CURRENT LEGAL FRAMEWORK FOR INSURANCE IN SLOVAKIA

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Before evaluating the current state of legislation, it may be worth noting that as recently as the beginning of the 1990s, the right to provide contractual and compulsory insurance lay exclusively with the state insurance company, in accordance with the Czechoslovak Act on Insurance (No. 82/1966 Coll.). The insurance company was required to establish no more than a basic reserve fund and a premium reserve fund to cover liabilities towards insured persons, while the finance minister could require the insurance company to create other similar funds. The ministry also laid down the general-technical principles regarding the setting of premium levels for contractual insurance and premium levels for compulsory third-party liability insurance for motor vehicles. Insurance contracts for natural persons were governed by the Civil Code and by part of the Act on Citizen Services, and those for legal persons were regulated by the Economic Code and, where the insurance relationship had a foreign element, by the International Trade Code. Insurance conditions were regulated through decrees issued by the finance ministry.

After 1989, rapid changes took place throughout society and also in the area of insurance: the Slovak National Council adopted the Act on Insurance (No. 24/1991 Coll.) the main objective of which was the demonopolisation and liberalisation of the market. Then, in 1991, there came the repeal of the decrees on insurance terms and conditions and of the International Trade Code and Economic Code. Act No. 509/1991 Coll. effected a relatively major amendment to Act No. 40/1964 Coll., codifying the legal regulation of insurance contracts for all entities into a single law – the Civil Code.

In subsequent years, however, the development continued in only one direction and that concerned the area of public law, in which I include the Insurance Act, the legal regulation of insurance mediation, and the legal regulation of supervision. The regulation of private law, including the legal regulation of insurance contracts, remained more or less in deep freeze.

The insurance industry

It may be said that Slovak legislation has been relatively successful at keeping in step with EU directives on insurance activities, with the adoption of Act No. 95/2002 Coll. on Insurance as amended by Act No. 430/2003 Coll., 186/2004, 645/2004 Coll., 580/2004 Coll., and 340/2005 Coll. This law (despite all the reservations about its quality and clarity) covers practically everything which according to EU directives is required for entering the insurance market, organising an insurance company, managing an insurance company, the conduct of regulatory activities with regard to insurance companies, and the methods for winding up an insurance company. Also to be found here are provisions on certain relations regarding the operation of insurance companies from other Member States and their branches, and those from other foreign countries and their branches. It is important to note that provisions on the supervision of the insurance industry are also contained in this law.

I assume that I may express my conviction that, like the participants in the Slovak insurance market, the Ministry of Finance of the Slovak Republic, as regulator, and the National Bank of Slovakia, as supervisor, are aware of the fact that the law requires prompt and effective innovation having become labyrinthine through innumerable amendments. In addition, it must also be admitted that many matters which could have been addressed have not been (facultative reinsurance between insurers, outsourcing), and that some matters which should not have been addressed are being addressed, though not very successfully (coinsurance, applicable law, legal protection insurance).

Mediation

On 1 September 2005, there entered into force Act No. 340/2005 Coll. on Insurance and Reinsurance Mediation, transposing Directive 2002/92/EC on Insurance Mediation. During the making of the law, the legislature consistently sought to apply the Directive's requirement for the categorisation of intermediaries even though the Directive does not include a direct requirement for categorisation – it does not employ the simple division of intermediaries into agents and brokers, but differentiates intermediaries according to other criteria (see Article 12(1)(i), (ii) and (iii):

1. An intermediary who provides a fair analysis, in other words one who is required to give advice on the basis of an analysis of a sufficiently large number of insurance contracts available on the market, to enable

him to make a recommendation in accordance with professional criteria, regarding which insurance contract would be adequate to meet the customers needs (a broker under Slovak law).

2. An intermediary who is under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings; he does not provide a fair analysis, but is required to provide the customer with the names of the insurance undertakings with which he may conduct business (an exclusive agent under Slovak law).

3. An intermediary who is not under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings and does not give advice based on the obligation to provide a fair analysis. He is also required, upon request, to provide the customer with the names of the insurance undertakings with which he may and does conduct business (a non-exclusive agent under Slovak law).

The Directive also requires that every intermediary in the EU be subject to registration. The Slovak law met this requirement with relative ease by the fact that the previously mentioned categories of intermediary – agents and brokers – are themselves registered and a further two categories may be registered indirectly: an exclusive intermediary through an insurance company, and a subordinate intermediary through an agent or broker. Underlying this legal regulation was the fact that hardly any problems had arisen in practice up to that point, since the insurer was responsible for its agent and managed all the documentation about him. This has also served to prevent the supervision authority being inundated with thousands of registration requests, tests, the issuing of certificates and so on. Slovakia had a warning in this regard with the licensing of intermediaries for old-age pension savings.

Supervision

As far as supervision is concerned, it is worth noting the fact that this important position has within the short period of five years been covered by three different institutions – the MF SR, Financial Market Authority (ÚFT) and NBS.

• The Finance Ministry conducted control of the insurance industry until 2000. Its role was interesting for the fact that, alongside its position as a state administration authority, it was also the founder and later a shareholder of the former monopoly state insurance company (Slovenská poisťovňa, a. s., which following privatisation in 2003 merged with Allianz a. s.). The peculiarity of this situation was the fact that the MF SR had to conduct control exclusively in the public interest under the then applicable Insurance Act (No. 24/1991 Coll.). Even with the passage of time, it may be seriously doubted whether one entity could effectively carry out at the same time the ownership rights, the rights and obligations related to the performance of state control, and the role of the regulator.

• The ÚFT was established by Act No. 329/2000 Coll. and was defined as "the state administration authority for the capital market and insurance industry". The definition was later amended by Act No. 96/2002 Coll., which changed the term "control" to "supervision" and defined it as "a legal person within the public administration which is entrusted with the performance of supervision". The legislature's original conception that this authority would in future also supervise banks did not materialise.

• On 1 January 2006, the NBS became third entity to have been assigned the supervision of the insurance industry, under Act No. 747/2004 Coll. It should be noted that, for the first time in the modern history of the Slovak insurance industry, this law clearly defines the purpose of financial market supervision, saying in Section 1: "The purpose of supervision of the financial market is to contribute to the stability of the financial market as a whole, as well as to its safe and smooth operation, in the interest of maintaining the credibility of the financial market, the protection of customers, and compliance with the rules of competition".

Private insurance law – insurance contracts

Insurance contracts in the Slovak Republic are still regulated on the basis of Act No. 40/1964 Coll. Despite having been amended many times, this code remains grounded in the minimalist (even nihilist) legal regulations which, at the time of this law's appearance formed part of an ideology founded on the principle that the socialist social structure was the basis for civil relations. Although the amendment of this code in 1991 did not in itself make a significant change to the regulation of insurance, a step forward did take place in that the legal regulation of insurance contracts for all entities was codified into the Civil Code. This was based on the understanding that an insurance contract is in no way a piece of business and that it therefore comes under the category of civil law relations, and this despite the fact that the insured (policyholder) could be a legal person or a legal person with a foreign element.

Insurance relations were affected substantially and immediately by provisions of Section 2(3) of the Act, to which was attached the popular tenet: "What is not forbidden, is permitted". In practice it meant that insurance parties could in their insurance contracts deviate from the law on all matters not expressly forbidden by it. So far, however, lawyers have rarely agreed on which of the

provisions under title fifteen are, according to the tenet, peremptory and which are advisory. I suppose that misunderstandings are arising mainly due to the fact that, in many cases, the law refers to insurance terms and conditions, and it is therefore possible to say that any such reference has a peremptory nature in the sense that only insurance terms and conditions may deviate from the act. According to this interpretation it may not be possible to make directly in the contract an arrangement that deviates from the law.

Another key change was that insurance relations were classified among obligatory relations in part eight of title fifteen, which was entitled "Insurance contracts". This name is there despite the fact that title fifteen also governs relations based on a fact other than an insurance contract, that is, compulsory insurance. As regards insurance there is little that is new under the amendment; it is clear at first glance that the legislature's priority was to incorporate into the Civil Code at least that which was previously regulated by the Economic Code, the International Trade Code and decrees on insurance terms and conditions.

In the same year, however, the issue of decrees on insurance terms and conditions by the MF SR was cancelled, and insurers came under the obligation to have these approved by the insurance industry's supervisory authority (as had been the case in 1934!). Thus insurance terms and conditions acquired slightly different legal nature despite the fact that the places where the law referred to them had hardly changed, the situation being the same as when insurance terms and conditions were set by legislation.

What I consider most significant, however, is the fact that with the cancellation of the decrees on insurance terms and condition, Slovakia has lost every track leading to at least a vague notion of the insurance branches mentioned in the decrees (for example, according to Decree 13/1983 Coll., property insurance terms and conditions include the following "branches": the damage or destruction of property by a natural event; the damage or destruction of property by water from water supply equipment; the damage, destruction, theft or loss of property while travelling on internal public transport; the theft of property; the intentional damage or destruction of property; the damage, destruction or theft of a motor vehicle; the death, necessary killing or slaughter of livestock or of animals no longer able to be used for breeding).

Another important amendment to the Civil Code was included in Act No. 526 Coll., adopted in 2002, which sought to make provision for EU directives. With regard, however, to the existing structure of the Civil Code and the content of title fifteen, it was a fairly unsuccessful attempt: the civil law regulations did not in any way take into account that the Insurance Act had since 2000 included an annex setting out the branches of insurance and types of insurance in line with the applicable EU classification of insurance types according to insurance branches.

Moreover, the 2002 Insurance Act, in accordance with EU directives completely cancelled the obligation of insurance companies to submit for approval their general insurance terms and conditions. Given that Act does not define any branch of insurance except for the insurance of persons, property, liability and legal aid, it means in effect that the content of insurance in other insurance branches may be fundamentally different from one insurance company to the next. It may therefore be doubted whether Slovakia's regulation of insurance contracts ensures consumer protection or "the general good" to the extent required by EU directives. There have also been transposed from EU directives new obligations on insurers in regard to the content and compulsory terms of insurance contracts, with the aim of improving the provision of information to those who conclude insurance contracts. In this regard, however, concepts have been heedlessly adopted which have not yet been defined in our legal system and which are used in a different sense in insurance practice (for example, bonus). Likewise, the tightening of the regime under which insurance is cancelled for non-payment has not been regulated in an entirely suitable way. The new ninth section on legal protection insurance was established non-systemically, without regard to the fact that the basic division of insurance types – insurance of property, persons and liability – had otherwise been retained. Meanwhile, no attention was paid to the fact that other insurance branches had been retained according to risk classification and that they could not be subsumed under property, persons or liability. For example, credit insurance, deposit insurance, insurance against various financial losses, personal insurance for the event of an emergency during travel or while staying outside the place of permanent residence.

It is well-known among professionals that the Ministry of Justice has prepared an independent bill on insurance contracts having concluded that it could not wait until the creation of a new Civil Code for the necessary legal regulation of insurance relations. Indeed, it has realised the necessity of addressing not only our past faults, as mentioned above, but also the new institutions, concepts and legal relations that the open European market has brought to Slovakia. The Slovak Association of Insurance Companies supports this bill and has cooperated in its preparation. It is now up to insurance professionals to back the fast-tracking of the bill through the legislative process, so that it is adopted as soon as possible.