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UKRAINE REDESIGNS ITS INSURANCE LEGAL FRAMEWORK

On 18 November 2021, the Parliament of Ukraine adopted the Draft Law "On Insurance", No.5315 (the "Insurance Law"). This law has been heavily supported by the National Bank of Ukraine (the "NBU"), which has recently become the insurance market regulator. The Insurance Law is expected to be signed into law by the President of Ukraine.

Aimed at creating a solvent, stable and transparent insurance market, the Insurance Law will replace the currently effective but outdated legislation, which was adopted almost a quarter of a century ago. The new restated Insurance Law will bring the national insurance regulations closer in line with EU regulations as well as introduce into Ukrainian law many European insurance sector best practices, including the principles of the International Association of Insurance Supervisors.

The Insurance Law will basically set up a new model of insurance market regulation. It will introduce new regulatory principles and requirements, ranging from market entry and (re)insurers licensing, solvency and liquidity, corporate governance and risk management, and consumer protection to market exit and transfer of the insurance portfolio. Some of these regulatory novelties are highlighted below.

New Regulatory Approach

The Insurance Law introduces a risk-based approach with respect to the insurance activities regulation and oversight functions of the NBU towards market players. The underlying principles of the risk-based regulation were announced by the NBU in 2020 in its white paper on the insurance sector regulatory development. In line with these principles, the Insurance Law provides for different requirements to market players depending on their significance and other factors as well as different measures and corrective actions depending on the type and severity of incompliance. In this regard, the Insurance Law contains quite a number of references to the regulations of the NBU including those which would regulate the exercise of the controlling functions and application of measures by the regulator.

Classes of Insurance

Under the new regulatory legal framework, (re)insurers will be licensed by classes of life and non-life insurance (which is in line with the EU Directive 2009/138/EU (Solvency II)) and not based on types of insurance, as is the current practice under the effective insurance law.

The prohibition on combination of life and non-life insurance activities will remain. Insurance companies will be also able to change the scope of the license by adding new or excluding existing classes of insurance (or risks belonging to a certain class of insurance).

The risks within insurance classes, classification criteria of insurance classes, risks within specific insurance classes, as well as the particularities of insurance activities and contractual arrangements under insurance classes will further be determined by separate statutory acts and regulations of the NBU. Most likely, these separate statutory acts and regulations will determine the specifics of the insurance activities which are defined as mandatory by the effective insurance law, the regulation of which is not contained in the Insurance Law.

Transparent Shareholding Structure

All insurers will be required to have a transparent shareholding structure, disclose and annually update information regarding the owners of substantial interest and key shareholders of the company. In order to comply with these requirements, an insurer will be required to appoint a responsible officer.

A shareholder intending to dispose of its substantial stake in an insurance company will be required to notify the NBU accordingly, and in certain cases specified in the Insurance Law, the NBU would be legally able to temporarily suspend the share transaction.

The NBU will receive an extraordinary right with respect to insurers' shareholders. If the NBU finds that the business reputation and financial standing of a substantial shareholder are non-compliant, the NBU will be authorised to suspend the exercise of voting rights.

Under the Insurance Law, the NBU will be authorised to determine the existence of a significant or decisive influence on the management or business activities of the insurer, as well as to recognise the person as a holder of an insurer's substantial interest. The criteria and procedure for such classification will be adopted by the NBU.

Enhanced Corporate Governance and Control Rules

Once the Insurance Law becomes operational, an insurer may be established only as a joint-stock company ("JSC"). For the currently existing insurers incorporated in a form of an additional liability company, there is no requirement to convert to a JSC. Rather, such insurers will have the option to conduct such reorganisation at their discretion within one year.

In line with a risk-based approach, the Insurance Law sets forth new requirements for the corporate governance and management structure of insurers based on the insurers' size, specifics of activity, business plan, significance of the insurer, the scope of services provided and other criteria. More detailed corporate governance rules and requirements will be elaborated upon by the NBU in its bylaws.

The Insurance Law introduces the notion of the collective suitability of an insurer's collegiate governing bodies which will be determined based on the NBU rules. Also, the law defines the executive officers of the insurer and sets forth the requirements of their qualification, competence and business reputation, as well as the procedure for their approval, and the respective authority of the NBU with respect to these executives.

Solvency and Capital Requirements

The insurer and the insurer's shareholders holding a substantial interest will be required to maintain the insurer's solvency. The solvency of insurers will be subject to compliance with the solvency capital requirement and minimum capital requirement.

The Insurance Law establishes two different approaches to the calculation of solvency requirements: simplified and basic. The basic approach will apply to life insurers, non-insurers licensed under any of the following classes of insurance - liability insurance, insurance of loans and sureties (guaranties) as well as larger insurance companies. For the first three years that the Insurance Law is effective, all insurers will have to meet the solvency requirements under the simplified approach.

The Insurance Law introduces different levels of the minimum capital requirements for insurance companies, in particular:

- UAH 32 million (approx. EUR 1.065 million) for non-life insurers, and
- UAH 48 million (approx. EUR 1.597 million) for life insurers, non-life insurers licensed under any of the following classes of insurance: liability insurance, insurance of credits and suretyship (guarantees) as well as inward re-insurers.

Every three years insurance companies will be required to submit their business plans to the NBU. Business plans will also be subject to regular reviews, assessment of their performance and updates. The criteria which will be applicable to business plans will be developed by the NBU.

Fair Play with Clients

The Insurance Law establishes additional requirements and obligations for insurers and insurance intermediaries vis-à-vis consumers. Compliance with these requirements will require updating insurers' internal processes and documents. For instance, the insurers, insurance intermediaries and their staff upon conducting their activities must take into account the customers' needs in insurance. Prior to execution of an insurance agreement, the insurer (insurance intermediary) will be required to collect and analyse the customers' information to determine such needs.

It is an insurer's obligation to disclose in detail information to the client regarding among others the terms of the insurance agreement, premium, payment procedure, insurance intermediary (if any) and franchise application. There is also a reservation that the text of the insurance agreement shall be set out in a coherent manner and does not permit multiple interpretations of the same provisions, contradictions or inconsistencies between the terms of the insurance agreement which may lead to an ambiguous understanding of these terms.

Market Exit

Unlike the effective insurance law which remains practically silent on withdrawal from the market by insurance companies, the Insurance Law envisages options for insurers to exit the market both voluntarily (i.e. by corporate restructuring or the shareholders' decision regarding the company's termination) and involuntarily (based on decision by the NBU). For this purpose, the Insurance Law will also introduce a set of rules for the transfer of an insurance portfolio including the pre-approval of such transfer by the regulator.

Further Steps

This Law shall enter into force on the day following the day of its publication and shall become applicable in two years after its entry into force (except for the limited provisions). Within 6 months thereafter, the insurers will be required to align their activities with the new legal framework and notify the NBU accordingly. Insurers will also be required to submit a 3-year business plan and to have their license(s) re-issued by the NBU. The Insurance Law provides other transitional rules and provisions which should be properly checked by insurers and other market players.

Under the transition provisions, the NBU, the Cabinet of Ministers of Ukraine and other state authorities are required to develop the necessary regulatory framework in order for the new insurance rules to become fully operational.

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