Jurisdiction update: Moldova — Insurance

Dec 06 2012 Roger Gladei & Aelita Orhei

The latest amendments to the Law on Insurance dated December 21, 2006 and the Law on Compulsory Motor Third Party Liability Insurance dated December 22, 2006, appointed for full implementation by the end of 2012, represent a steady upgrade of the Moldovan insurance business regulation. Current insurance legislation core provisions encompass:

- Life and non-life (general) insurance businesses require separate, exclusive licences. Life insurance businesses are allowed to subscribe risks covered by general (accident and health) insurance without having a separate licence, provided that such risks are ancillary to the ones already insured.
- The minimum share capital for general insurance is set at MDL 15 million (approximately 1,000,000 euros), at MDL 22.5 million for life insurance and at MDL 30 million for reinsurance. These thresholds were to be achieved gradually by the end of the transition period of five years after the enactment of the Law on Insurance, i.e., by April 2012.
- Insurance brokerage is subject to licensing (valid for an unlimited period of time) and to minimum capital requirements, equal to MDL 25,000 (1,700 euros). As of September 2012 as many as 76 insurance brokers held valid licences. The 2012 amendments have introduced the concept of bancassurance, under which banks, savings and loan associations, and microfinance institutions may be appointed corporate agents of an insurance company, provided they comply with the requirements set forth by the law (i.e., solvability, professional indemnity, personnel qualification).
- Acquisition of a significant (10 percent or more) equity interest in a Moldovan insurer/reinsurer is subject to prior notification to the insurance regulator (NCFM), while acquisition or increase of such interest to 20 percent, 33 percent or 50 percent (or their decrease respectively) is subject to NCFM prior consent.
- Use of actuary services by insurance businesses is compulsory and under close scrutiny of the NCFM. Actuaries are obliged to report within 15 days to the NCFM any inconsistencies or breaches by the insurer of relevant legislation.
- For transparency purposes, within 4 months from the end of each financial year, insurers are to publish in periodic, widely distributed media their balance sheet, financial statement and auditor's report.
- New prudential requirements compel insurers to lay out and comply with rules and procedures of personnel verification and training for the purpose of prevention of money laundering and terrorism financing via insurance activities, implementation of corporate governance principles, creation of internal risk management and control systems.

The early effects of the said rules have been market consolidation and the squeezing out of small insurers. Between 2007, when the Law on Insurance was enacted, and September 2012, the number of licensed insurers decreased from 43 to 18, whereas their financial soundness increased.

Draft legislation

The NCFM has forwarded to public debates two drafts concerning regulation of motor vehicles insurance segment. The first decision draft refers to the method of calculation of insurance premiums and adjusting coefficients related to Motor Third Party Liability (MTPL) Insurance and suggests two additional coefficients, in case the insured person is no longer interested in the services of an intermediary and second - in case the insurer wishes to stimulate the client from his profit. The other decision draft broaches the method of calculating depreciation in case of damages caused by motor vehicles, with the aim to create viable mechanisms in determining the real amount of MTPL damages, by applying the depreciation degree to the price of motor vehicles parts to be replaced.

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. By April 2012, all insurers, which operated as limited liability companies became joint stock companies. 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).

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- Practitioner's Guide for Broker-Dealers
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Licensing

Since 2008, authority for insurance licensing was commissioned 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 current rules, 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. The "squeeze-out right", i.e. the right of majority shareholders to compel the shareholders having less than 10 percent to sell their shares, shall not apply to insurance companies (and banks). Conversely, minority shareholders enjoy the "sell-out right".

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.

Insurance intermediaries

Insurance intermediaries are insurance agents, bancassurance agents and insurance brokers. There is no requirement for licensing either insurance or bancassurance agents, which 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 consultancy and risk inspection services 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.

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 is 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:
    - 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. 193 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).

    - Cargo insurance by the forwarder (Art. 1079 of the Civil Code).

    - Tourist travel insurance, which covers the risks of traffic accidents, sickness, etc., during travel (Art. 21 of the

Law on Organisation and Carrying-Out of Tourist Business, No. 352-XVI of November 24, 2006).

- 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):
  - 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).
  - 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:
    - 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).
    - 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).

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.

GLADEI & PARTNERS
Legal Consultants

***Roger Gladei** is the managing partner and **Aelita Orhei** is a senior associate at Gladei & Partners. Tel: +37322 240577,* www.gladei.md

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