

DECEMBER 2005

NUMBER XII

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INSURANCE MARKET**GEO no. 201/2005 for amending and completing the Law no. 32/2000 on insurance companies and insurance supervision**

Subsequent to the significant amendment of the Law no. 32/2000 on the insurance and reinsurance system in Romania (the „Law no. 32/2000”) in 2004, the process of harmonising the insurance legislation to the relevant community provisions further continued with the adoption of the GEO no. 201/2005 on the amendment and completion of Law no. 32/2000.

Published in the Official Gazette no. 1191 of December 29th, 2005, the new enactment significantly amends the relevant legislation by introducing certain provisions of the European directives on brokerage, the unforeseen control within the headquarters and risk management.

Terminological enrichment

GEO no. 201/2005 legally acknowledges certain institutions in the insurance field, by defining notions as the brokerage mandate, bank assurance or actuary.

We may mention the extension of the definition of significant persons that is subject to the approval of the Insurance Supervision Commission (“ISC”), by including in this category the members of the board of directors and/or of the supervision commission, managers of the

life insurance and general insurance activities, as well as other categories of representative persons for the insurers or for the insurance brokers that shall be settled by implementation norms.

Amendments to the insurance categories

The most important amendment of the GEO no. 201/2005 is the repeal of the provisions of Law no. 32/2000 on the separate classification of the two insurance categories: non-life and life insurance.

Thus, if pursuant to the legislative reform in 2004, all the insurance companies authorised to simultaneously carry out life and non-life insurances had to opt for only one of these activities, until December 31st, 2005 the new enactment allows the simultaneous carrying out of the life and non-life insurances, provided that the management of the respective activities is separated and, therefore, the insurers shall carry out a split activity.

According to the GEO no. 201/2005, the management of the two activities must be organised so as their clear separation to be ensured, by the observance of the following goals: (i) the profit made in one of the two activities not to be used in order to improve the other activity unless exceptional cases and under the express approval of ISC; respectively (ii) the minimum financial obligations settled in compliance with the legal provisions for each of the two activities to be separately carried out, no transfer of assets from an activity to the other being permitted.

It also is to be noted that the insurers with a split activity shall have the obligation to organize and maintain the bookkeeping separately for the two insurance activities, as well as to calculate the available solvency margin separately and to keep a special assets registry for each of the two activities.

New principles on the insurers operation

The amendments are also significant as concerns the insurers' rules. Thus, subsequent to the harmonization of the relevant European regulations, GEO 201/2005 provides for the insurers certain additional obligations, such as: the organisation of an internal risk management system, the training of their own personnel in view of observing the legislation in force and the norms prepared by ISC on the terrorism combat and prevention of money laundering through the insurance activities, or initiation of antifraud proceedings meant to ensure proper conditions for carrying out the insurance activity.

Mention should also be made that it was extended the range of entities which may carry out insurance activities in Romania after the accession to the European Union, by including the subsidiaries of the insurers or re-insurers in third party states, authorised by ISC, respectively of the insurers or re-insurers who are organised as the European type of joint-stock company (Societas Europea).

Amendments on the insurance brokers

GEO no. 201/2005 enlarges the range of the persons that may be insurance brokers,

settling that this type of activity may be exercised, besides brokers and insurance agents, by brokerage assistants, subagents and subordinated insurance agents.

It is also to be noted that by the new enactment, the insurance brokers may be shareholders only of one insurer or re-insurer, the same interdiction being applied as concerns the shareholder capacity within an insurance or reinsurance agent or within a subordinated insurance agent.

In respect of the operation rules for the insurance and reinsurance brokers, the GEO no. 201/2005 provides that they may gain benefits from or invest the share capital, the income resulted from the insurance or reinsurance brokerage activity, as well as the capital reserves in movable or immovable assets such as the bank deposits, shares, bonds, or other transferable securities or the buildings meant to their own activity or under lease. The income from building lease may represent maximum 15% of the income related to the insurance brokerage activity.

New prerogatives of ISC

The GEO no. 201/2005 grants CSA increased prerogatives for controlling and sanctioning the non-observance of the insurance legislation. Thus, the Commission shall be authorised to perform a permanent, regular or unforeseen control of the insurer, re-insurer, insurance and/or reinsurance brokers, the Automotive Insurer Office of Romania or Indemnity Trust.

Furthermore, the GEO no. 201/2005 settles the principles of conducting the continuous

control activity, carried out by ISC's departments in respect of all data, information and reports communicated to the Commission by the players on insurance market.

Mention should be also made that upon the entering into force of the said enactment, CSA shall have to justify all the sanctioning decisions, as well as to guarantee the concerned persons' right to challenge the penalizing measures, and also the term for

lodging the contestation, as well as the authority or court where to be lodged.

As concerns the actual implementation of the new legal provision, CSA shall issue norms of application of the Law no. 32/2000 within 6 months as from the GEO no. 201/2005 entering into force.