

On the basis of Article 88, item 2 of the Constitution of the Republic of Montenegro I hereby pass the

ENACTMENT
PROCLAIMING THE LAW ON INSURANCE
(Official Gazette of the Republic of Montenegro, No 78/06 from the 22nd
December 2006)

I hereby proclaim the Law on Insurance, adopted by the Constituent Parliament of the Republic of Montenegro at the fifth meeting of the second regular session in 2006, held on the 11th December 2006.

Number: 01-1547/2
Podgorica
15 December 2006

President of the Republic of Montenegro
Filip Vujanovic, signed

LAW ON INSURANCE

I BASIC PROVISIONS

Subject of the Law
Article 1

This law shall regulate the conditions and method of performing insurance business and supervision of the performance of insurance business.

Definitions
Article 2

Certain expressions used in this law shall have the following meanings:

- 1) "Insurance" means the combining of funds, on the principles of mutuality and solidarity, of an undefined number of natural or legal persons into an insurance company that undertakes, on the basis of that, to pay a monetary compensation, an insured sum or do something else, to some of these or third parties, in case of a property damage, loss or destruction of things, death or injuries to a person, bodily injury, or damage to the health, due to occurrence of a certain event, which could not have been foreseen in advance, or prevented or avoided, or with the passage of time, on the basis of an insurance contract (policy) and conditions that are prescribed in advance by that insurance company;

- 2) "Reinsurance" means the obligation of a reinsurer, in case of the occurrence of an insurable event reinsured, to assume all or part of the risk reinsured, while the insurer gives over to the reinsurer part of the premium proportionate to the part of the risk assumed;
- 3) "Co-insurance" means that several insurers have agreed to bear and share the risks jointly so that each of the insurers indicated in the insurance policy is liable to the policyholder for the complete indemnity in case of the occurrence of an insured event;
- 4) "Annuity insurance" means insurance where, in return for one or more premiums paid to an insurance company, the insurance company agrees to make fixed or variable periodic payments to the insured for a stated period of time or until the happening of a stated event;
- 5) "Voluntary health insurance" means the insurance which, on the basis of a contract, may provide rights related to health insurance to the persons that are not insured under the law governing compulsory health insurance, or a larger scope of rights than that provided by that law;
- 6) "Qualified participation" means:
 - the possession, either alone or acting in concert with other related persons, of the direct or indirect ownership of minimum 10% of capital or voting shares of a legal person;
 - irrespective of formal ownership of capital or voting shares, the ability to exercise significant influence over the management or policies of such legal person, on the basis of an agreement or understanding, or in any other way;
- 7) "Affiliate" means a part of the foreign insurance company that has a status of the legal person in the Republic of Montenegro;
- 8) "Insolvency" means a situation when the total value of an insurer's property is insufficient to meet all of the insurer's obligations;
- 9) "Illiquidity" means a situation when an insurer is unable to meet its obligations as they become due during the regular course of its business;
- 10) "Insurance premium" means the amount paid by a person to provide appropriate insurance coverage;
- 11) "Technical provisions" means the provisions established for covering obligations related to insurance, as determined at the end of an accounting period;
- 12) "Actuary" means a mathematics specialist who is applying statistics, theory of probability and financial mathematics on the matters related to insurance, investment of insurance funds, financial management, etc;
- 13) "Guarantee reserve" means the amount of funds the insurance company must have in order to provide for permanent fulfillment of obligations, which cannot be lower than the calculated solvency margin;
- 14) "Solvency margin" means the amount of funds the insurance company must provide in order to permanently fulfill its obligations under insurance contracts.

Insurance Business

Article 3

Insurance business shall consist of insurance activities, co-insurance activities, reinsurance activities and services directly related to insurance activities.

Insurance activities are considered to be concluding insurance contracts, executing insurance contracts obligations and undertaking measures for the prevention and control of the risks jeopardizing the insured property and persons.

Co-insurance activities are considered to be concluding and executing insurance contracts with several insurers who have agreed upon joint coverage and risk sharing.

Reinsurance activities are considered to be concluding and executing contracts on reinsurance of the insured surplus risks exceeding the retention amount of an insurance undertaking with a reinsurance undertaking.

Activities directly connected to the insurance business are insurance brokerage and agency, processing and assessment of risks and damages, brokerage in sale/s of the salvaged insured damaged property and rendering other intellectual and technical services relating to insurance activities.

Persons That May Engage in Insurance Activities

Article 4

Insurance, co-insurance and reinsurance business shall be conducted by insurance or reinsurance companies with head office in the Republic of Montenegro (hereinafter: the Republic), which have been licensed by the independent regulatory authority (hereinafter: the regulatory authority) for insurance and/or reinsurance business.

The activities referred to in paragraph 1 of this Article may also be conducted by a part of insurance company - affiliate licensed by the regulatory authority for insurance and/or reinsurance business in the Republic.

The persons referred to in paragraphs 1 and 2 of this Article may engage in insurance and co-insurance business only for those types of insurance for which they have been licensed by the regulatory authority.

Insurance brokerage business shall be conducted by insurance broker companies with head office in the Republic, which have been licensed by the regulatory authority.

Insurance agency business shall be conducted by insurance agent companies and insurance agents (natural persons) with head office or residence in the Republic, if licensed by the regulatory authority.

Insurance ancillary services shall be provided by insurance ancillary service providers and units of business organizations with head office in the Republic, if licensed by the regulatory authority.

Insurance on Voluntary Basis

Article 5

Insurance of persons and property shall be voluntary.

Notwithstanding paragraph 1 of this Article, insurance of persons and property shall be compulsory in cases determined by law.

Territorial Principle

Article 6

Property and persons in the Republic may be insured only by an insurance company established in accordance with this law.

Notwithstanding paragraph 1 of this Article, the following may be insured with a foreign insurance company:

- 1) aircraft and sea transportation above compulsory traffic insurance;
- 2) foreign persons with permanent and temporary residence in the Republic, and their property, except for compulsory insurance.

Insurance brokerage activities, insurance agency activities and provision of insurance ancillary services for the insurance referred to in paragraph 2 of this Article may be performed also by foreign companies.

Insurance company may be reinsured with domestic and foreign reinsurance company.

The Government of the Republic of Montenegro (hereinafter: the Government) may prescribe other conditions under which the property and persons referred to in paragraph 1 of this Article may be insured with a foreign insurance company.

Insurance Supervision

Article 7

Insurance supervision shall be carried out by the regulatory authority.

Application of Other Laws to Insurance Activities

Article 8

The law regulating the legal status of business organizations shall also apply to insurance companies, parts of insurance companies without a head office in the Republic, insurance brokers and agents, and insurance ancillary service providers, unless otherwise prescribed by this law.

The law regulating contractual relations and other laws regulating contracts in certain classes of insurance shall apply to insurance contracts, insurance brokerage contracts and insurance agency contracts.

II INSURANCE ACTIVITIES

Classes of Insurance

Article 9

Insurance activities, in the context of this law, shall be grouped into the following classes of insurance, subject to the type of risk or interest covered by the insurance:

- 1) life insurance;
- 2) annuity insurance;
- 3) supplementary insurance in addition to life insurance;
- 4) other classes of life insurance;
- 5) accident insurance, including insurance against injuries at work and professional diseases, which covers:
 - payment of contracted insured amounts, parts of insured amounts, or compensation for contracted costs;
 - payments due to consequences of injury or health damage or death of a passenger
- 6) voluntary health insurance, which covers:
 - one-time pecuniary benefit due to incapacity for employment;
 - compensation for contracted health care expenses;
 - combination of payments from 1 and 2 of this Article;
- 7) motor vehicle insurance, which covers all damage to or loss of:
 - self-propelled motor vehicles except for railway vehicles;
 - non-self-propelled vehicles;
- 8) railway rolling stock insurance, which covers all damage to or loss of railway rolling stock;
- 9) aircraft insurance, which covers all damage to or loss of aircrafts;
- 10) ship insurance, which covers all damage to or loss of sea, river and lake vessels;
- 11) goods in transit insurance, which covers all damage to and loss of goods including baggage, irrespective of the form of transport;
- 12) fire and other threat to property insurance, which covers all damage to property other than damage covered by insurance under points 7 to 11 of this Article which may occur due to fire, explosion, storm and other natural disasters, nuclear energy, and land slide or subsidence;
- 13) other property insurance, which covers all damage to property other than damage covered by insurance under points 7 and 11 of this Article which may occur due to breakage of machines, theft, glass breakage, frost or other threats, other than threats from point 12 of this Article;
- 14) motor vehicle liability insurance, which covers all liability arising out of the use of self-driven motor vehicles operating on the land, including carrier's liability;
- 15) aircraft liability insurance, which covers all liability arising out of the use of aircrafts, including carrier's liability;

- 16) ship liability insurance, which covers all liability arising out of the use of vessels, including carrier's liability;
- 17) general liability insurance, which covers all liabilities other than those from points 14 to 16 of this Article;
- 18) credit insurance, which covers:
 - risk of non-payment or default in payment as a result of insolvency or other events, acts or facts;
 - export loans and other risks related to export, trade and investments in domestic and foreign markets;
 - installment loans;
 - mortgage and Lombard loans;
 - agricultural loans;
 - other loans and grants;
- 19) suretyship insurance, which covers and guarantees direct or indirect fulfillment of debtor's obligations;
- 20) financial loss insurance, which covers financial losses due to:
 - risk of termination of employment;
 - insufficiency of income;
 - bad weather;
 - loss of profit;
 - unforeseen general expenses;
 - unforeseen trading expenses;
 - loss of market value;
 - loss of rent or revenue;
 - indirect trading losses, other than those from lines 1 to 8 of this point;
 - other non-trading losses;
 - other financial losses;
- 21) legal expense insurance, which covers court's expenses, lawyer's expenses and other litigation expenses;
- 22) assistance insurance, which covers assistance for persons who get into difficulty while traveling, or in other way while away from home or permanent residence; and
- 23) other classes of non-life insurance.

Groups of Insurance Activities

Article 10

Several classes of insurance shall be classified into groups of insurance activities, subject to the related risk or interest covered by the insurance, as follows:

1. life insurance, which includes the classes of insurance referred to in Article 9, paragraph 1, points from 1 to 4 of this Article and
2. non-life insurance, which includes the classes referred to in Article 9, paragraph 1, point from 5 to 23 of this Article.

Compulsory Insurance Article 11

Compulsory traffic insurance and other compulsory insurance shall be governed by a special law on compulsory insurance.

Reinsurance Article 12

An insurance company shall reinsure the obligations under an insurance contract exceeding the retention limit with a reinsurance company.

The retention limit is the amount of risks undertaken by insurance contracts that an insurance company retains as its own coverage.

Services Directly Related to Insurance Activities Article 13

Services directly related to insurance activities shall be:

- 1) insurance brokerage;
- 2) insurance agency;
- 3) adjustment activities and risk assessment;
- 4) salvage operations;
- 5) provision of other intellectual and technical services related to insurance activities.

Use of the Word “Insurance” Article 14

No legal entity or natural person shall use the word “insurance” or a derivative of the word “insurance” in respect of a trade name, or name of its product or service, unless it uses those words on the basis of provisions of this law or special law.

Application of Trade Rules, Good Business Practices and Code of Conduct Article 15

Insurance companies and other entities providing services directly related to insurance shall operate according to economic principles and trade rules and observe best business practices and code of conduct while performing insurance activities.

III INSURANCE COMPANY

Undertaking Insurance Business Article 16

Insurance activities in the Republic may be conducted only by insurance companies licensed by the regulatory authority to engage in such activities, in accordance with this law.

The companies referred to in paragraph 1 of this Article can only conduct those insurance activities for which they have been licensed for by the regulatory authority.

Prohibition of Entry into Brokerage or Agency Contracts Article 17

Insurance companies, within the granted authority, may enter into brokerage or agency contracts solely with entities licensed to engage in such activities.

Organizational Form of Insurance Companies Article 18

An insurance company may be formed by both legal and natural persons if they meet the terms and conditions prescribed by this law.

An insurance company shall be established as a joint-stock company.

The name of an insurance company shall contain the designation: AD.

Any change in status, name or head office of an insurance company shall be subject to the approval of the regulatory authority.

Performance of Insurance Activities Article 19

An insurance company may engage only in:

- 1) insurance activities or
- 2) reinsurance activities.

An insurance company may not engage in life and non-life insurance at the same time.

An insurance company may perform services directly related to insurance activities in accordance with this law.

Reinsurance activities may be performed only by an insurance company licensed for engaging in reinsurance business.

An insurance company may perform also voluntary pension insurance activities in accordance with special law.

Additional Clause for Life Insurance Activities

Article 20

Notwithstanding Article 19, paragraph 2 of this Law, an insurance company engaged in life insurance may also perform activities related to associated accident insurance and voluntary health insurance with respect to health care expenses, provided that these types of insurance refer to the person that concluded the life insurance contract.

Minimum Capital Requirement

Article 21

Minimum capital requirement for an insurance company shall be for:

- 1) Life insurance 800,000.00 euro
- 2) Non-life insurance:
 - 500,000.00 euro for accident and voluntary health insurance;
 - 1,250,000.00 euro for compulsory traffic insurance;
 - 1,000,000.00 euro for property insurance, including motor vehicle insurance – all-risks;
 - 2,250,000.00 euro for all classes of non-life insurance;
- 3) Reinsurance 2,000,000.00 euro

Prohibition of Cross Ownership

Article 22

Cross ownership of capital or voting rights in insurance companies, reinsurance companies, insurance broker companies and insurance agent companies shall be prohibited.

Approval of Qualified Participation

Article 23

A single person, directly or indirectly, may not acquire a qualified participation in an insurance company without prior approval by the regulatory authority.

The person that holds qualified participation in an insurance company may not increase its participation, without prior approval of the regulatory authority, if it would add up to its total participation of 20%, 33% or 50% or more of capital and voting shares of the insurance company.

The person that has been approved as in paragraph 1 of this Article (hereinafter: the qualified shareholder) who intends to dispose of the shares below the level for which it has been approved, shall ask the approval of the regulatory authority therefore.

Related Parties

Article 24

According to this Law, related parties are considered to be the legal entities mutually inter-connected through joint management, capital or in any other way to achieve mutual business goals, so that the business activities or results of one entity may significantly affect the business activities or results of the other.

According to this Law, the term “related parties” shall also include individuals and entities mutually inter-connected as follows:

- 1) members of immediate family;
- 2) in such a way that an entity, or entities considered to be related under this paragraph indirectly or directly participate in the other entity;
- 3) in such a way that the same entity holds shares in these entities, or entities deemed to be related as defined in other items of this paragraph;
- 4) if the entities are related according to the law governing the legal status of business organizations;
- 5) as members of management or employees in the company, on the basis of the labor contract, in which they act in that capacity, or in which the members of that individual's immediate family are employed as well.

According to this Law, members of the immediate family are considered to be:

- 1) spouse, or a person he/she has been living with that subject to the Law on Marriage has the same legal capacity as marriage;
- 2) children or foster children;
- 3) relatives up to the third degree of kinship, including in-laws;
- 4) other persons who do not have full work ability and have been awarded custody.

Application for Obtaining Qualified Participation Approval

Article 25

Documents attached to the application for obtaining approval for qualified participation are defined in items 7 to 9, paragraph 2, Article 30 of this Law.

Provided an entity has submitted the application for the license to engage in insurance activities, the decision on granting the approval defined in paragraph 1 of this Article shall be rendered within the procedure of rendering decision on the application for obtaining approval for engaging in insurance activities.

Rejection of Application for Obtaining Qualified Participation Approval

Article 26

The regulatory authority shall reject the application for obtaining the qualified participation approval if the documents and available information indicate that:

- 1) due to the activities currently or already conducted or the insurance related actions performed by the applicant or related party the activities of the joint-stock insurance company might be jeopardized;
- 2) due to the activities of the applicant or related party or because of the nature of their relation the joint-stock insurance company supervision might be impossible or difficult;
- 3) the applicant or related party has been a management member or a person with special authorities within the legal entity which undergone the liquidation or bankruptcy procedure over the past three years;
- 4) the acquisition of the qualifying holdings would be against the provisions of the Law governing the security market.

Loss of Voting Rights Article 27

An entity that acquires qualified participation in an insurance company and has not been given the regulatory authority's approval shall not have any rights in the management of the insurance company, for the shares so obtained.

Withdrawal of Qualified Participation Approval Article 28

The regulatory authority shall withdraw the granted qualified participation approval, by resolution, in the following cases:

- 1) if the approval has been granted on grounds of false and inaccurate information;
- 2) if the business activities and actions of the insurance company are jeopardized due to the activities conducted by the qualified shareholder or related party;
- 3) if due to the business activities and actions conducted by qualified shareholder or related party, or due to the nature of their relation, the supervision over the insurance company is impossible or difficult;
- 4) if the qualified shareholder violates the obligation to obtain the approval for qualified holdings or for the increase of its participation, or disturbs in any other way the supervision over the insurance company.

On the basis of the resolution specified in paragraph 1 of this Article, the qualified shareholder shall lose the voting right arising from the shares related to qualified participation.

Null and Void Decisions Article 29

Decisions rendered by the corporate bodies of the insurance company with participation of the votes of the qualified shareholders, whose qualified participation approval has been rejected or withdrawn, shall be null and void.

Application for Obtaining a License of Insurance Companies

Article 30

Application for obtaining a license for an insurance company shall be submitted to the regulatory authority by founders of the insurance company or, on their behalf, by a person authorized by them.

The application from paragraph 1 of this Article shall be accompanied by the following:

- 1) incorporation charter;
- 2) proposed by-laws;
- 3) evidence that funds equal to minimum capital requirement from Article 21 of this Law and funds for covering foundation and other start-up expenses have been provided;
- 4) business plan for the following three years, with the opinion of an authorized actuary;
- 5) insurance terms and conditions and premium tariffs;
- 6) list of shareholders with their family name, name and address, or name of the company and its head office address, total nominal value of the shares and percentages of participation in the initial capital of the insurance company;
- 7) for shareholders –the qualified shareholders legal entities:
 - evidence of registration from a relevant registration authority;
 - list of founders, total nominal value of their shares and percentages of participation in the initial capital of the insurance company;
 - financial reports with the certified auditor's report, for the last three years;
- 8) for shareholders – qualified shareholders natural persons:
 - evidence that the person has not been a member of the board of directors or individual endowed with special authority in a legal entity which has undergone the liquidation or bankruptcy procedure, for the past three years;
 - evidence that the person has not been unconditionally sentenced to imprisonment for more than three months due to the economic, property or malpractice and corruption offense,
 - evidence of payment of the total amount of income and property taxes during the past three years, issued by relevant authority.
- 9) list of entities related to the qualified shareholder with the description of the nature of such relations as defined in Article 24 hereof;
- 10) for the persons proposed to be nominated members of the Board of Directors, Executive Director and Secretary:
 - evidence they meet the requirements in terms of his/her education, skills and professional experience,
 - evidence that the person has not been a member of Board of Directors or person with special authorities in a legal entity which has undergone the liquidation or bankruptcy procedure, for the past three years,
 - evidence that the person is not limited as defined in Articles 48 and 49 hereof;
 - evidence that the person has not been unconditionally sentenced to imprisonment for more than three months,

- evidence of the relevant authority on the amount of paid property and income taxes for the past three years;
- 11) name and family name of the person nominated certified actuary with the data as defined in item 10 of this paragraph, or pre-contract on rendering actuary services signed with the certified actuary company and evidence of professional actuary liability insurance;
- 12) evidence that the company has the prescribed organizational, personnel and technical capacity for the conduct of business to be licensed;
- 13) evidence of owning or leasing the business premises in which the business will be conducted and
- 14) other evidence and data as may be required by the regulatory authority.

For the foreign founders, the documents defined in item 2 of this Article should be submitted in certified translation, in the language officially used in the Republic.

The Ministry of Finance shall specify the detailed requirements and manner to prove items 8 to 11 of this Article, as well as the necessary organizational, personnel and technical capacity of the insurance company.

Business Plan of Insurance Company **Article 31**

Business plan of an insurance company shall contain, *inter alia*:

- 1) an outline of business policy;
- 2) a group or classes of insurance that will be licensed (insurance terms and conditions and premium tariffs);
- 3) table of maximum retention amounts for all classes of insurance that will be licensed;
- 4) reinsurance program;
- 5) amount of expected solvency margin, determined in accordance with this law;
- 6) planned foundation expenses and manner of their coverage;
- 7) liquidity plan;
- 8) a study of expected results of business operations, particularly the expected income from premiums, expected expenses for damages and amount of technical provisions and provisions prescribed by this law, expected values of funds and their sources and preliminary cost estimate for conducting insurance business, together with economic viability study as related to the market size and structure.

Application for Obtaining a License for Reinsurance Activities **Article 32**

An application for the licensing of reinsurance activities shall be accompanied by the evidence, proposed documents and information from Article 30, paragraph 2 of this Law, while the business plan shall not contain the information from Article 31, point 2 of this Law.

Issuing the License for Insurance Activities

Article 33

The license for insurance activities shall be granted to the insurance company to engage in one or several classes of insurance.

The regulatory authority shall decide on the application to engage in insurance activities by resolution in the course of 90 days from the date of receipt of an application by either accepting or rejecting it.

The regulatory authority shall, in the resolution referred to in paragraph 2 of this Article, always list the classes of insurance that shall be licensed.

The resolution referred to in paragraph 2 of this Article shall be final.

Administrative dispute may be conducted against the resolution referred to in paragraph 2 of this Article.

The resolution on issuing license for insurance business to an insurance company shall be published in the "Official Gazette of the Republic of Montenegro".

Registration of Insurance Companies

Article 34

Within 60 days from the day of receiving a license for insurance activities, founders of the insurance company shall be obliged to submit the registration application to the Central Registry of the Commercial Court (hereinafter: CRCC).

The application for registration referred to in paragraph 1 of this Article shall be accompanied by the license obtained.

The insurance company shall submit the registration resolution to the regulatory authority within seven days from the day of its receipt.

Changes in License for Performing Insurance Activities

Article 35

The insurance company that intends to perform a certain type of insurance activity that is not covered by its license for performing insurance activities or to stop performing a certain type of insurance activity for which it has been licensed, shall submit application to the regulatory authority for the change in the license.

The provisions of Articles 30, 31, 33 and 34 of this Law shall accordingly apply to the change in the license referred to in paragraph 1 of this Article.

Rejection of Applications for Obtaining a License for Insurance Activities

Article 36

A license for insurance activities shall not be issued:

- 1) if the insurance company does not submit the evidence on fulfilling the conditions prescribed by Article 30 of this Law ;
- 2) if the founders with qualified participation in capital or voting shares of the insurance company do not meet the requirements for obtaining the consent referred to in Article 23 of this Law ;
- 3) if the provisions of the incorporation charter, by-laws and policies and procedures are contravening the provisions of the law;
- 4) if members of the managing bodies of the insurance company do not submit the necessary evidence for their eligibility or nominated persons do not meet the prescribed conditions;
- 5) if, on the basis of the bylaws and other submitted documents, and other acts and information, it can be concluded that the insurance company does not have organizational, staffing and technical capacity to perform insurance activities in the scope projected in its business plan;
- 6) if the insurance company does not meet other conditions stipulated in the law.

If the application for licensing of insurance activities has been refused, the reasons of the refusal must be indicated.

Termination of Insurance License Validity

Article 37

The license to engage in insurance activities shall be terminated in the following cases:

- 1) if the company does not submit the registration application to the CRCC within 60 days from the day of obtaining a license;
- 2) if the company fails to commence its business activities within six months from the day of issuing the insurance license .

In cases as defined in paragraph 1 of this Article, the regulatory authority shall render resolution on termination of the license to engage in insurance activities.

The resolution referred to in paragraph 2 of this Article shall be final and shall be published in the "Official Gazette of the Republic of Montenegro".

Administrative dispute may be conducted against the resolution referred to in paragraph 2 of this Article.

The insurance company the license of which has been terminated can no longer engage in insurance activities.

Issuing the License for Reinsurance Activities Article 38

The licensing of reinsurance companies shall be governed by the provisions of this law relating to the licensing of insurance companies.

General Acts, Annual Business Plans and Business Policies Acts of the Company Article 39

The insurance company shall adopt the by-laws, other general acts and business policies acts.

The insurance business policies acts referred to in paragraph 1 of this Article shall include:

- 1) general and special conditions of insurance and premium tariffs;
- 2) decision on technical bases of insurance;
- 3) decision on criteria, manner of determination and depositing of retention amount and total retention amount;
- 4) rules on conditions and manner of depositing and investing funds of the company;
- 5) rules on maximum rates of overhead supplement;
- 6) rules of forming and calculating and amounts of unearned premiums;
- 7) rules of forming and calculating mathematical provisions;
- 8) rules of forming and using reserve for participation in profits (for life insurance only);
- 9) rules of determining the part of technical premium for the disbursement of claims outstanding related to outstanding obligations incurred (claims outstanding);
- 10) rules of forming and using reserve for risk settlement (for non-life insurance only);
- 11) rules on the conditions and manner of coinsurance and reinsurance;
- 12) rules on the conditions and manner of exercising recourse;
- 13) other business policies.

By-law shall be subject to the approval of the regulatory authority.

Foundation of Organizational Parts Article 40

An insurance company licensed under this Law may found organizational parts that do not have the status of a legal person.

Organizational parts from paragraph 1 of this Article shall be founded with prior consent of the regulatory authority.

Status Changes Article 41

An insurance company may perform the status changes, including division, merger or acquisition, with prior approval by the regulatory authority only.

An application for obtaining approval of status changes shall be accompanied by the documents as specified by the Ministry of Finance.

IV A PART OF FOREIGN INSURANCE COMPANY - AN AFFILIATE

Application for Licensing Article 42

A foreign insurance company licensed for insurance or reinsurance activities in the country of its head office may found an organizational part with status of a legal person (hereinafter: foreign company affiliate) in the Republic.

License for insurance activities for a foreign company affiliate shall be issued by the regulatory authority on the basis of an application received from the foreign company.

The foreign insurance company shall submit the application from paragraph 2 of this Article accompanied by the following:

- 1) report on its operations for the last three years;
- 2) report on the performed audit of its financial statements for the previous business year;
- 3) opinion of supervisory authorities of the home country about the operation of the applicant, as well as their approval of foundation of the affiliate in the Republic, if such approval is required, or a certificate that such approval is not required;
- 4) certified copy of the applicant's license;
- 5) business plan of the foreign company affiliate for the following three years, with a detailed description of intended insurance or reinsurance activities, expected premium income, expected expenses for insurable events, and foundation and start-up cost estimate;
- 6) proposed business policies specified in Article 39 of this Law with the opinion of the certified actuary;
- 7) general and specific conditions of insurance and premium tariffs verified by a certified actuary for all the intended insurance activities of the affiliate;
- 8) evidence that the funds for the minimum capital requirement and for covering foundation and other start-up expenses have been provided;
- 9) information on persons nominated for the board of directors, including the person nominated as director of the affiliate;
- 10) information on the number and qualifications of the staff needed for the commencement of operation of the affiliate;
- 11) information about the technical capacity of the affiliate for its work,

12) other evidence and data as may be required by the regulatory authority.

The documentation referred to in paragraph 1 of this Article shall be submitted in the original or certified copy, signed and authenticated by a competent body of the insurance company.

Together with the documentation, data and proofs referred to in paragraph 1 of this Article and submitted in a foreign language, a certified translation of these documents in the language officially used in the Republic shall be submitted.

Deciding upon Applications Article 43

Within 90 days from the day of submitting the application referred to in Article 42, paragraph 2 of this Law, the regulatory authority shall pass a decision on granting or refusing to issue a license to a foreign company affiliate.

The decision from paragraph 1 of this Article shall be final.

Administrative dispute may be conducted against the decision referred to in paragraph 1 of this Article.

Revocation of Licenses Article 44

The regulatory authority shall revoke the license of a foreign company affiliate in the cases determined by this law with respect to insurance or reinsurance companies and if the home country regulator revokes the license of the foreign company – the founder of the affiliate.

Governing Provisions Article 45

The provisions of this law as well as other regulations that refer to insurance companies shall apply to foreign company affiliates.

V MANAGEMENT AND GOVERNANCE OF INSURANCE COMPANIES

Bodies of Insurance Companies Article 46

Bodies of an insurance company shall be: general meeting of shareholders and board of directors.

An insurance company shall have executive director and company secretary.

Election, revocation, scope of authority and procedural rules of bodies of an insurance company shall be regulated in detail in the by-laws of the insurance company.

Employment Obligation for Members of Board of Directors Article 47

Employment obligation for members of the Board of Directors shall be regulated by the Statute of the insurance company.

Appointment Criteria for Members of Board of Directors Article 48

A person who has appropriate university education and at least three years of experience at management positions in insurance or other insurance related areas may be appointed for a member of the board of directors.

A person may not be elected as a member of the board of directors if such person:

- 1) is a member of the board of directors or an executive director of another insurance company or subsidiaries of those companies;
- 2) is related to a legal person in which the insurance company has a qualified participation;
- 3) was in the management of a business organization or other legal person that was subject to bankruptcy proceedings or whose license was revoked.

Approval of Appointment of Members of Board of Directors Article 49

Only a person approved by the regulatory authority may be appointed as a member of the board of directors.

Along with the request for getting the approval referred to in paragraph 1 of this Article, the insurance company shall submit evidence of compliance with conditions referred to in Article 48 of this Law.

The approval referred to in paragraph 1 of this Article shall not be issued if the proposed person for the member of the Board of Directors does not meet the conditions referred to in Article 48 of this Law and if based on the available information it has assessed that the appointment of the proposed person may endanger business operations of the company due to current or prior activities or actions of such person.

Approval of Appointment of Executive Director Article 50

Only a person approved by the regulatory authority may be appointed as executive director.

The approval for the appointment of executive directors shall be given in the procedure and in the way prescribed for giving approval for the appointment of member of the board of directors.

VI INSURANCE BROKERAGE, INSURANCE AGENCY AND INSURANCE ANCILLARY SERVICES

1. Insurance Brokerage

Insurance Brokerage Activities Article 51

Insurance brokerage activities are the activities related to connecting an insured, i.e., insurance contractor, with an insurance company in order to make an insurance contract, upon the order of the insurance company established under the provisions of this law, or the order of the insured, i.e., insurance contractor.

Insurance Broker Company Article 52

Insurance brokerage activities are the only activities that can be carried out by insurance broker companies licensed by the regulatory authority, under this law.

In addition to brokerage activities from Article 51 of this Law, insurance broker companies may provide consulting and assistance in risk assessment and adjustment activities.

Insurance broker companies may not engage in insurance agency activities.

Prohibition of Insurance Brokerage Article 53

The insurance broker company cannot broker an insurance contract that is against Article 16 of this Law.

Name of Insurance Broker Companies

Article 54

Name of an insurance broker company must contain an indication of its business - "insurance brokerage".

Establishment of Insurance Broker Companies

Article 55

An insurance broker company shall be established as a joint-stock company or a limited liability company.

Application for Insurance Brokerage License

Article 56

An application for obtaining a license for insurance brokerage shall be submitted to the regulatory authority by founders of the insurance broker company or, on their behalf, by a person authorized by them.

The application from paragraph 1 of this Article shall be accompanied by the following:

- 1) incorporation charter;
- 2) proposed by-laws;
- 3) list of shareholders, that is, owners, together with the data as defined in items 6 to 8, paragraph 2, Article 30 of this Law;
- 4) business plan for the following three years;
- 5) evidence that the persons nominated as members of board of directors and executive director meet the conditions from Article 30 of this Law ;
- 6) evidence of the staffing and technical capacities of the company;
- 7) evidence of qualified participation in the capital or voting rights of the insurance companies or insurance broker companies;
- 8) pre-contract or contract on insurance against liability for damages resulting from performance of work or an unconditional financial guarantee from a bank, acceptable for the Central Bank of Montenegro (hereinafter: the Central Bank), for the insured sum, that is, for an amount of at least EUR 100,000.00;
- 9) evidence of relatedness, based on capital or other interests, with insurance companies, insurance agent companies or insurance broker companies;
- 10) other evidence and data as may be required by the regulatory authority.

Issuing Insurance Brokerage Licenses Article 57

The regulatory authority shall decide on applications for licensing of insurance broker activities by issuing a resolution within 90 days from the day of submitting the application from Article 56 of this Law.

The resolution from paragraph 1 of this Article shall be final.

Administrative dispute may be conducted against the resolution referred to in paragraph 1 of this Article.

Registration of the Company Article 58

Within 60 days from the day of receiving the license for engaging in insurance brokerage, founders of the insurance broker company shall submit an application for registration with the CRCC.

The application for registration shall be accompanied by the license obtained.

The insurance broker company shall submit the decision on registration to the regulatory authority within seven days from the day of receiving such decision.

Revocation of License for Insurance Brokerage Activities Article 59

The regulatory authority shall revoke the license of an insurance broker company if:

- 1) an insurance broker company is no longer meeting one of the conditions for obtaining the license for insurance brokerage activities ;
- 2) the business conducted by the insurance broker company threatens the interests of the insured or is in violation of the law and other regulations;
- 3) the insurance broker company acts for insurance company that is not licensed.

Authorization for Performing Insurance Brokerage (Authorized Brokers) Article 60

Brokerage activities in an insurance broker company may be performed only by persons authorized by the regulatory authority (hereinafter: authorized brokers).

The authorization referred to in paragraph 1 of this Article may be issued to a person who meets the following criteria:

- 1) full business capacity;
- 2) has passed the professional examination for insurance brokers;

- 3) has not been imposed a safety measure or measure of prohibition of business conduct by a valid court decision;
- 4) has not been unconditionally sentenced, by a valid decision, for criminal offences against property or economy to an imprisonment exceeding 3 months.

The professional examination referred to in paragraph 2 item 2) of this Article shall be taken before the commission appointed by the regulatory authority.

The Ministry of Finance shall prescribe, in the form of regulation, the contents of and procedure for passing the examination from point 2, paragraph 2 of this Article.

The activities of insurance brokerage within an insurance broker company may be performed by foreign natural persons who, based on the law of the state of which they are citizens, have fulfilled the conditions for performing insurance broker activities.

Revocation of Authorization

Article 61

The regulatory authority shall revoke the authorization for performing of insurance broker activities from the person:

- 1) who obtained the authorization based on untrue and incorrect information;
- 2) who no longer fulfills the conditions from Article 60, paragraph 2 of this Law;
- 3) who has violated the provisions of this law, to the detriment of policyholders or insurance companies.

Special Obligations of Insurance Broker Companies

Article 62

An insurance broker company that performs broker activities based on the order of the insured shall be obliged to provide explanations and advice to the insured about the circumstances of importance for the conclusion of an insurance contract.

In carrying out the obligations from paragraph 1 of this Article, insurance broker companies shall, among other things, be obliged to:

- 1) prepare adequate threat analysis and adequate principles of coverage for the insured;
- 2) prepare evaluation of solvency of the insurance company based on the information on business operations of the company;
- 3) mediate for the purpose of concluding an insurance contract with the insurance company which, considering the circumstances of a particular case, offers the most favorable protection for the insured;
- 4) inform the insurance company about the intention of the insured to conclude the insurance contract and offer the terms and conditions of an insurance policy to the insured and advise the insured of the rules for calculating premium;
- 5) check the contents of the insurance policy;

- 6) offer assistance to the insured during the insurance contract period, both before and after the occurrence of an insurable event, and especially take care that the insured performs actions important for maintaining and exercising the rights from the insurance contract within the specified time schedule;
- 7) follow the execution of the contract of insurance which the insured concluded through his mediation;
- 8) prepare proposal for the amendment of the concluded insurance contract, for the purpose of greater safety of the insured.

Conflict of Interests

Article 63

An insurance broker company shall advise the insured of all legal and economic relationships with the insurance company that might affect the impartiality of the insurance broker in meeting obligations towards the insured.

The legal and economic relationships from paragraph 1 of this Article shall be considered to include, but not be limited to, the provisions of the brokerage contract signed between the insurance broker company and the insurance company, based on which the insurance broker company:

- 1) shall act exclusively towards concluding the insurance contract with the particular insurance company;
- 2) has contracted the right to increased commission in relation to the usual broker commission for certain classes of insurance.

Governing Provisions

Article 64

Provisions of Articles 36 and 37 of this Law referring to insurance companies shall apply accordingly to insurance broker companies.

2. Insurance Agency

Insurance Agent Companies and Insurance Agents

Article 65

Insurance agency activities shall be the conclusion of insurance contracts on behalf and for the account of insurers (policy issuing), payment of premiums and other related activities.

Insurance agency activities, as the sole business, shall be performed by insurance agent companies or natural persons (hereinafter: insurance agent) licensed for insurance agency.

The persons referred to in paragraph 2 of this Article shall perform insurance agency activities on the basis of an agency contract, on behalf and for the account of an insurance company established under this law.

Along with insurance agency activities defined in paragraph 1 of this Article , an insurance agent may provide counseling and assistance in adjustment and risk assessment operations.

An insurance company shall maintain records of insurance agent companies and insurance agents that act on behalf of that company.

Agency Restrictions Article 66

An insurance agent may not act on behalf of more than one insurance company.

Notwithstanding the provision of paragraph 1 of this Article, an insurance agent may act on behalf of more than one insurance company, subject to their written consent.

Insurance agents shall display in their business premises, on a visible place, the name of the insurance company for which they act.

Name of Insurance Agent Companies and Insurance Agents Article 67

The name of an insurance agent company or insurance agent must contain an indication of the trade "insurance agency".

Establishment of Insurance Agent Companies Article 68

Insurance agent companies shall be established as a joint-stock company or a limited liability company.

Application for Licensing of Insurance Agent Companies Article 69

An application for obtaining a license for insurance agency shall be submitted to the regulatory authority by founders of the insurance agent company or, on their behalf, by a person authorized by them.

The application from paragraph 1 of this Article shall be accompanied by the following:

- 1) incorporation charter;
- 2) proposed by-laws;

- 3) list of shareholders, that is, owners, together with the data as defined in items 6 to 8, paragraph 2, Article 30 of this Law;
- 4) business plan for the following three years;
- 5) evidence that the persons nominated as members of management bodies meet the conditions from Article 30 of this Law;
- 6) evidence of the staffing and technical capacities of the company;
- 7) evidence of qualified participation in the capital or voting rights of the insurance companies or insurance broker companies;
- 8) pre-agreement or agreement on insurance agency, which has to contain provisions on the right of the insurance company to permanently supervise the agent's performance of such agreement;
- 9) evidence of relatedness, based on capital or other interests, with insurance companies, insurance agent companies or insurance broker companies;
- 10) other evidence and data as may be required by the regulatory authority.

License to Perform Insurance Agency Activities

Article 70

The provisions of this law that refer to insurance broker companies shall accordingly apply to the issuing and revoking of license of insurance agent companies and registration with the CRCC.

Authorization for Performing Insurance Agency (Authorized Agent)

Article 71

Agent activities may be performed by persons authorized by the regulatory authority (hereinafter: authorized agents).

The authorization, referred to in paragraph 1 of this Article for performing insurance agent activities may be issued to a person who meets the following criteria:

- 1) full business capacity;
- 2) has passed the professional examination for insurance agents;
- 3) has not been imposed to a safety measure or measure of prohibition of business conduct by a valid court decision;
- 4) has not been unconditionally sentenced, by a valid verdict, for criminal offences against property or economy to an imprisonment exceeding 3 months.

The professional examination referred to in paragraph 2, item 2 of this Article shall be taken before the commission appointed by the regulatory authority.

The Ministry of Finance shall prescribe, in the form of regulation, the contents of and procedure for passing the examination from point 2, paragraph 2 of this Article.

The activities of insurance agency may be performed by foreign natural persons who, based on the law of the state of which they are citizens, have passed the examination for performing insurance agent activities.

Insurance Agent – Physical Person

Article 72

Before applying for a license, an insurance agent, which is a natural person, shall be obligated to get registered with the CRCC as an entrepreneur, in accordance with provisions of the law regulating the status of business organizations.

An application for obtaining a license for an insurance agent shall be accompanied by the following:

- 1) evidence of identity of the insurance agent (name, ID card number and unique citizen registration number);
- 2) evidence of residence of the insurance agent;
- 3) evidence of professional qualifications of the insurance agent;
- 4) evidence that, for the last three years, the insurance agent has not been a member of management, supervisory board or has not had any special powers in a legal person that was subject to liquidation or bankruptcy proceedings;
- 5) evidence that the insurance agent has not been sentenced to an unconditional prison exceeding three months;
- 6) evidence from an authorized body about the amount of paid property tax and total personal income tax for the last three years;
- 7) evidence that the insurance agent possesses the authorization for insurance agency pursuant to Article 71 of this Law;
- 8) business plan for three years;
- 9) pre-agreement or agreement on agency signed with an insurance company, which has to contain provisions on the right of the insurance company to permanently supervise the agent's performance of the agreement;
- 10) evidence of the staffing and technical capacity of the insurance agent;
- 11) evidence of ownership or lease over the business premises in which the insurance agent will conduct this business;
- 12) certificate of registration with the CRCC;
- 13) evidence on relatedness based on capital or other participation with insurance companies, insurance agent companies or insurance broker companies;
- 14) other evidence and data as may be required by the regulatory authority.

Right to Inspect Insurance Agency Contract

Article 73

The insurance agency contracts shall be kept in the offices of the contractual parties.

The regulatory authority shall be entitled to inspect the contracts referred to in paragraph 1 of this Article.

Handling Money and Instruments of Payment

Article 74

Insurance agents shall pay the money and other instruments of payment and security instruments that they have collected, i.e., taken over from the insured, i.e., insurance contractor, on behalf and for the account of an insurance company, to the insurance company within the deadline determined by the contract of performing insurance agent activities and/or deliver other instruments of payment and security instruments with supporting documentation within the same deadline.

Insurance agents shall collect insurance premiums in accordance with the regulations and acts of the insurance company.

The money and instruments of payment and security from paragraph 1 of this Article shall be kept by the insurance agents in a safe place until the day of payment, i.e., delivery to the insurance company.

Liability for Insurance Agency

Article 75

An insurance company shall be liable for actions undertaken in performing insurance agency.

An insurance agent shall be liable to a policyholder for losses sustained by a policyholder where the agent has misrepresented the scope of his/her authority or has shown neglect, or has failed to disclose that he/she is acting in an agency capacity.

Executive director of an insurance company, or a person with special authorities who has signed an agency contract, shall be liable to the insurance company for the loss caused to the company arising out of that contract.

3. Insurance Ancillary Service Provider

Activities of the Insurance Ancillary Service Provider

Article 76

An insurance ancillary service provider (hereinafter: provider) shall be a legal person engaged in determination and assessment of risks and damages, intermediation in the sale and sales of the remains of insured damaged items, and provision of other intellectual and technical services related to insurance.

**Prohibition of Conducting Insurance, Insurance Brokerage and Insurance
Agency Business
Article 77**

The provider may not engage in insurance or insurance brokerage or insurance agency business.

**Establishment of Insurance Ancillary Service Providers
Article 78**

The insurance ancillary service provider shall be established as a joint-stock company or a limited liability company,

**Application for Obtaining the License for Insurance Ancillary Services
Article 79**

An application for obtaining a license for insurance ancillary services shall be submitted by founders of the provider or, on their behalf, by a person authorized by them.

The application from paragraph 1 of this Article shall be accompanied by the following:

- 1) incorporation charter;
- 2) proposed by-laws;
- 3) business plan for the following three years;
- 4) list of shareholders, that is, owners, together with the data as defined in items 6 to 8, paragraph 2, Article 30 of this Law;
- 5) evidence that the persons nominated as members of management bodies meet the conditions from Article 30 of this Law;
- 6) evidence of the staffing and technical capacities;
- 7) evidence of non-relatedness with insurance companies, insurance agent companies or insurance broker companies, based on provisions of this law and the law regulating the status of business organizations;
- 8) other evidence and data as may be required by the regulatory authority.

**Separately Organized Unit
Article 80**

Activities from Article 76 of this Law may also be performed by other business organizations, provided they have a separately organized unit for performing these activities, if they have staffing and technical capacity to provide insurance ancillary services.

License to Provide Insurance Ancillary Services Article 81

The issuing and revocation of licenses for performing insurance ancillary services and evidence of registration with the CRCC of the business organizations from Articles 76 and 80 of this Law shall be governed by provisions of this law which refer to insurance broker companies.

VII PROPERTY AND BUSINESS OPERATIONS OF INSURANCE COMPANIES

Insurance Premium Article 82

An insurance premium shall be monetary amount, which is liable to be paid by the insurance contractor, or the policyholder as a security against certain risk.

The insurance premium shall consist of functional premium and overhead supplement.

The functional premium shall consist of technical premium and contribution for risk prevention if such contribution is included in the insurance premium.

The technical premium shall be used to pay damages, contracted insurance amounts and other liabilities from the insurance contract.

The contribution for prevention shall be used for implementation of measures of prevention and control of risk, which could imperil property and persons.

The overhead supplement shall be used to cover expenses for application of insurance.

Technical Provisions Article 83

At the end of an accounting period, an insurance company shall be obliged to establish technical provisions to cover liabilities based on insurance activities.

An insurance company, which performs one or more classes of life insurance, shall establish technical provisions for:

- 1) unearned premiums;
- 2) claims outstanding;
- 3) participation in profit;
- 4) mathematical provisions.

An insurance company, which performs one or more classes of non-life insurance, shall establish technical provisions for:

- 1) unearned premiums;
- 2) claims outstanding;
- 3) risk equalization.

An insurance company shall keep life insurance funds in the special account and these funds may be used, or may be subject to an enforced payment order, for covering company's obligations under life insurance contracts only.

The criteria and method of calculation of technical provisions from paragraphs 2 and 3 of this Article shall be prescribed by the regulatory authority.

Unearned Premiums Article 84

Unearned premiums shall be established from the total insurance premium, separately for each class of insurance, in proportion to the duration of insurance.

Unearned premiums shall be used for covering insurance obligations, which will occur in the forthcoming accounting period.

Outstanding Claims Article 85

Outstanding claims shall be established in an amount equal to the assessed liabilities for claims incurred and reported but not paid and claims incurred but not reported in the current period.

If claims for certain classes of insurance appear in the form of annuities, the outstanding claims shall be established in a capitalized amount that will represent the amount of all future obligations.

Provisions for Participation in Profit Article 86

Provisions for participation in profit shall be established in an amount equal to the amount to which policyholders are entitled on the basis of participation in profit from the life insurance contract if the policyholders accept to participate in the risk of depositing and investing technical provisions.

Mathematical Provisions Article 87

Mathematical provisions shall be established in an amount equal to current value of future obligations of an insurance company decreased by the current value of future

obligations of an insurance contractor (insurance premium) and shall be calculated separately for each insurance contract.

Provisions for Risk Equalization

Article 88

Provisions for risk equalization shall be calculated on expenditures of an insurance company separately for each class of non-life insurance and shall be used for the term leveling of the course of the damage in individual classes of insurance.

The provisions from paragraph 1 of this Article shall be calculated on the basis of standard deviations of realized technical results during the current accounting period from the average of standard technical results for each class of non-life insurance conducted by the insurance company during the observed period.

1. Maintenance of Liquidity and Solvency

Maintenance of Liquidity

Article 89

The insurance company shall be obliged to maintain liquidity to pay claims and other obligations in a timely manner.

The insurance company may deposit and invest freely available funds, provided that it maintains constant liquidity and pays claims and other obligations of the company in a timely manner.

In dealings with insurance funds, an insurance company shall be obliged to undertake all necessary actions to provide safety of depositing or investing of the funds, in order not to affect their real value and liquidity of the company in meeting obligations under insurance contracts and other obligations.

The freely available funds of technical provisions shall be determined by reducing the total technical provisions as of a given date by the obligations that have become due and payable from those funds.

The insurance company shall be obliged to inform the regulatory authority on depositing and investing the funds referred to in paragraph 2 of this Article quarterly.

The regulatory authority shall prescribe in more detail the method of determining and monitoring liquidity of insurance company.

Depositing and Investing of Technical Provisions

Article 90

Technical provisions may be deposited and invested in:

- 1) securities issued by the Republic, central banks and governments of foreign countries that are rated at least "A" or its equivalent by widely-accepted, internationally recognized rating agencies;
- 2) bonds or other debt securities traded on the organized security market in the Republic;
- 3) bonds, or other debt securities not traded on the organized securities market, if the issuer is legal entity with the principle place in the Republic;
- 4) shares traded on the organized security market in the Republic;
- 5) with banks having their head offices in the Republic.

Notwithstanding paragraph 1 of this Article, the Ministry of Finance can prescribe other types of depositing and investing, which are, as regards safety, yield and marketability, adequate for depositing and investing.

Limitations of Individual Deposits and Investments

Article 91

The limitations of technical provisions for deposits and investments in accordance with Article 90 of this Law shall be defined in the regulations issued by the Ministry of Finance.

Guaranty Reserve

Article 92

In order to provide regular fulfillment of obligations, an insurance company must have a guaranty reserve.

The guaranty reserve shall consist of:

- 1) core capital;
- 2) provisions set aside from profit;
- 3) a part of the retained earnings from previous years, up to maximum of 50%;
- 4) a part of retained earnings from the current year, up to maximum of 50%, on the condition that the amount determined does not exceed average net profit over the last three years and does not exceed 25% of the guaranty reserve;
- 5) revaluation reserve.

Reserves under items 2 and 5, paragraph 2 of this Article may not constitute more than 20% of the guaranty reserve.

The guaranty reserve shall be reduced by own shares acquired, losses from previous years and losses in the current year.

The total amount of the guaranty reserve may not be lower than the amount determined in Article 21 of this Law.

Depositing and Investing of Guaranty Reserves **Article 93**

The insurance company shall be obliged to deposit and invest at least one third of the funds of the established guaranty reserve from Article 92 of this Law in types of property from Article 90 of this Law.

Limitations of Depositing and Investing of Guaranty Reserves **Article 94**

The limitations of deposits and investments of the guaranty reserve shall be defined in the regulation issued by the Ministry of Finance.

Depositing and Investing of Insurance Funds **Article 95**

The funds of an insurance company shall be deposited and invested in the Republic.

The insurance company may also the funds referred to in paragraph 1 of this Article deposit and invest abroad.

Solvency Margin **Article 96**

The insurance company shall calculate the solvency margin for the group of life insurance classes and for the group of non-life insurance classes separately.

The solvency margin shall be calculated in the manner specified by the regulatory authority.

Maintenance of Solvency Margin **Article 97**

The insurance company shall be obliged to maintain its solvency margin at the level determined by the regulatory authority.

Ratio between Guaranty Reserve and Solvency Margin **Article 98**

The guaranty reserve of an insurance company must exceed the solvency margin at all times.

Actions to Ensure Solvency

Article 99

If the guaranty reserve of an insurance company is less than the calculated solvency margin, the company shall immediately notify the regulatory authority thereon in writing and shall submit to the regulatory authority program of actions for reconciliation of guaranty reserve with solvency margin within 15 days from the day of establishing the mismatch between guarantee reserve and solvency margin.

Risk Management Rules

Article 100

An insurance company shall act in accordance with risk management rules, in the meaning of this law, if it has provided the following in its operations:

- 1) co-insurance and reinsurance of excess risks above retention limit, consistent with Article 12 of this Law;
- 2) payment of indemnity, contracted insured sums and other obligations related to insurance consistent with Article 8, paragraph 2 and Article 89, paragraph 1 of this Law;
- 3) technical provisions consistent with Article 83 of this Law;
- 4) liquidity consistent with Article 89 of this Law;
- 5) depositing and investing of technical provisions consistent with Articles 90 and 91 of this Law;
- 6) guaranty reserve consistent with Article 92 of this Law;
- 7) depositing and investing guaranty reserve consistent with Articles 93 and 94 of this Law;
- 8) solvency margin referred to in Article 97 of this Law;
- 9) the relation between guaranty reserve and solvency margin as provided in Article 98 of this Law;
- 10) other activities aimed at meeting the obligations from items 1 to 8, paragraph 1 of this Article, as well as other obligations prescribed by this Law relating to risk management.

Income

Article 101

Income of an insurance company shall consist of insurance premiums and active reinsurance premiums and other income from insurance activities, investing, non-operating income and extraordinary income.

Segregation of Insurance Acquiring Expenses

Article 102

Expenses for insurance acquiring shall be segregated in the proportion of unearned premiums to total premiums in accordance with the Law.

Expenses Article 103

Expenses of an insurance company shall be expenses for indemnities and contracted insured amounts, expenses for indemnities under active reinsurance operations, expenses for premiums related to passive reinsurance operations and other expenses from insurance activities, expenses for carrying out insurance and reinsurance (cost of realizing insurance and reinsurance), as well as cost of financing, non-operating expenses and extraordinary expenses.

The expenses for indemnities referred to in paragraph 1 of this Article shall be expenses of determining and assessing indemnities, expenses for recourse claims, court expenses and fees in litigations related to insurance liabilities, loss adjustor expenses and other expenses related to payment of indemnities.

Expenses of an insurance company may also include:

- 1) claims outstanding related to insurance, coinsurance and reinsurance;
- 2) allocations from life insurance premium for mathematical provisions;
- 3) allocations in cases where the policyholder decides to increase the insured sum and similar payments for life insurance, in accordance with terms and conditions of the life insurance contract;
- 4) allocations for provisions for risk equalization.

Profit or Loss Determination by Classes of Insurance Article 104

An insurance company engaged in life insurance shall determine profit and loss separately for each class of life insurance, and separately for reinsurance.

An insurance company engaged in non-life insurance shall be obliged to determine profit and loss separately for all types of non-life insurance and separately for reinsurance.

The determination of operating result, distribution of income made, coverage of loss and loss coverage action program shall be specified in a regulation of the regulatory authority.

Program of Actions to Increase Guaranty Reserve Article 105

An insurance company shall inform the regulatory authority in writing on incurred loss as of the date of identification of the loss.

If the loss has caused a decrease in the guaranty reserve below the amount referred to in Article 92, paragraph 5 of this Law, the insurance company shall be obliged to prepare and submit to the regulatory authority a program of actions to increase the

guaranty reserve to the required level by not later than 15 days as of the date of the loss identification.

The regulatory authority may designate an expert to control the implementation of the program for the increase of guaranty reserve, at the expense of the insurance company.

Based on recommendation of the expert referred to in paragraph 3 of this Article, the regulatory authority may order the insurance company to undertake specific actions to cover the loss incurred.

2. Financial Report and Annual Operational Report

Obligation to Prepare Financial Report and Annual Operational Report Article 106

An insurance company shall be obliged to prepare financial report on operations for financial – calendar year, in accordance with the law.

The annual financial report referred to in paragraph 1 of this Article together with opinions of the authorized actuary and the external auditor must be discussed and adopted at the General Shareholders' Meeting of the insurance company.

Chart of Accounts Article 107

Insurance companies shall maintain their books in accordance with the Chart of Accounts prescribed by the regulatory authority.

VIII INTERNAL AUDIT

Internal Audit Article 108

An insurance company shall be obliged to set up internal audit, which shall operate autonomously and independently.

The internal audit of the insurance company shall be performed by the separate organizational unit of the company as defined in the company's bylaws.

The internal audit unit of the insurance company shall directly report to the board of directors of the company.

Internal Audit Operations Article 109

Internal audit operations of the insurance company shall be regulated by a general act on internal audit operations, adopted by board of directors of the insurance company.

Internal Audit Tasks Article 110

The internal audit unit of the insurance company shall assess:

- 1) adequacy and effectiveness of internal control systems in the insurance company;
- 2) compliance of the company's operations with the law, regulations, and the company's established policies and practices;
- 3) adequacy and application of prescribed risk control policies and procedures;
- 4) quality and reliability of electronic data processing ;
- 5) accuracy, timeliness and reliability of accounting, financial and other reports and records.

The internal audit unit of an insurance company shall exercise an internal audit of company's operations in accordance with the professional standards and standards of audit, professional code of ethics of auditors and internal audit policy.

Internal Auditors Article 111

To carry out internal audit activities, an insurance company must have at least one employee who is qualified as certified auditor.

Persons performing internal audit may not perform other activities in the insurance company, or be members of the company's management bodies.

An internal auditor shall prepare report of each performed internal audit.

Annual Internal Audit Program Article 112

Annual internal audit program of an insurance company shall be adopted by the board of directors of the company.

Annual internal audit program shall specify areas of operations to be reviewed by the internal audit, the summarized contents of the planned audits by individual areas, the manner of carrying out the audits and methods and timeframe of reporting on the internal audit conducted.

In addition to internal audit determined in the program under paragraph 1 of this Article, the internal audit unit shall exercise specific audits upon request of authorized company's bodies.

Internal Audit Reports Article 113

The internal audit unit of an insurance company shall prepare quarterly and annual reports on internal audit.

Quarterly report on internal audit shall contain, *inter alia*:

- 1) description of the performed audits (subject of audit);
- 2) evaluation of documentation processing method, procedure for concluding insurance contracts, policy issuance and indemnities liquidation;
- 3) unlawfulness and other deficiencies identified by internal audit during the audit procedure with explanations and consequences of observed deficiencies and indication of responsible persons;
- 4) proposed actions to correct the found deficiencies and deadlines for their implementation;
- 5) other conclusions, evaluations and recommendations in relation to the correction of deficiencies noted by the internal audit;
- 6) other data and information as required by the regulatory authority.

Annual report on internal audit shall contain, *intern alia*:

- 1) report on realization of annual program of internal audit performance;
- 2) summary of significant conclusions regarding performed audit;
- 3) evaluation of actions undertaken to correct noted deficiencies.

The internal audit unit shall submit the reports referred to in paragraph 1 of this Article to insurance company's board of directors.

The annual report on internal audit, together with the opinion of the board of directors of the insurance company, shall be considered at the general shareholders' meeting, which shall also consider the annual financial report of the company.

Reporting to the Insurance Company's Board of Directors Article 114

Notwithstanding Article 113 of this Law, if internal audit finds that an insurance company does not act in accordance with risk management rules and the insurance company is thus threatened by illiquidity or insolvency, or realizes that the safety of the company's operations or policyholders' interests are compromised, it shall be obliged to advise insurance company's board of directors thereon without delay.

IX SUPERVISION OF INSURANCE ACTIVITIES

Entities Subject to Supervision Article 115

The regulatory authority shall exercise supervision, in accordance with this law and Core Principles for Efficient Insurance Supervision, over the operations of insurance companies, foreign insurance company affiliates, insurance broker companies, insurance agents, insurance ancillary service providers and the legal persons referred to in Article 80 of this Law.

The regulatory authority may inspect business records of legal entities which are related to the insurance company, as well as the business records of all participants in a transaction that is subject to supervision if it is considered necessary in order to supervise the insurance company's operations.

In cases when another supervisory body is responsible for supervising legal entities referred to in paragraph 2 of this Article, the regulatory authority will exercise supervision in collaboration with the other supervisory body.

Data Registry Article 116

The regulatory authority shall keep the registry of data on licensed insurance companies, with the data on company founders, qualified holders, members of company board of directors and executive director, as well as measures imposed in the process of supervision of the company operations.

In addition to the registry referred to in paragraph 1 of this Article, the regulatory authority shall keep the registry of insurance broker companies, insurance agent companies and insurance agents licensed by it, the registry authorized brokers and authorized agents, the registry of insurance ancillary service providers, the registry of the legal entities referred to in Article 80 of this Law and the registry of authorized actuaries.

All changes to the data shall also be recorded in the registries referred to in paragraph 1 and 2 of this Article.

The contents and manner of keeping the registries referred to in paragraphs 1 and 2 of this Article shall be specified in more detail by the regulatory authority.

Activities Subject to Supervision Article 117

Activities subject to supervision shall be:

- 1) compliance of insurance activities with license issued;

- 2) compliance of general acts and policies and procedures with the Law and other regulations;
- 3) legality of work;
- 4) liquidity and solvency relating to insurance activities;
- 5) manner of determining technical provisions;
- 6) compliance with obligations under insurance contracts;
- 7) depositing and investing of insurance funds in accordance with the Law;
- 8) preparation of book-keeping and other records, keeping of business books and preparation of financial statements in accordance with the Law, other regulations, general acts and policies and procedures;
- 9) implementation of actions imposed by the regulatory authority;
- 10) functioning of the internal audit;
- 11) compliance with the terms and conditions set forth in this Law for founders, qualified holders, members of the board of directors and executive director;
- 12) staffing and technical capacity of the company;
- 13) expenses relating to commissions for insurance brokerage and agency;
- 14) unpaid premiums and other receivables of insurance companies;
- 15) implementation of co-insurance and reinsurance policy.

Manner of Performing Supervision

Article 118

Supervision of operations of insurance companies shall be performed by:

- 1) collecting, monitoring and analyzing reports, data and notices that the insurance company is obliged to submit to the regulatory authority by the provisions of the Law;
- 2) on-site examination of the operations of insurance companies;
- 3) following up implementation of measures imposed in accordance with this Law and by bringing charges to competent authorities if there is reasonable doubt that the illegality and irregularities found have the characteristics of a criminal offence, commercial violation or minor offence.

The manner (methodology) of supervision of operations of insurance companies referred to in paragraph 1 of this Article shall be specified in more details in a regulation of the Ministry of Finance.

Persons Authorized to Conduct Supervision

Article 119

Supervision of insurance companies operations shall be performed by employees of the regulatory authority, who are authorized by the regulatory authority in writing (hereinafter: authorized supervisory person) to perform such activity.

Authorized supervisory person may be a person who shall, in addition to general requirements prescribed by law, meet the following requirements:

- 1) university degree in economics or law;
- 2) working experience of at least two years;
- 3) not to be unconditionally sentenced to imprisonment for more than 6 months;

- 4) criminal proceedings are not conducted against him.

Notwithstanding paragraph 1 of this Article, experts not employed with the regulatory authority may be engaged for performance of certain tasks in supervision over insurance companies' operations.

Authorizations in a Control Procedure Article 120

In carrying out on-site insurance supervision, the authorized supervisory person shall have right to:

- 1) inspect general acts, policies and procedures and business books of the company, and all other acts, documentation and data relating to the company's operations;
- 2) demand from board members, internal auditor, certified actuary and person with special authorizations in the company to give information and data within their scope of work regarding operations of the company;
- 3) temporarily revoke documents that indicate the existence of actions containing the elements of a crime, economic offence or administrative offence.

Obligations of Insurance Company Article 121

An insurance company shall be obliged to provide the following to the authorized supervisory person upon his/her request:

- 1) examination of the company's operations in its head office and other premises in which the company, or other entity under its authorization, performs the business activity and operations supervised by the regulatory authority;
- 2) examination of business and other documents, accuracy and correctness of business and other books and records, accuracy and correctness in compiling financial statements and annual reports on the company's operations, as well as reports and notifications submitted to the regulatory authority;
- 3) access to accounting and other records, business books or parts of business books and other records;
- 4) data extracts by means of media chosen by the authorized supervisory person, as well as a full access to the electronic data processing of the accounting system.

The authorized supervisory person shall be obliged to perform supervision over the operations of an insurance company so as to minimize the disruption to the regular operations of the company.

Examination Report Article 122

The examination report shall be made within not later than 15 days as of day of the performed examination.

The insurance company may lodge complaint to the regulatory authority against the report referred to in paragraph 1 of this Article within 15 days as of the day of receipt of the report.

If the insurance fails to substantiate its complaints against claims from the report regarding the found illegalities and irregularities in operations or violations of risk management rules, the regulatory authority shall impose on the company measures foreseen by this Law.

1. Insurance Company Reporting to the Regulatory Authority

Regular Reporting Article 123

The insurance company shall submit the following to the regulatory authority:

- 1) annual financial statement and annual report on operations, with the opinion of the certified actuary and report of the external auditor;
- 2) report on carrying out policy of coinsurance and reinsurance, with the opinion of certified actuary;
- 3) the bylaws, other general acts, business policy acts;
- 4) information on changes in the company's capital structure;
- 5) information on change of certified actuary and auditor;
- 6) proof of changes in data to be registered in the Central Registry of the Commercial Court;
- 7) information on calling general meeting of shareholders and minutes from the meeting;
- 8) other information, reports and data set forth in the law and regulations adopted on the basis of the law.

Quarterly Reporting Article 124

Insurance company shall report the following information to the regulatory authority on a quarterly basis:

- 1) capital structure;
- 2) co-insurance and reinsurance of excess risks above maximum retention limit, with the certified actuary's opinion;
- 3) amount and structure of collected premiums;
- 4) number and amounts of claims reported and paid and claims under dispute, with the certified actuary's opinion;
- 5) technical provisions, with the certified actuary's opinion;

- 6) deposited and invested technical reserves funds, status and changes of other assets;
- 7) liquidity of the company, with the certified actuary's opinion;
- 8) guaranty reserve, with the certified actuary's opinion;
- 9) depositing and investing funds of guarantee reserve;
- 10) solvency margin, with the certified actuary's opinion;
- 11) internal audit findings, with the evaluation of the board of directors;
- 12) other prescribed data.

Reporting Request of the Regulatory Authority Article 125

Insurance companies shall be obliged to submit also other reports, information and data important for supervisory activities, at the request of the regulatory authority.

Statistical Data Article 126

Insurance company provides the regulatory authority with statistical data and other data by groups and classes of insurance, within deadlines and in a manner prescribed by the regulatory authority.

The processed data referred to in paragraph 1 of this Article shall be used for the preparation of technical base and premium tariffs and for the performance of actuary duties.

Contents, Deadlines and Methods of Reporting Article 127

Contents, deadlines and manner of submission of reports and other information and data referred to in this Law shall be specified in more detail by the regulatory authority.

Cooperation with Other Supervisory and Regulatory Authorities Article 128

The regulatory authority shall cooperate with other supervisory and regulatory authorities, in order to carry out its supervisory and regulatory role efficiently and encourage a harmonized development of a network for supervision of financial institutions, in accordance with agreements concluded.

Supervisory or regulatory authorities may convey information obtained from the regulatory authority to other regulatory authority only upon prior approval of the regulatory authority.

Exchange of information in accordance with concluded agreements referred to in paragraph 1 of this Article in the process of cooperation of the regulatory authority with other supervisory and regulatory authorities shall not be considered as disclosure of confidential information.

2. Supervisory Actions

Types of Supervisory Actions Article 129

In exercising supervision over operations of insurance company the regulatory authority may:

- 1) order actions for correction of illegalities and irregularities;
- 2) order actions because of non-compliance with risk management rules;
- 3) order special actions against responsible persons in the company;
- 4) order transfer of insurance portfolio to the other insurance company;
- 5) introduce interim administration in the company;
- 6) revoke a license for specific or all insurance activities which the license was issued for.

Decisions under the items 5 and 6, paragraph 1 of this Article shall be published in the "Official Gazette of the Republic of Montenegro".

Actions to Correct Illegalities and Irregularities Article 130

The regulatory authority, shall order the insurance company to correct illegalities and irregularities in operations, if the regulatory authority observes the following:

- 1) company stops to meet any of requirements prescribed in regard to insurance activities;
- 2) company performs activities, which under this Law may not be performed;
- 3) company acts against the rules of keeping business books and reports, internal audit, or audit of financial statements;
- 4) company acts against reporting and information requirements of the regulatory authority;
- 5) member of the board of directors or executive director of the company does not meet requirements under this Law and regulations adopted on the basis of this Law;
- 6) company acts against the Law, other regulations and general acts which stipulate insurance company operations;
- 7) company acts towards policyholders and other insurance beneficiaries against the rules of insurance profession, good business practice and business ethics;
- 8) company does not meet other requirements set forth under the Law.

When pronouncing the actions referred to in paragraph 1 of this Article, the regulatory authority shall indicate the deadline for removal of identified illegalities and irregularities by way of an order.

The order of the regulatory authority referred to in paragraph 2 of this Article shall be final.

Administrative dispute may be conducted against the order referred to in paragraph 2 of this Article.

Report on Action Implementation Article 131

An insurance company shall be obliged to submit to the regulatory authority a report on implementation of ordered actions, accompanied with documents and other evidence showing that the established illegalities and irregularities have been removed, within the time specified in the order referred to in Article 130, paragraph 2 of this Law.

If the report referred to in paragraph 1 of this Article and the attached evidence show that the illegalities and irregularities have been removed, the regulatory authority shall pass a ruling confirming the same.

Before passing the ruling referred to in paragraph 2 of this Article, the regulatory authority may re-examine operations of the insurance company to an extent necessary to determine whether the illegalities and irregularities have been removed or not.

If the report on implementation of actions for removing illegalities and irregularities is incomplete, the regulatory authority may order the insurance company to complete the report and determine a deadline for its submission.

The regulatory authority shall pass the ruling stating whether the illegalities and irregularities have been removed or not within 30 days as of the day of receiving the report referred to in paragraph 1 of this Article.

If it is established, on the basis of the reports referred to in paragraphs 1 and 4 of this Article, that the illegalities and irregularities have not been removed, the regulatory authority shall undertake other measures in accordance with the Law.

Measures for Non-Compliance with Risk Management Rules Article 132

If the regulatory authority establishes that an insurance company does not act in accordance with the risk management rules referred to in Article 100 of this Law, it shall issue an order, whereby the insurance company shall be required to provide:

- 1) co-insurance and reinsurance of excess risks above retention limits;
- 2) payment of indemnities, contracted insured sums and other liabilities under the insurance;
- 3) guarantee reserve in the prescribed amount;
- 4) prescribed technical provisions;
- 5) liquidity of the company;

- 6) deposits and investments of technical provisions in prescribed amounts and structure;
- 7) deposits and investments of guaranty reserves in prescribed amounts and structure;
- 8) guaranty reserve and solvency margin match;
- 9) other activities to fulfill obligations referred to in items 1-8 of this paragraph, as well as other obligations prescribed by this Law with respect to risk management.

In addition to the measures referred to in paragraph 1 of this Article, the regulatory authority may, in form of the order referred to in paragraph 1 of this Article:

- 1) prohibit the company to enter into new insurance contracts for some or all classes of insurance and to expand obligations already undertaken;
- 2) order the company to cancel insurance contracts, insurance brokerage or insurance agency contracts, if their continued validity would incur damage to the company;
- 3) limit the degree of risk the company may undertake in insurance;
- 4) prohibit the company to make certain payments;
- 5) prohibit the company to conclude transactions with some shareholders, members of company management bodies, related parties or other legal persons;
- 6) order the company to appoint an advisor for the area where irregularities and illegalities were found;
- 7) order a change in the organization of the company's work;
- 8) order the collection of the company's receivables;
- 9) prohibit or limit the company's disposal of its assets;
- 10) order the company to update business books, make a list of assets and liabilities, reconcile receivables and liabilities and evaluate balance and off-balance positions;
- 11) order the company to improve electronic data processing;
- 12) order the improvement of organization and internal audit method;
- 13) order undertaking of other activities in accordance with the Law.

The regulatory authority shall prescribe a deadline for removing the irregularities found by the order referred to in paragraph 1 of this Article.

The order referred to in paragraph 1 of this Article shall be final.

Administrative dispute may be conducted against the order referred to in paragraph 1 of this Article.

The insurance company shall be obliged to remove the found irregularities by the deadline referred to in paragraph 3 of this Article and shall report to the regulatory authority on the implementation of the ordered measures.

The provisions of Article 131 of this Law shall accordingly apply to the report referred to in paragraph 6 of this Article.

Transfer of Insurance Portfolio Article 133

When the regulatory authority establishes illegalities and irregularities in operations of an insurance company that jeopardize or may jeopardize its capability to meet its liabilities in insurance, the regulatory authority may order the company to transfer its insurance portfolio to another insurance company.

The order referred to in paragraph 1 of this Article shall be final.

Administrative dispute may be conducted against the order referred to in paragraph 1 of this Article.

The transfer of an insurance portfolio shall be exercised in accordance with the provisions of Articles 148 to 152 of this Law.

Introducing Interim Administration Article 134

The regulatory authority may introduce interim administration in an insurance company, if:

- 1) the company has not met its contractual obligations or will not be able to do so at maturity;
- 2) assets of the company are not sufficient to provide contracted protection to insurers or creditors of the company;
- 3) part of the assets recorded in business books or other company records, or the assets under the company management, are not appraised and shown in a prescribed manner;
- 4) guaranty reserve of the company is at such a level, or its value is decreasing to such a degree, that it may have harmful consequences to policyholders or creditors of the company;
- 5) the company has established and shown the results of its operations in an incorrect or illegal manner;
- 6) the company does not act in compliance with the issued measures imposed by the regulatory authority.

The interim administration in an insurance company may not be longer than a year.

Appointment of Interim Administrator Article 135

The decision on introducing interim administration shall include the name of the interim administrator of the insurance company.

The decision referred to in paragraph 1 of this Article may appoint two or more interim administrators that represent interim administration of the insurance company.

The decision referred to in paragraph 1 of this Article shall be final.

Administrative dispute may be conducted against the decision referred to in paragraph 1 of this Article.

Qualifications of Interim Administrator Article 136

An interim administrator may be a person with a university degree, having at least three years of work experience in the field of insurance.

Employment Status of Interim Administrator Article 137

During the interim administration, all rights and obligations that the interim administrator had under his/her employment with a previous employer shall be held in abeyance.

The regulatory authority shall determine the salary or fee of the interim administrator.

Powers and Duties of Interim Administrator Article 138

All powers of the general meeting of shareholders, board of directors and executive director of the insurance company, except the power to decide to close the company, shall be delegated to the interim administrator on the day of assuming the duty of interim administrator.

The interim administrator shall be obliged to protect the assets and documentation of the insurance company.

The interim administrator shall undertake all necessary measures for regaining the stability and liquidity of the insurance company.

Interim Administration Reports Article 139

At least every quarter, the interim administrator shall submit to the regulatory authority a report on financial situation and operating conditions of the insurance company.

Within nine months following the day of appointment, the interim administrator shall submit to the regulatory authority a report on evaluation of economic stability of the insurance company and possibilities for its further operation, including, but not limited to:

- 1) Evaluation of ability and willingness of company shareholders to improve the financial condition of the company by increasing their holdings;
- 2) Possibility to remove uncovered loss of the company;
- 3) Unaccounted expenses that can affect liabilities of the company;
- 4) Evaluation of possible measures for removal of illiquidity of the company, along with the cost calculation for its implementation;
- 5) Evaluation of conditions for initiation of liquidation or bankruptcy proceedings of the company.

Increase in Minimum Capital Requirements for the Provision of Economic Stability of the Insurance Company

Article 140

If the regulatory authority, on the basis of the report of interim administration, estimates that for the provision of matching guarantee reserves and solvency margin of insurance company, or removal of illiquidity reasons of the company, is necessary to increase minimum capital requirements of the company in an appropriate manner with the new monetary investments, the regulatory authority can order to the interim administration of the company to convene general meeting of shareholders and to propose the adoption of the decision on such increase of minimum capital requirements.

At latest within eight days from the day of the receipt of the regulatory authority's order, the interim administration shall be obliged to promulgate convening of the general meeting of shareholders for decision making on increase in minimum capital requirements from the paragraph 1, of this Article.

When convening the general meeting of shareholders, shareholders must be warned about legal consequences of failing to adopt the decision on providing additional capital, i.e., legal consequences of unsuccessful issue of shares.

Evaluation of Results of Interim Administration

Article 141

At least once in three months, the regulatory authority shall evaluate the results of interim administration.

At latest within three months from the receipt of the report referred to in paragraph 2, Article 139 of this Law, the regulatory authority shall make the final evaluation of the results of the interim administration.

If the regulatory authority evaluates that during the work of interim administration economic situation of the insurance company improved in a manner that the company achieved adequate match between guaranty reserve and solvency margin and is fulfilling its obligations regularly, it shall bring a decision on termination of interim administration and dismissal of interim administrator.

By the decision referred to in paragraph 3 of this Article, the regulatory authority shall order the interim administrator to convene general shareholders meeting to return the control over the company to the shareholders.

If the regulatory authority evaluates that during interim administration economic condition of the insurance company did not improve so that the company has not achieved adequate match between guaranty reserve and solvency margin and is not able to fulfill due liabilities regularly, it shall bring a decision on initiation of liquidation or bankruptcy proceedings of the company.

Termination of Interim Administration

Article 142

The interim administration of the company shall terminate as of the day of:

- 1) Submission of the regulatory authority's decision on termination of interim administration to the company;
- 2) Adoption of the decision on initiation of bankruptcy proceeding, i.e. liquidation.

Entry of Interim Administration in the Registry

Article 143

The orders for starting and terminating interim administration shall be submitted to the CRCC.

3. License Revocation

Terms for Revocation of License

Article 144

The regulatory authority may, in form of a decision, revoke a license of the insurance company for some or all the company's insurance activities if:

- 1) illegalities and irregularities in operations of the company have been established, and further engaging in insurance activities would jeopardize interests of policyholders and other insurance beneficiaries;
- 2) the company has concluded an insurance brokerage or agency contract with an insurance broker company or insurance agent, respectively, that is not licensed by the regulatory authority;
- 3) the company does not conduct its business activity in accordance with trade rules, best business practices and business ethics;
- 4) the company conducts its business activity in a manner violating the rights of policyholders, insurance beneficiaries, or third parties, or if it does not pay indemnities or fails to meet other liabilities;
- 5) the company has presented incorrect data or information about its operations that may mislead policyholders, insurance beneficiaries or third parties;
- 6) the company fails to maintain guaranty reserve in the prescribed amount;

- 7) the company has adopted a financial statement and annual report on its operations, or any business policy without previous consideration of the opinion of an authorized actuary;
- 8) the company has not provided conditions for supervision in a prescribed manner;
- 9) the company has not provided the performance of auditing activities by a licensed auditor in a prescribed manner,
- 10) the company has not provided the performance of actuary activities in a prescribed manner;
- 11) the company did not submit reports, documents and other data in a manner and within the time prescribed by this Law;
- 12) the company transfers its insurance portfolio without the approval of the regulatory authority,
- 13) the company fails to comply with a measure imposed by the regulatory authority within the prescribed time, or fails to remove reasons for imposing such a measure; and
- 14) in other cases when the company does not act in accordance with this Law, other regulations and measures of the regulatory authority.

The decision referred to in paragraph 1 of this Article shall be final.

Administrative dispute may be conducted against the decision referred to in paragraph 1 of this Article.

License revocation referred to in paragraph 1 of this Article shall not release the insurance company from its obligations under the insurance contracts signed.

License Revocation for Insurance Activities Article 145

The regulatory authority shall, in form of a decision, revoke the license of an insurance company in the following cases:

- 1) if the license was granted on the basis of false and incorrect data;
- 2) if the company ceases to conduct insurance business for more than six months;
- 3) if the company ceases to meet requirements for obtaining the license to do insurance business;
- 4) if the company has been engaged in insurance business without approval of the regulatory authority;
- 5) if the company has not implemented the special measures referred to in Article 130 of this Law, within the prescribed time.
- 6) if the company has not paid contributions in the guarantee fund and for international card of automobile liability insurance, and if it does not meet other legal and international contractual obligations;

The decision referred to in paragraph 1 of this Article shall be final.

Administrative dispute may be conducted against the decision referred to in paragraph 1 of this Article.

The revocation of license referred to in paragraph 1 of this Article shall not release the company from obligations under insurance contracts signed.

Special Measures against Responsible Persons

Article 146

If, during its supervisory activities, the regulatory authority determines that a board member, executive director or person with special authorizations failed to act in accordance with the Law and general acts, and incurs material damage to the company or carries out activities regarded as bad business practice, and repeats such activities also upon a written warning by the regulatory authority, the regulatory authority may propose the following measures to be undertaken by the insurance company:

- 1) revocation, i.e. termination of labor agreement between the person and the insurance company;
- 2) temporary prohibition from performing insurance activities until appropriate decision is made by a competent body;
- 3) ordering the person to compensate the insurance company for damage incurred by illegal actions.

If criminal proceedings, caused by activities referred to in paragraph 1 of this Article, are conducted against a board member, executive director or person with special authorizations in the insurance company, the regulatory authority may order the suspension of the person from the job in the insurance company until the termination of criminal proceedings.

If the person, pursuant to the measure of the regulatory authority referred to in paragraph 1 of this Article, has lost his/her labor agreement, she/he can neither be employee nor participate in activities of a related person of the insurance company for the period of five years after such measure was undertaken.

Governing Provisions

Article 147

The provisions of this Law on the supervisory procedure and measures of the regulatory authority shall apply to insurance broker companies, insurance agents and agencies for insurance ancillary services.

X Transfer of Insurance Portfolio

Request for Obtaining Approval for Transfer of Insurance Portfolio Article 148

An insurance company may, upon obtaining approval of the regulatory authority, transfer the entire or part of the insurance portfolio to one or several other insurance companies licensed to do insurance business, provided they are willing to accept it.

The request for obtaining the approval shall be accompanied by the following documents:

- 1) insurance portfolio transfer contract that has to include type and amount of funds of technical provisions that are to be transferred together with the portfolio, as well as deadline for the portfolio transfer;
- 2) list of insurance contracts by classes of insurance that are subject to the transfer, including relevant general insurance terms and conditions;
- 3) explanation of reasons for the portfolio transfer and opinion on expected effects of the insurance portfolio transfer;
- 4) changes in the business plan of the company taking over the insurance portfolio, needed due to the aforementioned fact;
- 5) reports on financial operations of the company transferring the insurance portfolio and the company taking over the insurance portfolio, with the certified actuary's opinion;
- 6) the certified actuary's opinion on the insurance portfolio transfer.

There shall be no need for the approval of policyholders in the case of insurance portfolio transfer.

Deciding Upon Request for Obtaining the Consent for Insurance Portfolio Transfer Article 149

The regulatory authority shall decide on the request referred to in Article 148, paragraph 2 of this Law in the form of a decision, within 60 days upon receiving the request.

The decision referred to in paragraph 1 of this Article shall be final and published in the Official Gazette of the Republic of Montenegro.

Administrative dispute may be conducted against the decision referred to in paragraph 1 of this Article.

The transfer of portfolio shall come into effect on a day of submission of the decision approving the insurance portfolio transfer, at the earliest.

By the decision on approving the insurance portfolio transfer, the regulatory authority shall, at the same time, decide on changes in the license of the insurance company transferring the insurance portfolio.

Company's Obligations with Respect to Portfolio Transfer

Article 150

An insurance company that has transferred the insurance portfolio shall inform insurance contractors that are included in the transfer of insurance portfolio, directly in a written form and through mass media, about the name and head office of the insurance company taking over the insurance portfolio and the deadline for finalizing the transfer, within 15 days upon receiving the decision approving the insurance portfolio transfer.

A policyholder shall have the right to cancel the contract of insurance, and s/he shall inform the insurance company that took over the insurance portfolio about that in writing, within 30 days upon receiving the notification referred to in paragraph 1 of this Article .

Non-life insurance policyholders in the case referred to in paragraph 2 of this Article shall have the right to a premium portion that corresponds to the remaining time for which the contract is still valid, whereas life insurance policyholders shall have the right to the amount of mathematical provision calculated on the day of insurance portfolio transfer provided that life insurance funds are sufficient to cover that amount, or to the amount reduced proportionately to the decrease in life insurance funds.

Rejecting the Request for Portfolio Transfer Approval

Article 151

The regulatory authority may reject the request for approval of the insurance portfolio transfer, if it estimates that it would damage capacity of the insurance company taking over the insurance portfolio to meet obligations under insurance contracts that are included in the transfer, or if the insurance portfolio transfer would jeopardize liquidity and solvency of the company transferring the insurance portfolio.

Legal Consequences of Insurance Portfolio Transfer

Article 152

On the day of the portfolio transfer, the insurance company taking over the insurance portfolio shall become a party to the transferred insurance contracts, and shall take all the rights and obligations from these contracts, whereas the company transferring the insurance portfolio shall be released from obligations to the policyholders.

The transfer of insurance portfolio not approved by the regulatory authority shall not be legally valid.

XI Actuary Activities and Auditing

1. Actuary Activities

Article 153

Actuary activities, in the context of this Law, shall be obligatory and performed by certified actuaries.

A certified actuary shall be a person certified by the regulatory authority to perform actuary activities.

The Ministry of Finance shall prescribe requirements for acquiring the title of a certified actuary.

A certified actuary shall be appointed by executive director of the company, subject to the approval of the regulatory authority.

Insurance companies shall be obligated to appoint a certified actuary within 60 days as of the date of their registration with the Central Registry of the Commercial Court.

Certified Actuary Activities Article 154

A certified actuary shall:

- 1) provide an opinion on
 - the method of calculating premium tariffs;
 - whether technical provisions have been maintained in accordance with this Law;
 - various business policies in the process of their preparation, and/or in the process of their subsequent amendments and implementation;
 - the company's financial statements and annual report from the aspect of rules of the actuarial profession;
 - the report on implementation of co-insurance and reinsurance policy;
 - whether mathematical provisions have been calculated in accordance with the Law;
 - the transfer of insurance portfolio;
- 2) calculate solvency margins of the company;
- 3) perform other actuary duties in accordance with law.

Competent bodies of insurance companies shall consider opinion of the certified actuary in the process of adoption of documents and policies referred to in paragraph 1 of this Article.

The opinion of the certified actuary shall be submitted to the internal auditor and board of directors of the company.

Independence and Autonomy of Certified Actuary Article 155

A certified actuary shall independently and autonomously perform his/her activities, and s/he shall be responsible for the opinion given.

The certified actuary shall be obliged to perform his/her duty in accordance with the Law and rules of actuary profession, best business practices and business ethics.

The regulatory authority may prescribe elements that should be contained in the opinion of the certified actuary.

Corrective Measures Article 156

When a certified actuary finds out irregularities in operations of an insurance company, s/he shall be obligated to propose corrective measures to the board of directors of the company.

Obligations of Insurance Companies Article 157

Insurance company shall be obliged to provide a certified actuary with continuous and unimpeded access to the business data that are needed and required by the certified actuary for the purpose of performing actuary activities referred to in Article 154 of this Law.

Conflict of Interests Article 158

A person who is a member of the Board of Directors, internal auditor of the company or a person with special powers and responsibilities in the company cannot be appointed as certified actuary.

Supervision of Certified Actuary Article 159

Supervision of certified actuaries shall be performed by the regulatory authority.

If, during the performance of activities within his competence, the certified actuary does not comply with obligations prescribed by this Law, the regulatory authority can pronounce the following measures:

- 1) warning measure;
- 2) revocation of the license.

Warning Measure Article 160

The regulatory authority may pronounce a warning measure to a certified actuary, if s/he violates the rules referred to in paragraph 2, Article 155 of this Law.

License Revocation Article 161

The regulatory authority shall, by a decision, revoke license of a certified actuary, if:

- 1) the license has been obtained based on false and incorrect data;
- 2) the certified actuary has been convicted unconditionally for a crime that makes him unsuitable for the actuary's duties;
- 3) the certified actuary has repeated the violation of Article 155 paragraph 2 of this Law, in spite of the warning measure being issued.

The decision referred to in paragraph 1 of this Article shall be final.

Administrative dispute may be conducted against the decision referred to in paragraph 1 of this Article.

Appointment of a New Certified Actuary Article 162

If, upon the appointment of certified actuary, the regulatory authority revokes the license of the appointed person, i.e. if circumstances referred to in Article 158 of this Law regarding the appointed person occur, the insurance company shall be obligated to appoint a new certified actuary within 30 days as of the date of submitting the decision on revocation of the license, i.e. upon occurrence of the circumstances referred to in Article 158 of this Law.

Informing the Regulatory Authority on Rejecting Actuary's Opinion Article 164

When a respective body of an insurance company rejects the opinion of the certified actuary, the insurance company shall be obliged to inform the regulatory authority and state reasons for rejecting the opinion within 15 days from the day of occurrence of that circumstance.

In the case referred to in paragraph 1 of this Article, the regulatory authority may make a decision ordering adequate measures to be taken.

Reconsidering the Opinion of Certified Actuary Article 164

If the certified auditor establishes that the financial report of an insurance company does not reflect the true and objective state of the assets and operative results, the company shall submit such a report, within 5 days, to the certified actuary who prepared the opinion on the financial report of the company.

The certified actuary shall reconsider his/her opinion within 8 days as of the day of submitting the report referred to in paragraph 1 of this Article, and inform the relevant body of the insurance company competent for adoption of the financial report.

Reconsidering Report of Certified Auditor Article 165

If the certified actuary does not agree with the report on the performed audit, the insurance company shall be obligated to inform the regulatory authority of the certified actuary's opinion within three days.

Position of the Regulatory Authority Article 166

The regulatory authority shall consider the certified actuary opinion and independent audit report and advise the insurance company of its opinion.

If irregularities are found, the regulatory authority shall make a decision ordering the insurance company to take measures for removing the established irregularities, and the company shall act in accordance with the decision, and notify the regulatory authority within 30 days upon the adoption of the decision.

Checking of Certified Actuary's Opinion Article 167

During the supervision, the regulatory authority may request the certified actuary's opinion to be reviewed by another certified actuary appointed by the regulatory authority, if there are reasons to doubt the correctness of the certified actuary's opinion.

Costs of the procedure referred to in paragraph 1 of this Article shall be born by the insurance company, unless the opinion of the certified actuary appointed by the regulatory authority confirms correctness of the certified actuary's opinion appointed by the insurance company, in which case the costs shall be born by the regulatory authority.

2. Auditing

External Auditor Article 168

Audit of financial reports of the insurance company shall be done in accordance with the law regulating auditing of financial reports, unless otherwise prescribed by this Law for certain issues.

Audit of financial statements of an insurance company shall be done by an external auditor appointed by general meeting of shareholders of the insurance company, subject to prior approval of the regulatory authority.

The external auditor shall not perform the audit of the insurance company to which s/he is related.

Notification of the Regulatory Authority Article 169

The external auditor shall be obliged to inform the regulatory authority directly as soon as he finds out any of the following facts:

- 1) illegal actions have been taken by employees of the insurance company or any subsidiary of that insurance company;
- 2) there are some irregularities in the operations of the insurance company that may cause material damage;
- 3) the insurance company's activities are non-compliant with provisions of this Law;
- 4) there is non-compliance with the opinion of the external auditor.

External auditor shall be obliged to provide, at the request of the regulatory authority, additional explanations regarding the performed audit of the insurance company.

Checking of External Auditor's Report Article 170

During the supervision, the regulatory authority may request the external auditor's report to be reviewed by another auditor appointed by the regulatory authority, if there are reasons to doubt the correctness of the external auditor's opinion.

The costs referred to in paragraph 1 of this Article shall be born by the external auditor, unless the opinion of the auditor appointed by the regulatory authority confirms the reasons due to which the regulatory authority examined the correctness of the external auditor's report, in which case the costs shall be born by the regulatory authority.

Reporting to the Body in Charge of Supervising the Work of Auditors Article 171

The regulatory authority shall inform the body in charge of supervising the work of auditors on the established omissions and irregularities in the audit report and external auditor's work during the audit in the insurance company.

Publishing of the Summary of the Audited Financial Report Article 172

The summary of the audited financial statement shall be published in at least one printed media distributed in the entire territory of the Republic.

XII Permissions, Authorizations and Fees

Deadline for Making Decisions Article 173

The regulatory authority shall be obliged to make a decision upon submitted request for obtaining a permission and authorization under this Law within 60 days.

Manner of Decision Making Article 174

The regulatory authority shall make decisions upon the requests referred to in Article 173 of this Law in the form of decisions.

The decisions referred to in paragraph 1 of this Article shall be final.

Administrative dispute may be conducted against the decision referred to in paragraph 1 of this Article.

Fees Article 175

Fees shall be paid for obtaining a license, approval, permission and authorization in accordance with this Law.

The companies referred to in paragraphs 1 and 2 of Article 4 of this Law shall pay the annual fee in an amount up to 1% of gross premium.

An insurance company that has been imposed a supervisory measure under this Law shall pay a special fee.

The fees referred to in paragraphs 1, 2 and 3 of this Article shall be the earnings of the regulatory authority.

The amount of special fee referred to in paragraph 3 of this Article shall be specified in order to impose supervisory measures, but it may not exceed 0.5% of the guaranty reserve of the company that has been imposed a supervisory measure.

Amounts, manner of calculation and payment of the fees referred to in paragraphs 1, 2 and 3 of this Article shall be determined by the regulatory authority, subject to the approval of the Government.

XIV Status and Competency of the Regulatory Authority

Status Article 176

The activities of the regulatory authority determined by this Law shall be performed by the Insurance Supervision Agency (hereinafter: the Agency), which shall have the status of a legal entity

The Agency shall be independent in carrying out activities within its scope of work.

The Agency shall perform the activities referred to in paragraph 1 of this Article primarily in order to protect interests of policyholders and other insurance beneficiaries and provide stability and development on the insurance activities based on sound competition and equal operating conditions.

The Agency shall be set up by the Republic.

The Agency Council shall exercise, in accordance with law, the rights of founders in the name of the Republic.

Competency Article 177

Within the scope of its competency, the Agency shall:

- 1) issue licenses for the performance of activities related to insurance, reinsurance and coinsurance, brokerage and agency, and other activities directly related to insurance activities;
- 2) issue approval for acts and activities defined by this Law;
- 3) perform supervision over process of carrying out insurance activities;
- 4) pass regulations and other acts set forth in this Law;
- 5) keep registers in accordance with this Law;
- 6) consider complaints and appeals of policyholders and other insurance beneficiaries;
- 7) cooperate with other supervisory authorities in the country and overseas;
- 8) give initiatives for regulating insurance related issues;

- 9) perform other activities set forth in the Law.

Bylaws of the Agency Article 178

The Agency shall have its Bylaws.

The Bylaws of the Agency shall specify, *inter alia*:

- 1) the Agency's head office and business activity;
- 2) the Agency's internal organization;
- 3) the manner of work, decision-making and competency of the Agency's bodies;
- 4) more detailed decision-making process, particularly related to objections from natural persons and legal entities to the work of insurance companies, agents, brokers, foreign insurance company affiliates and ancillary insurance service providers;
- 5) manner of publishing annual financial statements.

The Parliament of the Republic of Montenegro (hereinafter: the Parliament) shall give a consent to the Statute of the Agency.

Agency Bodies Article 179

The Agency bodies shall be Agency Council and Director.

Composition and Appointment of the Agency Council Article 180

The Agency Council shall consist of a president and 2 (two) members.

President and members of the Agency Council shall be appointed and dismissed by the Parliament.

President and one member of the Agency Council shall be appointed at the proposal of the working body of the Parliament competent for election and appointment, whereas one member at the proposal of the Government.

President and the members of the Agency Council shall be appointed for the period of five years and may be reappointed.

President and the members of the Agency Council shall be responsible for their work to the Parliament.

Conditions for Appointment of the President and Members of the Council of the Agency

Article 181

A person to be appointed as a President or a member of the Agency Council shall meet the following requirements:

- 1) is a citizen of Montenegro;
- 2) holds university degree;
- 3) has professional experience in the field of insurance, legislation or economy of at least three years;
- 4) in the last three years has not been member of a management body in a legal entity under liquidation or bankruptcy proceedings.

Conflict of Interest

Article 182

A member of the Agency Council may not be the person who is:

- 1) member of the Republic and local parliament;
- 2) elected, appointed and employed in the Government;
- 3) a functionary in a political party (party presidents, members of presidencies, their deputies, members of executive and main boards, and other party functionaries);
- 4) as an owner of parts, shareholder, member of a management body, employee or a person bound by the contract, has an interest in legal entities conducting insurance business, in the manner that membership of that person in the Agency Council may lead to the conflict of interest;
- 5) convicted by a final and binding decision for a criminal offence against official duty, criminal offence of corruption, fraud or theft, regardless of the pronounced penalty or is sentenced by a final and binding decision for other criminal offence to more than a six-month prison, during the period of legal consequences of the sentence;
- 6) a spouse of the persons from points 1 to 4 of this paragraph or related to them in the straight line of kinship, regardless of the degree of kinship, and in the lateral line of kinship, up to second degree of kinship.

The candidate for a member of the Agency Council shall forward to the proposer a written statements confirming that there are not impediments for the appointment according to the Law.

Fee for Work

Article 183

The president and members of the Agency Council shall perform their functions for a fee and shall be entitled to a fee determined in the Agency Bylaws.

Dismissal of President and Members of the Agency Council Article 184

President or member of the Agency Council may be dismissed prior to expiration date of the term in the office:

- 1) upon his/her request;
- 2) due to permanent loss of working ability to perform his/her function;
- 3) if circumstances referred to in Article 192 occur;
- 4) if she/he violates principles of confidentiality.

Competency of Agency Council Article 185

The Agency Council shall:

- 1) decide on licenses, approvals, authorizations and other issues within the competence of the Agency;
- 2) pass rules and other acts set forth in the law;
- 3) pass Bylaws of the Agency;
- 4) determine annual report on conditions on the insurance market;
- 5) determine annual work plan and annual report on activities of the Agency;
- 6) determine financial plan and annual financial statements;
- 7) appoint and recall auditor for auditing annual financial statements of the Agency;
- 8) appoint bankruptcy board and interim administrator;
- 9) make decisions upon objections to examination reports and complaints and petitions received from policyholders;
- 10) perform also other activities determined by the law and statute.

Agency Council Decision Making Article 186

The Agency Council shall operate and decide at the session attended by more than half of members of the Council, if this Law does not prescribe otherwise for individual issues.

The Agency Council shall decide by majority vote of the total number of Council members.

In case of equal number of votes, the President of the Agency Council shall have the casting vote.

Rules passed by the Agency shall be published in the Official Gazette of the Republic of Montenegro.

Director of the Agency Article 187

The director of the Agency shall be appointed by the Council of the Agency on the basis of a public announcement, for the four-year period.

A person to be appointed as the director of the Agency shall meet the requirements for appointment of a member of the Council of the Agency determined by Article 181 of this Law, in addition to the general requirements.

A person who cannot be appointed as a member of the Council of the Agency pursuant to this Law, as well as a person who does not have a permanent residence in the Republic of Montenegro, cannot be appointed as director of the Agency.

Authorizations of the Director of the Agency Article 188

The Director of the Agency shall:

- 1) represent and act on behalf of the Agency;
- 2) organize and manage operations of the Agency;
- 3) enforce the decisions passed by the Agency Council;
- 4) propose work plans, operating reports, periodic and annual accounting statements of the Agency to the Agency Council;
- 5) perform other duties established by this Law and the Agency's Bylaws.

Keeping Confidential Information Article 189

The President and members of the Agency Council, the Director of the Agency and employees of the Agency, shall be obliged to keep as confidential information on entities over which the Agency exercise supervision, as well as other information in accordance with this Law and the Agency's Bylaws, except for the information which is disclosed according to the provisions of this Law and which is available for review by interested parties.

The obligation under paragraph 1 of this Article shall continue for three years after termination of their functions or employment in the Agency.

Funds for Operations of the Agency Article 190

Funds for operations of the Agency shall be provided from:

- 1) fees determined in accordance with the provisions of this Law;
- 2) funds allocated by the companies under paragraphs 1 and 2, Article 4 of this Law, up to 1% of gross insurance premium;
- 3) other income of the Agency, in accordance with the law.

Basic Contents of the Report on Insurance Market Conditions Article 191

The report on insurance market conditions shall indicate, *inter alia*, information on operations of insurance companies by classes of insurance, degree of promptness in indemnity payment, amount and composition of capital, liquidity and solvency trends, achieved operational efficiency (productivity, cost-effectiveness and profitability) and other issues relevant to the evaluation of insurance market conditions.

Basic Contents of the Report on Operations of the Agency Article 192

Annual report on operations of the Agency shall indicate, *inter alia*, information on: actions undertaken by the Agency in carrying out supervision, issued licenses and approvals, the Agency's cooperation with other supervisory bodies in the country and overseas, as well as other issues important for the operations of the Agency.

Reporting Article 193

After being adopted by the Agency, the reports and statements referred to in points 4, 5 and 6 of Article 185 shall be forwarded to the Parliament for adoption.

XIV Associations of Insurance Companies

Associations of Insurance Companies Article 194

Insurance companies can form an association of insurance companies for the purpose of achieving common interests and performing public authorizations, in accordance with law.

Membership of the Associations shall be obligatory for insurance companies dealing with compulsory insurance.

Public authorizations of the Associations regarding compulsory traffic insurance shall be regulated by a special law.

The Association referred to in paragraph 1 of this Article shall have the status of a legal entity.

XV Punitive Provisions

Offences

Article 195

A fine ranging from 50-fold to 300-fold amount of the official minimum monthly salary in the Republic shall be imposed on a legal person if:

- 1) it uses the word "insurance" in its name or the name of its product or service, without being authorized to do so by this or another law (Article 14);
- 2) it submits false data with the request for obtaining license (Article 30, 42, 56 and 79).

A responsible person in the legal entity referred to in paragraph 1 of this Article shall also be imposed a fine ranging from 10-fold to 20-fold amount of the official minimum monthly salary in the Republic for the violations specified in paragraph 1, point 1 of this Article .

Article 196

A fine ranging from 50-fold to 300-fold amount of the minimum wage in the Republic shall be imposed for an offence on insurance companies, insurance broker companies and insurance agent companies:

- 1) if they do not reinsure with the reinsurance company the obligations exceeding the retention limit (Article 12);
- 2) if they do not ask for the approval of the regulatory authority for a proposed change in the company name or head office (Article 18, paragraph 4);
- 3) if they conclude the contract on insurance brokerage or agency activities with a person not licensed to perform such activities (Article 17);
- 4) if they acquire cross ownership of capital with another insurance company, reinsurance company, insurance broker company or insurance agent company (Article 22);
- 5) if they acquire qualified participation in the insurance company without the approval of the regulatory authority (Article 23);
- 6) if it fails to submit to the regulatory authority the decision on registration with the Central Registry of the Commercial Court within 7 days upon receiving the decision (Article 34);
- 7) if they establish an organizational part without the status of a legal entity without the approval of the regulatory authority (Article 40);
- 8) if they fail to provide the regulatory authority's approval of the company's status changes (Article 41);
- 9) if they appoint a board member or executive director without the approval of the regulatory authority (Articles 49 and 50);
- 10) if insurance broker company performs insurance agency activities (Article 52, paragraph 3);
- 11) if it mediates for the purpose of concluding an insurance contract contrary to Article 53 of this Law;
- 12) if it enables an entity not authorized by the regulatory authority to perform insurance broker activities or if it enables a foreign natural person to perform

- insurance broker activities without the proof of reciprocity (Article 60, paragraphs 1 and 5);
- 13) if they do not inform a policyholder on all legal and economic relationships with the insurance company influencing impartiality of the insurance broker company in meeting obligations towards a policyholder (Article 63);
 - 14) if they do not maintain copies of their insurance agency activities contracts on their business premises (Article 73);
 - 15) if they operate contrary to the provisions of Articles 77, 78 and 81;
 - 16) if they do not determine technical provisions or they fail to determine technical provisions in the prescribed manner (Article 83);
 - 17) if they do not deposit and invest technical provision funds in the prescribed manner and if they do not inform the regulatory authority within the prescribed deadlines (Articles 90 and 91);
 - 18) if they do not maintain the prescribed guaranty reserve (Article 92, paragraph 5);
 - 19) if they do not deposit and invest guaranty reserve funds in the prescribed manner and if they do not inform the regulatory authority within the prescribed deadlines (Articles 93 and 94);
 - 20) if they do not maintain funds in accounts and investments in the prescribed manner (Article 95);
 - 21) if they do not calculate a solvency margin in the prescribed manner (Article 96);
 - 22) if they do not match the guaranty reserve and solvency margin in the prescribed manner (Article 98);
 - 23) if they do not adopt the program of measures for matching a guaranty reserve and solvency margin, i.e. if they do not submit the program to the regulatory authority, or if they fail to submit it on time (Article 99);
 - 24) if they do not determine profit, i.e. surplus and loss, i.e. deficit in the prescribed manner (Article 104);
 - 25) if they do not inform the regulatory authority about an incurred loss, or if they do not submit the program of measures for increasing the guaranty reserve to the regulatory authority in a timely way (Article 105);
 - 26) if they do not organize internal audit in the prescribed manner (Articles 108, 109 and 110);
 - 27) if they do not enable a person in charge of supervision to perform supervisory activities in the prescribed manner (Article 121);
 - 28) if they do not report to the regulatory authority in the prescribed manner (Articles 126 and 127);
 - 29) if they do not remove the established illegalities and irregularities in operations, or if they fail to submit the report to the regulatory authority in a timely way (Articles 130, 131 and 132);
 - 30) if they do not initiate the procedure of transfer the insurance portfolio to another insurance company (Article 133);
 - 31) if they transfer the entire portfolio or part of the portfolio to another insurance company without the approval of the regulatory authority (Article 148);
 - 32) if they do not inform the policyholders about the transfer of insurance portfolio in the prescribed manner and within the prescribed time (Article 150);
 - 33) if they do not appoint a certified actuary or if they do not appoint him within the prescribed deadline (Article 153);

- 34) if they do not provide certified actuaries with continuous and unimpeded access to the business data that are needed and required by the certified actuary (Article 157);
- 35) if they fail to inform or fail to inform, within the prescribed deadline, the regulatory authority on the fact that a competent body of the company did not accept the opinion of the certified actuary (Article 163);
- 36) if they do not submit, within the prescribed deadline to the certified actuary the financial report (Article 164);
- 37) if they do not inform the regulatory authority within the prescribed time of the certified actuary's refusal to accept the opinion of the external auditor (Article 165).

A fine ranging from 10-fold to 20-fold amount of the minimum wage in the Republic shall be imposed on a responsible person in the insurance company, insurance broker company and insurance agent company for the offence referred to in paragraph 1 of this Article.

Article 197

A fine from 10-fold to 20-fold amount of the minimum wage in the Republic shall be imposed on a natural person for the following offences:

- 1) on an internal auditor, if s/he does not perform or provide internal audit activities to be performed in the prescribed manner (Articles 110);
- 2) on a certified actuary, if s/he acts in violation to Article 155 of this Law ;
- 3) on a certified actuary, if s/he fails to propose to the board of directors measures to remove regularities (Article 156);
- 4) on a certified actuary, if s/he fails to consider his/her opinion or fails to do that in the prescribed time or fails to inform a competent body of the insurance company that is competent for adoption of the financial statements (Article 164, paragraph 2).

XVI Transitional and Final Provisions

Performance of Activities

Article 198

The Agency shall be established within 6 months from the effective day of this Law.

The working body competent for election and appointments and the Government shall submit to the Parliament the proposal for appointment of the president and members of the Agency Council, within 90 days from the effective day of this Law.

Until the Agency has been set up, the duties of the regulatory authority set forth in this Law shall be performed by the Ministry of Finance.

The Ministry of Finance shall be obliged to transfer documentation in the area of insurance of property and persons to the Agency within 30 days from the day of its establishment.

Funds for Starting up the Agency

Article 199

Until starting to earn its own income, the Agency will be provided with funds for its operations from the Budget of the Republic of Montenegro, in the form of a cash borrowing.

The Agency shall be obliged to repay the borrowed funds referred to in paragraph 1 of this Article in the manner and within the deadlines determined by the Contract of Borrowing concluded with the Ministry of Finance.

Status of Existing Insurance Companies

Article 200

Insurance and reinsurance companies and legal and natural persons conducting insurance related services with a head-office in the Republic and established before the effective date of this Law shall continue their operations for the licensed activities under the terms of their original registration with the CRCC.

Organizations Conducting One Group of Insurance Activities

Article 201

Insurance organizations referred to in Article 200 of this Law that are conducting only one group of insurance activities on the effective date of this Law shall, within no later than a year after the effective date of this Law, harmonize their operations, organization, and other general acts with the provisions of this Law and provide guaranty reserve equal to one-half of the monetary part of the minimum capital requirement prescribed in Article 21 of this Law and provide adequate evidence thereon to the Agency.

The Agency shall impose measures in accordance with this law against insurance organizations that fail to act in accordance with paragraph 1 of this Article.

The insurance organizations referred to in paragraph 1 of this Article shall be obliged, within no later than two years after the effective date of this Law, submit to the Agency an application for licensing, supported by evidence that the guaranty reserve has been provided in the amount of the monetary part of the minimum capital requirement prescribed in Article 21 of this Law.

The Agency shall issue a license for appropriate insurance activities to the organizations referred to in paragraph 3 of this Article that have harmonized their organization, operations, acts and guaranty reserve with this Law.

The Agency shall revoke licenses, in the form of a decision, of the organizations that have not harmonized their organization, operations, acts and guaranty reserve with this Law or have failed to submit to the Agency the request for obtaining the license

for performing insurance activities, within the time referred to in paragraph 3 of this Article.

Organizations Conducting Several Groups of Insurance Activities Article 202

Insurance organizations conducting both life and non-life insurance and/or reinsurance activities before the effective date of this Law may continue to perform both these activities simultaneously for not longer than four years after the effective date of this Law.

An insurance organization referred to in paragraph 1 of this Article shall be obliged:

- 1) within no later than one year after the effective date of this Law, harmonize its organization, operations and general acts with this law, except for the separation of insurance activities, as well provide guaranty reserve equal to one-half of the monetary part of minimum capital requirement and provide appropriate evidence thereon to the Agency;
- 2) within no later than two years after the effective date of this Law, provide guaranty reserve equal to monetary part of minimum capital requirement prescribed in Article 21 of this Law and provide appropriate evidence thereon to the Agency.

The Agency shall impose measures in accordance with this Law against the organizations referred to paragraph 1 of this Article that fail to act in accordance with paragraph 2 of this Article.

Within four years after the effective date of this Law, the organization referred to in paragraph 1 of this Article shall perform appropriate changes in its legal status and operations in accordance with Article 19 of this Article and shall provide adequate evidence thereon to the Agency.

Based on the evidence referred to in paragraph 4 of this Article, the regulatory agency shall evaluate, within 30 days as of the day of receiving such evidence, whether the conditions for issuing appropriate licenses prescribed by this Law have been met.

If the conditions referred to in paragraph 5 of this Article have not been met, the Agency shall revoke license, by the decision, from the organization referred to in paragraph 5 of this Article.

Persons Conducting Insurance Related Activities Article 203

Persons referred to in Article 200 of this Law conducting insurance related activities, in the meaning of this Law, on the effective date of the Law, shall harmonize their organization, operations and general acts with this Law and apply with the Agency for the licensing of such activities, within no later than one year after the effective date of this Law.

The Agency shall issue appropriate license to the persons referred to in paragraph 1 of this Article that have harmonized their organization, operations and general acts with the provisions of this Law.

Parts of Insurance Organizations with Head-Offices Outside the Republic **Article 204**

Insurance organizations with head-offices outside the Republic shall be obliged to organize their parts operating in the Republic in accordance with this Law within no later than two years after the effective date of this Law.

Upon expiration of the prescribed deadline, parts of insurance organizations referred to in paragraph 1 of this Article shall cease to operate unless they act in accordance with paragraph 1 of this Article.

Certified Actuaries **Article 205**

The persons who acquired the title of a certified actuary pursuant to regulations that were applicable before the effective date of this Law may perform activities of certified actuary determined by this Law.

Authorized Brokers and Authorized Agents **Article 206**

The Agency shall recognize the title of an authorized insurance broker or an authorized insurance agent to the persons with at least three years of working experience in insurance or insurance brokerage or insurance agency on the day this Law comes into effect, and without a relevant professional examination, provided that they meet other requirements prescribed by this Law and the regulatory authority shall enter them in the register of authorized insurance brokers or agents.

Requests for the title recognition referred to in paragraph 1 of this Article supported by the required evidence shall be submitted to the regulatory authority within one year after the effective date of this Law.

Reporting to the Regulatory Authority **Article 207**

Within the period of one year after the effective date of this Law, an insurance company shall be obliged to semiannually report to the Agency on the information and facts referred to in Articles 89, 91, 94 and 124 of this Law.

Timeframe for Adoption of Subsidiary Legislation Article 208

Enabling regulations related to this Law shall be adopted within 6 months after its effective date.

Until the regulations referred to in paragraph 1 of this Article have been adopted, the regulations valid on the effective date of this Law shall be applied.

Pending Procedures Article 209

Pending applications for obtaining licenses and approvals submitted before the effective date of this Law shall be decided pursuant to the provisions of this Law.

Special Capital Requirement Article 210

The minimum capital requirement for the insurance company which applies for license within one year after the effective date of this Law must be equal to at least a half of the minimum capital requirement prescribed by this Law, provided that at the latest within two years upon the effective day of this Law, guarantee reserve of this insurance company must be at least in the amount of minimum capital prescribed by this Law.

The minimum capital requirement for the insurance company that applies for license after expiration of one-year-deadline upon the effective day of this Law must be at least in the amount of minimum capital requirement prescribed by this Law.

Cease of Validity of Other Laws and Regulations Article 211

On that date this Law becomes effective, it shall supersede the Law on System of Insurance of Property and Persons (Official Gazette of the SRM , No. 37/77 and 23/83) and the Decree on Insurance of Property and Persons (Official Gazette of the Republic of Montenegro, No. 42/00), whereas the Law on Insurance of Property and Persons (Official Gazette of the Federal Republic of Yugoslavia, No. 30/96, 53/99) shall cease to apply, except for the provisions on compulsory insurance (Articles 73-107) and provisions on delegation of public authorizations to the Association of Insurance Organizations of Serbia and Montenegro (Articles 143-146).

**Coming into Effect
Article 212**

This Law shall become effective on the eighth day upon its publication in the “Official Gazette of the Republic of Montenegro”.

SU – SK Number 01-618/16
Podgorica
11 December 2006

Constituent Parliament of the Republic of Montenegro
President
Ranko Krivokapic, signed