

INSURANCE SECTOR

1.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
INSURANCE COVERAGE FOR NATURAL DISASTERS AND OTHER ACTS OF NATURE				
It is necessary to establish a strategy for natural disasters insurance, which aims to ensure that, in the event of a major adverse event, a significant proportion of the damage will be transferred to the insurance company. It would be important to avoid new levies on existing contracts, a measure already proposed by the Ministry of Finance, which would lead to additional expenditure for a small number of insured persons who now have insurance coverage. Implementation could be done gradually, as follows: i) Introducing compulsory insurance for all state and public property and infrastructure. ii) Introducing mandatory coverage of all assets designated as collateral for financing. iii) Introducing mandatory coverage from natural disasters/elemental disasters for all property that includes fire insurance, based on the French model.	2015			√
Consider a mechanism for natural disasters insurance with mandatory or semi-mandatory coverage. There are examples of such a solution, which are far from perfect, and which have shown that these mechanisms are effective in increasing coverage and managing this risk at the country level (Romania, Turkey). In addition, consider tax relief for companies in order to promote natural disasters insurance.	2018			√
When insuring crops and hail protection, exclude the hail contribution or collect the hail contribution from all farmers but not through the insurance policy.	2021			√
All crops or animals that are subject to state subsidies (for raw materials, fuel, procurement of basic livestock...) should be insured.	2021			√
AUTO INSURANCE MARKET				
Allow insurance companies to register cars on their own premises.	2013			√
Allow the possibility of issuing a compulsory auto liability insurance policy in electronic form as an electronic document.	2019			√
INSURANCE LAW				
In the case of concluding a life insurance contract, the notice referred to in paragraph 1 of this Article, in addition to the information referred to in that paragraph, shall also contain information regarding: 1) the basis and criteria for share in profit and the manner and deadlines for payment of share in profit; 2) the table of cash surrender values; 3) the conditions for exercising the right to capitalization of the contract and the rights under such contract; 4) in the case of insurance related to investment fund units - who shall bear the investment risk, the definition of investment units to which fees have been related and the prospectus of the investment fund, and especially on the investment structure; 5) tax regulations relating to life insurance.	2021			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
<p>Amend the Law on Insurance in such a way that the text of the existing Article 82 is amended and reads: Before concluding the insurance contract, the insurance company shall inform an insurance policy holder at least about:</p> <ol style="list-style-type: none"> 1) the business name, legal form, registered office and address of the registered office of the insurance company with which he concludes the contract; 2) the insurance conditions and the law applicable to the insurance contract; 3) the term of the insurance contract; 4) the risks covered by insurance and exclusions related to those risks; 5) the amount of insurance premium, the method of payment of insurance premium, the amount of contributions, taxes and other costs that have been calculated in addition to the insurance premium, as well as the total amount of payment; 6) the right to terminate the contract and the conditions for termination, or the right to withdraw from the contract; 7) the period within which the offer shall be binding on the insurance company; 8) the manner of filing and the deadline prescribed for filing a claim for damages, or for exercising rights based on insurance; 9) the manner of protection of his rights and interests with the insurance company; 10) the name, registered office and address of the body responsible for supervising the operations of the insurance company, as well as the manner of protection of his rights and interests with that body. 	2021			√
<p>In the case of insuring the costs of legal protection when choosing a lawyer or other person who has the appropriate qualifications in accordance with the regulations to defend, represent or protect the interests of an insured person in the investigation or proceedings – an insured person shall freely choose a lawyer or other person.</p>	2021			√
<p>If the data stated in the previous paragraphs of this Article have been contained in the insurance conditions submitted by the insurance company to an insurance policy holder before concluding the insurance contract, it is considered that the insurance company has fulfilled the obligation to provide information to an insurance policy holder. “</p>	2021			√
NEW LAW ON PREVENTION OF MONEY LAUNDERING AND FINANCING OF TERRORISM				
<p>Amend Article 4 of the Law by adding a new paragraph 4 after paragraph 3, which reads: Notwithstanding the provisions of paragraph 1, item 6) of this Article, insurance companies that have a license to conduct life insurance, insurance brokerage companies when performing life insurance brokerage, insurance agencies, insurance agents and banks that have a license for the performance of life insurance business shall not be considered entities subjected to the duty of due diligence under this Law when it comes to life insurance contracts that do not have a savings component (do not cover the risk of pure endowment).</p>	2021			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Amend Article 18 of the Law in order to define the conditions for establishing the identity of a party through a qualified electronic signature that can technically be achieved in practice.	2020			√
Amend Article 8 of the Law by adding a new paragraph 3 after paragraph 2, which reads: Notwithstanding paragraph 1 of this Article, the entity subjected to the duty of due diligence under this Law referred to in Article 4, paragraph 1, item 6) of this Law shall not perform the measures referred to in Article 7 of this Law when concluding a new life insurance contract when the insurance premium has been paid from the sum insured or mathematical reserve, or its part, based on expiration or surrender of the existing life insurance contract during the conclusion of which the entity subjected to the duty of due diligence under this Law has already performed actions and measures of knowing and monitoring a party in accordance with the Law, provided that a new insurance contract does not change a policy holder and a beneficiary.	2021			√
LIFE INSURANCE – EXEMPTION FROM INCOME FOR TAXATION OF FEES FROM PERSONS INSURANCE				
Amendments to Article 9, paragraph 1, items 6) and 7) of the Law on Personal Income Tax, which provide for exemption from income for taxation of income of natural persons based on certain types of insurance benefits, so that the application of the prescribed exemption extends to exemption from taxation of all benefits from the insurance of persons, and the deletion of Article 84 of the Law relating to the taxation of income of a natural person who receives compensation from the insurance of persons, as follows: - In Article 9, paragraph 1, item 6) after the words “except for salary compensation (salary)”, the words “property insurance compensation and personal insurance compensation in accordance with the law governing voluntary insurance” shall be added; “ - Article 9, paragraph 1, item 7) shall be deleted. - Article 84 shall be deleted.	2021			√
ABOLITION OF DOUBLE TAXATION FOR UNIT LINK PRODUCTS AND INVESTMENTS IN INVESTMENT FUNDS				
Bearing in mind that the insurance company has only formal ownership over the units of the investment fund, and it cannot freely dispose of them, whereby the payment of insurance compensation to a natural person (difference between the sum insured obtained by selling fund units by the insurance company and paid premium) represents the taxable income of a natural person, the Law on Corporate Income Tax should be amended in a way that would exempt the income generated from the sale of investment units to which life insurance is linked from the calculation of capital gain in the tax balance of the insurance company. In this way, double taxation shall not be completely eliminated, but only the income generated from the sale of this type of investment units shall be excluded from the calculation of capital gains, but it shall certainly be included in the taxable profit of the insurance company, as its “regular income”.	2021			√
The Law on Corporate Income Tax should be amended as follows: - In Article 27, paragraph 1, item 4) after the words “in accordance with the law governing investment funds” add the words “except in the case of surrender of investment units to which life insurance has been linked in accordance with the law governing voluntary insurance”.	2021			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
LAW ON ROAD SAFETY				
Amend Article 7 of the Law on Road Traffic Safety and introduce the definition of electric scooters in paragraph 1, item 34a: "electric scooter shall be a motor vehicle with two wheels, with its own electric drive"	2021			√
Introduce the obligation to insure owners of electric scooters against liability for damages caused to third parties.	2021			√
LAW ON ROAD TRANSPORT				
Amend Article 7 of the Law on Road Transport and provide for a professional liability insurance policy of the carrier as a mandatory condition for obtaining a transport license.	2021			√
LAW ON HEALTH INSURANCE				
<p>Amend the Law on Health Insurance in such a way that:</p> <p>a) the text of the existing Article 179 should be amended to read as follows:</p> <p>The contract on voluntary health insurance shall be concluded based on a previous offer for concluding a contract on voluntary health insurance (hereinafter: the Offer) given by an insurer to a person wishing to conclude a contract on voluntary health insurance.</p> <p>The offer referred to in paragraph 1 of this Article shall contain important data on voluntary health insurance policy holders, insurance start date, insurance waiting period, as well as insurance end date, amount and deadlines for payment of insurance premium, maximum agreed amounts by coverage risks and other important elements for insurance contracting.</p> <p>Important data on the insured persons of voluntary health insurance referred to in paragraph 2 of this Article shall be:</p> <ol style="list-style-type: none"> 1) name and surname, 2) Personal Identification Number, or the registration number for foreign citizens. <p>In the case of collective insurance, a policy holder may submit a unique offer containing the data referred to in the previous paragraph of this Article on each individual who will be covered by collective insurance.</p> <p>The offer referred to in paragraph 1 of this Article as well as the unique offer referred to in paragraph 4 of this Article, as important data, shall also contain data on the previous health condition of the insured persons of voluntary health insurance which are necessary for an insurer to assess insurance risk.</p> <p>Notwithstanding the provisions of this Article, when the insurance company concludes with a policy holder a contract on collective voluntary health insurance of employees, where the insured persons are entitled to payment of insurance compensation directly from the insurance company and where the paid compensation does not cover treatment costs, insurance can be concluded based on official records of employed insurance policy holders.</p> <p>b) the text of the existing paragraph 1 of Article 182 should be amended to read as follows:</p> <p>An insurer shall issue a voluntary health insurance document to any voluntary health insurance policy holder who does not use his insurance rights directly with an insurer on the day of issuing the policy, and no later than 60 days from the day of issuing the policy.</p>	2021			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
LAW ON HEALTH CARE				
Enable health care providers to diagnose or prescribe therapy by telephone or through online consultations by the Law on Health Care.	2021			√
LAW ON INJURIES AT WORK				
Occupational Safety and Health Directorate should propose the adoption of the Law on Insurance against Occupational Injuries, Occupational Diseases and Diseases Related to Work.	2021			√

OVERVIEW OF THE INSURANCE MARKET

CURRENT SITUATION

There are 20 insurance companies operating in Serbia, 16 of which are involved exclusively in insurance activities, while four companies are involved in reinsurance activities. As far as insurance companies are concerned, four of them are life insurance companies, while six companies deal exclusively in non-life insurance and six in both life and non-life insurance.

The market is still highly concentrated: i) the market leader, Dunav, holds 26,4% market share, ii) the three largest insurers together hold 57,7% of the market; and iii) five leading insurance companies control 75,8% of the market.

Majority foreign-owned companies (15 of 20) definitely dominate the market, accounting for 73,4% in assets (60,0% in non-life insurance premiums and 87,1% in life insurance premiums).

The insurance market recorded a premium of RSD 119.4 billion dinars (EUR 1.02 million), which is an increase of 8,6% compared to the same period last year (at the end of year).

As a conclusion of comparative indicators for the year 2022 and the previous years, the following changes were observed:

- an increase in the balance amount of the insurance sector by 6.3% amounting to RSD 334.0 billion;
- capital increased by 5.5% reaching RSD 81.1 billion;
- technical reserves increased by 5.3% reaching RSD 219.2 billion;

- the total premium reached the level of RSD 119.4 billion, with a growth rate of 8.6%;
- the share on non-life insurance in the total premium remains dominant with 77.3% in the total premium; the non-life insurance premium recorded a 10.2% growth, while voluntary health insurance, property insurance, motor vehicle insurance – “kasko” (full coverage) and vehicle liability insurance recorded an upward trend;
- the share of life insurance in the total premium dropped from 23.8 to 22.7%, with the growth of this premium by 3.6 %;
- there were 20 insurance companies on the market of the Republic of Serbia, an unchanged number compared to the same period last year, while the number of employees dropped to 11.244, a reduction of 1.0%.

The establishment of insurance companies and their activities are mainly regulated by the Insurance Law from December 2014, amended in 2021, and by the relevant by-laws of the National Bank of Serbia (NBS).

Other significant legal sources include the Law on Mandatory Traffic Insurance, the Law on Health Insurance, the Law on the Protection of Financial Service Consumers in Distance Contracts and the Law on Contracts and Torts (Law on Obligations). The lateral relevant legal source is the Law on Road Traffic Safety.

A large number of insurance companies and other insurance market participants try to adapt their services to the digital world. However, besides technical, cultural and other barriers, regulations are also an important limiting factor. Although in recent years, huge strides have been made towards creating conditions for digital business, there is still room for improvement. This primarily refers to the vehicle liability market where

policies still have to be issued according to the law on predefined forms printed by the Institute for Production of Banknotes and Coins – Topčider, which practically renders digital business impossible. Also, regulations in the area of prevention of money laundering and terrorism financing are an important limiting factor, as it does not recognize the exceptions previously recommended, which would contribute to the sale of life insurance through digital channels on the mar-

ket of the Republic of Serbia taking hold in practice.

The impact of the COVID – 19 virus pandemic is certainly not to be underestimated. However, remote business activities and work from home have contributed to the faster expansion of digital sale channels, as well as to an increasing level of digitalization of the insurance companies' business operations.

INSURANCE CONTRACT LAW

CURRENT SITUATION

Insurance contract law is regulated by the provisions of the Law on Contracts and Torts ("SFRY Off. Gazette", no. 29/78, 39/85, 45/89 – CCY decision and 57/89, "FRY Off. Gazette", no. 31/93, "SCG Off. Gazette", no. 1/2003 – Constitutional Charter and "RS Off. Gazette", no. 18/2020) from 1978 last amended 19 years ago.

POSITIVE DEVELOPMENTS

None.

REMAINING ISSUES

The Law on Contracts and Torts was passed more than forty years ago and was last amended nineteen years ago. Although it is one of the better laws that was taken over in all neighboring countries after the breakup of the old state, some segments simply do not correspond to the present time.

There are several reasons for passing a special Insurance Law:

Alignment with the changed circumstances and market needs

As mentioned before, the Law on Contracts and Torts was passed and subsequently amended a long time ago. At the time, the insurance market was not as developed in our country as it is today, and the same goes for the awareness of individuals about the importance of insurance. Furthermore, some provisions of the Law on Contracts and Torts which regulated the subject matter of insurance are in some ways outdated and do not follow the needs of the market, or practice in the European Union, to which Serbia also aspires, because they do not adequately protect the

rights of beneficiaries. This was also recognized by the NBS, so these provisions were included in the status Insurance Law and NBS by-laws;

Faster and easier passing of laws and simpler amendments

We are aware that work on the new Civil Code of Serbia is currently in progress and that the idea is to also integrate the provisions of insurance contract law in the Code. However, the fact is that the passing of the Code has been ongoing for years and it is still uncertain when it will be adopted. The needs of the insurance market, both of the insurer and the insured, require the fastest possible response by the regulator and legislator so that adequate regulations could make a good basis for the further market development. Also, changes in this legal matter require a faster response and, in our opinion, a difficult process of amending regulations should not be an obstacle to market development. During the pandemic, we witnessed a higher need for the issuance of insurance certificates instead of policies, for a higher volume of distance contracts, etc. Since the Civil Code will incorporate a larger scope of different types of civil law, it is not realistic to expect that it will be amended whenever a need for a single contract arises. We are therefore of the opinion that the subject matter of contractual insurance law should be included in a separate law.

Harmonization with the law of the European countries

A separate Insurance Contract Law is present in legislations world-wide (it exists in Germany, France, Italy, Spain, Belgium and a number of other developed countries) and has proven to be a good solution. The tendency of our country is to follow European standards and to aspire towards the European Union, so the passing of a special Insurance Contract Law would be another step forward in that direction. In this way, we would be the first state in the region to follow developed European countries in that area. The

tendency in the European Union to regulate the subject matter of insurance contracts separately is a sufficient indicator that there should also be a special law in our country regulating only the insurance contract.

Consolidation of the matter of contractual insurance law

Certain provisions of insurance contract law can be found in other regulations and laws, and not only in the Law on Contracts and Torts (in Insurance Law as a status law, in the NBS secondary legal acts, in the Law on Consumer Protection, the Law on Health Insurance, in the Law on Mandatory Traffic Insurance and in other regulations). In our opinion, it would be good to systematize and consolidate them into one regulation. The consolidation of the subject matter of insurance contract law would make this area more accessible, while at the same time minimizing the possibility of the lack of knowledge about the regulations. The comprehen-

sive inclusion of this subject matter in a single law would certainly minimize the possibility of legal gaps arising in practice in the future.

The importance of insurance contract

Last, but not least, the legal and economic importance of insurance in the modern world, including our country, should not be ignored. This area is very specific, but at the same time also complex, so it should preferably be regulated by a separate *lex specialis*, which would regulate the insurance contract in a consolidated way and ensure a higher certainty of legal transactions, reducing the possibility of legal gaps to a minimum. Furthermore, regulation of the matter of insurance contract law in one place would improve the citizens' knowledge and raise awareness on the importance of insurance precisely because the state gave it importance by passing a special law.

FIC RECOMMENDATIONS

- The enactment of a special Insurance Contract Law that would consolidate the provisions of the contractual insurance law. Creation of a working group of prominent lawyers in this field (distinguished professors, experts, people from the insurance industry, lawyers specialized in insurance law, etc.) who know both theory and practice, but also tendencies in the European countries and who would make a significant contribution to the development of the insurance market in our country. A good basis can be the Draft Insurance Contract Law prepared by the UOS which fully protects the rights and interests of insurance service consumers in line with the highest EU standards.

MEDIATION AS A MANDATORY STEP BEFORE THE INSURANCE COURT DISPUTE

CURRENT SITUATION

The provisions of Article 15, paragraph 1 of the Insurance Law stipulate that the National Bank of Serbia mediates in the settlement of a compensation claim in order to prevent disputes arising from insurance, acts upon complaints of insurance service consumers regarding the work of insurance companies and protects the rights and interests of these persons.

The provisions of Article 2 stipulate that the insurance service consumer has the right to complain and protect his rights and interests before the National Bank of Serbia in relation to the work of insurance brokerage companies, companies for representation in insurance, insurance agents and legal entities from Article 98, paragraph 2 of this Law, while Article 4 prescribes that the National Bank of Serbia prescribes more precisely the manner of brokerage in handling compensation claims and filing of complaints by insurance service consumers, as well as acting on these complaints.

The NBS Decision on the procedure regarding complaints of insurance service consumers stipulates that, if the insurance service consumer is dissatisfied with the response of the insurance service provider to his complaint or the

response was not submitted within the deadline specified in the NBS Decision, the dispute between the insurance service consumer and insurance service provider may be resolved through mediation of the National Bank of Serbia. In addition, the Decision prescribes that the mediation procedure handled by the National Bank of Serbia is not subject to the provisions of the law regulating mediation in dispute resolution.

POSITIVE DEVELOPMENTS

None.

REMAINING ISSUES

Provisions on mediation are contained in the article of the Insurance Law stipulating protection of the rights and interests of insurance service consumers which primarily concern complaints. Also, the NBS Decision regulating brokerage services in insurance is in fact the Decision on acting on complaints filed by insurance service consumers. Mediation as such is not given the importance it could have in this matter.

In addition to the above, the NBS Decision stipulates mediation as an option, not an obligation. Insurance service consumer may reach out to NBS before initiating a court dispute, but are not obliged to do so.

Also, the provisions of Article 149 of the Law on Consumer Protection stipulate that out-of-court settlement of consumer disputes, in terms of this Law, does not apply to consumer disputes that are the subject matter of this Law, if the out-of-court dispute settlement is regulated by a separate law, especially in the field of providing electronic communication services, postal services, financial services, except for financial arrangements, travel services.

Accordingly, as far as the out-of-court settlement of consumer disputes is concerned, the Law on Consumer Protection does not apply to insurance (regulated by a separate law, NBS Decision, and it is also a financial service).

An increasing number of attorneys representing insurance service consumers file incomplete compensation/damage claims and when the insurance company requests a supplement because it is objectively unable to make a decision based on available documentation, they file a court case. These disputes often end quickly because the attorney provides in the court case the information that the insurance company requested as a supplement. This increases the number of court cases and costs for both insurance companies and insurance service users and creates mistrust in the insurance industry, all because of individuals who see it as an opportunity for quick and easy profit.

FIC RECOMMENDATIONS

- Stipulate insurance mediation as a mandatory step before proceeding to litigation.

LIFE INSURANCE – EXEMPTION FROM TAXABLE INCOME OF PERSONAL INSURANCE FEES

CURRENT SITUATION

The present Law on Personal Income Tax stipulates that a collective life insurance premium in case of death of employee due to illness which is paid by the employer

for all employees shall not be considered as salary salary/wage. This legal solution is insufficient as an incentive for life insurance, given that life insurance has a social function – it provides stability and security to natural persons, ensures long-term savings for maintaining life standard in old age, while in this way, a natural person can ensure that, in the case of unforeseen life circumstances, he or the persons close to him are materially provided for.

POSITIVE DEVELOPMENTS

None.

REMAINING ISSUES

The proposed amendments to the Law on Personal Income Tax should encourage the citizens of the Republic of Serbia to independently provide funds for the future during their working age by setting aside part of their funds that are paid to insurance companies in the form of insurance premiums.

In addition to the benefits for natural persons who enter into insurance contracts, there are also numerous benefits for the state, as the growth of investment in life insurance would lead to an increase in tax revenues, since insurance premiums are subject to taxation as insurance companies' profit tax. On the other hand, the payment of life insurance would lead to an improvement in the standard of living of insurance beneficiaries, an increase in income in turn leads to an increase in consumption and therefore to an increase in collection of indirect taxes (value added tax, excise duty, customs duty). This leads to an inflow of funds into the budget of the Republic of Serbia which can be used for the achievement of budget goals.

The growth of life insurance premium payments has a direct impact on the development of the insurance market as an important factor of a country's economic growth. The more developed the insurance market, the faster and greater the economic growth that a country will experience. Namely, due to increased demand for life insurance products, new jobs are created in the insurance industry (besides unemployment reduction, the positive effect is also in the growth of funds collected in respect of income tax and contributions for mandatory social insurance). The industry's development leads to an increase in the number of insurance companies as important institutional inves-

tors on the market. Namely, insurance companies would invest the premium collected in government bonds, i.e., by issuing long-term government securities that reflect the long-term nature of life insurance contracts, while the Republic of Serbia would collect significant funds it could use to finance infrastructure and other projects of general importance for economic development. Collecting of insurance premiums achieves a mobilization of savings, which allows the reallocation of funds to projects that can generate higher returns. Likewise, raising citizens' awareness to enter into life insurance contracts and encouraging them to do so through proposed changes would also serve as a relief of social insurance funds.

There is a tendency around the world to introduce various tax incentives when it comes to taxation of insurance income. Steps in that direction have been made in the tax legislation of the countries in the region: for example, in Croatian legislation, as of 1 January 2019, the tax on income from insurance as such was abolished, so that this type of income of natural persons is not considered income. Namely, under the Law on Personal Income Tax ("Official journal" no. 115/16, 106/18, 121/19, 32/20) Article 8, paragraph 2, item 5 stipulates that indemnities not related to economic activities are not considered income and that payments in respect of insurance of assets, liability and property are considered indemnities, while paragraph 3 of the same article prescribes that proceeds arising from life insurance contracts and voluntary pension insurance are not considered income. Also, Article 64 of the Law defines what constitutes income from capital, also including interest income. Article 65 of the Income Tax Law prescribes that proceeds based on life insurance with a savings feature (insurance benefits above the paid insurance premiums) and benefits from voluntary pensions insurance are not considered interest.

FIC RECOMMENDATIONS

- Amendment of Article 9, paragraph 1, items 6) and 7) of the Law on Personal Income Tax which stipulate the exemption from taxable income the earnings of natural persons in respect of certain types of insurance benefits, extending the application of the stipulated exemption from taxation of all benefits from personal insurance and the deletion of Article 84, related to the taxation of a natural person's income generated from personal insurance, as follows:
 - In Article 9, paragraph 1, item 6) after the wording "except salary compensation", the following wording should be added "benefits from property insurance and benefits from personal insurance in accordance with the law regulating voluntary insurance;"
 - Article 9, paragraph 1, item 7) – to be deleted.
 - Article 84 – to be deleted.

ELIMINATION OF DOUBLE TAXATION FOR UNIT LINK PRODUCTS AND INVESTING IN INVESTMENT FUNDS

CURRENT SITUATION

Article 8, paragraph 1 of the Insurance Law (“RS Official Gazette”, no. 139/2014 and 44/2021) defines classes of life insurance, specifying life insurance as a separate class of insurance linked to investment fund units. The specificity of life insurance contracts linked to investment fund units is that the insurance contract obliges the policyholder to pay the insurance premium whose savings component is used to purchase investment units of selected investment funds. Namely, when concluding an insurance contract, the policyholder chooses a combination of investment funds from the insurance company’s offer (the structure of investing of the investment premium in investment funds is defined in the offer).

At the request of the insurance contract holder, the insurance company is obliged to pay the policy surrender value if the specific contract period for which insurance premium were paid from the beginning of insurance has elapsed. The number and value of investment units are established on the day of submission of request for the payment of surrender value.

When withdrawing funds, the insurance company actually submits a request for the purchase of investment units that

the open investment fund is obliged to purchase from it. Under the currently applicable provisions of the Law, when the units are purchased by the investment fund, a capital gain (loss) arises for the insurance company, determined in accordance with Articles 27-29 of the Law, which is included in the base for the calculation of the insurance company’s profit tax. Capital gain is determined as the difference between the sale price paid by the investment fund for the units and the purchase price determined as the net value of the open investment fund’s assets per investment unit on the date of payment, increased by the purchase fee if such fee is charged by the company managing the fund.

Also, when the insured sum is paid to the insured person, a taxable income that is subject to personal income tax arises pursuant to the currently applicable Article 84, paragraph 2 of the Law on Personal Income Tax (LPIT). Namely, under Article 84, paragraph 2 of the LPIT, taxable income from personal insurance would represent the difference between the amount of benefit paid from personal insurance and the amount paid in respect of insurance premiums. In this particular case, if the result of multiplying the number of investment units and their value on the date of occurrence of the insured event or on the date of submission of the request for purchase in the event of termination of the contract would be higher than the sum of the paid insurance premiums, the difference between these two amounts would be subject to taxation by personal income tax at the rate of 15%.

POSITIVE DEVELOPMENTS

None.

FIC RECOMMENDATIONS

- Since the insurance company only has formal ownership of the investment fund units, i.e. cannot freely dispose of them and the payment of insurance benefit to a natural person (difference between the insured sum obtained from the sale of the fund units by the insurance company and paid premiums) represents a taxable income of a natural person, the Law on Corporate Profit Tax should be amended in a way that would exempt the income generated by the sale of investment units linked to life insurance from the calculation of capital gains in the tax balance sheet of the insurance company. In this way, double taxation is not completely eliminated, but the income generated from the sale of this type of investment units is only excluded from the calculation of capital gains, but it is nevertheless included in the insurance company’s taxable profit as its “regular income”.
- The Corporate Profit Tax Law should be amended as follows:
 - in Article 27, paragraph 1, item 4), after the wording “in accordance with the law regulating investment funds”,

the following wording should be added “except in the case of purchase of investment units to which life insurance is linked in accordance with the law regulating voluntary insurance”.

LAW ON PREVENTION OF MONEY LAUNDERING AND FINANCING OF TERRORISM

CURRENT SITUATION

The Law on Prevention of Money Laundering and Terrorist financing began to apply on 1 April 2018, and has serious implications for the operation of insurance companies selling life insurance.

Article 8 of the Law does not recognize life insurance contracts (the so-called “risk insurance”) as exceptions from the obligation to conduct actions and measures of customer due diligence, as defined in the previous Law.

As regards Article 8, given the legal nature of such contracts which provide coverage against biometric risks (death and disability) only and envisage no option of payment of surrender value, policy loan or advance or pure endowment policy, and in view of the existing modalities of payment, (cashless transactions, bank payment), it is clear that the potential money laundering and terrorism financing risk as such is unfeasible and that it requires special treatment. Classification in the low-risk category and application of simplified procedures is not a mitigating circumstance, considering that significant resources are spent on the identification of the legal entity and beneficial owner.

Also, for insurance with a savings component, if a policyholder pays the insurance premium from the insured sum or mathematical reserve, or its part, based on the expiration or surrender of the existing life insurance contract, upon the conclusion of which the obligor has already performed the customer due diligence actions and measures in accordance with the law, the question is if taking actions in accordance with the Law is justified.

Article 18 of the Law stipulates that the customer’s identity can be established and verified through a qualified electronic certificate, but the technical requirements prescribed by this article for this type of customer identification cannot be implemented in practice and no obligor applies it.

POSITIVE DEVELOPMENTS

None.

REMAINING ISSUES

Implementation of the Law in practice has led to difficulties in contracting some of the above-mentioned types of life insurance, more precisely all types of life insurance where the risk of pure endowment has not been insured or in the case of insurance without a savings component.

Having in mind the provisions of Articles 1 and 2 of the Law, it is clear that the Law prescribes actions and measures to be taken in order to prevent and detect money laundering and terrorism financing. The above unequivocally leads to the conclusion that the aim of the Law is to prevent harmful consequences that may arise, or more precisely, be assisted by a person’s taking of illegal actions in terms of introducing the proceeds gained illegally into legal flows.

Based on the above, a necessary condition for the existence of danger is that at the time of performing actions that may give rise to money laundering and terrorism financing, the suspicion about the origin of funds and the suspicion of the intent/knowledge that the funds will be used for the financing of terrorism has not been removed.

All of the above, when it comes to implementation of the Law, shall be verified with regard to a person with the status of a policyholder. The logical assumption is that, if illicit actions should occur (money laundering and/or terrorism financing), a person who undertakes these actions (in this case a policyholder) will have a benefit or interest from it.

However, this is not the case with the “riziko” insurance, or life insurance contracts against the case of death. In these contracts, a policyholder, as a rule, is not the insurance beneficiary and he will not come into possession of the funds paid by the insurance company as the indemnity. Exceptionally, when a policyholder is the insurance beneficiary, before the payment of the insurance indemnity, the insurance company will apply the provisions of the Law.

When the policyholder is (a legal entity) and it contracts life insurance in case of death for a large number of insured persons (group insurance, and insurance beneficiaries are the legal heirs of the insured person, or banks where explicitly agreed up to the amount of outstanding loan, the application of the Law is meaningless and only causes difficulties

for both insurance companies and insurance beneficiaries.

In addition to the above, it is often the case in practice that a new life insurance contract is concluded immediately after the expiration or surrender of an existing life insurance contract, where the insurance premium is paid from the insured sum or mathematical reserve or its part of the existing insurance contract. Considering that, when concluding the existing life insurance contract, the insurance company has already taken measures in accordance with Article 7 of the Law on Prevention of Money Laundering and Terrorism Financing, there is no justifiable reason to take the same measures again and check the origin of the funds. This would apply only on condition that, under the new insurance contract, the policyholder and beneficiary do not change.

FIC RECOMMENDATIONS

- Article 4 of the Law by adding a new paragraph 4 after paragraph 3 should be amended to read:

“Notwithstanding the provisions of paragraph 1, item 6) of this Article, insurance companies that have a license to engage in life insurance, insurance brokerage companies when performing life insurance brokerage activities, insurance agencies, insurance agents and banks that have a license to perform the activities of life insurance shall not be considered entities liable for due diligence under this Law with regard to life insurance contracts that do not have a savings component (do not cover the risk of pure endowment).”

- Article 8 of the Law should be supplemented by adding a new paragraph 3 after paragraph 2 which reads:

“Notwithstanding paragraph 1 of this Article, the liable entity from Article 4, paragraph 1, item 6) of this Law is not required to perform the measures from Article 7 of this Law when concluding a new life insurance contract when the insurance premium is paid from the insured amount or mathematical reserve or its part, based on expiration or surrender of the existing life insurance contract during the conclusion of which the liable entity has already performed the actions and measures of customer due diligence in accordance with the Law, provided that under the new insurance contract, the policyholder and beneficiary do not change.”

- Article 18 of the Law should be amended in order to define the conditions for establishing customer identity via qualified electronic signature which are technically feasible in practice.

AUTO INSURANCE MARKET

CURRENT SITUATION

Auto Insurance (AI) is by far the most important segment of the insurance market (accounting for 30.9% of the total insurance premium in 2021) in Serbia, and the technical inspection facilities performing the mandatory annual inspection of all motor vehicles are definitely the most important distribution channels for these insurance policies. Articles 44 and

45 of the Law on Compulsory Traffic Insurance prohibit the payment of any commission to these technical inspection facilities – directly and/or through affiliated entities – which exceeds 5% of the gross insurance premium.

POSITIVE DEVELOPMENTS

Increased market surveillance by the National Bank of Serbia, which resulted in the fact that insurance companies have largely adjusted their operations to the laws and by-laws in this area.

FIC RECOMMENDATIONS

- Allow the possibility of issuing the compulsory auto liability insurance policy in electronic form as an e-Document.

LAW ON ROAD TRAFFIC SAFETY

CURRENT SITUATION

The existing Law on Road Traffic Safety does not regulate electric scooters. As their use and number in traffic are constantly rising, a need arose to regulate them legally. Electric scooters are also an increasingly frequent cause of traffic accidents, so it is necessary for the owners of these vehicles to conclude a contract on compulsory insurance for damage liability to third parties.

REMAINING ISSUES

Given that the use of electronic scooters is not regulated by the law, there is a problem in practice in the event that their use causes damage to third parties. If the owner of person operating the vehicle for any reason fails to pay the damage cause, the injured persons remain deprived of any compensation. Thus, they get into an unequal position compared to persons who sustained damages from any other means of transport for which it is obligatory to contract compulsory third-party liability insurance (motorcycle, passenger car, bus).

FIC RECOMMENDATIONS

- Article 7 of the Law on Road Traffic Safety should be amended to include a definition of electric scooters in paragraph 1, item 34a: „an electric scooter is a motor vehicle with two wheels, with its own electric drive“.
- Obligation of third-party liability insurance should be introduced for electric scooter owners.

LAW ON TRANSPORTATION OF CARGO IN ROAD TRAFFIC

CURRENT SITUATION

The Law on Transportation of Cargo in Road Traffic does not stipulate an obligation of the carrier to have a professional

liability insurance policy of the carrier, as in other countries.

REMAINING ISSUES

Carriers often do not have this insurance contracted, so the customers of transportation services cannot charge damages if caused by the carrier. This may lead to large-scale damage for transportation service customers as the entire load may be destroyed in transportation.

FIC RECOMMENDATIONS

- Article 7 of the Law on Transport of Cargo in Road Traffic should be amended to stipulate insurance policy of the carrier's professional liability as a mandatory requirement for obtaining a transport license.

VOLUNTARY HEALTH INSURANCE

1. HEALTHCARE LAW

CURRENT SITUATION

The current Healthcare Law does not provide for the possibility for health care providers to diagnose or prescribe treatment by telephone or through online consultation. The Rulebook on the nomenclature of health services at the primary level of health care stipulates only provision of advice in the telephone and Internet counseling service. This way of health care service provision has proved necessary, especially in the circumstances of the pandemic. Additionally, the development of technology that enables a health care worker and patient to also have visual contact and to exchange documents electronically, supports the idea that this type of treatment should be made available.

REMAINING ISSUES

Patients, holders of both mandatory and voluntary health insurance do not have the option to receive treatment or to be diagnosed by telephone or online consultations. Therefore, they must go to health care institutions in person.

This involves additional time and costs (transportation) for the health insurance holders. In circumstances of the pandemic, there is an additional risk from infection and concern regarding this risk.

For voluntary health insurance providers this means higher costs. An insured person must first visit the doctor to be prescribed which diagnostic procedures he should perform. If telephone or online consultations were permitted, the insured person could only get in touch with the health worker in that way. In this way, the cost for the insurer would also be lower because these services are less expensive than visits in person. In addition, they provide additional convenience and more user satisfaction to the insured persons.

FIC RECOMMENDATIONS

- Enable health care providers by the Healthcare Law to diagnose or prescribe treatment by telephone or online consultations.

2. LAW ON HEALTH INSURANCE

CURRENT SITUATION

The application of Article 179 of the Law on Health Insurance ("Official Gazette of the Republic of Serbia", no. 25/2019) is an obstacle to insurance companies in their daily work, primarily in the part referring to important data on the contracting parties, or holders of voluntary health insurance. The consequence is an increase in administrative costs for both insurance policyholders and insurance companies and, on the other hand, there are cases that do not meet the needs of policyholders with regard to persons whose employment was terminated or persons who entered into an employment contract during the term of the insurance contract.

Article 182 of the Law stipulates that an insurer issues a document on voluntary health insurance based on which the rights from voluntary health insurance are exercised. The issuing of the document makes sense only if the insured person exercises his/her rights from the contract directly at the health care provider in terms of coverage of the costs of treatment. In the case when an insured person is entitled to a lump sum payment from an insurer (as in the case of serious illnesses and surgical interventions), the document on voluntary health insurance is not required by an insurer as proof that the person is insured, which has been defined by the Law in the following way:

- "In the case when rights from the voluntary health insurance are exercised directly with an insurer, they are exercised based on the policy and the cover note".

It follows from the above that it is not logical to issue a document on voluntary health insurance to insured persons who do not use it to exercise their rights under the insurance contract, but the obligation to issue the document is nevertheless prescribed by the Law.

In addition to the above, the current Law on Health Insurance defines that the insurer of voluntary health insurance is the Republic Fund and the insurance company, but there are no penalty clauses for legal entities – health institutions involved in activities of voluntary health insurance taking the morbidity risks for a fee, although they are not registered for that in accordance with the regulations of the Republic of Serbia.

REMAINING ISSUES

The Law has also determined as important data, and thus mandatory data, the following personal data that are absolutely irrelevant for this type of insurance at the time of concluding the contract: date of birth, address of permanent or temporary residence in the Republic of Serbia (street name and number, place and municipality), contact information (phone number or email address). In the context of regulations governing the subject matter of personal data protection and especially the provision of Article 5, paragraph 1, item 3 of the Law on Personal Data Protection (Official Gazette of the Republic of Serbia number 87/2018), which as one of the principles prescribes that personal data must be "appropriate, relevant and limited to what is necessary with regard to the purpose of processing ("data minimization")", we believe that there is a justified basis for amending Article 179 of the Law.

Also, in some situations, the insurance company concludes a contract with employers on collective voluntary insurance of employees, where the insured persons are entitled to insurance indemnity payment directly from the insurance company and where the indemnity paid does not cover the costs of treatment, but satisfaction. Before the entry into force of the Law, this type of insurance was concluded without compiling a list of insured persons because the coverage was contracted based on official records of employees of the insurance policy holder. In this manner, automatic coverage was provided efficiently for all persons who met the criteria for the status of insured persons (who have concluded an employment contract with the employer), without the need to register for insurance separately, while coverage automatically ceased for all persons who lost the status of the insured person during the term of the insurance contract (persons whose employment contract ceased to be valid), also without the need to deregister from the insurance separately. The current Article 179 does not allow such a possibility and, in addition to the issue described in the previous paragraph related to Article 5, paragraph 1, item 3 of the Law on Personal Data Protection ("Official Gazette of the Republic of Serbia" number 87/2018) leads to the following problems:

- increase in administrative costs both for the insurance policyholder and for the insurance company due to the need to update the lists of insured persons during the insurance period (registration and deregistration from insurance must be made in writing);
- Occurrence of cases that absolutely do not meet the

needs of insurance policyholder that a person whose employment contract has been terminated still has the status of an insured person if a policyholder has not sent the deregistration request to the insurance company, or

that a person who has concluded an employment contract does not have the status of an insured person if the policyholder has not sent the registration application to the insurance company on time.

FIC RECOMMENDATIONS

Amendment to the Law on Health Insurance so that:

- the text of the current Article 179 should be amended to read:

“The contract on voluntary health insurance shall be concluded based on a previous offer for concluding a contract on voluntary health insurance (hereinafter: the Offer) given by an insurer to the person wishing to conclude a contract on voluntary health insurance.

The offer referred to in paragraph 1 of this Article shall contain relevant information on voluntary health insurance policyholders, insurance start date, insurance waiting period, as well as the insurance end date, amount and deadlines for payment of insurance premium, maximum contracted amounts per coverage risks and other elements of importance for insurance contracting.

Relevant information on the voluntary health insurance policyholders from paragraph 2 of this Article shall be:

1. name and surname,
2. Personal identification number, or registration number for foreign citizens.

In the case of collective insurance, an insurer may submit a single consolidated offer containing the data from the previous paragraph of this article on each individual to be covered by collective insurance.

The offer referred to in paragraph 1 of this Article, as well as the consolidated offer from paragraph 4 of this Article shall also contain as relevant the data on previous health condition of the voluntary health insurance policyholder which are necessary for the insurer to assess the insurance risk.

Notwithstanding the provisions of this Article, when the insurance company concludes with a policyholder a contract on collective voluntary health insurance of employees, where the insured persons are entitled to the payment of insurance indemnity directly from the insurance company and where the paid indemnity does not cover treatment costs, the insurance contract can be concluded based on official records of employed insurance policyholders.”

- the text of the existing paragraph 1 of Article 182 should be amended to read:

„An insurer shall issue a voluntary health insurance document to any voluntary health insurance policyholder who does not use his insurance rights directly at the insurer on the date of issuing the policy and no later than 60 days from the date of issuing the policy.”

- Amend the Law on Insurance – introduce penalty clauses for all persons engaged in insurance activities or underwriting activities against a fee without a prior permission obtained from the competent authorities.
- If the NBS considers the existing penalty clauses sufficient, introduce reinforced control of compliance with these clauses and their implementation if it is established that a person not holding a relevant permit is engaged in the insurance activities or underwriting activities.

LAW ON INJURIES AT WORK

CURRENT SITUATION

Article 53 of the Law on Safety and Health at Work defines the obligation of an employer to insure employees against injuries at work, occupational diseases and work-related illnesses in order to ensure compensation of damages.

The same article states that the terms and procedures of insurance against injuries at work, occupational diseases and work-related illnesses of employees shall be regulated

by the Law.

The Law on Compulsory Insurance against injuries at work, occupational diseases and work-related illnesses has not been enacted to date.

POSITIVE DEVELOPMENTS

None.

REMAINING ISSUES

The Law has not been passed yet.

FIC RECOMMENDATIONS

- Occupational Safety and Health Directorate should propose the adoption of the Law on Insurance against Occupational Injuries, Occupational Diseases and Diseases Related to Work.

LAW ON PUBLIC PROCUREMENT (“RS OFF. GAZETTE”, NO. 91/2019) AND PUBLIC PROCUREMENT PORTAL

CURRENT SITUATION

By abusing the legal concept of selection of a business entity in public procurement procedures whose subject are insurance services, the contracting authorities distort competition and prevent the participation of insurance companies that can adequately provide the insurance service which is the subject of public procurement in these procedures. Given the fact that insurance companies perform their activities based on the license issued by the National Bank of Serbia as a supervisory authority and that insurance companies are under the constant supervision of the National Bank of Serbia as a supervisory authority, they are deemed capable of providing any insurance service on the territory of Serbia. It is especially important to under-

line that the Law on Insurance very strictly prescribes all requirements for the performance of insurance activities, notably: minimum capital, business policy acts, organizational, staffing and technical capacities of such companies, technical reserves, solvency margin, retention, etc.

In addition, sometimes the Contracting Authorities distort competition by setting stricter requirements as criteria in certain areas defined by special regulations (laws or by-laws – e.g., confidentiality, IT system adequacy, professional and organizational staff, environmental protection) than the regulations require which is absolutely unjustified.

We believe that it is necessary to specify that economic and financial capacity can only be assessed based on the parameters confirming economic and financial capacity and not some other business indicators. In practice, contracting authorities define as financial capacity the criteria that have no relation to the financial capacity of insurance companies.

In the case of insurance services, it is specific that the time limits for settling claims involving the payment of insurance indemnities are defined by the Law on Contracts and Torts and by the Law on Compulsory insurance in Traffic

and they are quite short, so that defining longer time limits for the performance of the service would be contrary to the regulations, and defining shorter deadlines would be inexpedient and inapplicable, since the time limit for settling a claim depends on the submission of adequate documenta-

tion and reporting of the insured event.

POSITIVE DEVELOPMENTS

None.

FIC RECOMMENDATIONS

The following provisions of the Law on Public Procurement should be amended/supplemented: Article 114, Article 116 and Article 132 as follows:

- In Article 114, a new paragraph 6 should be added after paragraph 5, which would read:
“Economic entities that perform activities that is the subject of public procurement on the basis of a special permit (license) of the competent authority on the territory of the Republic of Serbia shall be considered to meet all criteria for the selection of economic entities from paragraph 1 of this Article and the contracting authority for the public procurement of such services may not set special criteria when drafting public invitations and tender documents”.
- In Article 114, a new paragraph 7 should be added after paragraph 6, which would read:
“If special regulations for certain areas stipulate conditions that business entities should meet, the contracting authority may not set special requirements from these areas as selection criteria.”
- In Article 116, a new paragraph 8 should be added after paragraph 7:
“Financial and economic capacity shall only be assessed on the basis of financial and economic criteria of economic entities and not some other indicators and parameters that are unrelated to the financial and economic domain.”
- In Article 132, a new paragraph 3 should be added after paragraph 2 which would read:
“If a special law for some services and works stipulates a deadline for the performance of a service and/or works, the Client shall not set the deadline for the performance of such service and/or works as a criterion for determining the most economically advantageous offer”.

DATA ON COMPLAINTS AGAINST THE WORK OF INSURANCE COMPANIES AND VOLUNTARY PENSION FUNDS MANAGEMENT COMPANIES

CURRENT SITUATION

The National Bank of Serbia publishes data on complaints against the work of insurance companies and voluntary pension funds management companies on a quarterly basis. The report contains the total number of complaints filed to the NBS, but does not include the total number of complaints filed to insurance companies.

POSITIVE DEVELOPMENTS

None.

FIC RECOMMENDATIONS

- Given that insurance companies are required to provide the NBS on a quarterly basis with data on the number of complaints received in the previous quarter, NBS already has this data and, in our opinion, they could very easily and without much additional effort publish this data in the above-mentioned report so that they would also be available to the public.