

THE INSURANCE AND
REINSURANCE
LAW REVIEW

TENTH EDITION

Editor
Simon Cooper

THE LAWREVIEWS

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PREFACE

It is hard to overstate the importance of insurance in personal and commercial life. It is the key means by which individuals and businesses are able to reduce the financial impact of a risk occurring. Reinsurance is equally significant: it protects insurers against very large claims and helps to obtain an international spread of risk. Insurance and reinsurance play an important role in the world economy. It is an increasingly global industry, with emerging markets in Asia and Latin America developing apace.

Given the expanding reach of the industry, there is a need for a source of reference that analyses recent developments in the key jurisdictions on a comparative basis. This volume, to which leading insurance and reinsurance practitioners around the world have made valuable contributions, seeks to fulfil that need. I would like to thank all the contributors for their work in compiling this volume.

One of the defining features of 2021 was the covid-19 pandemic, which has inflicted terrible human misery around the world. The insurance industry, like most other aspects of the economy, has been badly impacted by the pandemic. Although the financial loss to the industry seems likely to be manageable, it has undoubtedly raised issues about the suitability of a range of policy wordings for the modern commercial environment, while also raising various legal issues related to, for example, causation and the quantification of loss. The different jurisdictions represented in this book will have different responses to these developments so it is vital to hear from the lawyers in each of those countries on the factors that will govern the international response.

The year 2021 was another very bad year for insured losses from natural catastrophes. Hurricane Ida was the largest single loss event but other extreme weather events including deep winter freezes, severe thunderstorms, floods and heatwaves had a significant impact. These losses reinforce the continuing concern that climate change will see a long-term increase in the number and severity of such losses. From a legal perspective, the changing nature of natural catastrophes will raise issues of policy construction in relation to, for example, aggregation clauses and the obligation on reinsurers to follow their insured's underlying settlements.

The past year also saw no respite in the number or scale of cyber events, including the data breaches at the Microsoft Exchange Server and ransomware attacks on organisations as diverse as Bombardier, Acer, JSB Foods and Kia Motors. The insurer Axa also suffered a major ransomware attack which, interestingly, came shortly after the company indicated it would be amending some of its policies to exclude cover for the payment of ransoms. Events such as these test not only insurers and reinsurers, but also the rigour of the law. Insurance and reinsurance disputes provide a never-ending array of complex legal issues and new points for

the courts and arbitral tribunals to consider. Aggregation will also be an area of uncertainty in relation to the treatment of all losses of this kind, and again different jurisdictions are likely to provide different responses.

Looking ahead, 2022 is likely to see new developments and new legal issues. In particular, the impact of insurtech on the way in which insurance is underwritten, serviced and distributed will continue to present challenges around the world. This is reflected in our chapter on artificial intelligence. The current instability in international relations means there may also be an increased focus on issues such as the impact of sanctions on insurance recoveries and the scope of war exclusion clauses; for example, in relation to state involvement in cyber events.

I hope that you find this volume of use in seeking to understand today's legal challenges, and I would like to thank, once again, all the contributors.

Simon Cooper

Ince

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BULGARIA

*Irina Stoeva*¹

I INTRODUCTION

In 2020, the Bulgarian insurance market remained under-penetrated, with the ratio of insurance premiums to gross domestic product at 2.4 per cent, compared with the emerging markets' average of 3.4 per cent and the advanced markets' average of 9.9 per cent. Low household incomes result in the dominance of compulsory insurance. In 2020, gross written premiums amounted to €1.5 billion and non-life insurance accounted for 85 per cent of this amount. The motor insurance share in total non-life insurance premiums was 72 per cent (45 per cent of that share was attributed to compulsory motor third-party liability insurance (MTPL) and 27 per cent to vehicle insurance). Insurance premiums per capita (density) spent in 2020 in Bulgaria were approximately US\$240 (exceeding the emerging markets' average of US\$174, but far below the advanced markets' average of US\$4,695). In particular, the rates for Bulgarian life insurance market penetration (0.37 per cent) and density (US\$27) are among the lowest in Europe. These figures are not expected to have changed materially in 2021.²

The major law regulating insurance and reinsurance activity in Bulgaria is the Insurance Code 2015 (IC). The IC implements the new Solvency II prudential framework and risk-based supervisory approach.³ Insurers with a smaller volume of activities may opt for less stringent regulation, subject to certain financial conditions; however, such insurers will be restricted in their provision of services on the common market on the grounds of the right of establishment and freedom to provide services.

II REGULATION

i The insurance regulator

The Financial Supervision Commission (FSC) is the Bulgarian authority responsible for the regulation and supervision of insurance and reinsurance activity, as well as for capital markets and pension funds.

1 Irina Stoeva is a managing partner at Stoeva Tchompalov & Znepolski.

2 The Financial Supervision Commission, Annual Activity Report for 2020; Swiss Re Institute, Sigma, 3-2021.

3 Directive 2009/138/EC on the taking up and pursuit of the business of Insurance and Reinsurance (Solvency II).

ii Requirements for authorisation

To operate as an insurer or reinsurer, a Bulgarian entity must be granted a licence by the FSC. An insurance licence is issued either for life insurance or for general insurance only (principle of business separation) and it lists the specific classes of business that the entity is authorised to underwrite. Additional licences can be granted for extension of the initial scope of activity over new classes of business. A reinsurance licence may be issued for reinsurance of life insurance or general business insurance, or both.

An insurance or reinsurance licence may be granted by the FSC if the authority is satisfied about the sufficiency and suitability of the technical and financial resources of the applicant, the integrity, expertise and experience of the applicant's directors and senior management, and of the transparency and reliability of its shareholders.

An insurer or reinsurer based in another EEA Member State may, under the single-licence principle, carry out business in Bulgaria either under the right of establishment or under the freedom to provide services without having to obtain a licence from the FSC. Such an operation is limited to the scope of services defined by the licence held by the insurer or reinsurer.

An insurer or reinsurer based in a non-EEA Member State may carry out business in Bulgaria subject to setting up a branch and obtaining a licence from the FSC. Such a licence can be issued only for the class of business for which the insurer or reinsurer is authorised by its existing licence.

A person who has not obtained a licence for insurance operations shall not have the right to pursue any activity as insurer or reinsurer in Bulgaria.

iii The distribution of products

The Insurance Distribution Directive (IDD) was transposed in Bulgarian law through amendments to the IC, which became effective on 7 December 2018. In principle, Bulgarian lawmakers have kept as close to the IDD original language as possible. Bulgaria has decided not to apply the discretion to make the provision of advice mandatory for the sales of insurance-based investment products (IBIPs), but the lawmakers have implemented the derogation that permits Bulgaria to allow execution-only sales (i.e., no advice and without an appropriateness assessment) in relation to IBIPs in limited circumstances. Bulgaria has refrained from the possibility of also limiting or prohibiting the acceptance or receipt of third-party inducements in relation to the provision of advice for IBIPs. Further, Bulgaria has not implemented the IDD discretion to provide for criminal sanctions for breach of the IDD, in addition to administrative sanctions.

While Member States are required to adopt at least one measure for protection of the client's monies, Bulgaria has implemented three of all four measures provided by the IDD: monies paid by the customer to the intermediary are treated by law as having been paid to the insurer, whereas monies paid by the insurer to the intermediary are not treated as having been paid to the customer until the customer actually receives them; intermediaries may decide to transfer the customer's monies via strictly segregated customer accounts (the funds therein not used to satisfy other creditors in the event of bankruptcy) or, alternatively, to maintain a permanent financial capacity amounting to 4 per cent of the sum of annual premiums received, but not less than approximately €20,400; the IC has introduced payment deadlines for intermediaries and, in certain cases, requirement for notary authorisation of intermediaries by their clients.

iv Compulsory insurance

Compulsory insurance, in particular MTPL, is the main driver behind the Bulgarian market. According to data published by the FSC, as at the end of 2020, the gross written premium income for MTPL insurance accounted for 45 per cent of the insurance premium total for non-life insurance. However, MTPL premium income decreased by 1 per cent compared with the income in 2019.

The category of compulsory insurance products is large and it comprises, among others, various types of professional liability insurance (for physicians, dentists, solicitors, public notaries, auditors, constructors, insurance brokers and other occupations) and accident insurance (for public transport vehicle passengers, employees, magistrates and civil servants).

An insurer who carries out compulsory insurance on Bulgarian territory must sign a contract with each client who requests to purchase compulsory insurance. An insurer offering compulsory insurance against occupational accident under the conditions of the right of establishment or freedom to provide services shall be obligated to designate Bulgarian law as the law applicable to the insurance contract.

v Compensation

The National Bureau of Bulgarian Motor Vehicle Insurers (an NGO of the insurers offering MTPL in Bulgaria), is required, under the conditions laid down in the IC, to pay indemnity to a damaged party in Bulgaria when:

- a* the insurer of the guilty driver (or its claims settlement representative in Bulgaria) has not given a reasoned reply to the damaged party's claim within a three-month period;
- b* the insurer of the guilty driver has not appointed a representative for settlement of claims in Bulgaria;
- c* the guilty driver's motor vehicle is typically in a Member State other than Bulgaria; or
- d* the insurer of the guilty driver cannot be identified within two months of the insured event in a Member States other than Bulgaria.

A Guarantee Fund is established pursuant to the IC as a special purpose legal entity to implement the following main functions, among others:

- a* to pay for the damage inflicted by an unidentified motor vehicle or where the guilty driver does not have valid MTPL, or when there is no compulsory accident insurance covering the passengers;
- b* to guarantee the receivables of the damaged persons for the liability associated with motor vehicles located in Bulgaria in the event of bankruptcy of Bulgarian insurers (and third-country insurers with a registered branch in Bulgaria) offering compulsory MTPL and compulsory accident insurance of passengers;
- c* to guarantee the receivables under life insurances in the event of bankruptcy of Bulgarian life insurers (and third-country insurers with a registered branch in Bulgaria); and
- d* to carry out insolvency administrator's functions in connection with the bankruptcy of an insurer.

vi Taxation of premiums

Insurers, including from EU and third countries, are subject to 2 per cent premium tax for policies covering risks in Bulgaria. Policies exempt from taxation include (without limitation) life insurance, permanent health, aircraft and vessels insurance, and reinsurance.

III INSURANCE AND REINSURANCE LAW

i Sources of law

Bulgarian insurance law, which is generally harmonised with EU legislation, is primarily set out in the IC; however, other statutes also regulate specific insurance matters (e.g., marine insurance is regulated by the Merchants Shipping Code). Detailed regulatory requirements are established by ordinances issued primarily by the FSC.

The IC also contains provisions addressed to the activity and supervision of reinsurers and reinsurance intermediaries (including, without limitation, licensing and ongoing financial, organisational and qualification requirements, insolvency and liquidation rules). However, the IC does not apply expressly to reinsurance contracts, which are concluded under the freedom of contract principle and typically in accordance with international practice.

Although Bulgaria has a continental statute-based legal system, case law (and specifically Supreme Court of Cassation judgments) is important because normally it is strictly adhered to by the lower courts and regulators.

ii Making the contract

Similar to other contracts, an insurance contract becomes legally binding once the contract offer has been accepted. Normally the insured makes the offer to the insurer requesting an insurance cover for certain risks, usually by completing the insurer's form (such as a questionnaire or proposal). In addition, the IC lays down obligations for insurers to make certain disclosures to the insured prior to the conclusion of the insurance contract, such as information on its complaints procedure and the supervisory authority, as well as other IDD-related disclosures and documents (see Section III.iv).

According to the IC, an insurance contract must be concluded in writing as a hard copy or as an electronic document, signed by qualified electronic signatures within the meaning of the EU eIDAS Regulation on electronic signatures⁴ and the Bulgarian Electronic Document and Electronic Trust Services Act. In addition, MTPL may be concluded on the internet page of an insurer or insurance intermediary even without the signature of the insured, if he or she has paid the insurance premium or part of it on that same internet page using a credit or debit card issued in the name of the insured.

The IC requires the insurance contract to stipulate clearly, unambiguously and exhaustively:

- a* the risks covered and the exclusions to coverage;
- b* the conditions for payment of premiums by the insured and the consequences of non-payment or inaccurate payment;
- c* the insurer's liabilities, payment term and the manner of specifying the amounts of payments;
- d* the obligations upon occurrence of an insured event and its establishment;
- e* the circumstances relating to amendments to the insurance legal relationship; and
- f* the terms and the amount of any preliminary payments or borrowings against life insurance policies and their redemption.

⁴ EU Regulation 910/2014 of 23 July 2014 on electronic identification, which repealed Electronic Signatures Directive 1999/93/EC.

The general terms of the insurer, as accepted by the insured, shall form an integral part of the insurance contract. Any amendments to or substitution of the general terms shall be in effect only in cases where these have been approved by the insured in writing.

Prior to the conclusion of a contract, the insured (in person or acting by proxy and also through an insurance broker) is obliged to disclose fully and exhaustively to the insurer, pursuant to a questionnaire or a proposal form provided by the latter, all the information the insured is aware of that may be relevant for the evaluation of the risk. The IC provides that only the information the insurer has asked about in writing shall be deemed to be substantial. The insured is also under an obligation to declare immediately to the insurer any new and relevant information that has become known after the conclusion of the contract.

The written proposal or request addressed to the insurer concerning the conclusion of an insurance contract and the written replies of the insured to insurer's questions with regard to the nature and amount of risk assessment are deemed to be an integral part of the insurance contract.

The whole premium or the first instalment thereof shall be paid upon conclusion of the insurance contract, unless provided otherwise in the law or in the contract. Significant increase or decrease of the insurance risk during the term of the contract would entitle each party to request the increase or decrease of the premium, or termination of the contract.

Misrepresentation and concealment

If the insured, or his or her representative, has consciously given an incorrect statement (misrepresentation) or withheld information about the insured's circumstances (concealment) (or is aware of such misrepresentation or concealment) that, if known by the insurer, would have led to a refusal to enter into the contract, the insurer may demand amendment or termination of the contract within one month of learning about the misrepresentation or concealment. If the insured does not accept the proposed amendments within two weeks of their receipt, the contract shall be terminated. The insurer is entitled to retain the paid share of premium or to demand payment of premium for the period until the contract termination, or both. If an insurance claim is made in a case of misrepresentation or concealment, the insurer can only fully or partially refuse to pay the insurance indemnity if the inaccurately stated or withheld information has affected the claim. Where this information has only resulted in an increase in the cost of the damage, the insurer cannot refuse payment but may be able to reduce the payment in proportion to the amount of the premium paid for the initial premium, which is to be paid according to the actual insurance risk.

In the event of unconscious misrepresentation or concealment, both the insurer and the insured are entitled to propose an amendment of the insurance contract within two weeks of learning about the misrepresentation or concealment. If the other party does not accept the proposal within two weeks of its receipt, the proposing party is entitled to terminate the contract and return the proportion of the premium collected for the remaining term of the agreement. If, prior to the termination of the contract, an insurance claim is made, the insurer cannot refuse payment; however, the payment can be reduced in proportion to the amount of the premium paid for the initial premium, which is to be paid according to the actual insurance risk.

A non-reply or unclear reply to an insurer's question, where no concealment of substantial information has occurred, cannot constitute a ground for unilateral termination or amendment of the insurance contract or for refusing payment on a claim.

iii Interpreting the contract

Bulgarian legal agreements (including insurance policies) should be interpreted according to their wording and the actual mutual will of the parties shall be sought. Each individual clause shall be interpreted in conjunction with the others and shall be construed in the exact sense that is manifested in the entire agreement, in terms of the aim of the agreement, the established customs and according to the principle of good faith.

Bulgarian law does not contain a rule that an ambiguous word or phrase should not be resolved in favour of the party that drafted or proposed the contract; however, there is a principle that rights under the agreement may not be exercised with the aim of damaging the counterparty.

Where the insured is a consumer under the Consumer Protection Act (i.e., a natural person who enters into an agreement outside the scope of his or her professional activities), consumer protection regulations would also apply regarding unfair trade practices and contractual provisions establishing disparity between the parties.

iv Intermediaries and the role of the broker

The main categories of insurance intermediaries in Bulgaria are brokers and agents, both registered with the FSC.⁵ These intermediaries play key roles in generating business for insurers. Insurance and reinsurance brokers are wholly independent intermediaries between purchasers of insurance and reinsurance on one side and insurers and reinsurers on the other. Though brokers' remuneration is included in the insurance premium and is, therefore, paid by the insurer, brokers act for the insured and their typical role is to provide clients with objective insurance information (and sometimes with advice), to obtain quotes from various insurers and guide their clients in determining the adequate policy from the range of products. In practice, with respect to certain technical functions, brokers may also act on behalf of the insurer (e.g., collection of insurance premiums).

In contrast, an insurance agent acts on behalf of one or several insurers according to a written contract for the insurance agency. Insurance agents shall be obligated to notify the consumer about the insurers and the insurance products they are authorised to provide.

The IC presents the general principle that insurance distributors (insurers and insurance intermediaries) must always act honestly, fairly and professionally in accordance with the best interests of their clients and contains a number of specific conduct rules, which generally mirror those in the IDD framework (including demand and needs test, advice, appropriateness and suitability) and specific obligations regarding the provision to the client of a standardised product information document and other pre-contractual disclosure (nature and basis of remuneration, whether the distributor provides advice or not, conflict of interest related information).

In Bulgaria, reinsurance brokers are typically local subsidiaries of large international brokers that usually act on behalf of the cedent.

5 The IC also regulates (1) ancillary insurance intermediaries (as defined in the IDD), which are subject to registration with the FSC; and (2) unregistered ancillary insurance intermediaries, whose distribution activity meets the conditions under Article 1(3) of the IDD – the latter are subject to some of the conduct rules applicable to the registered intermediaries.

v Claims

The IC mandates that insurance claims shall be filed first with the insurer (and not with the court). In general, the insurer is obligated to respond to an insurance claim (other than to a claim under big risk insurance policies), within 15 business days of the submission of all evidence by the insured, as instructed by the insurer, either by assessing and paying the claim or by issuing a reasoned refusal to make payment. In any case, the insurer is required to respond to the claimant within six months (and, in relation to MTPL claims, within three months) of the date of filing the relevant claim.

When the insurer has asked questions in the process of finalising the insurance contract, the insurer cannot refuse to make payment on a claim on the basis of circumstances existing prior to the date of the insurance contract and about which the insurer has not asked in writing. In addition, if the insurer has concluded a contract, regardless of the fact that the insurer's questions have been answered unclearly or have not been answered at all, the insurer is not allowed for either of these reasons to terminate unilaterally the insurance contract, to refuse or to reduce the amount of the payment on a claim (see Section III.ii 'Misrepresentation and concealment').

Upon occurrence of an insured event, the IC obliges the insured to make maximum efforts to mitigate the damage and to comply with the insurer's instructions, otherwise the insurer may reduce the indemnity. In the case of reinsurance, the claims procedure will depend on what the parties have agreed upon.

Notification

Notices on occurrence of an insured event or of circumstances that may give rise to a claim (under liability policy) would typically be provided in writing to the insurer within a term set out in the policy. The documents evidencing the occurrence of the event and the amount of the damage might be provided at a later stage. It is common practice under motor vehicle insurance policies for the insurers to require a telephone call first, in addition to a written notice. Under travel assistance policies, the insurers typically require telephone notice.

The insured under property insurance must notify the insurer of damage to the property within seven days of the date of becoming aware of the damage or within another contractually set time limit. However, this limit may not be shorter than three days. For theft and burglary offences, the limit is 24 hours from the date the insured becomes aware of the crime. Under general liability policies, notice shall be provided within seven days of the date on which either the insured performed payment to the third party; the insured became aware of the circumstances that may result in its liability; or claims are initiated against the insured.

In cases of late notice, the insurer may deny coverage on the grounds of late notification of the damage to the property under property and general liability insurances only if:

- a* the insured intended thereby to prevent the insurer from revealing the circumstances related to the damaged property; or
- b* the late notification made the identification of the circumstances impossible; this exception may not be made by a general liability insurer who is defending a direct claim by the damaged third party.

Under the MTPL insurance, the insurer may not reduce the compensation due to a damaged third party on the grounds of non-disclosed information existing upon execution of the contract or recent changes in the insured's circumstances.

The insured's failure to notify the insurer of any recent changes in his or her circumstances, and about which the insurer posed a question in the proposal form, shall have the same consequences as misrepresentation or concealment of information. A notice to the insurer must be given immediately once the insured becomes aware of a change in circumstances.

Where the insured has failed to notify a change in address stated in the insurance contract, all notices sent to the initially declared address by the insurer shall be deemed validly received by the insured and shall have the prescribed statutory or contractual effect.

If the insurer fails to pay the sum or compensation due within the terms set out in the insurance policy or by the IC, the general legal interest rate for default payment of monetary debts will apply. However, Bulgarian law does not recognise punitive damages as under the Bulgarian legal doctrine the function of civil liability is limited to repairing or compensating damage.

IV DISPUTE RESOLUTION

i Jurisdiction, choice of law and arbitration clauses

Bulgaria is an EU Member State and, therefore, EU law takes precedence over domestic rules.

International insurance disputes, which are outside the scope of the Brussels Ia Regulation on jurisdiction and enforcement of judgments,⁶ are governed by the Bulgarian Private International Code (BPIC). The BPIC requires the Bulgarian court to examine *ex officio* whether it has jurisdiction over the claim brought before it; however, the Bulgarian court will most likely have jurisdiction for all insurance disputes with an international link (regardless of the nature of that link), unless the dispute has no connection with Bulgaria at all or if there is a choice-of-court clause in favour of a foreign court.

Similarly, the BPIC applies to international insurance disputes falling outside the scope of the Rome I or Rome II Regulations,⁷ on jurisdiction and applicable law, respectively. The BPIC provides that contracts shall be governed by the law chosen by the parties; nevertheless, where all the elements of a contract at the time of choice are connected with one state only, the choice of a foreign law must not prejudice the application of the mandatory rules of that state, from which it cannot contractually be derogated. In the absence of a choice-of-law clause, the law of the state most closely connected with the contract will apply; that is, the law of the state where the insurer, as the party with the characteristic performance, has its seat.

According to the BPIC, the obligations arising out of a tort (delict) shall be governed by the law of the state within whose territory the direct damage arises or is likely to arise.⁸ The same applicable law shall govern the right of direct action by the injured person against the insurer of the person claimed to be liable, unless the injured person prefers to base his or her claim on the law applicable to the insurance contract.

6 Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

7 Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I); Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II).

8 Note, however, that there are judges from the first instance court who do not correctly apply the Rome II Regulation in relation to the concept of *lex loci damni*. This further complicates for claimants the process of establishing the content and the court interpretation of the applicable foreign law.

ii Litigation

Regional courts are competent to hear all insurance disputes at first instance, where the claim does not exceed approximately €12,500; if the claim exceeds this sum, district courts are competent to hear the dispute in first-instance courts.

Decisions of the first-instance courts may be appealed before the district courts or the appellate courts, respectively. The appellate court, *ex officio*, reviews the validity of the first-instance decision in its entirety and its admissibility with regard to the part appealed.

To take into account the correctness of the decision (that is, correct establishment of relevant facts, correct application of substantive and procedural law), the court of appeal is limited to the complaints raised in the appeal. Within these limits, the court of appeal considers the facts and the law. As an exception, the court of appeal may, *ex officio*, apply mandatory substantive legal rules.⁹

Parties dissatisfied with the outcome of the first level appeal may further appeal the appellate decision before the Supreme Court of Cassation (SCC).

Cassation appeal is subject to two limitations. First, the case meets the formal criteria for minimum monetary evaluation of the claim. Second, cassation appeal, even if admissible, is discretionary. The SCC is entitled to select the cassation appeals that it will hear and resolve, applying criteria provided under the Civil Procedure Code (CPC), including, inter alia, where the second-instance decision deviates from compulsory precedents or interpretative decisions of the SCC or conflicts with resolutions of the Bulgarian Constitutional Court or of the Court of Justice of the EU. Regarding cassation appeals submitted after 31 October 2017, the SCC shall admit cassation appeals if it finds that the second-instance decision is likely to be invalid or inadmissible or is clearly incorrect.

The SCC is typically concerned with correct application of law. It is also competent to establish, on the basis of the evidence already gathered, a factual background different from the one described in the appellate decision.

Revocation of a final and binding decision of either a state court (or an arbitration tribunal) may be sought only on limited grounds and within compulsory statutorily determined time frames.

Evidence

Parties may present or request from the first-instance court collection of written documents, material objects or expert witness statements, interrogation of witnesses (written evidence from witnesses is not permitted), etc.

In general, the evidentiary record is limited to the one before the trial court. As an exception, parties may indicate newly discovered facts and new evidence before the court of appeal subject to conditions set out in the CPC. Parties may also require the gathering of new evidence by the court of appeal that was not admitted by the trial court because of incorrect interpretation of procedural law.

⁹ Interpretative Decision No. 1/2013 dated 9 December 2013, issued by the Supreme Court of Cassation on Interpretative Case No. 1/2013.

Costs

The losing party in the court decision reimburses the winning party's costs (for example, state and legal fees, costs incurred for translation and the gathering of evidence). If the claim is only partially awarded, then the reimbursement of the legal costs will also be partially recognised. The courts normally reimburse legal fees in the minimum amount set out by an ordinance adopted by the national Bar association, regardless of the actual fees stipulated with the client. There is no legal aid in Bulgaria.

iii Arbitration

Insurance disputes may also be litigated in arbitration proceedings (either arbitration institutions or ad hoc arbitration, on the grounds of an arbitration agreement), but the prevailing practice in the past 10 years indicates that the insurers abstain from arbitration proceedings.

iv Alternative dispute resolution

In accordance with the Bulgarian Consumer Protection Act and to promote the development of alternative dispute resolution, in 2015, the Minister of Economy established the Sectoral Insurance Conciliation Commission to hear insurance disputes. However, conciliation is not compulsory and is rarely used in practice.

v Mediation

Bulgarian law covers mediation in a separate statute, which transposes Directive 2008/52/EC on certain aspects of mediation in civil and commercial disputes into Bulgarian law. However, parties do not generally resort to mediation despite the courts typically requesting that parties do so.

V YEAR IN REVIEW

The continuing covid-19 pandemic has caused unprecedented disruption in many industry sectors and brought fast-moving and unexpected challenges for businesses across the globe. However, the commencement of an economic recovery in Bulgaria in 2021 (forecasted by the European Commission to be around 3.8 per cent) supported the insurance sector and the rise of gross premium income with 13 per cent, breaking to 9.7 per cent rise in general insurance and 30.2 per cent rise in life insurance premium income, for the first half of 2021, compared with the same period in 2020. According to the Bulgarian Insurers Association, these good results are also as a result of the fast digitalisation, flexibility and offer of client-friendly solutions, such as new mobile apps and remote inspections and registrations of claims. Nevertheless, online conclusion of insurance policies in Bulgaria is currently subject to legislative restrictions, which, according to the Bulgarian Insurers Association and scholars in the insurance field, need to be reconsidered.

Because of the pandemic, some important regulatory initiatives launched in 2019 were put on and remained on hold in 2021 (see Section VI).

VI OUTLOOK AND CONCLUSIONS

The impact of covid-19 is expected to lessen, but the low vaccination rate in Bulgaria causes concern. High energy prices will likely boost inflation and erode the purchasing power of households, possibly constraining the growth of the insurance market. Aside from that, the insurance industry is anticipating important regulatory amendments. After the withdrawal of the much-criticised draft legislative amendments related to the introduction of a *bonus-malus* system in Bulgaria in 2018, an updated draft was published in November 2019 for public consultation. This new *bonus-malus* proposal faced significant challenges from the industry and was withdrawn by the inter-ministerial working group for further revisions. No developments on this subject occurred in 2020 and 2021, but discussions are expected to resume when the covid-19 pandemic situation has moderated.

In addition, during the first half of 2020, consultants engaged by the Guarantee Fund prepared a draft methodology for compensation of car accident victims and their families. This methodology is adopted jointly by the FSC and the health and labour ministers; however, because of the covid-19 pandemic, the process was suspended. It is likely that the draft methodology will be discussed by the stakeholders later in 2022.

The bankruptcy, in 2018, of the Cypriot Olympic Insurance Company (Olympic) left nearly 197,000 Bulgarians with terminated MTPL policies. Olympic, whose main business was actually in Bulgaria, commenced compulsory liquidation in July 2019. All creditors, including those in Bulgaria, were invited to submit their claims. However, because of differences in the interpretation of the existing convention between the two countries' guarantee funds, the Bulgarian guarantee fund decided to refer the dispute to arbitration before any interventions were made regarding claims incurred in Bulgaria. The arbitration award issued in 2021 confirmed that the Cypriot guarantee fund must compensate the Bulgarians formerly insured by Olympic. It is expected that in 2022 the Bulgarian and Cypriot guarantee funds will enter into a technical agreement setting out the payment procedures to be followed for such compensation. It worth mentioning that, until 23 December 2023, Bulgaria will have to implement the requirements of Directive (EU) 2021/2118 of the European Parliament and of the Council of 24 November 2021 amending Directive 2009/103/EC relating to insurance against civil liability in respect of the use of the motor vehicles and the enforcement of the obligation to ensure against such liability. One of the important amendments is that each Member State must set up or authorise a body entrusted with the task of providing compensation to the injured persons resident within its territory in case of winding-up or bankruptcy proceeding of an insurance undertaking.

Bulgarian insurers are closely monitoring the ongoing review of Solvency II and hope that the changes will permit them to invest further in the real economy and in long-term savings instruments, and that the reporting requirements will be alleviated so as not to raise the cost of insurance products.

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Irina Stoeva has over 27 years of experience in insurance law and in all related forms of dispute resolution, as well as in corporate and commercial law. She has also extensive experience in healthcare and pharmaceutical, data protection, employment and public procurement.

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Irina has represented clients at all levels of the Bulgarian courts and at all stages of insurance and commercial litigation. In relation to insurance, she advises multinational and local insurers, insurance brokers and large policyholders on various matters, such as policy interpretation, claims, regulation and regulatory investigations. She provides expert statements regarding assessment of damages and Bulgarian insurance law when applicable to particular claims for compensation filed to the UK courts of law.

According to *The Legal 500* (2020 and 2021), clients appreciate that Irina 'not only provides answers to concrete questions, but she looks for a solution for the client which is tailor-made'. The clients also consider Irina to be a 'very responsive, business oriented, flexible and persuasive lawyer' and appreciate her 'profound knowledge of the local and European regulations in the insurance litigation space'.

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