INSURANCE - GREECE

Policyholder protection funds

December 15 2015 | Contributed by KG Law Firm

The International Association of Insurance Supervisors and the Organisation for Economic Cooperation and Development have both recognised the role that policyholder protection funds can play in maintaining consumer confidence in the insurance sector – something which has assumed even greater importance post-financial crisis. Experiences from countries where such schemes have already been tested can help to inform initiatives to strengthen policyholder protection elsewhere.

AUTHORS

Konstantinos S Issaias

Paraskevi Kalogerakou

Does your country have a policy protection fund (PPF) system?

As in other financial sectors,(1) guarantee funds have been set up for the protection of insureds and third parties in the insurance sector.

Compulsory car insurance

The Auxiliary Fund was established in 1986 to cover damage caused by car accidents.(2) The Auxiliary Fund provides third parties with financial cover for damage and personal injuries caused by motor vehicles for any reason and in any case not due to intentional misconduct by the insured,(3) or when the insured cannot be identified.

By covering the risk of insurers for compulsory third-party liability, the Auxiliary Fund serves a socio-economic purpose that benefits the public and the market.

All insurers that assume the risk of third-party liability motor insurance must participate in the Auxiliary Fund.

The Auxiliary Fund assumes the obligations of the insurer which covers the vehicle by covering the risks of third-party liability in the event of insolvency or revocation of the operation licence due to breach of law, or if enforcement proceedings against an insurer are unsuccessful.

The third party which suffers damage has the right to bring a direct claim against the Auxiliary Fund in the latter's capacity as a legal entity, which otherwise is not provided for in the Insurance Contract Law (2496/1997).(4)

In addition, the Auxiliary Fund may well issue proceedings against the driver of the uninsured vehicle or the driver who has acted in a deliberate or grossly negligent manner, causing the accident.

Life insurance

The operating licences of two well-known life and health insurers, ASPIS Pronoia AEGA and AEZ and Commercial Value SA, were revoked(5) at the beginning of the Greek financial crisis in 2009/1010. This left thousands of Greek policyholders exposed without cover and facing uncertainty regarding the premiums they had already paid.

In response, in an effort to better safeguard the interests of insureds, the Private Life Insurance Guarantee Fund was established.(6) This fund is a private law entity which acts under the supervision of the Bank of Greece Department of Private Insurance and which intervenes to protect the interests of policyholders in cases where an insurer engaged in life insurance goes bankrupt or enters into liquidation following revocation of its operating licence.

Who is responsible for generating this fund?

Auxiliary Fund

All insurers engaged in third-party liability insurance for car accidents automatically become members of the Auxiliary Fund, whether they are established in Greece or acting on the basis of the freedom to provide services regime. Following recent adjustments, the contribution payable amounts to 6% of the gross insurance premium.

Private Life Insurance Guarantee Fund

The following should become members of the Private Life Insurance Guarantee Fund:

- insurers established in Greece;
- branches of insurers of non-EU countries;
- branches of insurers of other EU or European Economic Area member states; and
- insurers engaged in cross-border services on the basis of the freedom to provide services regime.(7)

The contribution to the Private Life Insurance Guarantee Fund is up to 1.5% of the total annual gross premium, half of which is payable by the insurers, members of the Private Life Insurance Guarantee Fund, and the other half by the insureds.(8) The contribution is shown in each life insurance policy and is exempt from taxes or duties.

It has been claimed that the obligatory nature of the contribution acts as a disincentive to buy insurance and that the percentage is too high, as it is higher than contributions for other similar funds in the European Union.

Insurers must pay the contribution for all policies concluded or renewed during a two-month period within one month of that period ending.

What do insurers gain from contributing to the fund?

Insurance activity is enhanced by the operation of PPF in the local insurance market. Risk gaps within the insurance market are mitigated, which could otherwise allow the public to be distracted from the benefits provided by the insurance sector. Insurers are obliged by law to participate in PPF in order to contribute to the protection of the insurance transactions, which in turn boosts public trust in insurers.

What is the impact on the insured?

Auxiliary Fund

The benefits of the Auxiliary Fund are self-evident: it provides the public with peace of mind in cases where uninsured vehicles are involved in car accidents or where the driver who caused the damage or injuries cannot be identified. Similarly, insureds and third parties are insured where there are solvency issues or an insurer's licence has been revoked.

It has been claimed that the legal limits on Auxiliary Fund protection are too low. In particular, in regard to moral damages (ie, damages awarded by the courts in case of death or injury for pain and suffering), a case currently before the Plenary Assembly of the Supreme Court centres on whether the limits provided by law should be observed or whether the law imposing such limits breaches the Constitution.

Private Life Insurance Guarantee Fund

Life insurance policyholders are happy with the premiums they pay, since they are safeguarded against unfortunate events and solvency risks which may arise, for example, as a result of the financial crisis.

The Private Life Insurance Guarantee Fund replaces an insolvent insurer from the date on which it is declared insolvent or its operating licence is revoked and assumes the obligations arising from the life insurance policies. The fund further replaces the insurer in all ongoing litigation and pending disputes, and manages its assets.

However, despite the obvious benefits, the limits imposed by law on the monetary cover provided to insureds (ie, up to €30,000 per insured in case of redemption of life insurance policies and up to €60,000 per insured in case of death or permanent total disability) have been criticised.

What have been the practical experiences of PPFs to date?

Less than two years after it was established, the Private Life Insurance Guarantee Fund was called to settle the claims of insureds of VDV Leben International AEAZ, an insurer whose licence was revoked on January 10 2011. The insurer had no major assets and was subject to liquidation in accordance with the insurance legislation.

The Private Life Insurance Guarantee Fund was responsible for paying all verified claims arising from the insurance policies of the insolvent insurer. As a result, the Private Life Insurance Guarantee Fund paid €16.7 million – representing 47% of the total claims verified.

To what extent can PPFs encourage and enable underpricing of coverage (and even fraud) by insurance company executives, and what can be done to revise executive compensation rules to combat this?

In the light of EU guidelines dealing with insurance guarantee funds,(9) the Greek legislature attempted to regulate and supervise the operation of life insurers by introducing the Private Life Insurance Guarantee Fund and its Management Committee, which is composed of insurers (Articles 9, 11 and 12 of Law 3867/2010).

It is hoped that this self-regulation regime will prevent any attempts to abuse the existence of funds and assist in combatting unfair competition.

What role does the insurance regulator play in this framework? Can the regulator be held liable for failing to protect the insureds in the event of an insurer being declared insolvent?

Since the regulator is responsible for the financial supervision of insurers – including the protection of the interests of insureds, third parties and the public – in principle it could be held liable for any acts or omissions in the performance of its duties.

In practice, in actions filed by policyholders and insureds of Aspis Pronoia, whose operating licence was revoked and which entered into liquidation, the Council of State has held(10) that the liability of the state and its organs (ie, civil servants) exists only in case of major fault on the part of the regulator. The Supreme Administrative Court has also found(11) that the facts surrounding Aspis Pronoia did not justify the triggering of such liability.

Within the reasoning of this decision, the court held that the introduction of the law on the Private Life Insurance Guarantee Fund, which protected the insureds in that case, was a fundamental reason why the general basis of liability(12) for acts or omissions of state organs cannot apply directly in cases where the action is brought against the regulator for acts or omissions of its officers in the performance of their supervisory duties.(13)

For further information on this topic please contact Konstantinos S Issaias or Paraskevi Kalogerakou at KG Law Firm by telephone (+30 210 8171 500) or email (k.issaias@kglawfirm.gr or p.kalogerakou@kglawfirm.gr). The KG Law Firm website can be accessed at www.kglawfirm.gr.

Endnotes

(1) Guarantee funds intended to protect customers of financial sector firms are established and operate in Greece in accordance with the respective EU directives (ie, for credit institutions, the Deposit Guarantee and Investment Fund; for investment firms, the Co-guarantee Fund; and for credit risks relating to the settlement of the stock exchange transactions, the Auxiliary Fund).

(2) Chapter B, Article 16 of Presidential Decree 237/1986.

(3) The initial version of the law also covered the intentional causation of a car accident, which is not covered by insurance.

(4) The provision for direct action against the insurer is still not in force, as the relevant ministerial decision has not been issued (Article 26 of Law 2496/1997).

(5) *Greek Government Gazette* Vol 11292/21-09-2009 and *Greek Government Gazette* Vol 1468/26-02-2010, respectively.

(6) Law 3867/2010 on the Supervision of Private Insurance.

(7) These last two categories to the extent that they are not already covered by relevant funds in the countries in which they were originally established.

(8) According to the law, the contribution percentages payable in respect of each relevant class of insurance are specified by decision of the management committee of the Private Life Insurance Guarantee Fund approved by the Bank of Greece.

(9) European Commission White Paper on Insurance Guarantee Schemes, July 12 2010.

(10) Decision 3783/2014.

(11) Decision 3783/2014.

(12) Article 105 of the Civil Code.

(13) Despite the fact that the law was introduced only after the collapse of the insurer and the insureds and/or the failed insurer had paid no contributions to the Private Life Insurance Guarantee Fund, when the insurance policies were issued, they were covered by the fund.
