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REGULATORY INTELLIGENCE

COUNTRY UPDATE-Moldova: Insurance

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Overview

Member of IAIS:

No.

Supervised by EIOPA:

No.

Solvency II Implementation:

No.

Moldovan insurance business regulation continues to be steadily upgraded, partly due to diversification of the local insurance market, and partly due to Moldova's closer, recently formalized ties to the European Union. In particular, Moldova is committed to implement the Solvency II Directive by September 2021 (see below for details).

Regulation and operation

The National Commission for Financial Markets (NCFM) is the sole insurance regulator, having authority to regulate, authorize and supervise insurance market players.

Insurance (reinsurance) business is subject to licensing. Moldovan nationals are entitled to procure insurances from foreign insurers only when certain insurances are not offered by Moldovan insurers or in situations established by the international conventions ratified by Moldova.

Establishing an insurance company

Incorporation

An insurer should be established as a joint stock company and will be deemed an "entity of public interest". This qualification brings about extensive reporting and disclosure requirements.

The share capital should be paid in full upon incorporation, only in cash (in-kind contributions are disallowed). Borrowed money cannot be used to pay in the share capital.

Regulatory clearance is required for the incorporation of an insurer. The qualification criteria refer to the financial stability of the founder(s), the source of cash contributions and the fit and proper tests for significant shareholders and administrators (directors and officers). A person registered in a jurisdiction that does not apply international transparency standards or jurisdiction considered to be risky, as per the NCFM list, cannot own directly or indirectly equity interest of an insurer.

Licensing

Since 2008, authority for insurance licensing was commissioned to the NCFM. Under the licensing process:

• An insurer must submit a licence application, accompanied by: confirmation of share capital contribution; representation that the contributions were made out of own funds; insurance terms and conditions for each class of insurances; software for calculation of insurance premiums and technical reserves; the reinsurance programme; and a three-year business plan. Significant shareholders should reveal their identity and financial position in accordance with the NCFM regulations. In case of external insurance for the motor third party liability insurance the insurer must submit an audit evaluation and auditor opinion that confirms the existence the sufficiency of own financial resources for the compensation fund and the quota in the foreign bank guarantee.

• The NCFM shall examine the application and attachments and decide within 30 working days after submission of the full application package.

The licence is issued for an indefinite period of time and may be suspended or withdrawn for breaches of law. Licence suspension or withdrawal can be appealed in court.

Capital reserve requirements

• The minimum share capital for general insurance is set at MDL 15 million (approximately 750,000 euros), at MDL 22.5 million for life insurance and at MDL 30 million for reinsurance. As of August 2020, there were 12 licensed insurance companies and one of them had its license suspended.

• Insurance brokerage is subject to licensing (valid for an unlimited period of time) and to minimum capital requirements, equal to MDL 400,000 (approximately 20,000 euros). As of August 2020, as many as 41 insurance brokers held valid licences.

The 2012 amendments to the Insurance Law have introduced the concept of bancassurance, under which banks, savings and loan associations, and microfinance institutions may be appointed corporate agents of an insurance company, provided they comply with the requirements set forth by the law (i.e., solvability, professional indemnity, personnel qualification).

On May 27, 2019 NCFM issued a Regulation on the Register of Insurance Agents and Bancassurance Agents. As of September 2020, there were 59 registered insurance agents and bancassurance agents.

European legislation

Harmonization of Moldovan laws with the acquis communautaire is on the agenda of Moldovan government. Under the EU-Republic of Moldova Association Agreement, signed on June 27, 2014, Moldova undertakes to harmonize its insurance laws to EU laws, and in particular implement the provisions of the Directive 2009/138/EC of the European Parliament and of the Council of November 25, 2009 on the taking-up and pursuit of the business of Insurance (Solvency II), within seven years of the entry into force of the Association Agreement. After the Solvency II Directive is implemented, an EU insurance undertaking shall be allowed to carry out insurance business in Moldova based on the single EU passport and subject to the notification procedure as set forth by the Solvency II Directive.

The Solvency II Directive has been already partially transposed into national law via the Law No.242/2017 (on restrictions of the shareholder rights) and the Law No.133/2018 (Chapter II and Art. 144 of the Directive).

Other EU legislation which is planned to be implemented in the national laws includes: Commission Recommendation of December 18, 1991 on insurance intermediaries (92/48/EEC); Directive no. 2002/92/EC of the European Parliament and of the Council of December 9, 2002 on insurance mediation (to be implemented within 3 years of the entry into force of the Association Agreement).

The Association Agreement was ratified by the Republic of Moldova on July 2, 2014 and entered into force on July 1, 2016.

On May 2020, the NCFM has posted for public consultations the draft Law on Compulsory Motor Third Party Liability Insurance, which aims to transpose the EU Directive 2009/103/EC.

Domestic laws

Core provisions

Insurance business is primarily regulated through the Law on Insurance No. 407 dated December 21, 2006 (the "Insurance Law") and the Law on Compulsory Motor Third Party Liability Insurance No. 414 dated December 22, 2006. Core provisions of the insurance legislation refer to the following:

• Acquisition of a significant (10% or more) equity interest in a Moldovan insurer/reinsurer is subject to prior notification to the insurance regulator (NCFM), while acquisition or increase of such interest to 20%, 33% or 50% (or their decrease respectively) is subject to NCFM prior consent.

• A person registered in a jurisdiction that does not apply international transparency standards or jurisdiction considered to be risky, as per the NCFM list, cannot own directly or indirectly equity interest in a Moldovan insurer.

• Use of actuary services by insurance businesses is compulsory and under close scrutiny of the NCFM. Actuaries are obliged to report within 15 days to the NCFM any inconsistencies or breaches by the insurer of relevant legislation.

• For transparency purposes, within 4 months from the end of each financial year, insurers are to publish in periodic, widely distributed media their balance sheet, financial statement and auditor's report.

• New prudential requirements compel insurers to lay out and comply with rules and procedures of personnel verification and training for the purpose of prevention of money laundering and terrorism financing via insurance activities, implementation of corporate governance principles, creation of internal risk management and control systems.

Voluntary and compulsory insurance

In voluntary (facultative) insurance, the terms of insurance are agreed mutually between the insurer and the insured, in accordance with the insurance conditions of the insurer. Moldovan law makes it mandatory for the insurer to produce insurance terms and conditions to the insured party in an adequate form. The law sets forth the terms of compulsory insurance.

Compulsory insurance can be divided into groups, depending on the eligible insurers:

• Insurance which can be procured from a foreign insurer where it is not available on the Moldovan market:

1. 1. Civil liability of the carrier toward the passenger, which covers the risk of damages to the life, health and property of the passenger who travels by road, air, rail or ship transport (Law on the Mandatory Insurance of the Carriers toward the Passengers, No. 1553 of February 25, 1998). This also includes the passenger's insurance in sea transportation (Art. 193 of the Code on Commercial Maritime Navigation, No. 599 of September 30, 1999). From December 23, 2008, the Republic of Moldova became party to the Convention for the Unification of Certain Rules for International Carriage by Air (Montreal, May 28, 1999).
   2. Cargo insurance by the forwarder (Art. 1529 of the Civil Code).
   3. Tourist travel insurance, which covers the risks of traffic accidents, sickness, etc., during travel (Art. 21 of the Law on Organisation and Carrying-Out of Tourist Business, No. 352 of November 24, 2006).
   4. Professional indemnity for insurance brokers, notaries and conforming assessment bodies.
   5. Consumer leasing insurance, which covers the risk of fortuitous loss, damage or destruction of the leased asset.
   6. Insurance of life and health of patients or volunteers in clinical trials by the sponsor (the Law on Medicines, No. 1409 of December 17, 1997), etc.

• Compulsory insurance which can be procured only from Moldovan insurers (i.e., direct cross-border insurance is not allowed):

1. 1. Internal motor third party liability insurance (Law on the Mandatory Insurance of Civil Liability against the Damages Caused by Motor Vehicles, No. 414 of December 21, 2006).
   2. Military state insurance, which covers the risk of death or loss of working ability of the military (Government Resolution No. 983 of October 10, 2018).

• Compulsory state insurance, which can be procured only from the state-owned entities:

1. 1. Social state insurance that the National House for Social Insurance offers, which covers the risks of death, temporary loss of working ability of employees and other eligible individuals due to sickness/injury, loss of employment, as well as specific events such as retiring age (social pension), birth of a child (maternity aid) and sick care (Law on the Public Social Insurance System, No. 489 of July 8, 1999). From 2021 the compulsory state social insurance contributions is planned to be fully covered by the employer (which means an increase from 18% to 24%). The Government's reaction comes as a result of the COVID-19 pandemic effects.
   2. Health state insurance offered by the National Company for the Medical Insurance, which assures a minimum established coverage for the risk of sickness/injury of the insured individuals (Law on the Mandatory Medical Care Insurance, No. 1585 of February 27, 1998).

Contract of general insurance

The Law No. 133 dated November 15, 2018 repealed, with the effect from January 1, 2020, the provisions of the Insurance Law which refer to the insurance contract, and introduced a new Chapter XXV into Civil Code containing reformed provisions on the contracts of general insurance, life insurance and group insurance. The amended provisions largely follow the Principles of European Insurance Contract Law 2015 edition.

Product specific rules

Life

Life insurance business requires a separate, exclusive licence. Further, life insurance businesses are allowed to subscribe risks covered by general (accident and health) insurance without having a separate licence, provided that such risks are ancillary to the risks already insured.

General insurance

General (non-life) insurance requires a separate, exclusive license. The right to practice motor third party liability insurance (domestic and foreign, under the Green Card system) shall be granted separately. From September 2020, Moldova, via the National Bureau of Motor Insurers, was granted full membership in the Green Card System.

General insurance prevails in the aggregate structure of local insurers’ insurance portfolio, with a share of more than one third of the total premium subscribed.

Reinsurance

Moldovan insurers/reinsurers can cede insured risks to foreign reinsurers where the latter are licensed and supervised in their home country. The maximum liability of the reinsurer for the risk reinsured shall not exceed 25% of its equity and technical reserves, unless the excess is further ceded into reinsurance.

Where a Moldovan insurer transfers the risks to a foreign reinsurer, the former must retain at least 20% of the total exposure, provided that the above maximum liability requirements are also met.

The transfer of risks to a foreign reinsurer can be performed through an insurance broker, either resident or foreign. Retaining a broker is not mandatory though.

Enforcement and investigation

Senior management responsibilities

Under the Insurance Law, the following are deemed as "persons in management positions": the members of the board, the executive body and the auditing committee, the chief-accountant, branch managers, and other persons vested with the disposition power on behalf of the insurer. With respect to such persons, Moldovan laws set forth a series of requirements concerning their qualification, experience, reputation, lack of criminal records and conflicts of interests, etc.

Persons in management positions shall be liable for breach of the insurance legislation, which may give rise to civil, administrative and criminal sanctions.

Further, under Section 9 of the NCFM Regulations on Requirements to Persons in Management Positions approved through the NCFM Resolution No.13/3 of April 3, 2008, persons in management positions in insurers/reinsurers shall exercise their obligations as to ensure:

• sufficiency of technical and mathematical reserves and their calculation according to actuarial principles;

• correct determination of insurance premiums;

• maintenance of solvency;

• permanent sufficiency of liquidity; etc.

Rules of regulatory investigation

Supervision of professional participants of the insurance market is generally performed through (i) control of documents; (ii) on-site analysis and field inspections; (iii) legally-permitted interventions. To this end, professional participants of the insurance market shall submit to or ensure access of the NCFM to any information or document requested and shall allow questioning of any employee.

The NCFM and its staff shall bear disciplinary, administrative, civil and criminal responsibility for decisions and actions taken which threatened without grounds the business of investigated marketed participant, or have caused damages to the latter. Furthermore, the person conducting the regulatory investigation shall be liable for disclosure of the information obtained during the control, which represents insurance (commercial) secret.

Whistle-blowing rules

While there is no specific whistleblower protection law, whistle-blowing-related rules are incorporated in a series of normative acts, such as the Integrity Law No.82 dated May 25, 2017, the Law No.133 dated June 17, 2016 on disclosure of property and personal interests, the Criminal Code of the Republic of Moldova, etc. In addition, a central role is played by the Law on the Protection of Witnesses and other Participants in Criminal Trials, No. 105 of May 16, 2008, which foresees protection of participants in criminal trials whose life, physical integrity, freedom and property are endangered due to their delivery of information to investigative bodies and courts pertaining to severe, very severe and extremely severe criminal offences.

However, whistle blowing is not widespread in Moldova, partly due to the lack of a dedicated legislation (and protection) in this regard and partly due to the lingering problems in the justice system.

Complaints procedure

Insurers are bound to establish internal complaint management systems, to ensure timely and efficient review of complaints submitted by insured parties (beneficiaries) and any third parties. Such complaints should be reviewed objectively and within the timeframe defined by the insurer. Should the party who has filed a complaint remain dissatisfied of the manner in which the complaint has been solved by the insurer, such party can subsequently address the NCFM.

Creditor hierarchy

Insolvency

Under the new Law on Insolvency, No. 149 of June 29, 2012 (the "Insolvency Law"), the proceeds of the insolvency estate shall cover with priority all expenses related to the insolvency proceedings and the insolvency estate. In an insolvency context, insurers shall be deemed as unsecured creditors, ranking fifth after several unsecured creditors to whom the Insolvency Law affords priority (e.g. creditors whose claims are related to health and causing of death, claims held by employees, claims related to credits extended by the Ministry of Finance, etc.), unless the insurer hold a valid security interests (pledge or mortgage) in the debtor's asset.

Notwithstanding, under Article 102 of the Insolvency Law, if the debtor's insurance contract remains in effect, insurance premiums subject to payment by the debtor must be paid in full, even if they should have been paid before commencement of insolvency proceedings. In that case, insurance premiums shall be deemed as administrative expenses (i.e. satisfied with priority, before secured creditors).

Data protection

Data protection is primarily regulated through the Law on Personal Data Protection No. 133 of July 8, 2011, which mirrors the EU Data Protection Directive. Under the said law, insurers shall be commonly deemed as data controllers (and/or data processors, as the case may be), which draws the obligation to register as operator with the data protection authority, the National Center for Personal Data Protection. Generally, personal data shall be processed with the consent of the personal data subject, who can exercise access, intervention and opposition rights with respect to such processing.

Each insurer is bound to notify the Center on the customer evidence systems maintained.

Financial promotion

Financial promotion, as a variety of advertising, is regulated through the Law on Advertising, No. 1227 of June 27, 1997. As per the general rules, advertising shall be loyal and honest, and shall not contain unauthentic data. Further, advertising must not be misleading or prejudice consumer interests. In particular, the following shall be prohibited in the advertising of financial, insurance and investment services: (i) any type of guarantees, promises or suppositions regarding the future efficiency (profitability) of the activity; (ii) concealing of at least one of the conditions of the contract, if the advertising conveys its conditions; etc.

Corporate governance

The Corporate Governance Code, approved through the NCFM Resolution No. 67/10 of December 2015, provides best national and international practices and establishes governance standards for the management and the shareholders for the efficient governance, in particular for promotion and protection of shareholder rights; clarification of the functions of the company bodies; ensuring that the functioning of joint stock companies is in a non-corrupt environment; and promotion of mangers, employees and shareholders interests by harmonising the regulatory framework. The Corporate Governance Code is mandatory for the entities of public interest and is advisable for adherence by the other entities.

No industry-specific Corporate Governance Code exists in the insurance sector. The insurers are bound by the NCFM Code on the 'comply-or-explain' principle.

COVID-19

Reportedly, in the first half of 2020 the insurance premiums collected decreased by 18.5%, and the insurers have lost revenues of MDL 200m (ca. 10m euros). The market size in 2020 has shrunk to 2016 level.

However, the pandemic has created new opportunities for insurers, which may create a differentiator for insurers in the short run perspective.

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Complaints Procedure

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