

# Insurance law in Slovenia

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## 1. Introduction

The aim of this paper is to cast a glance at the current insurance law the Republic of Slovenia, including recent case law. Insurance law is a complex legal branch that gives rise to many difficult problems. During the last decades, insurance companies have been frequently under the scrutiny of governments. The articulation of a generally applicable definition of insurance has proven to be a very difficult task. It is, perhaps, quite natural to anticipate that insurance in different languages (*Croatian: osiguranje, French: assurance, German: Versicherung, English: insurance, Italian: assicurazione, Russian: strahovanie*) means safety before a certain event or fact occurs.<sup>1</sup> Whatever terminology is used it should always be considered that today insurance is an essential element of each economic system and for this reason it is subject to a special legal regime. When insurance is considered from the viewpoint of an insurer or society, it is appropriately viewed as a system for risk distribution, as well as risk transference which is indeed the primary function of insurance. By effecting insurance, the insured transfers the risk of economic losses to the insurer; who in turn redistributes the risk through investments and reinsurance arrangements.

Slovenia is a relatively small insurance market with around 20 domestic and foreign insurance and reinsurance companies and more than 100 years of tradition. Throughout the years, Slovenia has endeavored to establish a comprehensive insurance law to regulate insurance activities which is now, of course in accordance with the EU law, including the freedom of establishment, the freedom of service and the so called single passport system.

Despite of the idea of Single European Market many eminent authors point out that harmonization of insurance law does not really stimulate insurance activities as many insurance companies are still reluctant when it comes to offering insurance coverage for small commercial and consumer risks abroad.<sup>2</sup> What is clear is the fact that foreign insurance companies may now operate directly or through branches. Insurance accounting standards have also been adopted based on the EU directive.

With regard to development of insurance business, Slovenia is placed among the medium developed countries. Underlying this argument is the fact that Slovenia is falling behind predominantly in the share of life insurance within the entire insurance premium; nevertheless it has made progress in this field. The paramount distinctiveness of the Slovene insurance market is: a continuous growth of insurance premiums, the growth of life insurance share, the presence of composite insurance companies, high concentration and domestic ownership.<sup>3</sup>

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<sup>1</sup> Šime Ivanjko, *Uvod v zavarovalno pravo*, Pravna Fakulteta, Univerza z Mariboru 1999, p. 11

<sup>2</sup> Giesela Ruhl, *Common law, civil law, and the Single European Market for insurances*, *International and Comparative law quarterly*, 2006, 55 (4), p. 15

<sup>3</sup> Anja Mihelič, *Zavarovalnice in Pozavarovalnice v Sloveniji*, Univerza v Ljubljani Pravna Fakulteta, *Diplomska naloga*, maj 2009, str. 3

## 2. Insurance company law

As we know, the modern insurance law can be usually classified into company and contract law. Company insurance law is mainly regulated by *Insurance Act (Zakon o zavarovalništvu)*<sup>4</sup>, *Companies Act (Zakon o gospodarskih družbah)*<sup>5</sup>, *Compulsory Composition, Bankruptcy and Liquidation Act (Zakon o prisilni poravnavi, stečaju in likvidaciji)*<sup>6</sup>, *Protection of Competition Act (Zakon o varstvu konkurence)*<sup>7</sup> and *Prevention of Restriction of Competition Act and others (Zakon o preprečevanju in omejevanju konkurence)*<sup>8</sup>.

By far the most important piece of legislation is the *Insurance Act (Zakon o zavarovalništvu)*<sup>9</sup> (hereafter: the Act) which came into force in 2000. Due to the development of EU insurance law the Act has been amended several times in 2002, 2004, 2006, 2007, 2008 and 2009, incorporating *inter alia* the recent Solvency II Directive which represents new demands for the insurance companies in order to operate with sufficient capital and stay solvent.

The main purpose of the last amendment of the Act was also to harmonize the law on the subject of special procedures regarding the approval of qualified share in the credit institutions, insurance and reinsurance companies and investment enterprises. The new provisions enable insurance and reinsurance companies to be organized as European Joint Stock Company and the establishment of the registry of actuary which is under the supervision of Insurance Supervision Agency.

The comprehensive Act is comprised of 364 Articles divided into 21 sections. Articles in section 1 stipulate some definitions and general principles governing insurance activities. Section 2 addresses the general features of insurance – related company law, classes of insurance, subgroups and groups, entities carrying in insurance business, insurance agents and brokers, rules governing risk management, etc.. Among other things, it also regulates business books and financial statements, internal and external auditing, safe-guarding of confidential data and implementing national insurance supervision by the Insurance Supervisory Agency (*Agencija za zavarovalni nadzor*) which controls the Slovenian insurance market.

The main task of Supervisory Agency is to protect policyholders. The Agency determinates, supplements or prohibits manners of operations with measures of control, which consequently leads to indirect influence of the effectiveness of insurance company.<sup>10</sup> The Act envisages the possibility of internal supervisions and mandatory arrangement of internal audit as an independent organizational unit to be directly subordinated to the board of directors of the insurance undertaking functionally, as well as organizationally, separated from other organizational units of the insurance undertaking (Article 161). The purpose of this provision is reduction and abolition of irregularities in performing insurance businesses, to safeguard the

<sup>4</sup> Off. Gaz. RS, Nos. [13/2000](#), [12/2001](#) Skl.US: U-I-131/00-11, [21/2002](#), [52/2002-ZJA](#), [91/2002](#), [29/2003](#) Odl.US: U-I-131/00-22, [50/2004](#), [65/2004](#) Skl.US: U-I-300/02-31, [102/2004-UPB1](#), [79/2006](#), [109/2006-UPB2](#), [9/2007](#), [102/2007](#), [69/2008](#), [19/2009](#), [49/2009](#)

<sup>5</sup> Off. Gaz. RS, Nos. [42/2006](#), [60/2006](#), [26/2007-ZSDU-B](#), [33/2007-ZSReg-B](#), [67/2007-ZTFI](#), [10/2008](#), [68/2008](#), [23/2009](#) Odl.US: U-I-268/06-35, [42/2009](#), [65/2009-UPB3](#), [83/2009](#) Odl.US: U-I-165/08-10, Up-1772/08-14, Up-379/09-8

<sup>6</sup> Off. Gaz. RS, Nos. [67/1993](#) [74/1994](#) Odl.US, [8/1996](#) Odl.US: U-I-114/95, [25/1997-ZJSRS](#), [39/1997](#), [1/1999-ZNIDC](#), [52/1999](#), [101/2001](#) Odl.US: Up-148/01, [42/2002-ZDR](#), [58/2003-ZZK-1](#), [10/2006](#) Odl.US: U-I-253/04-11, [126/2007-ZFPPIP](#)

<sup>7</sup> Off. Gaz. RS, Nos. [18/1993](#), [56/1999-ZPOmK](#), [110/2002](#)

<sup>8</sup> Off. Gaz. RS, Nos. [56/1999](#), [37/2004](#), [99/2004-UPB1](#), [40/2007](#), [64/2007-UPB2](#), [36/2008-ZPOmK-1](#)

<sup>9</sup> Off. Gaz. RS, Nos. [13/2000](#), [12/2001](#) Skl.US: U-I-131/00-11, [21/2002](#), [52/2002-ZJA](#), [91/2002](#), [29/2003](#) Odl.US: U-I-131/00-22, [50/2004](#), [65/2004](#) Skl.US: U-I-300/02-31, [102/2004-UPB1](#), [79/2006](#), [109/2006-UPB2](#), [9/2007](#), [102/2007](#), [69/2008](#), [19/2009](#), [49/2009](#)

<sup>10</sup> Janez Gregorič, Nadzorni organ kot sooblikovalec (ne)uspešnosti zavarovalnice, Slovensko zavarovalno združenje, 14. Dnevi zavarovalnega prava, slovensko zavarovalno združenje 2007, p. 552

interests of insured persons, the capability in performing insurance economy and to safeguard general economic interests in Slovenian economic system as a whole.

It is also worth noting the *Financial Conglomerates Act (Zakon o finančnih konglomeratih)*<sup>11</sup> which has come into force in 2006, establishing supplementary supervision over the supervised subjects, which are part of the financial conglomerate. The objective of this act (composed of 62 Articles divided into 5 sections) is to adopt the Directive 2002/87/EC relating to the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate. So far only one financial conglomerate has been registered in Slovenia.<sup>12</sup>

*Insurance Contracts Tax Act (Zakon o davku od prometa zavarovalnih poslov)*<sup>13</sup> stipulates the obligation of paying the taxes from insurance transactions in Republic of Slovenia. According to Article 6 the basis for the statement of the tax is the premium which is paid on the basis of the insurance contract. The tax amount to 6,5% of the tax base (Art. 7.).

### 3. Insurance contract law

Insurance contract law is governed by the *Code of Obligations (Obligacijski zakonik)*, *Maritime Code (Pomorski zakonik)*, *Obligations and Property Rights in Air Navigation Act (Zakon o obligacijskih in stvanopravnih razmerjih v letalstvu)*, *Compulsory Motor Third-Party Liability Act (Zakon o obveznih zavorovanjih v prometu)*, *Health Care and Health Insurance Act (Zakon o zdravstvenem varstvu in zdravstvenem zavarovanju)*, *Pension and Disability Insurance Act (Zakon o pokojninskem in invalidskem zavarovanju)* and some other legislation which is predominantly dedicated to compulsory insurance. In addition, a very important source of insurance contract law are also general principles of obligations, general and specific conditions of insurance, clauses, customs, court and arbitration practice and legal doctrine.

The *Code of Obligations* regulates insurance in Articles 921-989 organized in three sections. The first section contains general provisions applicable to all types of insurance, the second addresses provisions on non-life insurance, whereas the third section deals with insurance of persons (broader than life insurance). Marine and similar insurance (e.g. aviation), credit insurance and reinsurance are regulated by different laws.

### 4. Health insurance

*Health Care and Health Insurance Act*<sup>14</sup> provides for the health system and health insurance. Health insurance is compulsory, offered by the Health Institute of Slovenia, and also voluntary provided by insurance sector. Voluntary health insurance is governed by the Obligations Code. Currently there are three insurance companies providing complementary health insurance. The

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<sup>11</sup> Off. Gaz. RS, Nos 43/2006

<sup>12</sup> Anja Mihelič p. 21

<sup>13</sup> Off. Gaz. RS, Nos 57/1999, 72/2005, 96/2005-UPB1

<sup>14</sup> Off. Gaz. RS, Nos. 9/1992, 13/1993, 9/1996, 29/1998, 77/1998 Odl.US: Up 53/96, 6/1999, 56/1999-ZVZD, 99/2001, 42/2002-ZDR, 60/2002, 11/2003 Skl.US: U-I-279/00-42, 126/2003, 20/2004-UPB1, 62/2005 Odl.US: U-I-390/02-27, 76/2005, 100/2005-UPB2, 100/2005 Odl.US: U-I-69/03-17, 21/2006 Odl.US: U-I-277/05-32, 38/2006, 72/2006-UPB3, 114/2006-ZUTPG, 91/2007, 71/2008, 76/2008, 118/2008

compulsory health insurance covers all population with permanent residence in Slovenia which is covered under the unique compulsory insurance scheme. Practically the entire population is insured.<sup>15</sup>

In 2005 the Slovenian National Assembly passed a new law with the scope to amend the *Health Care and Health Insurance Act* which came into effect on 1 September 2005. The new act rearranges complementary health insurance in several ways. There were three main purposes to amend the new act: to rearrange complementary health insurance, to introduce equalization between insurance companies and to enhance control over the insurance companies. The two most important provisions that came into force on 1 March 2006 were those with regard to existing insurance contract and equalization schemes.<sup>16</sup>

## 5. Marine insurance

Slovenia with its strategic position is itself a maritime transit country within the EU. Whether shipping by land or sea in all means of transportation are subject to different levels of risks. As the majority of comparable systems, there is a single act of law governing specifically marine insurance. Before 2001 marine insurance was regulated with the *Maritime and Internal Navigation Act* (Articles 689 to 752). The Act was inspired by the United Kingdom Marine Insurance Act of 1906 and the Italian *Codice della Navigazione* of 1942. Today, marine insurance contracts are governed by the *Maritime Code* (hereafter: the Code) which entered into force on May 12<sup>th</sup> 2001 and comprises 999 articles. Section V of the Code focuses on contract of marine insurance. The Code comprise general provisions, hull insurance, cargo insurance, freight insurance, liability insurance and other various types of insurance. The stipulations of the Marine Code concerning marine insurance are mainly of a non-compulsory nature.

The Code introduces a few new provisions, e.g. a direct action in the case of all obligatory liability insurances and the substitution of the word “compensation” with the word “insurance benefit”. Article 680 of the Code defines maritime insurance as insurance of the ship its engines, machines, equipment and supplies, as well as of goods and other objects; insurance of freight, fares, insurance costs; insurance of liability for the loss or damage suffered by other persons in connection with the use of the ship.

It is also worth noting that according to Article 687 of the Code the insurance company shall be obliged, only at the request of the party taking out insurance, to issue a correct and signed copy of the insurance policy. If a policy has been issued, the rights deriving from the insurance may be transferred by endorsing the policy or in another suitable manner (Article 688). Therefore, under the Slovenian legal system a contract of marine insurance is of an informal legal nature, meaning that the issue of a policy is not a condition for the existence and validity of a contract. Nevertheless, it is a common practice to issue a marine policy when the agreement is made, and by its legal nature it provides written evidence of the concluded contract (*forma ad probationem*).<sup>17</sup>

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<sup>15</sup> available on [www.zzs.si](http://www.zzs.si), visited on 03.12.2009

<sup>16</sup> <http://diplome.fov.uni-mb.si/uni/12134Osterman.pdf>, visited on 01.12.2009

<sup>17</sup> Drago Pavic, Marine Insurance System in Croatia: Its present and future, Marine Insurance at the turn of the Millennium, Volume 2, European Institute of Maritime and Transport Law, Antwerp 2000, Intersentia, p. 211

Maritime insurance shall cover the risks that the insured object is exposed to, namely shipping accident, natural disaster, explosion, fire and theft. An insurance contract may also cover other risks to which the insured object is exposed during insurance, such as theft, non-delivery, handling risks, shore risks, war and political risks (Article 700). Unless otherwise agreed, the insurance shall cover damage due to the insured risks, i.e. total loss of the insured object, partial loss of or damage to the insured object, salvage costs and costs caused directly by the occurrence of an insured loss, general average, salvage reward, costs of establishing and liquidating the damage covered by the insurance (Article 702).

## 5. Aviation insurance

Aviation insurance law arises from the *Obligations and Property Rights in Air Navigation Act*<sup>18</sup> (*Zakon o obligacijskih in stvarnopravnih razmerjih v letalstvu*) which has entered into effect in 2002, comprising 218 articles in six parts.

According to Article 2 of the Insurance Act aviation insurance is classified into aircraft insurance (hull insurance), insurance of goods (cargo insurance), air carrier liability insurance and travel accident insurance. According to Articles 145, 147 and 148 of the *Obligations and Property Rights in Air Navigation Act* the aviation insurance includes insurance of aircraft and its equipment, cargo, freight, insurance costs, anticipated profit, liens and other rights, specific pecuniary benefits, liability, aviation reinsurance and other similar types of insurance and reinsurance (such as product liability insurance, control tower liability insurance).

If certain issues are not regulated by the above legislation, the Maritime Code shall apply. Both acts are based on the principle of *ius dispositivum*.

Finally, the *Compulsory Motor Third-Party Liability Act* with its 52 Articles divided into seven sections provides for a direct application of Regulation (EC) No. 785/04 which imposes on air carriers and other aircraft operators' minimum insurance obligations in respect of liability for passengers, baggage, cargo and third parties.<sup>19</sup>

## 6. Compulsory Insurance

Today compulsory insurance is becoming more and more important. We shall always bear in mind that compulsory insurance has its positive and negative sides. The main drawback rests the fact that the insured person is normally averted from preventive behavior as it relies on compulsory insurance and even stimulates insurance frauds. The Insurance Act refers only to compulsory insurance in transport for which the supervision of the state principle applies related where the vehicle is registered.

The sources of law which regulates this field in Republic of Slovenia can be classified into international conventions, *acquis communautaire*, Obligations Code, special legislation which prescribes compulsory insurance, general and special conditions of insurance, court and arbitration practice and legal doctrine.

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<sup>18</sup> Off. Gaz. RS, Nos [12/2000](#), [67/2002](#), [92/2007](#)

<sup>19</sup> Regulation (EC) No. 785/04 available on <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:138:0001:0006:EN:PDF>

Compulsory insurance can be divided into obligatory transport insurance (motor liability insurance, air carrier liability insurance, insurance of vessel owners and travel accident insurance), professional liability insurance (of lawyers, notaries public, insurance brokers, doctors, land surveyors); obligatory insurance of liability for pharmaceutical and medical aid manufacturers, obligatory insurance of travel agents, obligatory environmental impairment liability insurance (nuclear damage, pollution of the sea with oil, general environmental disasters, etc.), obligatory accident and life insurance (foreign technical divers, voluntary fire-fighters police officers).

## **7. Recent case law**

Recent research demonstrates that one of the main tasks of jurisprudence is to fill gaps in the laws and to interpret some unclear statutory provisions or even to replace a “political agreement” regarding the position of insurance companies in Slovenia. Furthermore, the position and the procedure of the Insurance Supervisory Agency are sometimes not clear and therefore require the interpretation by courts of law. Insurance litigation has frequently been a forum in which issues of significant public concern have been considered by the courts. The main obstacle for the Slovene judges rests on the fact that it is difficult to follow the fast changing legislation regarding insurance economy, insurance mathematics and insurance law. Additionally, some Slovene journalists and political scientists like to see conflicts as it is their job to report and comment on them, therefore the position for judges sometimes is even aggravated. Accordingly, it is important to appreciate that in 2008 the so called “insurance suits” evidenced by court as “damage suits” solved before the Higher Court amounted to 1109<sup>20</sup> from 5466 of all solved cases.

In one of the recent cases (2007, Supreme Court, II Ips 430/2005), the Court of Appeal ascertained that the insurance policy was not an original but just a copy of insurance policy made from the micro film. The policy clearly stated the exact day of conclusion of the contract of insurance, the beginning of insurance coverage and insurance warranty. Additionally, the Court of Appeal recognized that the provisions from the insurance policy were unclear and therefore, must be interpreted to the benefit of validity of insurance contract and the benefit of the plaintiff.

The Supreme Court emphasized that the insurance contract becomes effective from the date the parties enter into a contract (Art. 901 of the Obligations Act); however, the insurance warranty starts to run the next day after the insurance premium was paid (Art. 913 para. 1 of the Obligations Act). Moreover, the court held that the parties agreed just for the payment of the first installment of the insurance premium. Therefore, the courts of first and second instance ascertained correctly the facts that the insurance premium (and the first installment) was not paid; however, they misinterpreted the evaluation of the actual situation according to Art. 913 of the Obligations Act.

The Supreme Court held that insurance premium needs to be paid after the insurance contract was concluded and that the insurance warranty begins to run on the day which is established in the contract of insurance (Art. 913 para. 2 of the Obligations Act).

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<sup>20</sup> Gordana Ristin, Podjetje in delo 6-7/2009/XXXV, Zavarovalništvo v judikaturni domačih sodišč, p. 1183

From the insurance policy it was clear that insurance starts to run on March 30, 1998 on condition that the first insurance installment was paid. If not, the insurance warranty starts after the payment of the first insurance installment. For all this reasons the Supreme Court dismissed the revision as unfounded.