

vor ističe ili u roku od mesec dana pošto primi fakturu osiguravača za plaćanje premije za sledeću godinu osiguranja, već prema tome šta nastupi kasije. Ugovarač nema obavezu da u obaveštenju navede razloge za odluku da ne želi produženje osiguranja.

4. Za ugovarače osiguranja koji u kopnenom osiguranju spadaju u kategoriju „veliki rizik“ treba ustanoviti slobodu ugovaranja roka trajanja osiguranja, prava i uslova za otkaz ugovora pre isteka ugovorenog perioda polise, produženja ugovora po isteku ugovorenog perioda osiguranja i dejstva produženja. Oni neosporno raspolažu sa dovoljno znanja, veština i oče-kivane pojačane pažnje da mogu da zaštite svoje inte-

rese prema osiguravačima koji posluju sa standardnim uslovima formularnih ugovora o osiguranju.

5. Zadržavanjem odredbe čl. 922. st. 3. ZOO u novog Građanskom zakoniku Srbije, u kojoj bi bio samo skraćen rok od pet godina u kome bi svaka ugovorna strana imala pravo da otkáže višegodišnje osiguranje na dve, tri ili četiri godine, ne bi se postigli ciljevi za koje se mi zalažemo u ovom radu u zaštiti ugovarača osiguranja kao slabije ugovorne strane prilikom ugovaranja trajanja osiguranja i bila bi zadržana u osnovi jedna odredba ZOO koja potstiče koruptivna ponašanja ugovornih strana prilikom ugovaranja rokova (višegodišnjeg) trajanja osiguranja.

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### INSURANCE CONTRACT DURATION

#### *Appendix to Discourse on the Insurance Contract Regulation in the new Civil Code of Serbia*

##### SUMMARY

1. Regarding issues not regulated in the Article 922 of the Law on Obligations and Tort (there below: LOT) both this law and general conditions for property insurance of our insurance companies maintain legal and economic insecurity on the insurance market. There is a legal gap in the said Article relating contract extension after its natural expiry. Some issues deriving from this are: does the right to extension can be stipulated by an explicit contractual clause or automatic renewal may take place tacitly by settlement and receipt of the premium or any other obvious act of a policyholder, can parties suspend extension clause, does the contract continues for the same period as previously agreed or only for another year, does the contract, if not cancelled, continues under entirely the same conditions regarding premium amount and what are the consequences in case of non-settlement of the first installment or part of the premi-

*um, what happens with the clause enabling insurer, during policy period, to unilaterally change conditions etc.*

*Stipulating multi-year insurance contracts from five up to ten years has been long-standing tradition of our companies. Insurer keeps right in these contracts by the clause he has inserted in advance in a contract and general insurance conditions, to change insurance conditions and premium rates (calculation basis and percentage in a way that they are substantially higher than market comparable premiums other insurers), change basic and additional risks he shall be covering, extend or reduce risk definition, introduce or change previously agreed exclusions, change bonuses and deductibles. At the same time, insurer does not insert clause enabling insured, in case of changing insurance conditions and rates that render material inequality in rights and obligations to his detriment, to avoid such contract. Our highest courts in disputes regarding these contracts where insured are trying to find ways how to evade from them, do not provide any support firmly maintaining position that contract may be cancelled only in two following ways: by parties' will; giving notice of cancellation by either party after expiry of five years in six months before expiry of the calendar year, which deadline runs from the day of tendering written notice within the meaning of the Article 922, item 3 of the Law on Obligations and Tort; on the operation of law if premium remains unpaid longer than one year from the due date, when insurer does not lose right to premium for another year from the due date according to the Article 913, item 4 of the LOT.*

*Therefore, if rules from the Article 922, item 3 on termination of the multi-year insurance contracts are to be kept, than lawmakers should amend it in order to enable insured to cancel contract due to the changed circumstances*

adequate to insurance, which aspect for the purpose of sale and other commercial contracts is regulated in the Article 133 of the LOT. The other option is to provide that the rule in Article 143 of the LOT on null and void clauses in the contracts of adhesion apply to such clause.

2. However, we are pleading that insurance period in consumer contracts and contracts with natural persons, except health and life insurance, in insurance contract law is regulated similarly to modern solutions of the European insurance contract law adopted, e.g., in the French Code des Assurances or, even better and regulated in more detail, in the Draft Common Frame of Reference for Insurance Contract Law, 17 December 2007. Reasons for such choice would be high level of policyholder's interest protection against drawbacks of the adhesion features in the multi-year insurance contracts where insurer is imposing such clause and equal treatment of the parties to such contracts.

3. Having in mind the above, insurer and insured must have right to terminate contract at the end of each one-year insurance period or that the law provides that insurance period lasts one year with the option for contractual parties to stipulate any other periods if the risk nature enjoins this. These rules on insurance duration do not apply to insurance of persons. After expiry of one-year insurance period, contracts stipulated to longer periods due to the nature of subject risk should be deemed extended for another year. Insurer and policyholder may suspend such contract extension by giving the other party statement to that end.

Deadlines and conditions for tendering notice of cancellation should be different depending on who is giving notice. Insurer must give written notice of cancellation within one month before the expiry of contract period stating reasons why he does not wish to extend contract. On the other hand, policyholder has to undertake the same duty at the latest on the day of contract expiry or within one month after he receives insurer's debit note for premium settlement for next insurance period, or whatever takes place later. Policyholder does not have duty to give reasons in his decision why he does not wish to renew insurance.

4. Policyholders falling into the 'major risk' category in non-marine insurance should have freedom of stipulating insurance period, rights and conditions for contract termination, contract extension and effects of such extension. Undoubtedly, they have enough knowledge, skill and higher degree of personal diligence to protect their interest from an insurer operating according to the standard conditions of the form insurance contracts.

5. Keeping provisions in the Article 922, item 3 f the LOT in new Civil Code of Serbia with reduction of the five-year term and right of either party to cancel multi-year insurance after two, three or four years, would not in line with goals we are pleading in this work on protection of policyholders as weaker party when agreeing insurance period. This would also mean it would be kept provision impelling parties' corruptive behavior when agreeing multi-year insurance duration.