MESSAGES FROM THE CONFERENCE
PALIĆ 12-14 APRIL 2006

Taking into account generally accepted view that sound and efficient regulation of insurance industry is of essential importance for development of a free and dynamic economy, whereas fast harmonisation of our legislation with the EU insurance law shall contribute towards achievement of this goal and facilitate adjoining process of Serbia and Montenegro to the EU, lawyers, economists, actuaries and other experts from insurance field on the Conference held on Palić from 12 to 14 April 2006 on the 'Insurance in the Adjoining Process of Serbia & Montenegro to EU (Status and Trends – Palić 2006)' by the Association for Insurance Law of Serbia and Montenegro, have adopted and submit to the professional audience the following:

MESSAGES

Life Insurance

1. In order to promote life insurance development, it is necessary to snatch at tax policy measures. Because the tax treatment of life insurance policy is unfavourable, changes of the Citizen Income Tax Act should take place in order to create certain support in one of the following ways: either to provide exemption of life insurance premium from the taxation basis, in which case tax shall be payable on the sum insured on income payment, i.e. life insurance income tax; or, as in the USA, to embrace life premium into taxation basis and leave sum insured payments untaxed.

2. Rigorous supervision of the agent network should be carried out because a strong 'multilevel' agent structure is still present on the domestic market. These agents operate without proper licenses and competence at legal entities and agencies licensed by the National Bank of Serbia. They sell policies of the foreign insurance companies, thus making big damage to the domestic market.

3. Having in mind the annual premium limit of EURO 1,000 as a criterion for identification, evidencing and reporting persons in compliance with the Money Laundry Prevention Act, has been set far too low to fulfil its purpose, changes of the said Act are necessary. Another reason for this is the fact that such practice would lead to premium outflow towards those countries where signing statement on the financial means' origin is not required for premium payments over EURO 1,000.

4. In order to enable citizen to afford medical expenses for certain disease excluded from the compulsory health insurance and avoid transfer of these types of the health protection to the voluntary health insurance and personal means of the compulsory health insurance, especially because of dramatic increase of the heavy diseases with lethal outcome, authorities should establish an efficient monitoring system aiming at preventing abuse and a possibility of getting richer to the burden of prospective health protection clients. This is because the Health Insurance Act, which is adopted without proper systematic analysis, narrows scope of the insured rights and unreasonably opens space for voluntary health insurance to the burden of personal means of the compulsory health protection.

Property Insurance

1. In banking practice generally accepted conditions that housing loan client, in order to have a loan granted, must cumulatively secure the loan pay-back by numerous means: bank bill honour or surety, mortgage over real estate, which purchase is being credited and various types of insurance – loan insurance policy, life insurance policy, fire and certain additional perils policy assigned to the bank, make this practice unfair towards loan clients as consumers of bank services. These conditions are

unfair because each of the required means is for itself, not to mention combination with some other means, sufficient to secure a bank from risk of client's default. By this practice, banks unreasonably make loans more expensive, aggravate consumers' access to credit services and derange principle of equivalency in contractual relations. Therefore the National Bank of Serbia should seriously consider this practice and prevent it by way of appropriate supervision measures.

2. Reasonable operation of the highly professional services through protection of their providers from liability for damage that may be caused to clients and clients' effective protection when such services pose increased health, safety or high financial risk, is best performed by providing compulsory insurance of liability of their providers. Therefore, introduction of a compulsory liability insurance into our system for attorneys at law, medical doctors, architects, bankruptcy and wind-up administrators, court experts, court interpretators, mediators, tutors and providers of some other services (organisers of sport and other events) is justified.

In order to ensure complete legal and economic safety of the providers and clients new legislation must determine essential elements of these insurance, namely: perils covered, minimal limit, deductible, objections that insurer cannot raise against damaged client, who is a contractor, claims and risks excluded, monitoring duty to maintain insurance against civil liability, duty of insurers who provide cover for such compulsory insurance to stipulate insurance policy, time when the contractor duty to take out policy occurs and fines in case of non-conclusion of the compulsory insurance contract.

3. The Export and Financing Agency Act of the Republic of Serbia facilitates necessary legal framework for establishment and operation of the comprehensive national support scheme for exports and investments abroad. Yet, Agency's financial capacity is not adequate to meet needs of our, expected in near future, growing export and investments. Investigating comparative approaches and experience in organisation of the national supporting schemes in certain transition countries, including those which completed transitional process and became EU members, one can realise, that within the limited financial sources available to the Agency today and in the future, orientation towards its partnership and co-operation with other national institutions which facilitate exports and investments (insurance companies, banks and other financial institutions), with leading foreign agencies world-wide and from the region countries in transition and with leading private political risk insurers by way of coinsurance and reinsurance, the Agency may contribute to fulfilment of the projected goals.

Agency's co-operation with leading insurers' associations of the export credit and investments in the world is also necessary because of standard harmonisation in this field.

4. Primary goal of the Fourth EU Directive on motor third party liability insurance is filling gaps in the system of damaged persons' protection, i.e. improvement of the damaged party who suffered injury in a traffic accident abroad, without changing rules on governing law and jurisdiction. Positive effects of the time limits for claims settlement, introduced by the Fourth EU Directive, are best reflected by the fact the Fifth EU Directive extends time–limits to all claims. Accordingly, right of the damaged party to turn in his domicile to the authorised representative of the foreign insurance company for claim settlement and improvement of the damaged party's status, with the Fifth Directive, have additionally 'coronated' with outstanding change of the international rule on court jurisdiction, because the damaged party is guaranteed right to bring an action against foreign insurance company in the country of his domicile.

We can draw a conclusion the Fourth EU Directive on compulsory motor third party liability insurance has showed what positive effects may bring fast and proactive claim settlement of the 'motor claims'. Claims outgoes are reduced by poised claim settlement process without precluding damaged parties' rights. Establishment of the trust, which is easier to achieve with the representative in own country, than with a foreign insurer, as a precondition for a pragmatic compromise, leads to satisfaction of the damaged parties with such solution, making such settlement sa free marketing to insurance companies.

Pending legal reform of the motor third party liability insurance in Serbia should introduce without demur most of the measures from the Fourth Directive. One lump of the giant 'mosaic' called harmonisation with the EU legislation shall be put in its place by doing this, without excluding

possibility to rely on the experience of Romania, Bulgaria and Croatia, as candidates for EU membership, because they transposed rules of the Fourth Directive into their laws which shall come into force on the day of acquiring full membership in the EU.

Status issues of the insurance market institutions

1. Insurance Act provision according which the National Bank of Serbia decides on expediency of an insurance company's establishment is contrary to the constitutional principle of freedom of establishment, principle of free establishment of insurance companies in the EU and generally accepted power of the supervising bodies in the EU countries to control fulfilment of the legal conditions by the founders for insurance license only and not expediency of the company's establishment. This provision creates possibility for free, unlimited discretionary acts of the National Bank of Serbia and source of corruption (Article 41, 1).

2. The National Bank of Serbia's power based on the Insurance Act to 'pass regulations for implementation of this law', i.e. all the bylaws in insurance field without exception (Article 142), is inappropriate and unconstitutional. Likewise, powers provided for in the Articles 39, 78, 95 etc. are of the same nature or connected with the said power of the National Bank of Serbia to provide conditions for licensing of the insurance companies, insurance agents, intermediaries and actuaries. Conditions for business establishment may be fixed only by law or by the Government of the Republic of Serbia responsible for law enforcement and, by the Article 99 of the Constitution, explicitly competent for passing regulations for law enforcement.

3. Association for Insurance Law pleading for introduction of the integrative supervision of the financial services as in the UK, Germany or Croatia because of advantages over sector supervision performed by the National Bank of Serbia and the Securities Commission, does not mitigate importance of the Association pleading, before implementation of the integrative supervision, for fixing obvious drawbacks in the present supervision system. Therefore, the Association proposes:

- Introduction of the financial, i.e. insurance ombudsman who shall, instead of the National Bank of Serbia, be responsible for out-of-court dispute resolutions between insurer, intermediary (agent and broker) and their clients. Furthermore, it is recommended that powers' concentration with ombudsman embraces other schemes from the European law, currently not used in our country. Aim of this proposal is to ensure higher level of consumer protection from insurers and intermediaries by this independent body;

- Establishment of the body (board or appropriate) with indispensable influence in the decision-making process at the National Bank of Serbia. Composition of this body, with autonomous experts and representatives of the public interest, will ensure independence from the bodies, departments etc. of the National Bank of Serbia and various pressures, setting up integrity of the National Bank's decisions against unwanted (political and other) and conflicting interests;

- Establishment of the several official mechanisms of the National Bank's liability enabling responsible discharge of its supervision powers. Representing the Annual Report to the Parliament on the state of affairs of the insurance market does not make it sufficiently responsible in discharging legal powers. This conclusion could be drawn from the frequent cases of passing illegal decisions or decisions with retroactive effect because of which, the Supreme Court of Serbia repealed several of its measures. Therefore, it is justified to establish duty of the National Bank of Serbia to consult insurance experts before passing rules and guidelines, i.e. before passing decisions authorised by law. Another proposal would be to establish independent advisory boards at the National Bank, one consisted of clients and another made up from the insurance professionals, both in order to give advice which the National Bank must consider and give written reasons in case of disagreement. Finally, the Association proposes establishment of the independent trustee for control of the appeals against the National Bank;

- Establishment of the National Bank's power to define and monitor implementation of the standards of professional conduct in insurance industry beside the duty to define standards for a supervision. It is with doubt that legislative basis for insurance conduct is incomplete without establishment of the high

professional standards of conduct between insurers, reinsurers, insurance intermediaries and their clients. Not only these standards must be comprehensive (embracing sound business practice of insurance intermediaries and insurers), but must make reasonable balance between interests of the good practice and client protection. All these elements may not be achieved by autonomous self-regulation with Code of Conduct, which the Association of Insurance Organisations of Serbia and Montenegro passes and the measures the Court of Honour at the Chamber of Commerce of Serbia passes for its breach.

General issues of the insurance law and industry

1. One of the urgent, strategic goals of our insurance companies, especially because of the future competition of the foreign companies by way of privatisation of state insurance companies and in other ways, is to investigate and apply new spectre of distribution channels (e-commerce, partnership with big organisations with attractive network, integrated financial and banking companies with big portfolios and selling capacity, co-operation with trading associations – car dealers, supermarkets, etc.), instead of tariff beating and often competing in a disloyal fashion. Timely legal implementation should, especially in the field of e-commerce, encourage and abate all the flexible distribution schemes and be harmonised with the European legal concepts.

2. Because of the similar criminal offences provided for in the Insurance Act – criminal offence of unauthorised insurance conduct (Article 222), criminal offence of giving false opinions and reports (Article 223) and criminal offence of giving false estimation (Article 224) with features of the criminal offences in the new Criminal Code of Republic of Serbia – criminal offence of unauthorised conduct of the certain businesses (Article 353), criminal offence of document forgery (Article 355) and criminal offence of official document forgery (Article 357), it seems appropriate to consider if the Insurance Act still need to provide for the special criminal offences in insurance field and if the criminal law protection of insurance is improved by this state of affairs.

3. In order to ensure unified implementation of the Contracts and Torts Act, equality of the parties before courts, disabling arbitrary conduct of courts in deciding on the amount of bodily injuries, establishment of clear criterions for out-of-court settlement between an insurance company and damaged insured party, i.e. efficient and economical out-of-court procedure for a bodily injury settlement, it is necessary that the Supreme Court fixes approximate criterions and amounts from time-to-time as a framework or a guideline for conduct of the courts and out-of-court dispute resolution.

We suggest in the same regard that medical associations organize seminars for establishment of the common medical criterions, which should be used as basis for giving expert opinions in disputes deciding on the bodily impairment and other disputes for bodily injuries.