

# Moldova



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## Country Guides: Insurance

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Enactment of the Law on Insurance No. 407-XVI dated December 21, 2006, under the proviso that full implementation of the law will happen by 2012, and subsequent regulations issued by the supervisory authority, marked a turning point in insurance business regulation in Moldova. Insurance prudential regulatory and supervisory power is vested in the financial market "mega-regulator", the National Commission for Financial Market. The new legislation has been harmonised with European Union directives and its core provisions as follows:

- Life and non-life (general) insurance businesses require separate, exclusive, licences.
- The minimum share capital for general insurance is set at MDL15 million (approximately 1,000,000 euros), at MDL22.5 million for life insurance and at MDL30 million for reinsurance. These thresholds are to be achieved gradually by the end of the transition period of five years after the enactment of the new law, i.e., by April 2012.
- Insurance brokerage is subject to licensing, which was introduced in 2008, and to minimum capital requirements, equal to MDL25,000 (1,700 euros). As of November 2011 as many as 68 insurance brokers held valid licences.
- Acquisition of a significant (10 percent or more) equity interest in a Moldovan insurer/reinsurer is subject to prior notification to the NCFM, while the increase of such interest to 20 percent, 33 percent or 50 percent is subject to NCFM prior consent.

The early effects of the new rules have been market consolidation and the squeezing out of small insurers. Between 2007, when the new Law on Insurance was enacted, and October 2011, the number of licensed insurers decreased from 43 to 21, whereas their financial soundness increased.

### Draft legislation

In a continuing effort to improve the insurance laws and to transpose the EU Directives (particularly the core already enacted provisions of Solvency II Directive), the NCFM has drafted and the Government has recently endorsed and submitted to Parliament amendments to the Law on Insurance and the Law on Compulsory Insurance of Civil Liability for Damages Caused by Motor Vehicles.

The major draft amendments to the Law on Insurance refer to the following:

- Licence can be suspended for failure to remedy the breaches detected during the supervisory inspections; licence can be suspended or withdrawn either for one class of insurance or for all classes.

- Beside the core business, insurers can offer services of assistance (in health insurance) and correspondence (in Green Card insurance).
- Health and accidents insurances, as non-life classes, can be offered by holder of life insurance licence only as ancillary risks insurances.
- Requirements toward corporate governance framework, risk management and internal control systems were introduced.
- Operational requirements toward branches of insurance companies are introduced.
- In line with Article 72 of the Solvency II Directive, auditors have the duty to report to the public supervisor any fact or decision concerning the audited insurer which is liable to bring about any material breach of the laws, regulations or administrative provisions which lay down the conditions governing authorisation or which specifically govern pursuit of the activities of insurance and reinsurance undertakings, any impairment of the continuous functioning of the insurance or reinsurance undertaking, or any refusal to certify the accounts or to the expression of reservations.
- Actuarial services shall become mandatory. The Registry of certified actuaries shall be held by the NCFM.
- In case of liquidation of the insurance company, the insurance creditors shall have priority in payments, except for a few categories of claims preferred by law (with social or budgetary character).

In addition, in the effort to introduce the risk-based supervision principles and techniques, the NCFM has drafted some other law revision proposals, which have not yet exposed for public consultations.

### **Establishing an insurance company**

#### **Incorporation**

An insurer should be established as a joint stock company and will be deemed an "entity of public interest". This qualification brings about extensive reporting and disclosure requirements. Existing insurers which operate as limited liability companies will have to become joint stock companies by April 2012. Around half of the insurance companies were still limited liability companies as of September 2011. The share capital should be paid in cash and must only be drawn out of the shareholders' own funds. Borrowed money cannot form part of the share capital, which must be fully paid upon incorporation. Regulatory clearance is required for the incorporation of an insurer. The qualification criteria refer to the financial stability of the founder(s), the source of cash contributions and the fit and proper tests for significant shareholders and administrators (directors and officers).

#### **Licensing**

From October 2008, authority for insurance licensing was transferred from the Licensing Chamber to the NCFM. Under the licensing process:

- An insurer must submit a licence application, accompanied by: confirmation of share capital contribution; representation that the contributions were made out of own funds; insurance terms and conditions for each class of insurances; software for calculation of insurance premiums and technical reserves; the reinsurance programme; and a three-year business plan. Significant shareholders should reveal their identity and financial position in accordance with the NCFM regulations.
- The NCFM examines the application and attachments on its merits and must decide within 30 working days after submission of the full application package.

The licence is issued for an indefinite period of time and may be suspended or withdrawn for breaches of law. Licence suspension or withdrawal can be appealed in court.

### **Mergers and acquisitions**

Under the general rule, shares in Moldovan insurers/reinsurers which operate as joint stock companies can be purchased only via the stock exchange through the competitive bidding procedure. Apart of the apparently positive effects on the capital market, this "concentration rule" is likely to cause the adverse effect of stimulating potential unwanted takeovers. In order to prevent this side effect, when the acquisition terms are agreed upon between the seller and buyer, they can resort to one of the exhaustively listed exceptions to the concentration rule.

The acquirer of a controlling (i.e., more than 50 percent) equity interest in an insurer is bound to issue a mandatory takeover bid, which is addressed to the rest of the shareholders, within three months after acquisition. Unless this requirement is fulfilled, the acquirer can exercise the voting right only in respect of 25 percent of the insurer's shares. In addition, the amendments to the securities laws have enacted the "squeeze-out" right, i.e., the right of shareholders owning 90 percent of shares to make the minority shareholders sell their shares upon market terms.

Any insider (including any shareholder that, individually or together with its affiliates, holds at least 50 percent of the voting shares) can sell its shares either through public offer or privately, subject to compliance with the price setting and information disclosure requirements. The acquisition of shares (participations) in insurers which operate during the transition period as limited liability companies can be done through direct share transfer agreements. No mandatory buy/sell public offer requirements would apply in such a case.

### **Insurance intermediaries**

Insurance intermediaries are insurance agents and insurance brokers. There is no requirement for licensing insurance agents, which the Law on Insurance defines as individuals or legal entities that carry out professional activity based on proxy issued by the insurer and conclude insurance contracts on the terms set forth in such proxy. An insurance broker, subject to licensing, is defined as a Moldovan legal entity which negotiates the insurance agreement on behalf of its client and provides assistance during the contract operation or, as the case may be, in connection with loss adjustment. Cross-border cession of insurance risks into reinsurance can be done either directly or via reinsurance brokers, local or foreign.

### **Reinsurance: risk transfer to foreign reinsurers**

Moldovan insurers/reinsurers can cede insured risks to foreign reinsurers where the latter are licensed and supervised in their home country. Where a Moldovan insurer transfers the risks to a foreign reinsurer, such Moldovan insurer must retain at least 20 percent of the total exposure. This minimum retention requirement, however, will become effective only after the five-year transition period expires. Bearing in mind that the old threshold (minimum 10 percent own retention) which had been imposed by the insurance regulator imposed was cancelled in 2006, Moldovan insurers are free to cede into reinsurance up to 100 percent of the policies underwritten until April 2012.

### **Cross-border insurance**

Moldovan companies or individuals can only contract insurance directly with foreign insurers when Moldovan insurers cannot offer equivalent insurance. Under Article 1306 of the Civil Code: "Persons from the Republic of Moldova enter into insurance contracts with entities registered in the Republic of Moldova, except for the cases when the required insurances are not operated on the domestic market." To learn whether a particular kind of insurance is offered or not on the Moldovan market, the interested

person can either contact the Moldovan insurers or make enquiries with the NCFM about the insurance classes that Moldovan insurers have filed.

This rule is also applicable to compulsory insurance, except for motor third party liability insurance, which can only be offered by Moldovan licensed insurers, as well as social insurance and health and sickness compulsory insurance, which are still the monopoly of state-owned entities appointed by the law.

### **Voluntary and compulsory insurance**

In voluntary (facultative) insurance, the terms of insurance are agreed mutually between the insurer and the insured, in accordance with the insurance conditions of the insurer. Moldovan law makes it mandatory for the insurer to produce insurance terms and conditions to the insured party in an adequate form. The law sets forth the terms of compulsory insurance.

Compulsory insurance can be divided into groups, depending on the eligible insurers:

- Insurance which can be procured from a foreign insurer where it is not available on the Moldovan market:
  1. Civil liability of the carrier toward the passenger, which covers the risk of damages to the life, health and property of the passenger who travels by road, air, rail or ship transport (Law on the Mandatory Insurance of the Carriers toward the Passengers, No. 1553-XIII of February 25, 1998). This also includes the passenger's insurance in sea transportation (Art. 93 of the Code on Commercial Maritime Navigation, No. 599-XIV of September 30, 1999). From December 23, 2008, the Republic of Moldova became party to the Convention for the Unification of Certain Rules for International Carriage by Air (Montreal, May 28, 1999).
  2. Cargo insurance by the forwarder (Art. 1079 of the Civil Code).
  3. Tourist travel insurance, which covers the risks of traffic accidents, sickness, etc., during travel (Law on Organisation and Carrying-Out of Tourist Business, No. 352-XVI of November 24, 2006).
  4. Professional indemnity for insurance brokers and notaries.
- Compulsory insurance which can be procured only from Moldovan insurers (i.e., direct cross-border insurance is not allowed):
  1. Internal motor third party liability insurance (Law on the Mandatory Insurance of Civil Liability Against the Damages Caused by Motor Vehicles, No. 414-XVI of December 21, 2006, effective from September 9, 2007).
  2. Military state insurance, which covers the risk of death or loss of working ability of the military (Government Resolution No. 214 of April 10, 1996).
- Compulsory state insurance, which can be procured only from the state-owned entities:

1. Social state insurance that the National House for Social Insurance offers, which covers the risks of death, temporary loss of working ability of employees and other eligible individuals due to sickness/injury, loss of employment, as well as specific events such as retiring age (social pension), birth of a child (maternity aid) and sick care (Law on the Public Social Insurance System, No. 489-XIV of July 8, 1999).
2. Health state insurance offered by the National Company for the Medical Insurance, which assures a minimum established coverage for the risk of sickness/injury of the insured individuals (Law on the Mandatory Medical Care Insurance, No. 1585-XIII of February 27, 1998).

Under a recent highly debated law-making initiative, the private insurers could be also allowed to share the pie of the compulsory health insurance.

#### **Motor third party liability insurance with a foreign insurer**

As a member of the International Motor Insurance Card System (the Green Card System), which was established in 1952 under the aegis of the United Nations, the Republic of Moldova recognises International Motor Insurance Cards, which foreign insurers issue on behalf of the Moldovan Motor Insurers' Bureau. The Moldovan Motor Insurers' Bureau is legally mandated to carry out loss adjustment activities on behalf of foreign insurers that issue Green Cards, to represent such foreign insurers before Moldovan authorities and in court proceedings, and to settle the insurance claims, in accordance with the Internal Regulations of the Council of Bureaux, which were issued in Rethymno, Crete in May 2002, and revised in Lisbon on May 29, 2008. The Moldovan MIB currently has six full members, including two new insurers, who won the right to enter the league in a series of legal actions. According to new draft legislation, currently debated in the Parliament, the Moldovan MIB shall be composed of all the insurers entitled to run compulsory motor third party liability insurance.



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