

UDC 368(4:497.2)

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LEGAL OPPORTUNITIES FOR PERFORMING INSURANCE ACTIVITY IN BULGARIA BY ENTITIES WITH HEADQUARTERS IN A THIRD COUNTRY

I. Introduction

It is a fact that the existing and functioning of a stable banking and insurance system is the base for the development of a democratic and legal state. These qualities of the Republic of Bulgaria are defended in accordance with the Constitution of the country and they can be objectively accessed by contemporary Bulgarian society. During the last 20 years, however, when the transition to market economy took place, these two sectors of economy of the country were quite instable. This is most often explained by the dynamics of the social economic relationships which impose the development and application of different normative solutions. The legislation base of the insurance sector undergoes a lot of changes and amendments of different legal acts. The beginning of this century in the Republic of Bulgaria is characterized by gradually establishing stability in the social economic relations and together with this are fulfilled the so-called Copenhagen criteria for membership in the European Union. The membership in the union itself is the circumstance that imposes the introduction of a completely new legal regime in some aspects of the insurance activity in Bulgaria. The accepted new normative act – The Insurance code¹ regulates the performing of activity in the Republic of Bulgaria by insurers with headquarters in third countries.² The report will present the differentiation in the legal opportunities for performing of activity by entities with headquarters in a member state and by entities with headquarters in a third country to which the Arabic Republic of Egypt belongs.

II. Legal opportunities for performing of activity by an insurer with headquarters in a third country

1. General conditions

In accordance with the Bulgarian legislation the

entities – insurers with headquarters in a third country have the right to perform activity if they observe special conditions. Such are foreseen for subjects registered in any country that is not a member of the European Union or the European Economic Area. Different regulations, specific and characteristic for the common internal market,³ are valid for the representatives of these two unions.

The peculiarities of the insurance activity as a whole impose supervision on the part of the country and the application of imperative measures. That is why, first, the entity that wants to perform insurance activity in Bulgaria should have this right as per its national legislation. In order to have rights as per the Bulgarian legislation this entity is obliged to register its branch on the territory of Bulgaria. The registration of the branch is performed in accordance with the general regulations of the Bulgarian commercial legislation and is not the subject of the present report.

The second main element of the actual contents of performing activity by an insurer with headquarters in a third country includes the issuing of a licence by the Financial Supervision Commission that is the competent state authority supervising the insurance activity on the territory of Bulgaria. The starting of the branch of the foreign insurer cannot be done alone. It is based on the preliminary submission to the registration authority (The Registry Agency) of the already issued licence which on its part allows the official to enter the respective branch with subject of activity insurance and/or reinsurance. The Registry Agency issues a certificate for the registration of the branch of the insurer from a third country and a copy of it should be submitted to the supervising authority – the Financial Supervision Commission.

¹ The insurance code in its prevailing part is effective as from the date of entry into force of the Treaty of Accession of the Republic of Bulgaria to the European Union.

² As per the Insurance code a „member country” is a country that is a member of the European Union or that belongs to the European economic area. „Third country” is any other country not belonging to these two agreements.

³ See Chapters III and IV of the Insurance Code.

2. Granting of a licence

2.1. General regulations

The role of the Financial Supervision Commission is quite significant because all insurers from third countries have rights and obligations of insurers with headquarters in the Republic of Bulgaria and their insurance activity in the country is supervised by the state. The registration procedure and starting of activity by an insurer with headquarters in a third country is connected with the evaluation of the facts and circumstances that are stated before the Financial Supervision Commission when the licence is issued. The licence itself is issued and can encompass only the types of insurance that the insurer received permit for performing in the country where the headquarters are. To this aim the Financial Supervision Commission checks and compares the submitted certified copy of the licence for performing insurance activity issued by the respective competent authority as per the headquarters of the insurer.

The insurer with headquarters in a third country submits an application for the issuing of a licence for performing insurance activity by the branch. It is obligatory to attach to the application the act by which the Managing body of the insurer has taken a decision for the opening of a branch on the territory of Bulgaria. In order to decide whether the Bulgarian legislation requirements are met the Financial Supervision Commission should receive official documents certifying the registration of the insurer as well as updated data for its individualizing features including the headquarters and the management address, subject of activity, the amount of the subscribed capital, the management system and the persons that manage it and/or represent it.

Having in mind the specifics of the insurance activity and with the aim to guarantee the opportunity for correct fulfilment of the obligations as per the concluded insurance contracts the insurer with headquarters in a third country is obliged to meet a number of requirements connected with its financial standing. A deposit amounting to one fourth of the minimum guarantee capital⁴ should be deposited in a bank that performs banking activity in the Republic of Bulgaria. The deposit is part of the guarantee capital the branch of the insurer should have. The guarantee capital itself cannot be less than the

minimum amounts specified as per types of insurance included in the licence of the insurer. The branch of the insurer from a third country is obliged to invest within the boundaries of the Republic of Bulgaria its assets calculated to the amount of the minimum guarantee capital.

The procedure of the application for issuing of a licence requires the insurer from a third country to present a programme for the activity for the next three years which should be updated on an annual base. The contents of the programme for the activity of the insurer is imperatively stipulated and includes information about the management and organization structure, forecast for the expenses for the organizing and starting of the activity, the resources, amount and distribution of the own funds. The lack of even one of the required elements can be the reason for refusal to issue a licence.

2.2. Special requirements

The application for issuing of a licence should take place after some special internal acts have been developed by the insurer. Such are the regulations for the organization and management of the information system and for the organization and activity of the service for internal control. The information system should be kept up-to-date as its most significant elements include the statute of the insurer and the other internal acts, the accounting and actuarial information and others.

The branch of an insurer from a third country should create a specialized service for internal control and its manager should be appointed by the organ that is competent to appoint the manager of the branch. The service has important authority as the most important is to check and evaluate the observation of the law and the internal acts, the preparation of the accounting documents and reports and others. The importance of the internal control can be judged from the fact that there is a special legal act.⁵

Special information that should be submitted with the application to the Financial Supervision Commission is the information for the persons that have advantage when taking decisions in the General meeting of the insurer. Such are the persons that have directly or by connected entities 10 or more than 10 votes in the General meeting or the capital of the insurer or other participation which gives them the opportunity to control it.

⁴ The amount of the minimum guarantee capital varies in accordance with the types of insurance included in the insurer's licence – 4.4 million BGN, resp. 6.4 million BGN. In accordance with § 4. from Insurance code's additional provisions the minimum amounts under Article 82, Paragraph 1 shall be updated every year and their amount in EUR shall be increased with the percentage increase of the European index of consumer prices published by Eurostat provided that this percentage exceeds by 5 per cent the last re-calculation. The result shall be rounded up to any complete EUR 100,000.

⁵ See Ordinance No 32/13.09.2006 about the requirements to the organization and activity of the service for internal control of the insurer and the people included in the insured group. (published SG issue 86/2006).

Together with the shown requirements that should be met when applying for the issuing of a licence the insurer from a third country has the obligation to present its annual financial reports for the last three years.

The Financial Supervision Commission is obliged to pronounce its decision within 4 months after receiving of the application. With its decision the Financial Supervision Commission has the right to issue a licence for performing of insurance activity or to refuse the issuing of a licence.

2.3. Refusal for the issuing of a licence

The refusal of the Financial Supervision Commission to issue a licence for performing insurance activity by the branch of the insurer with headquarters in a third country can be based on not meeting the requirements stated in the Insurance code and the acts for its application. Also the Financial Supervision Commission can motivate its refusal to issue a licence on the grounds that the performed towards the insurer insurance supervision by the respective competent national organ threatens the interest of the consumers of insurance services or impedes the performing of the state insurance supervision as per the Bulgarian legislation. A negative answer can be given also in case that the Financial Supervision Commission establishes that in the respective third country as per the headquarters of the insurer is not applied the reciprocal principle⁶ when giving access to Bulgarian insurers to the respective local national insurance market.

In case there is a negative decision the Financial Supervision Commission motivates in writing its refusal for issuing a licence and a new application for issuing a licence can be submitted not earlier than 6 months after the decision for refusal was enforced.

2.4. Withdrawal of a licence

The withdrawal of a licence of an insurer from a third country is part of the material competency of the Financial Supervision Commission. The Legislator has divided the prerequisites for withdrawal of a licence⁷ into two groups – general and special as the general ones are valid for insurers with headquarters on the territory of Bulgaria and the special ones are valid only for insurers registered in a third country.

Acting in the conditions of entangled competency the Financial Supervision is obliged to withdraw the licence of an insurer when it establishes that the entity has not started activity within 12 months after the issuing of the

licence. The violation of the prohibition for performing other commercial activity besides the activity for which a licence was received is also an absolute prerequisite for withdrawing of the licence. The same consequence is realized in case that the total amount of the liabilities of the entity exceed the total value of its assets.

The general prerequisites for withdrawing of a licence of an insurer are complemented also by the cases in which the Financial Supervision Commission has the right to decide whether to perform its authority to withdraw the licence or not. When the insurer stops performing activity for more than six months the Financial Supervision Commission has the discretion rights to withdraw the licence of the insurer. If the latter illegally refuses to pay or delays payment of an executable payment and liquid cash obligation the Financial Supervision Commission may decide to withdraw the licence. The withdrawal of the licence can be for one or more types of insurance if the grounds for withdrawal of the licence refer to part of the activity of the insurer.

The special prerequisites for withdrawal of the licence of an insurer from a third country include obligatory withdrawal of the licence when the permit for performing of insurance activity has been withdrawn by the competent organ in the country as per the headquarters.

The withdrawal of the licence, however, does not free the insurer from the obligations as per the already concluded contracts. After the decision for withdrawal of the licence becomes effective the insurer does not have the right to conclude new insurance contracts and to offer new conditions in them as well as to change them. When the licence is withdrawn away in connection with the grounds for this the Financial Supervision Commission is obliged to inform the respective court for the opening of a procedure for liquidation or for insolvency procedure.

2.5. Special cases

Advantages to foreign insurers

The insurers from a third country have the legal opportunity to use special advantages connected with alleviated requirements to their financial standing in the member states of the European Union and the European Economic Area. To this aim the insurer from a third country submits an application to the Financial Supervision Commission and to the competent organs of the remaining

⁶ The insurer from a third country is obliged to submit a certificate issued by the organ performing insurance supervision in the country as per the headquarters that a Bulgarian insurer can open and start its activity in this country as per the general order established for then foreign insurers.

⁷ Only some of the prerequisites for withdrawal of an insurance licence have been considered in this report – art. 36 from the Insurance code.

member countries with a request to perform activity (or has already received a licence for performing such an activity). In the request the insurer states motives for choosing of a competent organ of one of the member countries which will supervise its solvency in connection with the activity of all its branches established within the European Union and the European Economic Area. All competent organs to which the request has been submitted should give their consent including the Financial Supervision Commission which gives its consent after evaluating the financial standing of the insurer including its solvency. The procedure for the choice ends when on its part the specified in the request of the insurer competent organ informs the other competent organs that he will supervise the solvency of the insurer regarding the activity of all its branches established within the framework of the European Union and the European Economic Area. As a result of this the insurer from a third country receives a kind of privilege because the insurer is not obliged to deposit the specified deposit amounting to one fourth of the amount of the minimum guarantee capital (see 2.1) in every member country where he performs activity but only in one of them. The same applies for the assets that represent means to the amount of the guarantee capital. They may be in one of the member states in which the insurer performs activity. The third advantage is connected with the so-called limit of solvency⁸ of the insurer from a third country. It can be calculated towards the overall volume of activity performed in the member states and not separately in each of them. These opportunities aim on one side to alleviate the requirements for the financial standing of the insurers from third countries when starting or extending their activity in other member countries and on the other hand – to unify the principles and the execution of the state insurance supervision by the competent national authorities.

When there is an application for issuing of an insurance licence that comprises insurance concerning every responsibility for damages due to the usage of land vehicles the insurers from third countries should submit to the Financial Supervision Commission and the Guarantee fund⁹ a list with the names and addresses of the representatives for settling of claims as per this insurance in every of the member states.

Collateral installments

All insurers including the branches of insurers from a third country are obliged until 31st May every year to perform payment as per the account of the fund to secure the insurance receivables. In this way are guaranteed the receivables of the insurance services consumer in case of insolvency of an insurer with headquarters in Bulgaria or of an insurer from a third country that has registered a branch. The insurers from a third country make installments in the securing fund only for the activity performed through the branch registered in Bulgaria.

Requirements to the activity of the branch of an insurer from a third country

The branch of the insurer from a third country has relative autonomy. It is obliged to keep its trade registers in Bulgarian in accordance with the legislation in the Republic of Bulgaria and to store as per its address the complete available documentation connected with its activity in the country. Unlike the branches of Bulgarian entities, the branches of insurers with headquarters in a third country should prepare a separate balance sheet.

The competent organ of the insurer as per the legislation of the third country should choose a manager of the branch in the Republic of Bulgaria. Having in mind the status of the branch and the peculiarities of the insurance activity the law has introduced a number of requirements namely to the manager of the branch of an insurer from a third country. The Manager of the branch – citizen of a third country should have a permit for long term residence in the Republic of Bulgaria. His representative power should be to the limit that allows him to take the insurer's obligations towards third parties and to represent him to state authorities and courts in the Republic of Bulgaria. In this way by means of the authorized representative of the branch the insurer from a third country takes part in the administrative and court cases in front of Bulgarian administrative and court organs. The documents handed over as per the established order at the management address of the branch are considered handed over to the insurer. The stating of this inarguable presumption aims to bind the insurer to the activities performed by and towards the authorized

⁸ In accordance with art. 81 of the Insurance code the solvency limit represents the minimum amount which should be equal to the own funds of the insurer (that means his assets decreased by the foreseen liabilities), decreased by the intangible assets, necessary for the performance of the contractual obligations of the entity in the long term, in correspondence with the total volume of his activity. For the accurate calculation of these indices see Ordinance No 21/16.03.2005 for the own funds and the solvency limit of the insurers, re-insurers and health insuring companies (published in S.G. No 29/2005).

⁹ The guarantee fund is an independent legal entity that receives installments from all insurers offering the obligatory insurance "Third party liability" for vehicles as the minimum amount of the funds in the fund is 3 million BGN.

representative because as per the Bulgarian commercial law the branch has no procedural legitimating and the party in all cases is the insurer.

Applicability towards the insurance intermediaries

The insurance intermediaries (insurance brokers and insurance agents) registered in a member state of the European Union and the European Economic Area can perform activity on the territory of the Republic of Bulgaria under the conditions of the right of establishment and freedom of rendering services. They can start activity one month after informing the Financial Supervision Commission by the respective competent organ of the country by origin about the intention of the insurance intermediary to perform activity in Bulgaria. Unlike the insurance intermediaries from member countries, the Bulgarian legislation does not settle the option for insurance intermediaries registered in third countries to perform insurance activity.

Стефанов Р., Дочев Х. М. Законні можливості для страхової діяльності в Болгарії об'єктами зі штаб-квартирою в третій країні

Після вступу до Євросоюзу Республіка Болгарія стала частиною єдиного внутрішнього євrorинку. Коли контракт набуває чинності, тоді первинне і вторинне законодавство об'єднання, стає обов'язковим для всіх Болгарських державних влад, фізичних і юридичних осіб. Нормальне існування 450-мільйонного сімейства європейців вимагає введення і дотримання низки вимог, які не були застосовані доти. Республіка Болгарія зобов'язана гармонізувати внутрішнє законодавство із законодавством Євросоюзу, подаючи низку директив у національних нормативних актах або створюючи повністю нові. Так нові моменти в розвитку правової основи відбиваються в усіх аспектах соціальних взаємин. Це повідомлення взаємопов'язане з передумовами для виконання страхової діяльності в Болгарії об'єктами з штаб-квартирою в третій країні, оскільки акцент робиться на специфічних особливостях процедури для дозволів і виконання державного нагляду.

Ключові слова: страховик, дозвіл, страхова діяльність, третя країна, Болгарія.

Стефанов Г., Дочев Х. М. Законные возможности для страховой деятельности в Болгарии объектами со штаб-квартирой в третьей стране

После вступления в Евросоюз Республіка Болгарии стала частью единого внутреннего евrorынка.

Вступление в силу контракта делает первоначальное и вторичное законодательство объединения, обязательным для всех Болгарских государственных властей, физических и юридических лиц. Нормальное существование 450-миллиона семейства европейцев соединено с введением и соблюдением ряда требований, которые не были применены до тех пор. Республика Болгария обязана гармонизировать внутреннее законодательство с законодательством Евросоюза, представляя ряд директив в национальных нормативных актах или создавая полностью новые. Эти новые моменты в развитии правовой основы отражаются во всех аспектах социальных взаимоотношений. Это сообщение имеет дело с предпосылками для выполнения страховой деятельности в Болгарии объектами со штаб-квартирой в третьей стране, так как акцент делается на специфических особенностях процедуры для разрешений и выполнения государственного надзора.

Ключевые слова: страховщик, разрешение, страховая деятельность, третья страна, Болгария.

Stefanov G., Dochev H. M. Legal Opportunities for Performing Insurance Activity in Bulgaria by Entities with Headquarters in a Third Country

After joining the European Union on 1st January the Republic of Bulgaria became part of the European single internal market. The entering into force of the contract makes the primary and secondary legislation of the union obligatory to all Bulgarian state authorities, physical and legal entities. The normal existence of the 450-million European family is connected with the introduction and observation of a number of requirements which have not been applied until then. The Republic of Bulgaria is obliged to harmonize its internal legislation with the legislation of the European Union by introducing a number of directives into the national normative acts or by creating entirely new ones. These new moments in the development of the legal framework are reflected in all aspects of social relationships. This report deals with the prerequisites for performing insurance activity in Bulgaria by entities with headquarters in a third country as emphasis is put upon the specifics of the procedure for issuing of licences and performing of the state supervision.

Key words: insurer, licence, insurance activity, third country, Bulgaria.

Received by the editors: 10.09.2012
and final form 20.11.2012