



The Business & Law Readers Digest

**Insurance:
Ukrainian Legal Framework
and Developments in 2007**

Banking and Finance // Beverages Industry // Corporate // Corporate Dispute Resolution // Due Diligence // Employment // Financial Services // **Insurance** // Investments // Kyoto Protocol Implementation // Logistics // Mergers and Acquisitions // Natural Resources // Oil and Gas // Representative Office // Land // Ukraine and the WTO // Ukraine and Russia // Tourism



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General legal framework

The Law "On Insurance" (the "Insurance Law") of 7 March 1996 is the principal legislation regulating insurance activities. The Insurance Law sets forth regulatory requirements for registration of insurance companies, a legal framework for conducting insurance activities and protection of the interests of insured persons. The Insurance Law has been amended numerous times since its conception, to reflect developments to insurance legislation.

In addition to general Insurance Law, several special laws govern specific areas of insurance activities, for example, the Law "On Compulsory Insurance of Civil Liability of Owners of Transport Vehicles" of 1 July 2004, which deals with legal rules for mandatory insurance of liabilities of owners of automobiles.

The principal legislative requirements of the Insurance Law in respect of insurance companies (insurers) may be viewed as the following:

- an insurer may be established as a joint stock company, general partnership, limited liability partnership or additional liability partnership;
- an insurer should have at least three shareholders;
- the insurer's capital should be not less than the equivalent of EUR 1 million (EUR 1.5 million for companies engaged in life insurance) at the official exchange rate of the National Bank of Ukraine. Capital should be paid in cash or, partly, in governmental securities;
- an insurer should obtain a licence for insurance activities from the State Commission of Ukraine on Financial Services Markets (the "Financial Services Commission");
- an insurer may not conduct activities other than insurance, re-insurance and management of insurance reserves according to statutory requirements;
- any insurer that possesses a license for life insurance may not engage in other types of insurance;
- contributions by an insurer to the capital of other insurers may not exceed 30% of its own paid capital;
- the value of the net assets of an insurer at any time after its second year of operation should not be less than the minimum required statutory capital;
- if insurance coverage exceeds 10% of statutory capital, the insurer should re-insure the insurance agreement.



The Financial Services Commission is the state authority regulating financial markets, including insurance, financial institutions (other than banks), non-state pension funds and some others. According to the Insurance Law, the authority of the Financial Services Commission in respect of insurance activities expands to:

- maintaining a Register of Insurers and Re-insurers, and a Register of Insurance and Re-insurance Brokers;
- issuing licenses to insurers and monitoring their compliance with licensing requirements;
- registering insurance brokers and monitoring their compliance with statutory requirements;
- conducting audits of insurance participants;
- issuing normative regulations regarding insurance applicable to insurance participants, etc.

Regulatory changes in 2007: regulation of foreign insurance participants

In 2007, in anticipation of Ukraine's entry to the World Trade Organisation (WTO), several regulatory changes were introduced to insurance regulations. Such changes shall take effect after of the admission of Ukraine to the WTO.

Law of Ukraine "On Amendments of the Law of Ukraine "On Insurance" No. 1110 of 31 May 2007

The Law disallows foreign insurers from engaging in insurance activities in the territory of Ukraine, except for the following activities:

- insurance of risks in relation to maritime transportation, commercial aviation, launching space objects and freight (including satellites), if the subject of insurance is property which is transported, transport vehicles, or liability which arises in connection with the transportation of goods;
- re-insurance;
- insurance of intermediary activities, such as broker and agency services regarding insurance of risks in relation to maritime transportation, commercial aviation, launching space objects and freight (including satellites), if the subject of insurance is property,



which is transported, transport vehicles or liability that arises in connection with transportation of goods;

- auxiliary services in relation to insurance, such as consultancy services, valuation of actuary risk and presentation of claims.

Regulation of the Financial Services Commission No. 8197 of 1 November 2007 "On Procedure for Concluding Contracts with Foreign Insurers"

Regulation 8197 provides that Ukrainian insurers may conclude the following contracts with foreign insurers:

- contracts for insurance of risks in relation to maritime transportation, commercial aviation, launching space objects and freight (including satellites), if the subject of insurance is property, which is transported, transport vehicles or liability that arises in connection with transportation of goods;
- re-insurance contracts;
- contracts with insurance agents;
- consultancy agreements, services on valuation of actuary risks and presentation of claims

Regulation 8197 prescribes Ukrainian insurers to ascertain, before the conclusion of any agreements with foreign

insurers, that the foreign insurer complies with the following requirements:

- the state where the foreign insurer is based should be a member of WTO and should not be indicated by the Financial Action Task Force (FATF) as a non-cooperative country or territory;
- the foreign insurer should be subject to state supervision by an authorised state agency in the country of its registration;
- the foreign insurer should not be registered in a country or territory with off-shore status according to the Organization for Economic Co-Operation and Development (OECD);
- the foreign insurer has a licence for insurance activities according to the legislation of its country; the insurance agreement should specify the relevant state authority which issued the license, the date and number of the licence;
- the rating of the financial standing of a foreign insurer should be in compliance with the requirements established by the Financial Services Commission.

Regulation of the Financial Services Commission No. 8170 of 25 October 2007 "On Intermediary Activities in Ukraine on Concluding Insurance



Contracts with Foreign Insurers". Regulation 8170 sets forth that intermediary activities in the territory of Ukraine in relation to the conclusion of insurance/reinsurance contracts with foreign insurers may be conducted by:

- Insurance brokers;
- Re-insurance brokers;
- Insurance agents acting on behalf of a foreign insurer.

Regulation 8170 requires an insurance/re-insurance broker and insurance agent to ascertain - before conclusion of any contract with the non-resident - that the foreign insurer complies with the following requirements:

- that the foreign insurer's country of registration is a WTO member, that it is not listed as a country that does not participate in international cooperation in combating money laundering, and it is not indicated as a non-cooperative country or territory by the Financial Action Task Force (FATF);
- that there is a relevant agreement on exchange of information between the Financial Services Commission of Ukraine and a relevant foreign financial services regulator;
- that the foreign insurer is subject

to state supervision and monitoring in the country of its registration;

- that there is a convention on the avoidance of double taxation between Ukraine and the country of registration of a foreign insurer;
- that the foreign insurer is located within the territory of one of the countries which are not designated by the OECD as having offshore status;
- that the foreign insurer has a relevant insurance license;
- that the rating of the financial standing of a foreign insurer is in compliance with the requirements of the Financial Services Commission.

An insurance/re-insurance broker or insurance agent that is planning to provide within the territory of Ukraine intermediary broker/agency services in relation to foreign insurers should submit to the Financial Services Commission a declaration notice one month in advance of the commencement of its activities.

According to Regulation 8170, an insurance/re-insurance broker/insurance agent should provide to its client before conclusion of an insurance agreement:

- a copy of a certificate evidencing registration of the broker in



the Register of Insurance / Re-insurance Brokers or a copy of an agreement between the insurer and insurance agent;

- a list of foreign insurers with whom a given insurance broker cooperates;
- information on whether an insurance broker directly or indi-

rectly owns 10% or more of the capital of a relevant foreign insurer with whom it plans to conclude an insurance agreement;

- information on whether a foreign insurer directly or indirectly owns 10% of the statutory capital of an insurance broker.

Types of insurance

The Insurance Law establishes two principal types of insurance - compulsory insurance for specified activities and other voluntary insurance.

Compulsory insurance is required, inter alia, for the following activities:

- medical insurance;
- personal insurance of medical and pharmaceutical personnel;
- personal insurance of personnel of fire safety inspections;
- insurance of sporting personnel;
- insurance of personnel of veterinary medicine;
- personal insurance against transport accidents;

- aviation insurance of civil aviation;
- insurance of liability of maritime cargo carrier;
- insurance of civil liability of owners of transport vehicles;
- insurance of vehicles of water transportation;
- insurance of agricultural crops;
- insurance of liability of operators of nuclear equipment, etc.

Voluntary (non-obligatory) insurance services may be provided for:

- life insurance;
- accident insurance;



- health insurance;
- railway insurance;
- transport insurance;
- cargo insurance;
- insurance against fire risks and natural accidents;
- property insurance;
- liability insurance;
- insurance of financial credits, investments, financial risks, bank guarantees;
- insurance of judicial costs, medical costs, etc.

Licencing procedures

According to Licencing Regulations No. 40 of 28 August 2003 of the Financial Services Commission, an insurance licence is issued by the Financial Services Commission upon submission by the applicant of the following documents:

- an application pursuant to a prescribed format, specifying the types of insurance to be conducted by the applicant;
- a copy of an extract from the Register of Commerce;
- copies of corporate foundation documents;
- a letter issued by a bank or certified auditor confirming payment of capital;
- information on the financial standing of company shareholders;
- approved regulations (rules) of insurance for specific types of insurance;
- an economical feasibility study of planned insurance activities (business plan);
- prescribed information regarding shareholders;
- prescribed information regarding company management (director and deputy directors);
- information on the certification of insurance personnel;
- approved regulations for financial monitoring;
- the appointment of the officer responsible for financial monitoring.

The time period for review of the application package by the Financial



Services Commission is one month. The licence is issued for an unlimited duration. The licencing fees range depending on the type of insurance:

UAH 30,000 for life insurance, UAH 21,000 for transport and certain other types insurance and UAH 12,000 for most other types of insurance.

Insurance regulations and agreements

The Financial Services Commission requires insurers to prepare insurance regulations (rules) for each type of insurance and submit them to the Commission before a licence for insurance activities can be issued. The insurance agreement with the insured person should be in conformity with the insurance regulations of the insurer approved by the Financial Services Commission.

The Insurance Law sets forth the standard requirements regarding insurance regulations and agreements. In particular, the insurance regulations for specific types of insurance submitted to the Financial Services Commission should indicate the following:

- type of insurance;
- manner for calculating insurance payments;
- insured risks;
- limitations to insured events;
- duration and territory covered by

insurance;

- procedure for the conclusion of an insurance agreement;
- rights and duties of the insurer and insured;
- course of action of the insured person at the occurrence of insured event;
- specific documents that should evidence the occurrence of insured event and damages;
- procedure and conditions for making insurance payments;
- timeframe for the review of insurance claims;
- grounds for refusal of insurance claim;
- conditions for termination of insurance agreement;
- dispute resolution;
- insurance tariffs, etc.



A standard insurance agreement should be in compliance with the insurance regulations, and should refer to:

- the name and address of the insurer and the insured;
- types of insurance;
- the amount of the insurance sum;
- specified insured events;
- insurance premiums;
- insurance tariffs;

- the term of validity of the agreement;
- the procedure for amendment to and termination of the agreement;
- provisions for making insurance payments and grounds for refusal;
- the rights and duties of parties, liability for non-performance, etc.

An insurance agreement generally takes effect upon payment by the insured of the first insurance premium. The agreement may be evidenced by an insurance policy (certificate) issued by the insurer.

Regulation of insurance intermediaries

The Insurance Law generally recognises the following types of insurance intermediaries: (1) insurance brokers, (2) re-insurance brokers and (3) insurance agents.

1. Insurance brokers act on the basis of a broker contract with the insured person and represent the insured in relation to insurers. A broker should be registered by the Financial Services Commission and recorded in the register of insurance brokers maintained with the Commission.

2. Re-insurance brokers act on the basis of a broker contract with an insurer and

represent the insurer in relation to a re-insurer.

3. Insurance agents represent the insurer in respect of insured individuals. Insurance agents are legal persons, or individuals with authority to act on behalf of the insurer, issue insurance policies, receive insurance premiums and make insurance payments.

Insurance and re-insurance brokers should be registered by the Financial Services Commission with the Register of Insurance / Re-Insurance Brokers administered by the Commission.



The registration procedure for insurance brokers is regulated by the Regulation of the Financial Services Commission No. 736 of 28 May 2004 "On Registration of Insurance and Re-Insurance Brokers and Maintenance of State Register of Insurance / Re-Insurance Brokers".

To register with the Financial Services Commission, an insurance broker should submit the following documents:

- an application pursuant to the prescribed format;

- a copy of the registration of an insurance broker;
- copies of certificates attesting the qualifications of the insurance brokers' personnel;
- an economic feasibility study of planned broker activity (business plan).

Upon receipt of such documents, the Financial Services Commission should within 5 days record the applicant with the Register of Insurance / Re-Insurance Brokers.

Regulation of foreign insurance participants

Under the Insurance Law, the insurer should re-insure the insurance agreement if the insurance coverage envisaged by such agreement exceeds 10% of the insurer statutory capital.

A Ukrainian insurer may re-insure risks with a foreign re-insurer subject to certain restrictions established by Resolution of the Cabinet of Ministers of Ukraine No. 124 of 4 February 2004 "Procedure of Re-Insurance with Foreign Insurers (Re-Insurers)". Re-insurance with foreign re-insurers is permitted if:

- the legislation of the country of registration of the re-insurer establishes a regulatory framework for

state supervision over insurance and re-insurance activities;

- the insurer (re-insurer) has been engaged in insurance activities for not less than three years;
- the foreign re-insurer has no reported violations to insurance legislation in their place of registration and no violation of money laundering legislation.

Foreign insurance brokers may establish representative offices in Ukraine and register with the State Register of Insurance / Re-Insurance Brokers maintained by the Financial Services Commission.

Upon obtaining a certificate of registra-



tion with the Register of Insurance / Re-Insurance Brokers a representative office of a foreign broker may perform the following services:

- consulting;
- provision of expert information services;
- services in relation to prepara-

tion, conclusion and performance of insurance / re-insurance agreements;

- settlement of claims in case of occurrence of an insured event;
- other intermediary services regarding insurance/re-insurance permitted by Financial Services Commission.

Taxation

Insurance and re-insurance services, services of insurance and re-insurance brokers are not subject to value added tax (Article 3.2.3 of the Law "On Value Added Tax").

Taxation of the profits of insurance participants is regulated by Chapter 7 of the Law "On Taxation of Corporate Profits" of 28 December 1994, as amended. Income from the insurance activities of Ukrainian insurers is subject to the following taxation rules:

- income of Ukrainian insurers from provision of long-term life insurance and non-state pension insurance is taxed at the rate of 0%. Long-term life insurance is life insurance for 10 years and more, subject to a condition that insurance premiums should be contributed by an insured person for a

period of not less than 5 years and that the insurance payments should be made to an insured person who survives the expiration of insurance contract or occurrence of an 'insurance event' envisaged in their insurance contract, or if an insured person reaches the age determined in the contract.

- income of Ukrainian insurers from other types of insurance activities is taxed at the rate of 3%. The taxable insurance income includes the gross amount of insurance premiums collected from insured persons, minus re-insurance costs.
- other types of income of Ukrainian licensed insurers are taxed according to the general tax rate of 25%.



Income of foreign insurers derived from re-insurance in Ukraine is taxed as follows:

- income of foreign insurers received for re-insurance is not subject to taxation in Ukraine, if the rating of the financial standing of such foreign insurer complies with the requirements established by the Financial Services Commission;
- income of foreign insurers whose rating of financial standing does not comply with the requirements established by the Financial Services Commission is subject to a withholding tax of 12%.

The applicable rating of the financial standing of foreign insurers and re-insurers is approved by the Financial Services Commission No. 2885 of 3 December 2004.

Financial reliability of foreign insurers and re-insurers should be not less than the following ratings established by international rating agencies:

- AM Best - "B+"
- Moody's Investors Service - "Baa"
- Standard & Poor's - "BBB"
- Fitch Ratings - "BBB"

Financial reliability of insurers registered in countries that are part of the Single Economic Area (the Russian Federation, Belarus, Kazakhstan) should be not less than the following ratings, established by international rating agencies:

- AM Best - "B"
- Moody's Investors Service - "Ba"
- Standard & Poor's - "BB"
- Fitch Ratings - "BB"

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