

## Legal Framework for Insurance in Ukraine

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The main instruments that regulate insurance activity in Ukraine are the *Insurance Act of Ukraine of 7 March 1996* and the *Licence Conditions of Insurance Activity* approved by the *Order of the State Commission on Regulation of the Market of Financial Services*.

Only insurance companies that are residents of Ukraine and established in the form of stock, full partnership, special partnership or societies with additional liability carry out insurance business in Ukraine. Foreign insurance companies can also be engaged in insurance activity but only through a Ukrainian company that is established in accordance with legislation. The general requirement for all insurance companies is participation of at least three participants.

Apart from insurance companies, insurance activity can be carried out with the participation of insurance intermediaries – insurance or re-insurance brokers and insurance agents. Insurance agents are individuals and companies that run the insurance business on behalf of an insurer, namely, concluding insurance contracts, dealing with insurance payments, and insurance compensation.

Insurance brokers are businessmen or companies that are listed in the state register and carry out intermediary activity in insurance on their own behalf on the basis of broker agreements with an insurer. The State Commission on Regulation of the Market of Financial Services of Ukraine approved the order of registration of insurance and re-insurance brokers on 28 May 2004.

### Licensing

Insurance activity in Ukraine is subject to licensing. Licenses for all kinds of insurance are issued by the State Commission on Regulation of the Market of Financial Services of Ukraine for a period of three years, except for life insurance, and they are valid throughout all of Ukraine. The life insurance licence is not limited in time, and the insurance company that acquires the licence for life insurance has no right to be engaged in other kinds of insurance.

An insurance company is obliged to pay for a licence in the amount that is established individually for each kind of insurance and is calculated for each year of the validity of the licence. Unlike other kinds of insurance, the payment for the life insurance licence is made annually. The current



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amount of the payment has been approved by the *Order of the State Commission on Regulation of the Market of Financial Services of Ukraine of 29 December 2003*. In particular, the payment for validity of the licence for one year is:

Life insurance	10,000 UAH
Insurance of credits	7,000 UAH
Medical insurance	4,000 UAH
Insurance of property	4,000 UAH

### Authorized Capital of Insurance Companies

Requirements concerning the authorized capital of insurance companies are still valid from the time when the new edition of the *Insurance Act of Ukraine* that introduced them in the current form was only passed by the Ukrainian Parliament at the end of 2001. According to the transitional provisions of the amended *Insurance Act of Ukraine*, insurance companies were given time to bring authorized capital into conformity with the requirements of the Act by 7 November 2004, i.e. in the amount of EUR 1 million for companies that do not deal with life insurance, and EUR 1.5 million for companies which deal with life insurance. According to provisions of the Act, the authorized capital of insurance companies should be formed only with money funds. As an exception, the authorized capital can be formed with securities issued by the state provided that their share does not exceed 25 % of the authorized capital.

### Mandatory Insurance

The most significant event of 2005 is the introduction on 1 January of the *Mandatory Civil Liability Insurance of Proprietors of Vehicles Act of Ukraine of 1 July 2004*, according to which operation of vehicles without a mandatory insurance policy is forbidden on the territory of Ukraine. One exception is vehicles that do not participate in traffic.

Insurers can be insurance companies that are members of the Motor (Transportation) Bureau of Ukraine and have at least two years experience of voluntary insurance. In order to join the Motor (Transportation) Bureau of Ukraine, an insurance company should have a licence for civil liability insurance and make a guarantee payment to the fund for protection of victims; the minimum amount is EUR 100,000. The Act implies the right of an insured per-

son to freely choose an insurer and introduces prohibition on the services of any insurance companies being imposed upon people by government agencies.

The object of insurance is the damage caused to life, health, and property of third parties, and the liability limit of the insurer is established at a rate of UAH 25,500 per victim for damage to property, and UAH 51,000 for damage to life and health. The Act stipulates two types of civil liability insurance contracts, depending on the territory of validity. A domestic contract is valid exclusively in the territory of Ukraine. An international insurance civil liability contract is valid in the territory of other nations specified in such contracts, including the territory of Ukraine. International insurance contracts, in particular, include the Green card certificate.

The forms of typical policies are developed by the Motor (Transportation) Bureau of Ukraine and approved by the State Commission on Regulation of the Markets of Financial Services of Ukraine. In the same way, they establish basic payments and adjustable coefficients, on the basis of which insurers independently establish the amounts of individual insurance payments.

### Re-Insurance

The order of re-insurance by the Ukrainian insurance companies of their risks with non-residents has undergone a number of significant changes recently. On 4 February 2004, the Cabinet of Ministers of Ukraine approved the Order and Requirements Concerning Re-Insurance by a Non-Resident Insurer (Re-Insurer). According to the Order, conclusion of re-insurance contracts with non-residents can occur subject to the following requirements:

- Legislation of the country where a non-resident is registered stipulates the state supervision of insurance and re-insurance activity;
- At the time of conclusion of a re-insurance contract, a non-resident has been performing insurance activity for at least three years;
- There are no facts that such a non-resident violates legislation on insurance and re-insurance activity of the non-resident's country, and also concerning preventing and counteracting legalization (laundering) of criminal proceeds, and the fight against terrorism.

According to amendments of the *Company Income Tax Act of Ukraine* that came into effect on 1 October 2004, re-insurance of risks with non-residents that meets the requirements set by the State Commission on Regulation of the Markets of Financial Services of Ukraine is taxed at a zero rate. If a non-resident does not meet such requirements the tax rate is 3% of the sum of payments at the resident's expense. It should be mentioned that the State Commission on Regulation of the Markets of Financial Services of Ukraine has not yet approved requirements concerning non-residents.

A benchmark can be requirements concerning ratings of financial reliability of re-insurers who are non-residents that are approved by the Cabinet of Ministers of Ukraine according to the previous edition of the *Profit Taxation Act of Ukraine*. Non-residents should have a rating not lower than:

- A.M. Best – “B, B-”
- Moody's Investors Service – “A3”
- Standard and Poor's – “A-”
- IBCA – “A-”

Otherwise, a non-resident re-insurer who is a syndicate or an authorized broker of the Lloyd's international insurance association. One restriction is location of a re-insurer in a country that does not participate in the international cooperation in the area of preventing and counteracting the legalization (laundering) of criminal proceeds, and fight against terrorism, or location in an offshore zone.

### Life Insurance

Life insurance is one of the most actively developing segments of the insurance market. Significantly, it is promoted by provisions of the *Profit Taxation Act of Ukraine*, according to which incomes of insurance companies under long-term life insurance contracts are not included in gross revenues and do not increase tax obligations of such insurers. This implies that in terms of taxation, life insurance and retirement insurance are the most favorable. One should remember that the zero tax rate is applied exclusively to long-term life insurance contracts. Besides, life insurance is incompatible with other kinds of insurance activity.

### PRO file



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Konnov & Sozanovsky was founded in 1992 in Kiev and has grown to be one of the leading Ukrainian law firms with offices in Kiev, Moscow and Chernovtsy. The firm's attorneys have extensive knowledge of Ukrainian law as well as understanding of business in Ukraine. Konnov & Sozanovsky provides superior, cost-efficient legal services to a wide range of domestic and international clients in the following areas: antitrust, banking and finance, communications, copyright, corporate law, labor and employment, litigation, media, mergers and acquisitions, patents, real estate, securities, tax and trademarks. The firm and its lawyers are members of various professional and business associations including the Ukrainian Bar Association, the International Bar Association, the American Bar Association, the International Trademark Association (INTA), the Ukrainian Internet Association, the European Business Association, the American Chamber of Commerce in Ukraine, the International Association of Tax Consultants and others. The firm is ranked among the top 10 Ukrainian law firms according to The Yuridicheskaya Practika ("The Practice of Law") Weekly, the premier legal periodical in Ukraine. The firm is also recognized in European 500, Global Counsel 3000, Chambers Global and other professional publications.