass the bylaws which shall regulate the organisation and performance of the internal audit in the insurance company.”.

Article 18

In the Article 60, in the first sentence of the paragraph 2), the words: “directors, managers, executive officers, authorised representatives or actuaries of insurance companies” shall be replaced by the words: “persons holding significant positions”.

In the paragraph 3), after the words: “in an insurance company”, a comma and the words: “procurators, certified actuaries” shall be added, and the word: “liquidators” shall be replaced by the words: “internal auditors”.

In the same article, the paragraph 6) shall be amended to read:

“For the person holding a significant position appointed by the insurance company, the company shall be required to submit to the RS Agency the request for obtaining of previous approval for appointment of persons in significant positions and such request needs to be substantiated with evidence on meeting the requirements established in the regulations governing the field of insurance.”.

After the paragraph 6), the new paragraphs 7), 8), 9) and 10) shall be added and shall read:

“The RS Agency may issue a decision ordering the insurance company to undertake the measure to dismiss the person holding a significant position if:

- the insurance company has failed to act in compliance with the decisions of the RS Agency on the elimination of illegalities and irregularities, and on undertaking and enforcement of supplementary and other measures ordered by the RS Agency;
- the insurance company has frequently violated the obligation involving timely and accurate reporting to the RS Agency;
- the insurance company has obstructed the RS Agency in conducting supervision;
- they cease meeting the prescribed requirements during the performance of the duty, on any basis;
- it has established that the approval for appointment of persons into significant positions has been provided based on untruthful and incorrect data;
- it has established that the person holding a significant position has committed a serious violation of the obligations applicable to persons holding significant positions.

The approval for appointment of persons holding significant positions shall cease to be valid if:

- the duty of the person holding significant position has ceased at the insurance company as of the day of the cease of the duty;
- the employment at the insurance company has ceased as of the day of the cease of the employment;
- the person has failed to be appointed within three months as of the day of receipt of the decision of the RS Agency providing the approval for such appointment.

The mandatory bodies of the insurance company shall be the general assembly of shareholders, director, management board and the body at the company performing supervision.

Within 90 days as of the day of entering into force of this law, the Management Board of the RS Agency shall pass the bylaws prescribing the requirements to be met by persons holding significant positions at the insurance company, the approval procedure, the cease of validity of the approval for their appointment, as well as the procedure for dismissal upon the order of the RS Agency, and special or additional duties and obligations for persons holding significant positions.”.

Article 19

In the Article 61, the paragraph 10) shall be deleted, and the present paragraphs 11), 12), 13) and 14) shall become the paragraphs 10), 11), 12) and 13) respectively.

Article 20

In the Article 67, in the paragraph 1), after the word: “introduction”, the following words shall be added: “of an emergency trustee,”.

Article 21

After the Article 67, the new articles 67a and 67b shall be added, with the titles of the articles reading:

“Introduction of emergency trusteeship

Article 67a

The RS Agency may pass the decision on introduction of emergency trusteeship into the insurance company if it has established the following:

- that further operations of the insurance company may hinder its liquidity or solvency, or the security of insured persons and other beneficiaries of the rights arising from insurance contracts;
- that the insurance company has concealed from the RS Agency, certified actuaries and certified auditors the business books, documents, records or property of the company, or has denied access to authorised persons to such books;
- that the insurance company imposed with the supplementary measures referred to in the Article 54, paragraph 8), of this law, within specific periods has not commenced their enforcement or has not enforced them;
- that the insurance company, notwithstanding the enforced supplementary measures, has not fulfilled the capital adequacy requirements.

In the decision on the introduction of emergency trusteeship over the insurance company, the RS Agency shall determine the period of duration of the emergency trusteeship which may not exceed one year, shall appoint one or more emergency trustees, shall determine the type and scope of their tasks, and shall provide mandatory instructions for conducting the company's business operations.

The decision on the introduction of emergency trusteeship over the insurance company and the replacement of persons authorised to represent it shall be entered in the court register.

Within three days as of the day of appointment, the emergency trustee shall be required to file with the relevant court the request for entry of the emergency trusteeship and the replacement of the persons authorised for representation, and to submit the decision on the introduction of emergency trusteeship.

As of the day of adoption of the decision on the introduction of emergency trusteeship over the insurance company, all authorisations and powers of the management, the company's body conducting supervision, and the powers of the general assembly of shareholders shall cease, except for the powers for adoption of the decision to increase the capital upon the request by the RS Agency.

The powers of the management shall be transferred as of the day of adoption of the decision on the introduction of emergency trusteeship over the insurance company onto the emergency trusteeship, and of the powers of the company's body conducting supervision onto the RS Agency.

When undertaking the measures from within their own powers, the RS Agency and the emergency trustee shall be authorised to seek assistance from the relevant law enforcement agencies and other authorities.

Emergency trusteeship reports

Article 67b

At least on a quarterly basis, the emergency trusteeship shall be required to submit to the RS Agency the reports on the financial standing and the conditions of the insurance company's operations.

The emergency trusteeship shall submit the final written report to the RS Agency about the results of the emergency trusteeship 30 days before the expiration of the period of duration of the emergency trusteeship.

The report shall contain the data on the measures carried out during the period of emergency trusteeship, specifically:

- the assessment and consequences of assuming the loss by the shareholders of the insurance company;
 - the possibility for allocation and dispersion of the other losses of the insurance company;
 - the unforeseen expense that may affect the liabilities of the insurance company;
 - the assessment of the possible measures for elimination of the financial difficulties of the insurance company, including possible portfolio transfer, along with the costs involved in the enforcement of such measures;
- the assessment of the conditions for extension of the emergency trusteeship, the commencement of special liquidation or bankruptcy of the insurance company.

If the RS Agency has assessed, on the basis of the emergency trusteeship report, that in order to meet the capital adequacy requirements and for the elimination of the cause of insolvency and non-liquidity it is necessary to increase the core capital, it may order to the emergency trustee to call the general assembly of shareholders in order to pass the decision on the increase of capital.

At least on a quarterly basis, the RS Agency shall conduct the assessment of the results of the emergency trusteeship, and it shall pass the final assessment after reviewing the final emergency trusteeship report, when it shall pass the decision on:

- ceasing the emergency trusteeship because of the cease of existence of the reasons due to which the emergency trusteeship had been introduced;
- extending the duration of the emergency trusteeship for no longer than six months;
- instituting the procedure for special liquidation as foreseen by the Law;
- filing of a motion for institution of the bankruptcy procedure.”.

Article 22

In the Article 68, in the paragraph 8), the words: “as of the date when the decision on appointment of the temporary trustee has been published in the official gazette”, shall be replaced by the words: “and shall be transferred onto the emergency trustee, as of the day of adoption of the decision on their appointment”.

In the paragraph 10), the full stop at the end of the second sentence shall be replaced by a comma, and the following words shall be added: “and the powers of the company’s body conducting supervision shall be assumed by the RS Agency”.

In the paragraph 17), the full stop at the end of the first sentence shall be replaced by a comma, and the following words shall be added: “on the next working day as of the day of adoption of the decision on voluntary liquidation”.

In the same paragraph, in the second sentence, the word: “fifteen” shall be replaced by the number: “30”, the full stop shall be replaced by a comma, and the following words shall be added: “or a decision restricting the validity of the business licence of the company to such services that are needed in order to carry out the liquidation of the insurance company and determine the rules that the insurance company shall be required to adopt and apply in the liquidation procedure”.

In the paragraph 18), the word: “fifteen” shall be replaced by the number: “30”.

After the paragraph 20), the new paragraph 21) shall be added and shall read:

“During the liquidation procedure, the insurance company may not conclude any new insurance contracts or undertake new operations except for the operations involving the liquidation procedure and monetisation of the liquidation pool of assets, and the operations necessary for transfer of the insurance contract portfolio onto another insurance company.”.

Article 23

After the Article 68, the new Article 68a shall be added with the article title reading:

“Bankruptcy reasons

Article 68a

The RS Agency shall pass the decision on filing of a motion for institution of the bankruptcy procedure in the following cases:

1. if based on the emergency trusteeship report it has established that the financial situation has not improved and that the insurance company is not capable of regularly meeting the mature and future liabilities, and

2. if during the supervision of the insurance company it has established the existence or threat of existence of payment incapacity.

After the adoption of the decision on filing of a motion for institution of the bankruptcy procedure, the RS Agency shall be required to file it to the relevant court without delay.

The insurance contracts concluded by the insurance company shall cease to be valid as of the day of institution of the bankruptcy procedure.

The RS Agency shall be required to notify without delay the FBiH Agency, as well as the supervisory body of the country in which the branch office of such an insurance company has been registered about the institution of the liquidation procedure (special, voluntary or standard one) and the bankruptcy procedure against the insurance company from the Republic of Srpska.

Article 24

The Article 77 shall be amended to read:

“The minor offence fine in the amount of BAM 200,000 shall be imposed on the legal person if it has conducted or organised the direct insurance activity without the approval of the RS Agency (Article 3, paragraph 1)).

The minor offence fine in the amount of between BAM 50,000 and BAM 200,000 shall be imposed on the insurance company if:

- a. it has conducted other activities apart from the activity of insurance (Article 1, paragraph 2));

- b. it has failed to proceed as per the order of the RS Agency in relation to the investment of insurance funds pertaining to the activity involving long-term life insurance (Article 11, paragraph 1));
- c. it has provided insurance services in such types of insurance for which it has not received the business licence (Article 26, paragraph 2));
- d. it has reduced the shareholding equity or hindered the capital structure by acquiring its own shares of stock, without prior written approval from the RS Agency (Article 49, paragraph 7));
- e. it has failed to calculate the solvency margin (Article 52);
- f. it has violated the requirements related to capital adequacy, rules of risk management, rules of liquidity management or the restrictions in terms of profit distribution (Article 52a, paragraphs 1), 2), 3) and 4));
- g. it has increased the shareholding equity or issued debt securities and other financial derivatives without prior approval from the RS Agency (Article 52a, paragraph 6));
- h. it has failed to cover loss and adopt and apply the measures aimed at securing the required capital (Article 52a, paragraphs 7) and 8));
- i. it has failed to proceed as per the order from the RS Agency aimed at ensuring protection of the insured persons (Article 52a, paragraph 9));
- j. it has failed to harmonise the amount of the guarantee fund with the Article 53, paragraph 1);
- k. it has violated the provisions related to capital adequacy requirements (Article 53a);
- l. it has failed to proceed as per the order of the RS Agency for elimination of illegalities and irregularities or it has failed to apply the supplementary or other measures of the RS Agency (Article 54, paragraphs 7), 8) and 10));
- m. it has failed to submit the short-term financial recovery plan for the approval of the RS Agency (Article 54, paragraph 9));
- n. it has failed to proceed in line with the adopted business policy acts (Article 54, paragraph 14));
- o. it has failed to establish the technical and mathematical reserves in line with the risks assumed (Article 55);
- p. it has invested funds in contravention of the provisions referred to in the Article 56;
- r. it has failed to compile financial statements pursuant to the Article 59, paragraph 3);
- s. it has failed to dismiss the person holding a significant position upon the order from the RS Agency (Article 60, paragraph 7));
- t. It has failed to establish the grounds of an insurance claim or other types of claims, depending on the type of insurance, within 30 days as of the day of completion of the claim, and has failed to pay out the established compensation within the further 14-day period.

A fine in the amount of 5,000 KM to 20,000 KM shall be pronounced against the responsible person of the insurance company who has committed the violations referred to in paragraph 2) of this Article.”.

Article 25

After Article 77, the new Article 77a shall be added as to state:

“Article 77a

The minor offence fine in the amount of between BAM 10,000 and BAM 40,000 shall be imposed on the insurance company if:

- a. it has failed to allow to the authorised person of the RS Agency to exercise powers and controls (Article 7, paragraph 2), first indent, and Article 16);
- b. it has concluded a reinsurance contract with a reinsurance company not possessing the business licence issued in Bosnia and Herzegovina, without prior approval from the RS Agency (Article 3, paragraph 6));
- c. it has failed to submit to the RS Agency the mandatory reports and information on all business elements (Articles 14 and 15);
- d. it has failed to appoint the certified actuary (Article 20, paragraph 8));
- e. it has failed to hire an actuary (Article 20, paragraph 9));
- f. it has violated the provisions related to protection of insured persons (Articles 23 and 24);
- g. it has refused to cooperate with the ombudsman in insurance (Article 25);
- h. it has failed to pay to the RS Agency the fee for supervision of business operations (Article 27, paragraph 3));
- i. it has failed to submit a copy of the reinsurance contract pursuant to the Article 35;
- j. it has failed to submit financial statements to the RS Agency (Article 54, paragraph 4));
- k. it has failed to calculate and report to the RS Agency about the business indicators (Article 54, paragraph 12));
- l. it has failed to submit the notifications, reports, data and acts pursuant to the Article 54, paragraph 13);
- m. it has failed to notify the RS Agency of investments of funds (Article 57, paragraphs 1), 2) and 3));
- n. it has failed to submit to the RS Agency the non-audited annual and semi-annual financial statements pursuant to Article 59, paragraph 2);
- o. it has failed to submit to the RS Agency the reports and opinions of the certified actuary pursuant to the Article 59, paragraph 4);

- p. it has failed to appoint the certified auditor pursuant to the Article 59, paragraph 4);
- r. it has failed to organise internal audit (Article 59, paragraph 9)).

The minor offence fine in the amount of between BAM 2,500 and BAM 10,000 shall be imposed on the responsible person of the insurance company who has committed the violation referred to in the paragraph 1) of this article.”.

Article 26

The Article 78 shall be amended to read:

“The minor offence fine in the amount of between BAM 2,500 and BAM 10,000 shall be imposed on the certified actuary of the insurance company should they fail to provide the opinion pursuant to the Article 20 of this law and the bylaws of the RS Agency.

The minor offence fine in the amount of between BAM 2,500 and BAM 10,000 shall be imposed on the certified auditor of the insurance company should they fail to perform audit of the financial statements in line with the applicable regulations on auditing of financial statements and auditing standards (Article 59, paragraph 4)).

The minor offence fine in the amount of between BAM 2,500 and BAM 10,000 shall be imposed on the director, executive directors, executive members of the management board, as well as the members of the company’s body performing supervision, if they have failed to proceed pursuant to the Article 60 of this law and the bylaws of the RS Agency.

The fine in the amount of between BAM 2,500 and BAM 10,000 shall be imposed on the emergency trustee should they fail to submit reports and should they not comply with the instructions of the RS Agency (Articles 67a and 67b).”.

Article 27

In the Article 79, paragraph 2), the words: “after five years as of the day of entering into force of this law” shall be replaced by the words: “as of the date of admission of Bosnia and Herzegovina into the EU membership”.

Article 28

The Article 83 shall be deleted.

Article 29

The Article 84 shall be amended to read:

“The insurance companies registered with the RS Agency shall be required to organise internal audit and to hire persons for actuary tasks at the insurance company pursuant to the provisions of this law within one year as of the day of entering into force of this law.”.

Article 30

In the Article 85, the words: “referred to in the Article 84 of this law” shall be replaced by the words: “which pertain to mandatory insurance for passengers in public transportation against the consequences of accidents, mandatory insurance of owners or users of aircraft against liability for damage caused to third parties, mandatory insurance of owners or users of vessels propelled by motor engines against liability for damage caused to third parties, which shall remain in force until laws have been passed to regulate the other mandatory types of insurance beyond the insurance against auto-insurance”.

Article 31

This law shall enter into force on the eighth day as of the day of publication in the “Official Gazette of the Republic of Srpska”.

No: 01-968/10
8 July 2010
Banja Luka

Speaker
of the National Assembly,
MSc **Igor Radojičić**, m.p.