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PRAVNI OKVIR I PRAKTIČNI IZAZOVI LIKVIDACIJE DRUŠTAVA ZA OSIGURANJE U FEDERACIJI BOSNE I HERCEGOVINE

PREGLEDNI NAUČNI RAD

Apstrakt

Zbog potrebe očuvanja stabilnosti finansijskog tržišta, prestanak društava za osiguranje, osobito u postupcima prinudne likvidacije ili stečaja, zahtijeva posebno pravno uređenje. U radu se analizira tržište osiguranja Federacije Bosne i Hercegovine koje bilježi više postupaka likvidacije društava za osiguranje, a koji su karakteristični po dugotrajnosti i specifičnoj primjeni zakonskih propisa. Primjena relevantnih zakona, kako posebnih tako i općih, vezuje se za trenutak pokretanja postupka likvidacije, što u praksi dovodi do primjene propisa koji više nisu na snazi, a u cilju zaštite vjerovnika i osiguranja pravne sigurnosti. Autori analiziraju primjenjive propise te kritički ukazuju na njihove nedorečenosti, oslanjajući se na empirijske podatke iz provedenih ili tekućih postupaka likvidacije društava za osiguranje. Uz navedeno, u radu se analiziraju trenutno važeći propisi i upozorava na njihove nedostatke u pravnoj regulaciji utemeljene na refleksiji propisa koji se primjenjuju na aktualne postupke likvidacije. Analizira se i europski zakonodavni okvir te se daju prijedlozi de lege ferenda s ciljem uspostavljanja sustavnijeg i učinkovitijeg pravnog okvira za postupke koji dovode do prestanka društava za osiguranje te jačanja zaštite korisnika usluga osiguranja.

Ključne riječi: tržište osiguranja Federacije BiH, prestanak društava za osiguranje, likvidacija, stečaj, normativni okvir

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I Uvod

Društva za osiguranje zajedno s bankama čine aktivne sudionike finansijskog tržišta. U statusno pravnom obliku dioničkih društava imaju određene posebnosti svojstvene organizaciji poslovanja djelatnosti osiguranja, a po kojima se razlikuju i od banaka. Specifičnosti društava za osiguranje trebale bi se uzeti u obzir i prilikom normativnog reguliranja prestanka društava za osiguranje, odnosno likvidacije i stečaja. Zbog toga se, uvažavajući značaj općih propisa koji reguliraju ovu materiju, opravdano postavlja pitanje prikladnosti pravnog okvira koji normira postupke likvidacije i stečaja društava za osiguranje.

U Bosni i Hercegovini djelatnost osiguranja normirana je na entitetskim razinama. Na tržištu osiguranja Republike Srpske nema aktivnih postupaka likvidacije društava za osiguranje dok se u Federaciji BiH trenutno vode tri postupka, a dva su završena. S obzirom na veličinu tržišta osiguranja, ovaj broj predstavlja veliku zastupljenost navedenih postupaka i po tome je tržište osiguranja u Federaciji BiH i regionalno zanimljivo. Ovakva divergencija između entiteta ukazuje na razlike u regulatornim praksama i tržišnoj strukturi, što ukazuje na potrebu za daljnjom harmonizacijom tržišta osiguranja u Bosni i Hercegovini.

Posebnost tržišta osiguranja u Federaciji BiH predstavlja i sam zakonodavni okvir koji regulira postupke prestanka rada društava za osiguranje. Važeći sektorski propisi kojima je normirana ova materija u Federaciji BiH su Zakon o osiguranju³ i sekundarno Zakon o obveznim osiguranjima u prometu⁴. Međutim, s obzirom na aktivne postupke likvidacije društava za osiguranje, primarno polazimo od odredbe članka 227. Zakona o osiguranju (u nastavku: ZOS) prema kojemu će se „postupak stečaja i likvidacije u društvima za osiguranje, koji su pokrenuti prema odredbama Zakona o stečajnom postupku, Zakona o likvidacijskom postupku, Zakona o gospodarskim društvima i Zakona o društvima za osiguranje u privatnom osiguranju, dovršiti u skladu sa odredbama navedenih zakona“. Radi se o zakonima koji u svome integralnom učinku više nisu na snazi. Navedena odredba ZOS jasno upućuje na primjenu propisa kojima je djelatnost osiguranja u Federaciji BiH bila regulirana u vrijeme pokretanja postupaka posebne likvidacije društava za osiguranje (njih 5). Zbog toga autori primjenom normativne i empirijske analize primarno polaze od zakonskih rješenja koja su prethodila trenutno važećim te relevantne norme dovode u empirijski kontekst već provedenih postupaka likvidacije, odnosno onih koji su još uvijek u tijeku. Na osnovi normativne analize i praktičnih implikacija dolazi se do određenih zaključaka i prijedloga *de lege ferenda*.

³ Zakon o osiguranju, *Službene novine Federacije BiH*, broj 23/17.

⁴ Zakon o obveznim osiguranjima u prometu, *Službene novine Federacije BiH*, broj 57/20 i 103/21.

II Normativni okvir koji se primjenjuje na aktivne postupke likvidacije društava za osiguranje u Federaciji Bosne i Hercegovine

Likvidacija društava za osiguranje je mjera koja se poduzima u slučaju kada se procijeni da društvo ima dovoljno sredstava za ispunjenje svojih obveza, no unatoč tome postoje okolnosti i razlozi koji dovode do prestanka društva za osiguranje, primjerice, kod oduzimanja odobrenja za rad.⁵ Kao *lex specialis*, na aktualne postupke likvidacije društava za osiguranje u Federaciji BiH, primarno se primjenjuje Zakon o društvima za osiguranje u privatnom osiguranju iz 2005.⁶ (u nastavku: ZDO). Sporedno ovu materiju uređuje i Zakon o osiguranju od odgovornosti za motorna vozila i ostale odredbe o obveznom osiguranju od odgovornosti također iz 2005.⁷ (u nastavku: Zakon o osiguranju od odgovornosti).

ZDO u samo dva članka regulira pitanje likvidacije i stečaja društava za osiguranje (članci 69. i 70.). Iako su oba članka normativno neuobičajeno opširna, ipak se može zaključiti da je ova materija predmetnim Zakonom sažeto regulirana. Jasno je da se sa samo dva zakonska članka nije mogao sadržajno regulirati cjelokupan postupak i sve posebnosti likvidacije društava za osiguranje. Posljedica su brojne pravne dileme koje se pojavljuju nakon što Agencija za nadzor osiguranja Federacije BiH⁸ utvrdi nepravilnosti u radu društava za osiguranje, a što u konačnici rezultira oduzimanjem odobrenja za rad. Oduzimanje odobrenja za rad predstavlja najtežu mjeru koja se izriče društvu za osiguranje nakon provedenog nadzora, a koja ima za cilj spriječiti društvo za osiguranje da ubuduće obavlja poslove osiguranja za koje je dobilo odobrenje za rad.⁹

Članak 69. ZDO normira posebnu likvidaciju društava za osiguranje, a kao jedan od razloga pokretanja postupka posebne likvidacije navodi oduzimanje

⁵ Miroslav Džidić, Marijan Ćurković, *Pravo osiguranja*, Pravni fakultet Sveučilišta u Mostaru, Mostar, 2017, 108.

⁶ Zakon o društvima za osiguranje u privatnom osiguranju, *Službene novine Federacije BiH*, broj 24/05 i 36/10

⁷ Zakon o osiguranju od odgovornosti za motorna vozila i ostale odredbe o obveznom osiguranju od odgovornosti, *Službene novine Federacije BiH*, broj 24/05.

⁸ Agencija za nadzor osiguranja Federacije Bosne i Hercegovine jedna je od tri regulatorne agencije koje djeluju u Bosni i Hercegovini i nadležna je za tržište osiguranja Federacije BiH. Osnovana je odredbama ZDO kao samostalna i neprofitna institucija koja ima regulatornu i nadzornu funkciju u oblasti privatnog osiguranja s ciljem zaštite osiguranika i društava za osiguranje. Agencija za nadzor osiguranja FBiH ovlaštena je izdavati odobrenja za rad društvima za osiguranje i posrednicima u osiguranju, davati mišljenja na akte društava za osiguranje, vršiti nadzor u pogledu ulaganja, održavanja i raspolaganja sredstvima osiguranja, nalogati mjere koje se odnose na vođenje poslova osiguranja društva za osiguranje, propisivati i uvjete za stjecanje i povlačenje zvanja ovlaštenog aktuara, donositi provedbene propise, druge opće kao i pojedinačne akte te poduzimati sve ostale mjere koje smatra odgovarajućim za ispunjenje svojih nadzornih i regulatornih ciljeva. dostupno na adresi <https://www.ano.ba/o-nama/>, 20.3.2026.

⁹ Isto tako: Nataša Petrović Tomić, *Osnovi prava osiguranja*, Univerzitet u Beogradu Pravni fakultet, Beograd, 2021, 100.

odobrenja za rad.¹⁰ Posljedica oduzimanja odobrenja za rad od strane regulatora u Federaciji BiH bilo je pokretanje postupaka posebne likvidacije određenog broja društava za osiguranje. Sva dosadašnja oduzimanja odobrenja za rad rezultirala su pokretanjem prvotno likvidacijskog postupka, a tek naknadno stečajnog zbog zakonske odredbe koja je određivala da se u slučaju oduzimanja odobrenja za rad pokreće postupak posebne likvidacije (čl. 69. stavak 1. alineja 1. ZDO)¹¹.

Agencija za nadzor osiguranja Federacije BiH je u vremenu važenja ZDO donijela pet rješenja o oduzimanju odobrenja za rad društvima za osiguranje. Dva rješenja donesena su 2006.; Bosansko-njemačko osiguranje d.d. Tuzla i Una-Sana d.d. Bihać dok je 2010. oduzeto odobrenje za rad Hercegovina osiguranju d.d. Mostar, a 2012. Lido osiguranju d.d. Sarajevo i LOK osiguranju d.d. Sarajevo. Ovih pet likvidacija društava za osiguranje koje su uslijedile zbog oduzimanja odobrenja za rad od strane regulatora, primjenom članka 227. ZOS (2017.), provode se i dalje po propisima koji su važili prije donošenja trenutno važećeg normativnog okvira djelatnosti osiguranja i općih propisa za provođenje postupaka stečaja i likvidacije. U skladu s člankom 69. ZDO, nad društvima se provodio postupak posebne likvidacije. Likvidacijski postupci još su u tijeku za tri društva za osiguranje. Nad društvom Una – Sana d.d. Bihać nakon postupka likvidacije pokrenut je stečajni postupak koji je zaključen 2023. godine. Široj stručnoj javnosti posebno je zanimljiv predmet likvidacije Hercegovina osiguranja d.d. Mostar. Rješenjem Općinskog suda u Mostaru¹² početkom 2011. otvoren je likvidacijski postupak nad ovim društvom. U 2025., nakon više od 14 godina, završen je postupak posebne likvidacije društva Hercegovina osiguranje d.d. Mostar¹³ nakon čega je nad društvom, zbog nedostatka novčanih sredstava za daljnji nastavak vođenja likvidacijskog postupka te nemogućnosti daljnjeg unovčenja imovine¹⁴, izravno pokrenut stečajni postupak¹⁵. Skupština vjerovnika prihvatila je prijedlog likvidacijskog upravitelja o direktnom pokretanju stečajnog postupka te je zbog nepostojanja stečajne mase upućen javni poziv svim zainteresiranim za

¹⁰ "Postupak likvidacije društva bit će pokrenut i vođen u slučajevima ako:

1. Agencija za nadzor oduzme odobrenje za rad društvu,
2. pravomoćnom sudskom odlukom registriranje društva bude proglašeno ništavnim ili
3. skupština društva odluči o prestanku društva."

¹¹ U Srbiji primjerice, nad društvom se pokreće postupak prinudne likvidacije u slučaju oduzimanja odobrenja za rad, ali samo ako nisu ispunjeni uvjeti za pokretanje stečajnog postupka. To znači da se u slučaju oduzimanja odobrenja za rad može izravno pokrenuti i stečaj. Vidi: Nataša Petrović Tomić, *Pravo osiguranja - Sistem*, Knjiga I, JP Službeni glasnik, Beograd, 2019, 222.

¹² Rješenje br. 58 0 L 076564 10 L od 12.01.2011.

¹³ Dana 30.06.2025. Agencija za nadzor osiguranja Federacije BiH donijela je Rješenje broj: 02-07.5-04-2123-1/25 o okončanju postupka posebne likvidacije.

¹⁴ Likvidator Hercegovina osiguranja d.d. Mostar je utvrdio kako ne postoje izgledi za unovčenje imovine odnosno za naplatu potraživanja od Hercegovačke banke d.d. Mostar u stečaju.

¹⁵ Rješenje Općinskog suda u Mostaru broj: 076564 10 L od 23.09.2025. o okončanju likvidacijskog postupka i direktnom otvaranju stečajnog postupka nad društvom Hercegovina osiguranje d.d. Mostar.

uplatu potrebnog predujma.¹⁶ U ostavljenom roku od 30 dana nije bilo zainteresiranih za uplatu predujma, pa je sud pozivajući se na članak 196. važećeg Zakona o stečaju¹⁷ zaključio stečajni postupak i donio odluku o brisanju društva iz registra gospodarskih subjekata.¹⁸

Članak 69. ZDO određuje i primjenu općih propisa na postupke stečaja ili likvidacije društva, odnosno u to vrijeme važećih Zakona o stečajnom postupku,¹⁹ Zakona o likvidacijskom postupku²⁰ i Zakona o gospodarskim društvima,²¹ osim u slučajevima kada je to drugačije regulirano samim ZDO. Zbog toga se na aktivne postupke likvidacije društava za osiguranje u Federaciji BiH i dalje primjenjuju i opći propisi koji više nisu na snazi. Ako nakon likvidacije uslijedi otvaranje stečajnog postupka, slijedom citiranog članka ZOS, značajno je da će se i taj postupak voditi po starim propisima zbog kontinuiteta ovih postupaka i primjene relevantnog normativnog okvira. Osim navedenog, svrha nastavka vođenja postupka stečaja po ranijim propisima trebala bi biti i pravna sigurnost te zaštita oštećenih osoba, odnosno vjerovnika u postupku. Navedeno ukazuje na posebnost tržišta osiguranja Federacije BiH i to ne samo zbog značajnog broja postupaka likvidacije društava za osiguranje u odnosu na druga tržišta, već i zbog specifične primjene općih i posebnih zakonskih propisa.

Također je u predmetnom članku ZDO propisano da se stečaj ne može otvoriti dok se ne okonča postupak posebne likvidacije, a da posebnu likvidaciju nadzire privremeni upravitelj kojega postavlja regulatorna Agencija. U praksi je zanimljiv slučaj Lido osiguranje d.d. Tuzla za koje je Općinski sud u Sarajevu 24.5.2019. donio Rješenje 65 0 St 273747 19 St kojim otvara stečajni postupak nad ovim društvom u likvidaciji. Nakon intervencije Agencije za nadzor osiguranja FBiH, isti sud ispravlja pogrešku koja je nastala zbog neprimjenjivanja posebnih sektorskih propisa te stavlja van snage rješenje kojim je odlučeno o pokretanju stečajnog postupka i određuje nastavak likvidacijskog postupka.²²

¹⁶ Javni poziv kojim se pozivaju svi vjerovnici i zainteresirane osobe na uplatu predujma za otvaranje stečajnog postupka u iznosu od 100.000,00 BAM objavljen je u Službenim novinama FBiH br. 76/25 od 03.10.2025.

¹⁷ Zakon o stečaju, *Službene novine Federacije BiH*, broj: 53/21 i 19/25, a koji je trenutno na snazi, u članku 196. normira sljedeće: „(1) Ako se nakon otvaranja stečajnog postupka ispostavi da stečajna masa nije dovoljna za pokriće troškova stečajnog postupka, stečajni sudac će zaključiti postupak. (2) Stečajni postupak se ne zaključuje ako se predujmi dovoljan novčani iznos...”. Istu odredbu sadrži i stari Zakon o stečajnom postupku iz 2003. u članku 132. Usporedbom odredbi ova dva zakona rješava se dilema je li sud trebao primijeniti Zakon o stečajnom postupku koji je bio na snazi u vrijeme otvaranja likvidacijskog postupka, a radi kontinuirane primjene pravne norme na što upućuje članak 227. ZOS. Vidi: *supra* Uvod i naslov II.

¹⁸ Rješenje Općinskog suda u Mostaru broj: 58 0 St 076564 25 St od 24.11.2025.

¹⁹ Zakona o stečajnom postupku, *Službene novine Federacije BiH*, br. 29/03 i 32/04.

²⁰ Zakon o likvidacijskom postupku, *Službene novine Federacije BiH*, broj 29/03.

²¹ Zakon o gospodarskim društvima, *Službene novine Federacije BiH*, br. 23/99, 45/00, 2/02, 6/02 i 29/03.

²² Rješenje Općinskog suda u Sarajevu broj: 65 0 St 273747 19 St od 19.08.2019.

Osnovna svrha posebne likvidacije proizlazi upravo iz članka 69. ZDO kojim je normirano da je privremeni upravitelj „u roku od pet dana od svoga imenovanja dužan podnijeti zahtjev za pokretanje likvidacijskog postupka i za postavljenje likvidacijskog upravitelja.“ Do pokretanja likvidacijskog postupka i imenovanja likvidacijskog upravitelja od strane nadležnog suda, privremeni upravitelj obavlja dužnost uprave odnosno direktora društva. Nakon imenovanja likvidacijskog upravitelja, privremeni upravitelj prati napredak likvidacije, daje svoje mišljenje o pitanjima likvidacije ako to likvidacijski upravitelj zatraži, pisano obavještavati Agenciju za nadzor o napretku likvidacije jednom u dva mjeseca te obavlja sve što regulator od njega zatraži i podnosi izvješće po okončanju posebne likvidacije. Nakon što sud otvori likvidacijski postupak i imenuje likvidacijskog upravitelja, uloga privremenog upravitelja ustvari poprima savjetodavni karakter. Predmetni članak ZDO također određuje da „privremeni upravitelj može intervenirati u sudskim postupcima koje vodi likvidacijski upravitelj“. Ova intervencijska uloga privremenog upravitelja u sudskim postupcima nije u potpunosti jasno normirana u njenom sadržaju i formi.

ZDO je normirao i žurnost tekućih sudskih postupaka nakon pokretanja posebne likvidacije društva te ovlast privremenog upravitelja i likvidacijskog upravitelja zahtijevati to od suda. Iako se radi o zakonskoj normi koja je u skladu s općim načelom žurnosti likvidacijskog i stečajnog postupka, u praksi sudovi nisu tako postupali te predmeti nisu imali prioritet i žurnost u odnosu na druge predmete, a koji ne proizlaze iz postupka likvidacije. Tekući postupci likvidacije društava za osiguranje u Federaciji BiH vode se 15-20 godina.

Zakon je propisivao i obvezu Agencije za nadzor da formira listu od 30 mogućih privremenih upravitelja te da te osobe moraju imati posebna znanja i iskustvo u radu društava za osiguranje i kreditnih institucija. Međutim, Agencija nije formirala ovu listu, a u određenim postupcima likvidacije društava za osiguranje nije uopće imenovala privremenog upravitelja. Navedeno najbolje prikazuje odnos prema ovome institutu te nedorečenost zakonskih odredbi i nepraktičnost ovako regulirane uloge privremenog upravitelja. Uloga privremenog upravitelja, iako normirana kao savjetodavna nakon otvaranja likvidacijskog postupka i imenovanja likvidacijskog upravitelja, ustvari gubi svoj značaj i smisao nakon postupka posebne likvidacije.

Prethodno navedeno ukazuje i na činjenicu da postupak posebne likvidacije ustvari ima karakter i ulogu međupostupka do otvaranja postupka sudske likvidacije, a sve s ciljem zaštite imovine društava za osiguranje i interesa vjerovnika. Cilj ovoga postupka trebao bi biti utvrđivanje liste potraživanja s naglaskom na potraživanja iz osnove obveznih osiguranja. Svrha posebne likvidacije, koja bi primarno trebala biti zaštita vjerovnika, postigla bi se dostavljanjem liste vjerovnika utvrđenih

u posebnoj likvidaciji Zaštitnom fondu Federacije BiH.²³ Obveza Zaštitnog fonda bila bi u definiranom roku isplatiti iznose iz liste potraživanja s pripadajućom zateznom kamatom i to kronološkim redoslijedom isplate po starosti nastanka štetnog događaja. Međutim, ovu svrhu nemoguće je bilo postići u postupku posebne likvidacije s obzirom na nerazmjer postavljenih rokova za podnošenje zahtjeva za pokretanje sudskog likvidacijskog postupka (5 dana) i rokova za prijavu potraživanja (90 dana od objave poziva). Uz sve navedeno, a s obzirom i na duljinu trajanja pojedinih aktivnih postupaka likvidacije društava za osiguranje, može se zaključiti da je posebna likvidacija normirana radi zaštite imovine društva za osiguranje do pokretanja postupka sudske likvidacije ili stečaja.

Nadalje, odredba članka 70. ZDO upućivala je na odredbu članka 2. tada važećeg Zakona o likvidacijskom postupku prema kojemu je svrha likvidacijskog postupka namirenje svih vjerovnika pravne osobe, nakon unovčenja njene imovine. Odredbom članka 70. ZDO bili su također propisani način, uvjeti, rokovi i postupak pozivanja ugovaratelja osiguranja i podnositelja zahtjeva za isplatu osiguranja, kao i na prijavu svojih potraživanja..., u kom slučaju će likvidacijski sudac odlučiti o osnovanosti svakog potraživanja. Likvidacijski upravitelj daje svoje mišljenje likvidacijskom sucu koji konačno odlučuje o zahtjevu. Članak 70. ZDO normirao je i kategoriziranje tražbina na sljedeći način:

- „a) korisnici polica životnoga osiguranja;
- b) korisnici naknada po policama neživotnoga osiguranja koji su prijavili ostvarenje osiguranog slučaja i čije su prijave uredno ubilježene u knjige društva i
- c) bilo koje druge osobe koje su prijavile svoje zahjeve u propisanom roku.“

Iz prikazanog sadržaja predmetne regulacije postupka likvidacije društava za osiguranje, jasno je kako primjenjivi sektorski zakoni daju samo uopćeno određenje, okvir za provođenje ovih postupaka. Navedeno upućuje na daljnju primjenu općih propisa, a što u sudskoj praksi može biti dvojbeno, odnosno upitno koji će se opći propisi primjenjivati s obzirom na vrijeme njihova važenja i primjene²⁴.

1. Uloga Zaštitnog fonda Federacije Bosne i Hercegovine

U kontekstu aktualnih likvidacija društava za osiguranje bitno je istaknuti i ulogu Zaštitnog fonda Federacije BiH kao i različite stavove sudske prakse koji su se odnosili na obveze ove institucije, a koje su proizlazile iz navedenih postupaka. Zakon o osiguranju od odgovornosti nije izravno uređivao pitanje likvidacije već

²³ Zaštitni fond Federacije BiH je pravna osoba osnovana u skladu sa Zakonom o osiguranju od odgovornosti te je pod nadzorom i kontrolom Agencije za nadzor osiguranja Federacije BiH, a ima nadležnost pokrivati štete koje nisu pokrivenne obveznim osiguranjem.

²⁴ Vidi: *supra* bilj. 15.

sporedno i uopćeno u članku 16. kojim je propisana obveza Zaštitnog fonda FBiH na plaćanje odštete oštećenim osobama u slučaju smrti ili tjelesne ozljede te materijalne štete prouzročene prometnim nezgodama u BiH kada je, između ostalog²⁵, „protiv društva registriranog u Federaciji pokrenut postupak posebne likvidacije zbog stečaja ili zbog oduzimanja odobrenja za rad zbog neispunjenja finansijskih obveza prema Zakonu o društvima za osiguranje u privatnome osiguranju ili prema Zakonu o osiguranju od odgovornosti.“ Istim člankom stavak 4. navedenog Zakona bilo je regulirano da Zaštitni fond FBiH preuzima sva prava oštećenog koja proizlaze iz nezgode prema osobi koja je odgovorna za štetu ili njenom osiguratelju, kao i prema sredstvima društva koje je u postupku posebne likvidacije, kao i da Zaštitni fond FBiH ima privilegiju korisnika naknade predviđene u članku 71. (70.)²⁶ ZDO. Ovim člankom ZDO kao privilegirane tražbine normira sve tražbine koje proizlaze iz ugovora o osiguranju.

Ako dovedemo u vezu Zakon o osiguranju od odgovornosti i ZDO, jasno je da obveza Zaštitnog fonda FBiH nastupa nakon potpunog i konačnog oduzimanja odobrenja za rad društvu za osiguranje. Preduvjet za to je otvaranje stečajnog postupka, a isti se, prema odredbi članka 69. stav 5. ZDO, može otvoriti tek kad se dovrši postupak likvidacije. Sve dok se ne okonča postupak likvidacije ne može se znati koliko je potraživanja namireno, a koliko nije, odnosno koliki bi bio opseg obveza Zaštitnog fonda FBiH. Zbog toga se u predmetima u kojima su vjerovnici ustajali tužbom²⁷ čak i radi isplate priznatog potraživanja, tužba prema sudskoj praksi smatrala preuranjenom.²⁸

Problematicu ovoga pitanja čini sudska praksa kojom se početno zauzimao stav da je Zaštitni fond FBiH pasivno legitimiran za naknadu štete samim trenutkom oduzimanja odobrenja za rad društvu za osiguranje, uzimajući relevantnim članak 16. Zakona o osiguranju od odgovornosti za formiranje ovakvog stava. Ako ovu zakonsku normu razmatramo i analiziramo zasebno, a ne u kontekstu cijeloga Zakona i drugih zakona koji reguliraju ovu materiju, može se zaista strogim formalnim tumačenjem doći do zaključka da je obveza Zaštitnog fonda FBiH nastala u trenutku pokretanja likvidacijskog postupka, a ne njegovog okončanja. Međutim, Odluka Vrhovnog suda FBiH od 19.12.2013. godine broj 58 0 Mal 030723 11 REV čini obrat u sudskoj

²⁵ Druga dva slučaja u kojima je Zakon propisao navedenu obvezu Zaštitnog fonda su kada osoba odgovorna za nezgodu ostane nepoznata (samo kod šteta zbog smrti ili tjelesnih ozljeda) te ako je nezgodu prouzrokovalo vozilo za koje nije ugovoreno osiguranje od autoodgovornosti, a vozilo posjeduje osoba s prebivalištem u Federaciji BiH.

²⁶ U Zakonu o osiguranju od odgovornosti upućuje se na članak 70. ZDO, a privilegirani korisnici naknade regulirani su zapravo člankom 71. ZDO.

²⁷ Primjerice, Hercegovina osiguranje d.d. Mostar je iz svoje likvidacijske mase isplatilo samo 23% priznatih potraživanja II isplativnog reda (neživotna osiguranja), a ostatak priznatih potraživanja po osnovi osiguranja od autoodgovornosti vjerovnici su potraživali sudskim putem od Zaštitnog fonda FBiH.

²⁸ Primjerice, Presuda Vrhovnog suda u Federaciji BiH broj: 63 0 P 017334 23 Rev od 10.05.2023. godine

praksi i nakon iste stav Vrhovnog suda je jasan - odgovornost Zaštitnog fonda FBiH je supsidijarna te su neosnovani zahtjevi pokrenuti protiv Zaštitnog fonda prije okončanja likvidacijskog postupka. Međutim, do zauzimanja ovoga jasnog sudskog stava, Zaštitni fond FBiH isplatio je milijunske štete.²⁹

Prije navedenog sudskog stava, Vrhovni sud FBiH je još 15.12.2011. godine u presudi broj 65 0 Ps 024356 10 REV zauzeo identičan stav o supsidijarnosti Zaštitnog fonda FBiH, ali to nije bio opći stav Vrhovnog suda FBiH tako da su nakon toga donesene odluke 41 0 P00010 10 REV od 16.02.2012. godine te 39 0 P003869 11 REV od 18.09.2012. godine kojima je Zaštitnom fondu FBiH naložena isplata štete bez obzira što likvidacijski postupak nije okončan. Nakon relevantne odluke Vrhovnog suda FBiH iz 2013., sve presude drugačijeg sudskog stava donesene su bez odlučivanja Vrhovnog suda FBiH zbog imovinskog cenzusa za ulaganje revizije, a povodom čega se Zaštitni fond FBiH obraćao sudu i kroz vanrednu reviziju³⁰ te Visokom sudskom i tužiteljskom vijeću BiH. Sve sporne presude donesene su na Kantonalnom sudu u Tuzli. Zanimljivo je da ove presude nisu dovodile u pitanje supsidijaran karakter Zaštitnog fonda FBiH već su ulazile u svojevrstu pravnu akrobatiku dokazivanja da oštećeni ne mogu naplatiti potraživanje iako likvidacijski postupak nije okončan, a što je bilo u suprotnosti s člankom 2. Zakona o likvidacijskom postupku.³¹

Različita sudska praksa iste sudske instance (Vrhovnog suda FBiH) po istom pravnom i činjeničnom stanju okončana je donošenjem već citirane odluke od 19.12.2013. godine. Vrhovni sud Federacije BiH je zauzeo pravni stav da obvezu Zaštitnog fonda treba analizirati u svjetlu odredbe članka 69. i članka 70. ZDO koji normiraju obvezu Zaštitnog fonda FBiH za naknadu štete nakon okončanja likvidacijskog postupka. Navedeno sporno tumačenje norme *pro futuro* je riješeno i kroz odredbu članka 180. trenutno važećeg ZOS koji normira obvezu Zaštitnog fonda FBiH na naknadu štete u razdoblju od tri godine nakon okončanja likvidacijskog postupka.

III Nova zakonska rješenja

Iako se trenutno ne vodi nijedan likvidacijski ili stečajni postupak društava za osiguranje prema važećim propisima u Federaciji BiH, radi predviđanja ishoda

²⁹ 284 štete u iznosu 1.965.044,28 BAM za Bosansko – njemačko osiguranje d.d. u likvidaciji te 8 šteta u iznosu od 50.955,71 BAM za Hercegovina osiguranje d.d. u likvidaciji. Usporedbe radi, nakon 2013. pa do 2020. isplaćeno je ukupno 37 šteta na iznos od 906.768,59 BAM (8 predmeta za Bosansko-njemačko osiguranje d.d. u likvidaciji, 11 predmeta za Hercegovina osiguranje d.d. u likvidaciji i 18 predmeta za Lido osiguranje d.d. u likvidaciji).

³⁰ Revizija protiv presude Kantonalnog suda u Tuzli broj: 32 0 Mals 329853 20 Pž od 14.02.2023.

³¹ Članak 2. Zakona o likvidacijskom postupku definirao je svrhu ovoga postupka: „Likvidacijski postupak provodi se nad pravnim osobama. On služi potpunom namirenju svih vjerovnika pravne osobe unovčenjem njegove imovine. Ukoliko nakon toga preostanu još neke imovinske vrijednosti, članovi pravne osobe namiruju se iz preostale imovine razmjerno svom učešću.“

potencijalnih postupaka, potrebno je uz refleksiju na prethodne propise analizirati i one koji su trenutno na snazi. Analiza novih zakonskih rješenja koja u Federaciji BiH reguliraju likvidaciju društava za osiguranje, nažalost također ukazuje na određeni stupanj neusklađenosti. Zakon o obveznim osiguranjima u prometu (u nastavku: ZOOP) normira obvezu Zaštitnog fonda FBiH na podmirenje štete ako ona nije mogla biti nadoknađena iz stečajne mase. S druge strane, Zakon o osiguranju (u nastavku: ZOS) određuje da se u slučaju nedostatka sredstava sačinjava popis vjerovnika koji se dostavlja Zaštitnom fondu FBiH radi namirenja, najkasnije tri godine od dana dostavljanja. Iz ovoga bi se mogao izvući svojevrsan zaključak da su potraživanja po obveznim osiguranjima u prometu izuzeta iz stečajnog postupka. Dileme se za-pravo javljaju kod primjene članka 194. ZOS prema kojemu potraživanja koja imaju vjerovnici prema društvu za osiguranje nad kojim je otvoren stečajni postupak, a na osnovu ugovora o obveznim osiguranjima, neće se rješavati u stečajnom postupku već ti vjerovnici svoja potraživanja usmjeravaju prema Zaštitnom fondu FBiH kako bi se postigla potpuna naknada prema ovim vjerovnicima. Ovdje se dalje nameće dilema svrhovitosti otvaranja stečajnog postupka ako je imovina, odnosno stečajna masa nepostojeća, a potraživanja iz osnove obveznih osiguranja se usmjeravaju na teret Zaštitnog fonda FBiH.

Prema članku 195. ZOS (Isplatni redovi stečajnih vjerovnika) i Zaštitnom fondu FBiH pripada pravo subrogacije za sve isplate koje je izvršio po osnovi članka 194. te ova potraživanja spadaju u treći viši isplatni red. To znači da se u ovom slučaju Zaštitni fond FBiH pojavljuje kao vjerovnik sa svojim potraživanjima iz stečajne mase te da primarni vjerovnici po osnovi ugovora o obveznim osiguranjima ne sudjeluju izravno u stečajnom postupku. U svakom slučaju, a iz naprijed navedenog, proizlazi da za društvo koje je u likvidaciji, obveza Zaštitnog fonda FBiH nastupa kao supsidijarna, odnosno kada je nastupila nemogućnost naplate u likvidacijskom postupku i to za ona potraživanja koja se temelje na ugovoru o obveznom osiguranju u prometu i koja su priznata u likvidacijskom postupku.

Pozitivno zakonodavstvo u Federaciji BiH ne poznaje institut posebne likvidacije, već regulira redovnu i prinudnu likvidaciju (glava X. ZOS). Prinudna likvidacija društva za osiguranje provodi se na temelju odluke nadzorne agencije. Agencija za nadzor osiguranja FBiH donijet će rješenje o oduzimanju odobrenja za obavljanje poslova osiguranja društvu za osiguranje u taksativno navedenim slučajevima (čl. 180. st. 1. ZOS FBiH³²). Agencija za nadzor FBiH donosi odluku o pokretanju prinudne

³² „a) ako na osnovu izvješća posebne uprave iz članka 161. stav (2) ovog zakona procijeni da se za vrijeme trajanja posebne uprave finansijsko stanje nije poboljšalo do mjere da društvo za osiguranje dostiže marginu solventnosti iz članka 71., odnosno članka 72. ovog zakona, te da ne postoje uvjeti za podnošenje prijedloga za otvaranje stečajnog postupka; b) ako skupština dioničara sazvana prema članku 162. ovog zakona odbije donijeti odluku o povećanju dioničkog kapitala društva za osiguranje ili je donese, ali prva prodaja dionica ne uspije; c) ako je društvu za osiguranje odobrenje za obavljanje poslova osiguranja prestalo važiti, a u roku tri mjeseca od prijema rješenja iz članka 21. stav (2) ovog

likvidacije na dan oduzimanja odobrenja za rad. Prinudna likvidacija podrazumijeva utvrđivanje i izmirivanje potraživanja vjerovnika iz ugovora o osiguranju. Postupak prinudne likvidacije završava se izmirenjem svih obveza iz ugovora o osiguranju ili utvrđivanjem nedostatnosti imovine za izmirivanje navedenih obveza. Postupak prinudne likvidacije prati Agencija za nadzor FBiH i ima pravo intervencije u sudskim predmetima.

Stečaj društva za osiguranje provodi se u pravilu kada društvo ne može izmiriti svoje obveze. Ako likvidatori utvrde postojanje stečajnog razloga,³³ dužni su u skladu s člankom 191. ZOS bez odlaganja podnijeti prijedlog za otvaranje stečajnog postupka i o tome odmah obavijestiti Agenciju za nadzor FBiH.

Analizirajući položaj oštećenih u slučaju prinudne likvidacije ili stečaja društva za osiguranje, važeća normativna rješenja reguliraju prinudnu likvidaciju te odbor vjerovnika kao organ društva; nadležnosti nadzornog odbora društva za osiguranje i nadležnosti skupštine preuzima regulatorna Agencija koja je ovlaštena i za pokretanja postupka redovite, sudske likvidacije; odluku o utvrđivanju potraživanja donosi sudski likvidator te obveza Zaštitnog fonda FBiH prema vjerovnicima, koji se utvrđuju postojanjem posebnog popisa, nastupa u trenutku okončanja likvidacijskog postupka i isti mora u narednom roku od tri godine izvršiti svoju obvezu naknade štete.

Iz svega navedenog proizlazi zaključak kako federalni zakonodavac ni u sada važećim propisima nije uspio jasno razgraničiti postupak prinudne likvidacije od sudske kojoj prethodi niti je uspio razgraničiti prava i obveze određenih postupajućih organa iz postupka prinudne likvidacije. Uloga odbora vjerovnika koji se ovim zakonom konstituira kao organ društva u prinudnoj likvidaciji nije normativno jasno regulirana, odnosno nisu uopće regulirane nadležnosti toga organa. Zakon ne regulira ni odnos ovog odbora s organima redovitog postupka sudske likvidacije - likvidacijskog suca i likvidacijskog upravitelja. Također se pravno upitnim postavlja pitanje zbog čega je otežan položaj oštećenih koji svoja prava prema Zaštitnom fondu FBiH, kao i do sada, mogu usmjeriti tek nakon okončanja likvidacijskog postupka uz pravo Zaštitnog fonda FBiH da u daljnjem roku od tri godine isplati naknadu. Znajući iz prakse da ovi postupci traju i po više od deset godina, a da u postojećem normativnom okviru nije osiguran veći stupanj žurnosti u odnosu na prethodne propise, ostavljanje dodatnog roka za ispunjenje obveze Zaštitnog fonda FBiH ne štiti dovoljno prava oštećenih.

Zakonodavac je dodatnu pozornost posvetio zaštiti imovine u stečajnom postupku. Tako je normirano da u prijedlogu za otvaranje stečajnog postupka Agencija

zakona nije započet postupak za preoblikovanje ili prestanak društva ili ponovni postupak za dobivanje odobrenja za obavljanje poslova osiguranja; d) ako procijeni da bi provođenje redovne likvidacije moglo izazvati štetu za osiguranika i korisnike društva za osiguranje.“

³³ U skladu s člankom 6. važećeg Zakona o stečaju FBiH stečajni razlozi zbog kojih sud može donijeti odluku o otvaranju stečajnog postupka su: a) platežna nesposobnost stečajnog dužnika, b) prijeteća platežna nesposobnost stečajnog dužnika, c) nepostupanje po usvojenom planu reorganizacije i d) ako je plan reorganizacije izrađen prijevarom ili na nezakonit način.

za nadzor FBiH može predložiti postavljanje privremenoga stečajnog upravitelja. Agencija može predložiti i druge mjere osiguranja koje smatra potrebnim kako bi se spriječilo nastupanje promjena imovinskog položaja društava za osiguranje do donošenja odluke o otvaranju stečajnog postupka, a koje bi za osiguranike, korisnike osiguranja i oštećene osobe mogle biti nepovoljne. U očuvanju imovine društva za osiguranje, a samim time i zaštite potraživanja vjerovnika, vrlo je bitno pravodobno oduzimanje odobrenja za rad i djelovanje Agencije u skladu s datim joj ovlastima.³⁴

IV Europski zakonodavni okvir za reorganizaciju i likvidaciju društava za osiguranje

S obzirom na utvrđene nedostatke, ne samo trenutno primjenjivog nego i važećeg zakonodavnog okvira kojim se reguliraju postupci likvidacije društava za osiguranje Federacije BiH, potrebno je radi boljeg normativnog reguliranja *pro futuro*, a i radi usklađivanja sa *acquis communautaire*, analizirati kako je postupke likvidacije i stečaja regulirao europski zakonodavac. Postupak reorganizacije i likvidacije društava za osiguranje u Europskoj uniji uređen je direktivom Solvency II³⁵ kojom je u normiranju ove materije zamijenjena ranija direktiva 2001/17/EZ o sanaciji i likvidaciji društava za osiguranje,³⁶ a u odnosu na koju Solvency II ne donosi neke bitnije promjene u reguliranju ove materije. Odredbe Glave IV. Solvency II, koja propisuje pravila reorganizacije i likvidacije društava, odnose se samo na društva za osiguranje i ne uključuju društva za reosiguranje.³⁷ Izvorni tekst Solvency II koristi termin „winding up“ koji se može odnositi kako na likvidaciju tako i na stečaj društava za osiguranje. Preustroj, odnosno reorganizacijske mjere, podrazumijevaju bilo koje djelovanje nadležnih tijela koje je namijenjeno očuvanju ili ponovnoj uspostavi financijske stabilnosti u društvu za osiguranje. Početkom prošle godine na razini Europske unije donesena je i Direktiva Europskog parlamenta i Vijeća 2025/1 (IRRD) o uspostavi okvira za sanaciju i oporavak društava za osiguranje³⁸ kojom se

³⁴ Na primjeru likvidacije Lido osiguranja d.d. sporno je djelovanje Agencije za nadzor osiguranja FBiH, odnosno prigovara se na kašnjenje u oduzimanju odobrenja za rad (duže od dvije godine) te potencijalno svjesno omogućavanje umanjenja imovine. Po ovome pitanju vodi se i spor između Agencije za nadzor osiguranja FBiH i Zaštitnog fonda FBiH.

³⁵ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast) (Text with EEA relevance), OJ L 335, 17.12.2009, pp. 1–155.

³⁶ Directive 2001/17/EC of the European Parliament and of the Council of 19 March 2001 on the reorganisation and winding-up of insurance undertakings, OJ L 110, 20.4.2001, pp. 28–39.

³⁷ Na preustroj i likvidaciju društava za reosiguranje primjenjuju se odredbe Smjernice 2005/68/EZ.

³⁸ Directive (EU) 2025/1 of the European Parliament and of the Council of 27 November 2024 establishing a framework for the recovery and resolution of insurance and reinsurance undertakings and amending Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 and Regulations (EU)

dopunjuje regulatorni okvir Solvency II na način da se normira kontinuitet osigurateljne zaštite za ugovaratelje osiguranja, korisnike osiguranja i oštećene osobe, na način da se osigura prijenos održivih aktivnosti i portfelja društva za osiguranje ako je to primjereno te raspodjela gubitaka na pravedan i predvidiv način.

Najjednostavniji model za utvrđivanje usklađenosti domaćeg zakonodavstva s europskim jeste usporedba odredbi Solvency II koje normiraju minimum instituta i pitanja koje propisi matične države članice trebaju regulirati u pogledu postupka likvidacije. Područja te pravne regulacije definirana su člankom 274. stavak 2. Solvency II slijedom:

- a) imovina koja pripada likvidacijskoj masi i kako treba postupati s imovinom koju je steklo ili je prenesena na društvo za osiguranje nakon otvaranja likvidacijskog postupka;
- b) ovlaštenja društva za osiguranje ili likvidatora;
- c) pretpostavke za valjanost prijeboja;
- d) kakav učinak ima otvaranje likvidacijskoga postupka na postojeće ugovore u kojima je društvo za osiguranje ugovorna stranka;
- e) učinke pokretanja likvidacijskog postupka na pojedinačne postupke za ostvarivanje tražbina koje su pokrenuli vjerovnici, osim učinaka na parnice u tijeku;
- f) koje se tražbine mogu prijaviti u odnosu na likvidacijsku masu društva za osiguranje i kako treba postupati s tražbinama koje su nastale nakon otvaranja likvidacijskog postupka;
- g) pravila koja uređuju prijavu, ispitivanje i utvrđivanje tražbina;
- h) pravila koja uređuju podjelu utroška dobivenog unovčenjem imovine, isplati red tražbina i prava vjerovnika koji su nakon otvaranja likvidacijskog postupka na temelju stvarnog prava ili prijeboja djelomično namireni;
- i) pretpostavke i učinke zaključenja likvidacijskoga postupka, posebno nagodbom;
- j) prava vjerovnika nakon zaključenja likvidacijskoga postupka;
- k) strana koja snosi troškove likvidacijskoga postupka, uključujući i troškove koji proizlaze iz njega i
- l) pravila koja reguliraju koje su pravne radnje ništave, pobojne ili djelomično ništavne jer oštećuju ukupnost vjerovnika.

Uzimajući u obzir posebne sektorske propise kojima je trenutno regulirana materija likvidacije društava za osiguranje u Federaciji BiH, jasno je da je opseg potrebne pravne regulacije na koju upućuje Solvency II opsežniji i upućuje na detaljniju regulaciju. Međutim, u nedostatku posebnih odredbi, primjenjuje se

No 1094/2010, (EU) No 648/2012, (EU) No 806/2014 and (EU) 2017/1129 (Text with EEA relevance)
PE/6/2024/REV/1, OJ L, 2025/1, 8.1.2025

naravno opći propis. Ako usporedimo sadržajno opće propise u Federaciji BiH s navedenim odredbama Solvency II, opet se može zaključiti da domaći zakoni ne definiraju, odnosno ne definiraju prilagođeno finansijskom tržištu, sve odredbe na koje Solvency II upućuje kao na minimalnu regulaciju likvidacije i stečaja društava za osiguranje. Domaći zakoni koji materiju stečaja, a posebice likvidacije reguliraju za društva za osiguranje, ne uređuju određene segmente koje europski zakonodavac definira kao sadržajne institute koje nacionalna zakonodavstva trebaju regulirati. Solvency II primjerice predviđa mogućnost da regulator djelomično ostavi na snazi odobrenje za rad u mjeri u kojoj je potrebno likvidatoru ili drugoj nadležnoj osobi radi obavljanja neke od djelatnosti društva u opsegu u kojem je to potrebno ili primjereno za potrebe likvidacije.³⁹ Čak i da se ne izuzme supsidijarna primjena općih domaćih propisa o stečaju i likvidaciji, brojna pitanja ostaju nejasna, dvojbeni ili podložna različitim tumačenjima.

Solvency II nadalje propisuje da osigurnine imaju prednost pred drugim potraživanjima od društva za osiguranje ali određuje i moguće iznimke:

- a) potraživanja zaposlenika koja proizlaze iz ugovora o radu i radnog odnosa
- b) porezna potraživanja javnih tijela
- c) potraživanja sustava socijalne sigurnosti
- d) potraživanja po osnovi imovine koja podliježe stvarnom pravu (čl. 275. st. 1. *Solvency II*).

Iz navedenog proizlazi da naše trenutno važeće zakonodavstvo ne priznaje prioritet isplata redova sukladno europskim propisima, budući među višim isplatinim redovima nisu uvrštena potraživanja zaposlenika niti potraživanja na temelju stvarnih prava (vidi. čl. 195. ZOS).

Solvency II nadalje normira obvezu svakog društva za osiguranje da vodi u svom sjedištu poseban registar imovine koji se koristi za pokriće tehničkih pričuva koje su izračunate i uložene u skladu s pravom matične države članice (čl. 276. st. 1. *Solvency II*). Ako društvo pruža usluge i životnog i neživotnog osiguranja, vodi dva odvojena registra.⁴⁰ S obzirom da i na tržištu Federacije BiH djeluju kompozitna društva, trebalo bi imati na umu i ovu odredbu europskog zakonodavca.

Nacionalnim zakonodavstvom može biti propisano da, kad su prava vjerovnika društva za osiguranje subrogirana na jamstveni program uspostavljen u toj državi članici, potraživanja toga sustava nisu uključena u potraživanja od osiguranja koja imaju prednost pred ostalim potraživanjima. Ako prema nacionalnim propisima potraživanja od osiguranja imaju prednost pred ostalim potraživanjima, izuzev potraživanja od države i zaposlenika (porezna i socijalna davanja, potraživanja iz

³⁹ Nikolina Maleta, *Statusno pravo osiguranja Europske unije i Bosne i Hercegovine*, Sveučilište u Mostaru Pressum, Mostar, 2023, 132.

⁴⁰ *Ibid.*, 131.

ugovora o radu, te na temelju stvarnih prava), tada svako društvo za osiguranje mora osigurati da ta potraživanja u svakom trenutku i neovisno o mogućoj likvidaciji budu pokrivena imovinom.

Analizom važećih sektorskih zakona u Federaciji BiH zaključuje se kako postoji nužnost dodatnog usuglašavanja s načelima istaknutim u Solvency II, a što se posebno ogleda u zaštiti interesa vjerovnika odnosno zaštiti prava žrtava prometnih nezgoda. Potrebno je u budućem normiranju postići stvarnu usklađenost, a ne samo deklaratornu pozivanjem na propise Europske unije. U budućim zakonodavnim intervencijama na tržištu osiguranja Federacije BiH bit će potrebno konkretna rješenja europskog zakonodavca uvrstiti u samu normu, a ne općenito upućivati na usklađenost s europskim propisima. S obzirom na opseg i sadržaj normiranja materije likvidacije i stečaja društava za osiguranje u Solvency II, može se zaključiti da bi za domaći pravni sustav bilo praktičnije i pravno sigurnije ovu materiju regulirati posebnim zakonom - zakonom o likvidaciji i stečaju društava za osiguranje ili barem zakonom o likvidaciji i stečaju finansijskih institucija kako je to primjerice regulirao zakonodavac u Srbiji.⁴¹ Minimalna pravna regulacija pretpostavlja opsežnije odredbe o likvidaciji društava za osiguranje u posebnim zakonima kojima se regulira tržište osiguranja kako bi se izbjegla neprilagođenost općih propisa. Obje koncepcije reguliranja materije stečaja i likvidacije društava za osiguranje su prihvatljive, odnosno nije toliko značajno je li to normiranje sadržano u posebnom zakonu ili u općem zakonu o osiguranju, već koliko su opširne i prilagođene norme.⁴²

V Zaključak

Tržište osiguranja Federacije BiH jedno je od rijetkih koje na relativno malom tržištu bilježi više aktivnih postupaka likvidacije društava za osiguranje. Polazeći od činjenice da postupci likvidacije društava za osiguranje traju jako dugo, čak i više od deset godina, te da su rijetki postupci, poput onoga koji se vodio za Una-Sana osiguranje d.d. Bihać, u kojima su se vjerovnici u cijelosti namirili, nužno je tražiti nova zakonska rješenja koja će pružiti bolju i djelotvorniju zaštitu vjerovnicima, a posebice onima iz osnova obveznih osiguranja u prometu. Iako po dužini trajanja likvidacijskih postupaka ne odstupamo puno od zemalja u regiji, treba naglasiti nužnost bolje i učinkovitije zaštite oštećenih osoba, odnosno žrtava u prometu od kojih mnogi ni nakon desetljeća nisu blizu ostvarenju svojih prava. Ne možemo se na temelju te činjenice ne zapitati o (ne)postojanju svrhovitosti zakonskih propisa

⁴¹ Zakon o stečaju i likvidaciji banaka i društava za osiguranje, *Službeni glasnik Republike Srbije*, br. 14/15 i 44/18).

⁴² Isto tako: Jelena Lepetić, „Poseban režim stečaja društava za osiguranje“, *Zbornik radova Novi proizvodi osiguranja, tehnološke inovacije i zaštita korisnika u osiguranju* (ur. Nataša Petrović Tomić), Beograd 2025, 194.

te sukobu forme i suštine kao i cilja likvidacijskih postupaka društava za osiguranje. Ako tome pridodamo i neujednačenu sudsku praksu, odnosno pogrešna tumačenja zakonske norme u sudskim odlukama koje su dovele do svojevrzne nestabilnosti institucionalnog sustava tržišta osiguranja, jasno je kako je tržište osiguranja Federacije BiH u pogledu likvidacijskih postupaka obilježeno svojevrsnim kontroverzama. Ova negativna iskustva moraju biti pouka svim aktivnim sudionicima na tržištu osiguranja, a posebice zakonodavcu kojemu bi trebala biti dužnost ponuditi rješenje koje će osigurati ostvarivanje zakonskih prava vjerovnika u razumnom vremenskom roku, vodeći računa da novi normativni okvir ne ugrožava stabilnost financijskog tržišta i funkcioniranja društava za osiguranje.

Sustavni rizik koji se vezuje za poslovanje institucija financijskog tržišta, pa tako i društava za osiguranje, opravdava nužnost posebnog pravnog režima stečaja i likvidacije društava za osiguranje. To podrazumijeva normiranje posebnih odredbi u odnosu na one koje su sadržane u općim propisima za stečaj i likvidaciju. Posebne odredbe mogu biti sadržane u općem sektorskom propisu ili u posebnom zakonu kojim će se isključivo regulirati materija stečaja i likvidacije društava za osiguranje. Ovo posljednje rješenje bi svakako pojednostavilo normativnu primjenu, riješilo problem neujednačenosti pravnih propisa i borbu s pravnim dilemama u njihovoj primjeni, a što je najvažnije doprinijelo bi višem stupnju sigurnosti i zaštite vjerovnika, korisnika usluga osiguranja te očuvanju stabilnosti tržišta.

S obzirom na dužinu trajanja likvidacijskih/stečajnih postupaka nad društvima za osiguranje na tržištu osiguranja Federacije BiH, jasno je da oni nisu usuglašeni s načelom hitnosti koje karakterizira opće postupke stečaja i likvidacije. Isplatti redovi također bi se trebali detaljnije definirati, odnosno, trebalo bi voditi računa o razlikovanju isplatti redova po vrstama osiguranje u okviru neživotnih osiguranja, budući da različita osiguranja ne mogu imati isti prioritet, odnosno, ne bi trebala biti u istom isplattom redu.

Poseban značaj i ulogu u pravodobnom pokretanju likvidacije društava za osiguranje ima Agencija za nadzor osiguranja FBiH. Pravodobno oduzimanja odobrenja za rad posebno je bitno, jer svako nepotrebno odugovlačenje stvara mogućnost potencijalnog umanjenja imovine te odugovlačenje i poteškoće u naplati vjerovnika. Zbog toga je vrlo bitna zakonska regulativa koja će postaviti jasne i nedvosmislene uvjete kada Agencija mora oduzeti odobrenje za rad ostavljajući što manje prostora za diskrecijsko odlučivanja regulatoru, a koje je utemeljeno na procjeni kako je to sada regulirano, odnosno nužno je detaljnije normirati okvir i mjerila za takve procjene.

U skladu sa svim navedenim dilemama, nejasnoćama i negativnim posljedicama vođenja likvidacijskih postupaka nad društvima za osiguranje na tržištu Federacije BiH te neupitne potrebe boljeg, sustavnijeg i cjelovitijeg normativnog uređenja ove materije, može se zaključiti da osigurateljna javnost u Federaciji BiH

treba učiti iz vlastitog iskustva i stvarati uvjete za sustavniju borbu protiv rizika koji dovode do likvidacije/stečaja, preuzeti odgovornosti, ne primjenjivati normu radi ispunjenja forme već radi postizanja svrhe, a koja je bez ikakve dileme bolja zaštita vjerovnika i oštećenih osoba. Drugim tržištima empirijska iskustva aktivnih likvidacija društava za osiguranje u Federaciji BiH mogu poslužiti kao primjer na temelju kojega mogu dodatno unaprijediti svoj regulatorni okvir kako bi spriječili reperkusije koje je praksa osiguranja u Federaciji BiH iskusila ili im još uvijek svjedoči.

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LEGAL FRAMEWORK AND PRACTICAL CHALLENGES OF INSURANCE COMPANIES' WINDING UP IN THE FEDERATION OF BOSNIA AND HERZEGOVINA

REVIEW SCIENTIFIC PAPER

Abstract

Due to the need to preserve the stability of the financial market, the winding up of insurance companies, particularly in compulsory liquidation or bankruptcy proceedings, requires a specific legal framework. This paper analyses the insurance market of the Federation of Bosnia and Herzegovina, which has experienced several insurance company liquidation proceedings characterized by their lengthy duration and the specific application of statutory provisions. The application of relevant legislation, both special and general, is linked to the moment when liquidation proceedings are initiated, which in practice results in the application of regulations that are no longer in force, with the aim of protecting creditors and ensuring legal certainty. The authors analyse the applicable regulations and critically highlight their ambiguities and shortcomings, relying on empirical data derived from completed and ongoing insurance company liquidation proceedings. In addition, the paper examines the currently applicable legislation and identifies deficiencies in the existing legal regulation, based on a reflection on the regulations applied in current liquidation proceedings. The European legislative framework is also analyzed, and *de lege ferenda* proposals are presented with the aim of establishing a more systematic and effective legal framework for proceedings leading to the winding up of insurance companies and strengthening the protection of insurance service users.

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Keywords: insurance market of the Federation of Bosnia and Herzegovina, winding up of insurance companies, liquidation, bankruptcy, regulatory framework

I Introduction

Insurance companies, together with banks, are active participants in the financial market. As joint-stock companies, they have certain features specific to the organisation of insurance business activities that distinguish them from banks as well. The specific characteristics of insurance companies should be taken into account when establishing the legal regulation governing their winding up, namely, the proceedings of liquidation and bankruptcy. For this reason, while acknowledging the importance of the general legislation governing this area, the question of the adequacy of the legal framework regulating the liquidation and bankruptcy of insurance companies legitimately arises.

In Bosnia and Herzegovina, insurance industry is regulated at the entity level. In the insurance market of Republika Srpska, there are no active insurance company liquidation proceedings, whereas in the Federation of BiH, three such proceedings are currently ongoing and two have been completed. Given the size of the insurance market, this number represents a high frequency of such proceedings, making the insurance market of the Federation of BiH of regional interest as well. This divergence between the two entities indicates differences in regulatory practices and market structure, underscoring the need for further harmonisation of the insurance market in Bosnia and Herzegovina.

A further distinguishing feature of the insurance market in the Federation of BiH is the legislative framework regulating the winding up of insurance companies. The currently applicable sectoral legislation governing this area in the Federation of BiH is the Insurance Law³ and, secondarily, the Law on Compulsory Motor Third Party Liability Insurance.⁴ However, given the ongoing insurance company liquidation proceedings, the analysis primarily proceeds from Article 227 of the Insurance Law (hereinafter: IL), which provides that “bankruptcy and liquidation proceedings of insurance companies, which were initiated pursuant to the provisions of the Law on Bankruptcy Procedure, the Liquidation Proceedings Law, the Company Law and the Private Insurance Companies Law, shall be completed in accordance with the provisions of the aforementioned laws”. These laws, taken as a whole, are no longer in effect. This provision of the IL clearly indicates the application of regulations governing insurance activities in the Federation of BiH at the time the special liquidation proceedings of insurance companies (five in total) were initiated. For this reason,

³ Insurance Law, *Official Gazette of the Federation of BiH*, No. 23/17.

⁴ Law on Compulsory Motor Third Party Liability Insurance, *Official Gazette of the Federation of BiH*, Nos. 57/20 and 103/21.

through the application of normative and empirical analysis, the authors primarily rely on legislative solutions that preceded the currently applicable framework and examine the relevant legal provisions within the empirical context of completed liquidation proceedings, as well as those that are still ongoing. Based on the normative analysis and its practical implications, certain conclusions and *de lege ferenda* proposals are formulated.

II Regulatory Framework Applicable to Active Liquidation Proceedings of Insurance Companies in the Federation of Bosnia and Herzegovina

Liquidation of insurance company is a measure undertaken where the company is assessed having sufficient assets to meet its obligations, but circumstances and reasons nevertheless exist that require the company to be wound up, for example following the revocation of its operating licence.⁵ As *lex specialis*, the ongoing insurance company liquidation proceedings in the Federation of BiH are primarily governed by the 2005 Private Insurance Companies Law⁶ (hereinafter: PICL). Secondly, this area is also regulated by the Law on motor vehicle liability insurance and other provisions on compulsory liability insurance, also from 2005⁷ (hereinafter: Liability Insurance Law).

The PICL regulates the issue of insurance company liquidation and bankruptcy in only two articles (Articles 69 and 70). Although both articles are unusually extensive by legislative standards, it may nonetheless be concluded that this matter is regulated in a concise manner under the Law. It is clear that two articles alone could not adequately regulate the entire procedure and all specific features of insurance company liquidation. This has created legal dilemmas which arise after the Insurance Supervisory Agency of the Federation of BiH⁸ identifies irregularities in the operations

⁵ Miroslav Džidić, Marijan Ćurković, *Pravo osiguranja*, Faculty of Law, University of Mostar, Mostar, 2017, 108.

⁶ Private Insurance Companies Law, *Official Gazette of the Federation of BiH*, Nos. 24/05 and 36/10.

⁷ Law on Motor Vehicle Liability Insurance and Other Provisions on Compulsory Liability Insurance, *Official Gazette of the Federation of BiH*, No. 24/05.

⁸ The Insurance Supervisory Agency of the Federation of Bosnia and Herzegovina is one of three regulatory agencies operating in Bosnia and Herzegovina and is responsible for the insurance market of the Federation of BiH. It was established under the PICL as an independent, non-profit institution with regulatory and supervisory functions in the field of private insurance, with the aim of protecting policyholders and insurance companies. The Insurance Supervisory Agency of the Federation of BiH is authorised to issue operating licences to insurance companies and insurance intermediaries, issue opinions on acts of insurance companies, supervise investments, the maintenance and disposal of insurance funds, impose measures relating to the management of insurance business of insurance companies, prescribe conditions for obtaining and withdrawing the status of authorised actuary, adopt implementing regulations and other general as well as individual acts, and take all other measures it considers appropriate for

of insurance companies, ultimately resulting in the revocation of the operating licence. Revocation of the operating licence is the most severe measure imposed on an insurance company following a supervisory review, aimed at preventing the insurance company from continuing to carry out the insurance activities for which the licence had originally been granted.⁹

Article 69 of the PICL regulates the special liquidation of insurance companies and identifies revocation of the operating licence as one of the grounds for initiating special liquidation proceedings.¹⁰ The revocation of the operating licence by the regulator in the Federation of BiH led to the initiation of special liquidation proceedings against a number of insurance companies. To date, all prior revocations of operating licences have resulted initially in the commencement of liquidation proceedings, with bankruptcy proceedings being initiated only subsequently, due to the statutory provision requiring the initiation of special liquidation proceedings in the event of the revocation of an operating licence (Art. 69, para. 1, indent 1 of the PICL).¹¹

During the period in which the PICL was in force, the Insurance Supervisory Agency of the Federation of BiH issued five decisions revoking the operating licences of insurance companies. Two decisions were issued in 2006, concerning Bosansko-njemačko osiguranje d.d. Tuzla and Una-Sana d.d. Bihać, while the operating licence of Hercegovina osiguranje d.d. Mostar was revoked in 2010, and those of Lido osiguranje d.d. Sarajevo and LOK osiguranje d.d. Sarajevo in 2012. These five insurance company liquidations, which followed the revocation of operating licences by the regulator, continue – pursuant to Article 227 of the IL (2017) – to be conducted under the legislation that was in force prior to the adoption of the current regulatory framework governing insurance activities and the general legislation on bankruptcy and liquidation proceedings. In accordance with Article 69 of the PICL, special liquidation proceedings were initiated against these companies. Liquidation proceedings are still ongoing for three insurance companies. Following the completion of liquidation proceedings against Una-Sana d.d. Bihać, bankruptcy proceedings were initiated and subsequently concluded in 2023. The liquidation

the fulfilment of its supervisory and regulatory objectives. See in detail: <https://www.ano.ba/o-nama/> (accessed on 20 March 2026).

⁹ See also: Nataša Petrović Tomić, *Osnovi prava osiguranja*, University of Belgrade Faculty of Law, Belgrade, 2021, 100.

¹⁰ "Liquidation proceedings of a company shall be initiated and conducted in the following cases: the supervisory Agency revokes the company's operating licence; by a final court decision the registration of the company is declared null and void; or the company's general assembly decides to dissolve the company."

¹¹ In Serbia, for example, compulsory liquidation proceedings are initiated against a company upon revocation of the operating licence, but only if the conditions for the initiation of bankruptcy proceedings are not met. This means that, in the event of revocation of the operating licence, bankruptcy proceedings may be directly initiated as well. See: Nataša Petrović Tomić, *Pravo osiguranja – Sistem*, Book I, JP Official Gazette, Belgrade, 2019, 222.

proceedings involving Hercegovina osiguranje d.d. Mostar are of particular interest to the wider professional community. By decision of the Municipal Court in Mostar,¹² liquidation proceedings against this company were initiated in early 2011. In 2025, after more than 14 years, the special liquidation proceedings of Hercegovina osiguranje d.d. Mostar were concluded,¹³ after which, due to insufficient financial resources to continue the liquidation proceedings and the inability to realise the company's assets,¹⁴ bankruptcy proceedings were initiated directly.¹⁵ The creditors' assembly accepted the proposal of the liquidator to initiate bankruptcy proceedings directly, and given the absence of a bankruptcy assets, a public notice was issued to all interested parties to make the required advance payment.¹⁶ Within the prescribed 30-day period, no interested parties came forward to make the advance payment, and the court, citing Article 196 of the applicable Bankruptcy Law,¹⁷ concluded the bankruptcy proceedings and ordered the company's removal from the register of business entities.¹⁸

Article 69 of the PICL also provides for the application of general legislation to the bankruptcy or liquidation proceedings of a company, namely the Bankruptcy Proceedings Law,¹⁹ the Liquidation Proceedings Law,²⁰ and the Company Law,²¹ except where otherwise regulated by the PICL itself. For this reason, the general legislation that is no longer in force continues to apply to the active liquidation proceedings of

¹² Decision No. 58 0 L 076564 10 L of 12 January 2011.

¹³ On 30 June 2025, the Insurance Supervisory Agency of the Federation of BiH issued Decision No. 02-07.5-04-2123-1/25 concluding the special liquidation proceedings.

¹⁴ The liquidation administrator of Hercegovina osiguranje d.d. Mostar determined that there were no prospects for the realisation of assets, specifically the recovery of claims against Hercegovska banka d.d. Mostar in bankruptcy.

¹⁵ Decision of the Municipal Court in Mostar, No. 076564 10 L of 23 September 2025, concluding the liquidation proceedings and directly opening bankruptcy proceedings against Hercegovina osiguranje d.d. Mostar.

¹⁶ A public notice was published in the *Official Gazette of the Federation of BiH*, No. 76/25 of 3 October 2025, calling upon all creditors and interested parties to advance the deposit for the opening of bankruptcy proceedings in the amount of BAM 100,000.00.

¹⁷ The Bankruptcy Law, *Official Gazette of the Federation of BiH*, Nos. 53/21 and 19/25, which is currently in force, provides in Article 196 as follows: "(1) If, following the opening of bankruptcy proceedings, it is established that the bankruptcy estate is insufficient to cover the costs of the proceedings, the bankruptcy judge shall close the proceedings. (2) The bankruptcy proceedings shall not be closed if a sufficient amount is advanced [...]" The same provision is contained in Article 132 of the old Bankruptcy Proceedings Law of 2003. A comparison of the provisions of the two Laws resolves the question of whether the court should have applied the Bankruptcy Proceedings Law that was in force at the time the liquidation proceedings were opened, in the interest of the continuous application of the legal provision as indicated by Article 227 of the IL. See: *supra*, Introduction and Section 2.

¹⁸ Decision of the Municipal Court in Mostar, No. 58 0 St 076564 25 St of 24 November 2025.

¹⁹ Bankruptcy Proceedings Law, *Official Gazette of the Federation of BiH*, Nos. 29/03 and 32/04.

²⁰ Liquidation Proceedings Law, *Official Gazette of the Federation of BiH*, No. 29/03.

²¹ Company Law, *Official Gazette of the Federation of BiH*, Nos. 23/99, 45/00, 2/02, 6/02 and 29/03.

insurance companies in the Federation of BiH. If bankruptcy proceedings are initiated following the conclusion of liquidation proceedings, it is important, pursuant to the aforementioned provision of the IL, that those proceedings will also be conducted under the previous legislation, in order to preserve procedural continuity and ensure the application of the relevant regulatory framework. Moreover, the purpose of continuing bankruptcy proceedings under the earlier legislation should be to ensure legal certainty and protect injured parties, that is, creditors in the proceedings. This underlines the distinctive feature of the insurance market in the Federation of BiH, not only because of the high number of insurance company liquidation proceedings compared with other markets, but also because of the specific application of both general and special legislative provisions.

It is also prescribed under the relevant provision of the PICL that bankruptcy proceedings could not be initiated until the special liquidation proceedings had been concluded, and that the special liquidation was to be supervised by a temporary administrator appointed by the regulatory Agency. In practice, a noteworthy case is that of Lido osiguranje d.d. Tuzla, in respect of which the Municipal Court in Sarajevo issued, on 24 May 2019, Decision No. 65 0 St 273747 19 St opening bankruptcy proceedings against this company in liquidation. Following the intervention by the Insurance Supervisory Agency of the Federation of BiH, the same court rectified the error that had arisen due to the failure to apply the special sectoral legislation, set aside the decision initiating the bankruptcy proceedings, and ordered the continuation of the liquidation proceedings.²²

The fundamental purpose of the special liquidation derives from Article 69 of the PICL itself, which provides that the temporary administrator is "required, within five days of appointment, to file a request for the initiation of liquidation proceedings and for the appointment of a liquidator." Until the liquidation proceedings are initiated and a liquidator is appointed by the competent court, the temporary administrator performs the duties of the company's management board or director. Following the appointment of the liquidator, the temporary administrator monitors the progress of the liquidation, provides opinions on liquidation matters when requested by the liquidator, reports in writing to the Supervisory Agency on the progress of the liquidation every two months, carries out all tasks required by the regulator, and submits a report upon the conclusion of the special liquidation. Once the court opens the liquidation proceedings and appoints a liquidator, the role of the temporary administrator effectively takes on an advisory character. The relevant article of the PICL also provides that "the temporary administrator may intervene in court proceedings conducted by the liquidator". However, this intervention role of the temporary administrator in court proceedings has not been fully defined in terms of its content and form.

²² Decision of the Municipal Court in Sarajevo, No. 65 0 St 273747 19 St of 19 August 2019.

The PICL further provides for the expedited handling of ongoing court proceedings following the initiation of special liquidation proceedings and grants both the temporary administrator and the liquidator the authority to request such expedited treatment from the court. Although this statutory provision is consistent with the general principle of expedition in liquidation and bankruptcy proceedings, courts did not follow this approach in practice, and such cases were not accorded priority or expedited treatment in relation to other cases not arising from liquidation proceedings. The ongoing insurance company liquidation proceedings in the Federation of BiH have been pending for between fifteen and twenty years.

The Law also prescribed an obligation for the Insurance Supervisory Agency to establish a list of 30 potential temporary administrators and stipulated that such individuals possess specialised knowledge and experience in the operations of insurance companies and credit institutions. However, the Agency did not establish this list, and in certain insurance company liquidation proceedings did not appoint a temporary administrator at all. This best illustrates the approach to this institution, as well as the ambiguity of the statutory provisions and the impracticality of the temporary administrator's role as regulated. The role of the temporary administrator, although defined as advisory following the opening of the liquidation proceedings and the appointment of a liquidator, effectively loses its significance and purpose after the completion of the special liquidation procedure.

The foregoing also indicates that the special liquidation proceedings effectively function as an intermediate procedure prior to the opening of judicial liquidation proceedings, with the purpose of protecting the assets of the insurance companies and the interests of creditors. The aim of this procedure should be to establish a list of claims, with emphasis on claims arising from compulsory insurance. The purpose of the special liquidation, which should primarily be the protection of creditors, would be achieved by submitting the list of creditors established in the course of the special liquidation to the Guarantee Fund of the Federation of BiH.²³ The Guarantee Fund would be obligated to settle the amounts on the list of claims, together with accrued default interest, within a prescribed period and in chronological order based on the date of occurrence of the insured event. However, this purpose could not be achieved within the special liquidation proceedings, given the disparity between the deadlines set for filing a request to initiate judicial liquidation proceedings (5 days) and the deadlines for lodging claims (90 days from publication of the notice). Taking into account all of the above, as well as the duration of certain ongoing insurance company liquidation proceedings, it may be concluded that the special liquidation was provided for in order to protect the assets of the

²³ The Guarantee Fund of the Federation of BiH is a legal entity established under the Liability Insurance Law, operating under the supervision and control of the Insurance Supervisory Agency of the Federation of BiH, and is competent to cover damages not covered by compulsory insurance.

insurance company pending the initiation of judicial liquidation or bankruptcy proceedings.

Furthermore, Article 70 of the PICL referred to Article 2 of the then applicable Liquidation Proceedings Law, according to which the purpose of liquidation proceedings was to satisfy all creditors of a legal entity following the realisation of its assets. Article 70 of the PICL also set out the manner, conditions, time limits and procedure for notifying policyholders and claimants seeking insurance payments to submit their claims, as well as for lodging their claims..., in which case the liquidation judge would rule on the merits of each claim. The liquidation administrator provides an opinion to the liquidation judge, who makes the final ruling on the claim. Article 70 of the PICL also provided for the categorisation of claims as follows:

- a) beneficiaries of life insurance policies;
- b) beneficiaries of compensation under non-life insurance policies who have reported the occurrence of an insured event and whose claims have been duly recorded in the company's records; and
- c) any other persons who submitted their claims within the prescribed period.

From the above overview of the applicable regulation of insurance company liquidation proceedings, it is clear that the applicable sectoral laws provide only a general framework for the conduct of these proceedings. This points to the need for further application of general legislation, which in judicial practice may give rise to uncertainty as to which general provisions are to be applied, given the different periods during which they were in force.²⁴

1. The Role of the Guarantee Fund of the Federation of Bosnia and Herzegovina

In the context of the ongoing insurance company liquidation proceedings, it is important to highlight the role of the Guarantee Fund of the Federation of BiH, as well as the divergent judicial approaches in judicial practice regarding the obligations of that institution arising from such proceedings. The Liability Insurance Law did not regulate liquidation proceedings directly, but addressed them indirectly and in general terms in Article 16, which imposed an obligation on the Guarantee Fund of the Federation of BiH to compensate injured parties for death or bodily injury, and for property damage caused by traffic accidents in BiH where, *inter alia*,²⁵ "special

²⁴ See: *supra*, footnote 15.

²⁵ The other two circumstances in which the Law provided for this obligation of the Guarantee Fund are where the person responsible for the accident remains unidentified (in cases of death or bodily injury only) and where the accident was caused by a vehicle for which motor third party liability insurance was not concluded, and the vehicle is held by a person residing in the Federation of BiH.

liquidation proceedings have been initiated against a company registered in the Federation on grounds of bankruptcy or revocation of the operating licence due to failure to fulfil financial obligations under the Private Insurance Companies Law or the Liability Insurance Law.” Paragraph 4 of the same Article further provided that the Guarantee Fund is subrogated to all rights of the injured party arising from the accident against the person liable for the damage or their insurer, as well as against the assets of the company in special liquidation proceedings, and that the Guarantee Fund enjoys the privileged status of a compensation beneficiary as provided for in Article 71 (70)²⁶ of the PICL. That article of the PICL designates all claims arising from insurance contracts as privileged claims.

If the Liability Insurance Law together and the PICL are interpreted together, it is clear that the obligation of the Guarantee Fund arises upon the complete and final revocation of the operating licence of the insurance company. A precondition for this is the opening of bankruptcy proceedings, which, pursuant to Article 69, paragraph 5 of the PICL, may only be opened upon the completion of the liquidation proceedings. Until the liquidation proceedings are concluded, it cannot be determined which claims have been satisfied and which remain outstanding, nor the extent of the obligations of the Guarantee Fund. For this reason, in cases where creditors brought legal action²⁷ even for the payment of acknowledged claims, such actions were considered premature in judicial practice.²⁸

The difficulty with this issue lies in the judicial practice that initially took the position that the Guarantee Fund had passive standing in claims for damages from the very moment the operating licence was revoked, treating Article 16 of the Liability Insurance Law as the relevant legal basis for such a position. If this statutory provision is considered i and analysed separately, rather than in the context of the Law as a whole and of the other laws governing this area, a strict formal interpretation could indeed lead to the conclusion that the Guarantee Fund's obligation arose upon the initiation of liquidation proceedings, rather than upon their conclusion. However, the decision of the Supreme Court of the Federation of BiH of 19 December 2013 (No. 58 0 Mal 030723 11 REV) marked a turning point in judicial practice by establishing a clear position: the liability of the Fund of the Federation of BiH is subsidiary, and claims brought against the Guarantee Fund prior to the conclusion of the liquidation

²⁶ The Motor Liability Insurance Law refers to Article 70 of the PICL, whereas the privileged compensation beneficiaries are in fact regulated by Article 71 of the PICL.

²⁷ For example, Hercegovina osiguranje d.d. Mostar paid out from its liquidation estate only 23% of recognised claims in the second priority class (non-life insurance), and creditors sought to recover the remaining recognised claims under motor third party liability insurance through litigation against the Guarantee Fund of the Federation of BiH.

²⁸ See, for example, Judgment of the Supreme Court of the Federation of BiH, No. 63 0 P 017334 23 Rev of 10 May 2023.

proceedings are unfounded. In the period leading up to this clear judicial position, however, the Guarantee Fund had paid out millions in compensation.²⁹

Prior to the above ruling, the Supreme Court of the Federation of BiH had already adopted the same position on the subsidiary nature of the Guarantee Fund's liability in its judgment of 15 December 2011, No. 65 0 Ps 024356 10 REV. However, this did not represent the general position of the Supreme Court of the Federation of BiH, as subsequent decisions, namely No. 41 0 P00010 10 REV of 16 February 2012 and No. 39 0 P003869 11 REV of 18 September 2012, ordered the Guarantee Fund to pay damages notwithstanding the fact that the liquidation proceedings had not been concluded. Following the landmark Supreme Court ruling of 2013, all judgments adopting a contrary position were rendered without the involvement of the Supreme Court of the Federation of BiH, owing to the monetary threshold required for filing a revision appeal. Accordingly, the Guarantee Fund of the Federation of BiH addressed both through extraordinary revision proceedings³⁰ and by petitioning the High Judicial and Prosecutorial Council of BiH. All contested judgments were rendered by the Cantonal Court in Tuzla. Notably, these judgments did not call into question the subsidiary character of the Guarantee Fund of the Federation of BiH, but rather engaged in a form of legal reasoning, seeking to demonstrate that injured parties were unable to collect their claims even though the liquidation proceedings had not been concluded, which was contrary to Article 2 of the Liquidation Proceedings Law.³¹

Divergent judicial practice of the same judicial instance (the Supreme Court of the Federation of BiH) on identical legal and factual circumstances, was ultimately resolved by the aforementioned decision of 19 December 2013. The Supreme Court of the Federation of BiH took the legal position that the Guarantee Fund's obligation should be assessed in light of Articles 69 and 70 of the PICL, which regulate the Fund's obligation to compensate damages only after the completion of liquidation proceedings. This disputed interpretation of the provision was resolved *pro futuro* through Article 180 of the currently applicable IL, which provides that the Guarantee Fund of the Federation of BiH is obligated to pay compensation within a period of three years following the completion of liquidation proceedings.

²⁹ 284 claims totalling BAM 1,965,044.28 in respect of Bosansko-njemačko osiguranje d.d. in liquidation, and 8 claims totalling BAM 50,955.71 in respect of Hercegovina osiguranje d.d. in liquidation. By comparison, from 2013 to 2020, a total of 37 claims were paid out in the amount of BAM 906,768.59 (8 cases in respect of Bosansko-njemačko osiguranje d.d. in liquidation, 11 cases in respect of Hercegovina osiguranje d.d. in liquidation, and 18 cases in respect of Lido osiguranje d.d. in liquidation).

³⁰ Revision appeal against the judgment of the Cantonal Court in Tuzla, No. 32 0 Mals 329853 20 Pž of 14 February 2023.

³¹ Article 2 of the Liquidation Proceedings Law defined the purpose of those proceedings: "Liquidation proceedings are conducted over legal entities. They serve the complete satisfaction of all creditors of the legal entity through the realisation of its assets. If any assets remain thereafter, the members of the legal entity shall be satisfied from the remaining assets in proportion to their respective interests."

III New Legislative Solutions

Although no liquidation or bankruptcy proceedings of insurance companies are currently being conducted under the legislation in force in the Federation of BiH, it is necessary, in anticipation of potential future proceedings, to analyse the currently applicable legislation alongside the preceding legal framework. An analysis of the new legislative solutions regulating the liquidation of insurance companies in the Federation of BiH also reveals a degree of inconsistency. The Compulsory Motor Third-Party Liability Insurance Law (hereinafter: CMTPL Law) provides for the obligation of the Guarantee Fund of the Federation of BiH to pay compensation if they could not be recovered from the bankruptcy estate. The Insurance Law (hereinafter: IL), on the other hand, provides that in the event of insufficient assets, a list of creditors is drawn up and submitted to the Guarantee Fund of the Federation of BiH for settlement no later than three years from the date of submission. This may suggest that claims arising from motor liability insurance are excluded from the bankruptcy proceedings. Questions, in fact, arise in connection with the application of Article 194 of the IL, which provides that claims held by creditors against an insurance company over which bankruptcy proceedings have been opened, on the basis of compulsory insurance contracts, shall not be resolved in the bankruptcy proceedings. Instead, such creditors direct their claims to the Guarantee Fund of the Federation of BiH in order to ensure their full compensation. This gives rise to the further question of the purpose of opening bankruptcy proceedings where no bankruptcy estate exists and claims arising from compulsory insurance are to be satisfied at the expense of the Guarantee Fund of the Federation of BiH.

Under Article 195 of the IL (Priority Ranking of Bankruptcy Creditors), the Guarantee Fund of the Federation of BiH also has a right of subrogation for all payments made under Article 194, and such claims rank in the third higher priority class. This means that, in this scenario, the Guarantee Fund of the Federation of BiH appears as a creditor with claims against the bankruptcy estate, and that the primary creditors under compulsory insurance contracts do not participate directly in the bankruptcy proceedings. In any event, it follows from the foregoing that, in respect of a company in liquidation, the obligation of the Guarantee Fund of the Federation of BiH arises on a subsidiary basis, namely when recovery in the liquidation proceedings has proven impossible, and only in respect of claims based on compulsory motor liability insurance contracts that have been recognised in those liquidation proceedings.

The positive law of the Federation of BiH does not recognise the institution of special liquidation, but instead regulates ordinary and compulsory liquidation (Chapter X of the IL). The compulsory liquidation of an insurance company is carried out on the basis of a decision by the Supervisory Agency. The Insurance Supervisory

Agency of the Federation of BiH shall issue a decision revoking the operating licence of an insurance company in the exhaustively enumerated circumstances (Art. 180, para. 1 of the IL of the FBiH³²). The Supervisory Agency of the Federation of BiH issues a decision to initiate compulsory liquidation on the date the operating licence is revoked. Compulsory liquidation involves the identification and settlement of creditors' claims under insurance contracts. The compulsory liquidation proceedings are concluded either upon settlement of all obligations arising from insurance contracts or upon determination that the assets are insufficient to satisfy those obligations. The compulsory liquidation is supervised by the Supervisory Agency of the Federation of BiH, which has the right to intervene in judicial proceedings.

Bankruptcy proceedings against an insurance company are generally initiated when the company is unable to satisfy its obligations. If the liquidators determine that grounds for bankruptcy exist,³³ they are required, in accordance with Article 191 of the IL, to file a petition for the opening of bankruptcy proceedings without delay and to notify the Supervisory Agency of the Federation of BiH immediately.

Analysing the position of injured parties in the event of compulsory liquidation or bankruptcy of an insurance company, the applicable regulatory solutions provide for: compulsory liquidation; a creditors' committee as a corporate body; the supervisory Agency assuming the competences of the supervisory board and the general assembly of the insurance company, with authority to initiate ordinary judicial liquidation proceedings; the judicial liquidator issuing the decision on the recognition of claims; and the obligation of the Guarantee Fund of the Federation of BiH towards creditors identified through a special list arising upon the conclusion of the liquidation proceedings, with the Guarantee Fund then having three years to discharge its compensation obligations.

From the foregoing, it follows that the federal legislature has failed, even under the currently applicable legislation, to clearly distinguish compulsory liquidation

³² "a) if, on the basis of the report of special administration under Art. 161, para. 2 of this Law, it assesses that the financial position has not improved during the period of special administration to the extent that the insurance company achieves the solvency margin under Art.71 or Art. 72 of this Law, and that the conditions for filing a petition for the opening of bankruptcy proceedings are not met; b) if the shareholders' assembly convened pursuant to Art. 162 of this Law refuses to adopt a decision on increasing the share capital of the insurance company, or if such a decision is adopted but the initial sale of shares is unsuccessful; c) if the insurance company's operating licence has expired and, within three months of receipt of the decision under Art. 21, para. 2 of this Law, no proceedings for transformation, dissolution, or a new application for an operating licence have been commenced; d) if it assesses that the implementation of ordinary liquidation proceedings could cause harm to the policyholders and beneficiaries of the insurance company."

³³ Pursuant to Article 6 of the applicable Bankruptcy Law of the Federation of BiH, the grounds for bankruptcy on the basis of which a court may issue a decision to open bankruptcy proceedings are: a) the debtor's insolvency; b) the debtor's imminent insolvency; c) failure to comply with an adopted reorganisation plan; and d) if the reorganisation plan was drawn up fraudulently or unlawfully.

from the judicial liquidation proceedings that follow it, or to clearly define the rights and obligations of the various bodies involved in the compulsory liquidation proceedings. The role of the creditors' committee, which is constituted under the Law as a corporate body in compulsory liquidation, has not been clearly defined, and the powers of this body have not been regulated at all. The Law also fails to regulate the relationship between this committee and the bodies of the ordinary judicial liquidation proceedings, namely the liquidation judge and the liquidator. It is also questionable why the position of injured parties has been made more difficult, given that, as under the previous legal framework, they may pursue their claims against the Guarantee Fund of the Federation of BiH only after the conclusion of the liquidation proceedings, with the Guarantee Fund then being afforded a further three years to pay compensation. Given that, in practice, these proceedings last more than ten years, and that the existing regulatory framework provides for no greater degree of expedition than the preceding legislation, granting an additional period for the fulfilment of the Guarantee Fund's obligations does not provide sufficient protection for the rights of injured parties.

The legislature has paid additional attention to the protection of assets in bankruptcy proceedings. It has been provided that, in a petition for the opening of bankruptcy proceedings, the Insurance Supervisory Agency of the Federation of BiH may propose the appointment of a temporary bankruptcy administrator. The Agency may also propose such other interim measures as it considers necessary to prevent changes in the financial position of the insurance company from occurring prior to the issuance of the decision to open bankruptcy proceedings, which could be detrimental to policyholders, insurance beneficiaries and injured parties. In preserving the assets of the insurance company, and thereby protecting creditors' claims, the timely revocation of the operating licence and the Agency's exercise of its statutory powers are of critical importance.³⁴

IV The European Legislative Framework for the Reorganisation and Winding Up of Insurance Companies

In light of the identified deficiencies, not only in the currently applicable but also in the applicable regulatory framework governing insurance company liquidation proceedings in the Federation of BiH, it is necessary, for the purposes of improving legislative regulation *pro futuro* and aligning with the *acquis communautaire*, to examine how the European legislator has regulated liquidation and

³⁴ The operation of the Insurance Supervisory Agency of the Federation of BiH is itself a matter of dispute in the liquidation of Lido osiguranje d.d., where it is alleged that the Agency delayed the revocation of the operating licence for more than two years and potentially knowingly allowed the diminution of assets. This matter is the subject of ongoing litigation between the Insurance Supervisory Agency of the Federation of BiH and the Guarantee Fund of the Federation of BiH.

bankruptcy proceedings of insurance companies. The reorganisation and winding up of insurance companies in the European Union are governed by the Solvency II Directive,³⁵ which replaced the earlier Directive 2001/17/EC on the reorganisation and winding-up of insurance undertakings,³⁶ in this regard, Solvency II did not introduce any significant changes in the regulation of this area relative to its predecessor. The provisions of Title IV of Solvency II, which prescribe the rules on the reorganisation and winding-up of companies, apply only to insurance undertakings and do not extend to reinsurance undertakings.³⁷ The original text of Solvency II uses the term “winding up”, which may refer to both the liquidation and the bankruptcy of insurance companies. Reorganisation measures refer to any action taken by the competent authorities aimed at preserving or restoring the financial stability of an insurance company. At the beginning of last year, the European Parliament and the Council adopted Directive (EU) 2025/1 (IRRD) establishing a framework for the recovery and resolution of insurance and reinsurance undertakings,³⁸ which supplements the Solvency II regulatory framework by providing continuity of insurance protection for policyholders, insurance beneficiaries and injured parties, for the transfer of viable activities and portfolios of insurance companies, where appropriate, and for the allocation of losses in a fair and predictable manner.

The simplest method for assessing the compatibility of domestic legislation with European standards is to compare the provisions of Solvency II that set out the minimum institutional requirements and issues that the legislation of the home Member State must regulate in respect of winding-up proceedings. The areas of legal regulation are defined in Article 274, paragraph 2 of Solvency II as follows:

- a) the assets comprising the liquidation estate and the treatment of assets acquired or transferred to the insurance company after the opening of the winding-up proceedings;
- b) the powers of the insurance company or the liquidator;
- c) the conditions for the validity of set-off;
- d) the effect of the opening of the winding-up proceedings on existing contracts to which the insurance company is a party;

³⁵ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast) (Text with EEA relevance), OJ L 335, 17.12.2009, 1–155.

³⁶ Directive 2001/17/EC of the European Parliament and of the Council of 19 March 2001 on the reorganisation and winding-up of insurance undertakings, OJ L 110, 20.4.2001, 28–39.

³⁷ The reorganisation and winding-up of reinsurance undertakings is governed by the provisions of Directive 2005/68/EC.

³⁸ Directive (EU) 2025/1 of the European Parliament and of the Council of 27 November 2024 establishing a framework for the recovery and resolution of insurance and reinsurance undertakings and amending Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 and Regulations (EU) No 1094/2010, (EU) No 648/2012, (EU) No 806/2014 and (EU) 2017/1129 (Text with EEA relevance) PE/6/2024/REV/1, OJ L, 2025/1, 8.1.2025.

- e) the effects of the initiation of winding-up proceedings on individual enforcement actions brought by creditors, other than the effects on pending litigations;
- f) the claims that may be lodged against the liquidation estate of the insurance company, and how claims arising after the opening of the winding-up proceedings are to be treated;
- g) rules governing the lodging, examination and determination of claims;
- h) rules governing the distribution of proceeds from the realisation of assets, the priority ranking of claims, and the rights of creditors who, after the opening of the winding-up proceedings, have been partially satisfied by virtue of a right in rem or through set-off;
- i) the conditions and effects of the conclusion of the winding-up proceedings, in particular by composition agreement;
- j) the rights of creditors after the conclusion of the winding-up proceedings;
- k) the party bearing the costs of the winding-up proceedings, including costs arising from the proceedings; and
- l) the rules governing which legal acts are void, voidable, or partially ineffective because they are detrimental to the general body of creditors.

Taking into account the special sectoral legislation currently regulating insurance company liquidation proceedings in the Federation of BiH, it is clear that the scope of the required legal regulation indicated by Solvency II is broader and calls for more detailed provisions. In the absence of special provisions, however, general legislation naturally applies. Comparing the content of the general legislation in the Federation of BiH with the said Solvency II provisions, it may again be concluded that domestic law does not define, or does not define in a manner adapted to the financial market, all the matters to which Solvency II points as the minimum required regulation of insurance company liquidation and bankruptcy proceedings. Domestic laws governing insurance company winding-up and bankruptcy fail to address certain matters that the European legislator defines as substantive institutions which national legislatures should regulate. Solvency II, for example, provides for the possibility that the regulator may partially leave the operating licence in force to the extent necessary for the liquidator or other competent person to carry out certain activities of the insurance company to the extent needed or appropriate for the purposes of the winding-up.³⁹ Even setting aside the subsidiary application of general domestic legislation governing bankruptcy and liquidation, numerous issues remain unclear, uncertain or subject to divergent interpretations.

³⁹ Nikolina Maleta, *Statusno pravo osiguranja Europske unije i Bosne i Hercegovine*, University of Mostar Pressum, Mostar, 2023, 132.

Solvency II further provides that insurance claims shall take priority over other claims against an insurance company, but also prescribes possible exceptions:

- a) employees' claims arising from employment contracts and employment relationships;
- b) tax claims of public authorities;
- c) social security claims; and
- d) claims based on assets subject to rights in rem (Art. 275, para. 1, *Solvency II*).

It follows that the currently applicable domestic legislation does not recognise the priority ranking of claims in accordance with European standards, given that neither employees' claims nor claims based on rights in rem are included among the higher priority classes (see Art. 195 of the IL).

Solvency II further requires every insurance company to maintain, at its registered office, a special register of assets used to cover technical reserves calculated and invested in accordance with the law of the home Member State (Art. 276, para. 1, *Solvency II*). Where an insurance company provides both life and non-life insurance services, it is required to maintain two separate registers.⁴⁰ Given that composite insurers also operate in the insurance market of the Federation of BiH, this provision of the European legislator should also be taken into account.

National legislation may provide that, where a guarantee scheme established in a Member State has been subrogated to the rights of creditors of an insurance company, the claims of that scheme are not included among the insurance claims that enjoy priority over other claims. Where, under national legislation, insurance claims take priority over other claims, with the exception of claims by the State and employees (tax and social contributions, employment claims, and claims based on rights in rem), every insurance company must ensure that such claims are covered by assets at all times, and independently of any potential winding-up proceedings.

An analysis of the applicable sectoral legislation in the Federation of BiH leads to the conclusion that there is a pressing need for further alignment with the principles set out in Solvency II, particularly with regard to the protection of the interests of creditors and, specifically, the rights of traffic accident victims. What is needed in future legislative activity is genuine alignment, not merely declaratory references to European Union regulations. In forthcoming legislative interventions in the insurance market of the Federation of BiH, it will be necessary to incorporate specific solutions of the European legislator directly into the statutory provisions, rather than making general references to alignment with European standards. Given the scope and substance of the Solvency II provisions regulating insurance company winding-up and bankruptcy, it may be concluded that it would be more practical and legally certain, for the domestic legal system, to regulate this area through separate

⁴⁰ *Ibid.*, 131.

legislation – a Law on the Liquidation and Bankruptcy of Insurance Companies, or at least a Law on the Liquidation and Bankruptcy of Financial Institutions, along the lines of the approach taken, for example, by the Serbian legislature.⁴¹ The minimum required legal regulation presupposes more extensive provisions on insurance company liquidation in the special laws governing the insurance market, so as to avoid the inadequacy of general legislation. Both approaches to regulating insurance company bankruptcy and winding-up are acceptable, i.e. what matters is not so much whether the rules are contained in special law or in the general insurance law, but how comprehensive and tailored those rules are.⁴²

V Conclusion

The insurance market of the Federation of Bosnia and Herzegovina is one of the few relatively small insurance markets in which multiple ongoing insurance company liquidation proceedings remain ongoing. Starting from the fact that such proceedings are extremely protracted, often lasting more than ten years, and that only rarely, as in the case of Una-Sana osiguranje d.d. Bihać, have creditors been fully satisfied, it is necessary to seek new legislative solutions capable of providing creditors with better and more effective protection, particularly those holding claims arising from compulsory motor liability insurance.

Although the duration of liquidation proceedings in this region does not differ significantly from that of neighbouring countries, it is necessary to emphasize the urgency of providing better and more effective protection for injured parties, particularly victims of traffic accidents, many of whom remain no closer to the enforcement of their rights even after a decade. Based on these facts, one cannot help but question the (non-)existence of a meaningful purpose in the applicable legislative framework, and the tension between form and substance, as well as the ultimate objectives of insurance company liquidation proceedings. If one adds to this the inconsistent judicial practice, including erroneous interpretations of statutory provisions in judicial decisions that have contributed to a degree of instability in the institutional framework of the insurance market, it is clear that liquidation proceedings on the insurance market of the Federation of BiH have been marked by a number of controversies. These negative experiences must serve as a lesson to all active participants in the insurance market, and in particular to the legislator, whose duty should be to provide solutions that ensure the effective exercise of creditors'

⁴¹ Law on Bankruptcy and Liquidation of Banks and Insurance Companies, *Official Gazette of the Republic of Serbia*, Nos. 14/15 and 44/18.

⁴² See also: Jelena Lepetić, "Poseban režim stečaja društava za osiguranje", *Zbornik radova Novi proizvodi osiguranja, tehnološke inovacije i zaštita korisnika u osiguranju* (ed. Nataša Petrović Tomić), Belgrade, 2025, 194.

statutory rights within a reasonable period of time, while ensuring that the new regulatory framework does not undermine the stability of the financial market and the functioning of insurance companies.

The systemic risk associated with the operations of financial market institutions, including insurance companies, justifies the need for a special legal regime governing the bankruptcy and liquidation of insurance companies. This entails the adoption of specific provisions distinct from those contained in the general legislation on bankruptcy and liquidation proceedings. Such specific provisions may be contained either in the general sectoral legislation or in a separate law that exclusively regulates the bankruptcy and liquidation of insurance companies. The latter solution would undoubtedly simplify the application of the regulatory framework, resolve the problem of legislative inconsistencies and the legal dilemmas encountered in their application, and, most importantly, contribute to a higher degree of certainty and protection for creditors, insurance service users, and the stability of the market as a whole.

Given the duration of the liquidation and bankruptcy proceedings of insurance companies in the insurance market of the Federation of BiH, it is clear that they are not aligned with the principle of expedition that characterizes general bankruptcy and liquidation proceedings. The priority ranking of claims should also be more precisely defined, in particular, a distinction should be drawn between the priority ranking of claims arising from different classes of non-life insurance, given that different types of insurance cannot have the same priority and should not be placed in the same ranking category.

The Insurance Supervisory Agency of the Federation of BiH has a particularly important role in the timely initiation of insurance company liquidation proceedings. The timely revocation of the operating licence is of vital importance, as any unnecessary delay creates the possibility of a reduction in the company's assets, as well as delays and difficulties in the satisfaction of creditors' claims. Therefore, it is essential that the statutory provisions clearly and unambiguously establish conditions under which the Agency is required to revoke an operating licence, leaving as little room as possible for discretionary decision-making. In other words, the legal framework and the criteria governing such assessments should be defined more precisely.

In light of all the dilemmas, ambiguities and adverse consequences of the insurance company liquidation proceedings in the insurance market of the Federation of BiH, together with the unquestionable need for better, more systematic and comprehensive legislative regulation of this area, it may be concluded that the insurance community in the Federation of BiH must learn from its own experience and create the conditions for a more systematic approach to managing the risks that lead to the liquidation and bankruptcy of insurance companies – by assuming responsibility, applying the law not merely as a formal compliance exercise, but as

a means of achieving its purpose, which is ultimately aimed at ensuring better protection of creditors and injured parties. For other markets, the empirical experiences from ongoing insurance company liquidation proceedings in the Federation of BiH may serve as a valuable case study from which they can draw to further strengthen their own regulatory frameworks and prevent the repercussions that the insurance sector in the Federation of BiH has experienced, or continues to experience.

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