

Property Insurance

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ABSTRACT: The paper presents the topic regarding the insurance of assets, defining the insurance agreement and the notion of "asset" in the legal sense, the principles underlying the insurance, the classification of the assets, the distribution of the insurances according to their object, as well as the object of the insurance of assets mentioned in the insurance agreement. Also, the specific elements of this type of agreement can be found in the paper: the period of insurance of assets, the beginning and termination of liability, the insured interest- a condition imposed on the insurance agreement arising from the principle of damage compensation, the insured risk, that future and possible event, the conditions that an event must fulfil and also the insured case.

KEYWORDS: insurance, movable assets, immovable assets, insured risk, insured case

Introduction

Insurances are those policies that come to the aid of natural or legal persons, in order to protect them against natural disasters, diseases or accidents. More and more people want to conclude such insurance contracts, in case of a damage caused to the property which is part of their assets. The property insurance is not required by law, being an optional insurance.

The agreement of will between the insured and the insurer, made under the form of a contract, represents the insurance in the event of occurrence of a risk, based on the principle of mutuality, within the meaning that the insured must pay an amount of money to cover the damages. The insurer takes over the risk and undertakes to pay an indemnity to the insured upon the occurrence of the insured event.

The insurance contract implies certain conditions of validity, such as: the existence of the insurance object, a freely expressed consent, as well as a term agreed between the contracting parties.

Insurance companies determine what types of property they can insure in case of theft or other events. The property can be provided by the owner or by another person using it. The insured amount is determined according to the real value of the property.

The properties are considered to be those assets which meet the needs of man and which have economic value. Properties existing in the present, as well as those from the future, can be insured, and represent thus the object of insurance.

Insurance companies specify that degraded properties are not accepted to be insured. The insurer can check whether the insured property has been maintained.

The concept of insurance and the notion of "property"

There is a lot of uncertain future phenomena in terms of occurrence that may affect certain categories of natural or legal persons. After the payment of certain amounts of money (insurance premiums) to certain specialized companies (insurance companies), these persons can establish an insurance fund.

Persons interested can use this fund, only insofar as they have contributed to its establishment, in order to protect their assets against any damage caused by the dangers that have united them.

Between the persons interested in insurance (insured) and the insurance company (insurer), monetary distribution relationships are achieved:

- firstly, by means of the payment of the insurance premiums by the insured to the insurer.

- secondly, by the granting of damage compensation by the insurer, in the form of an indemnity, in case the property or interests of the insured person are affected (Iliescu 1999, 8-9).

The insurance contract is the legal deed by which a person, called the insured undertakes to pay an amount of money (insurance premium) to a specialized legal person, called the insurer, in exchange for which the latter takes over the risk of a certain event determined, by means of the payment that will be made to the insured or to the beneficiary of the insurance, as damage compensation, within the agreed limits and deadlines (Iliescu, 1999, 26).

"The properties" within the legal meaning of the word are only those things that have economic utility, that is of meeting a need and which can be appropriated in the form of patrimonial rights.

It follows that in civil law only those assets which cumulatively fulfil the following two conditions can be considered properties:

- a) The asset has an economic value, useful to meet a material or spiritual need of the human being.
- b) To be able to be appropriated in the form of patrimonial rights.

Our civil code uses the term of property in two senses or acceptances. Thus, in the narrow sense (*stricto sensu*), the property is understood as an economic value that presents utility in meeting the material and spiritual needs of man, being susceptible of appropriation in the form of patrimonial rights. In the broad sense (*lato sensu*), properties mean both the assets and the patrimonial rights that have these assets as object (Lupulescu 1998, 65-66).

Insurance principles

The organization of the insurance activity is based on a sum of principles, which represents the framework of this activity, among which we mention:

- *The principle of unity*, which considers the development of a unitary policy in this field, both at the system level and at the level of each insurance company; the unity of insurances is also given by the unity of the rules and rates of insurance, by the unity of the financial base
- *The universality of insurance*, as a principle, implies that a very wide range of properties (almost universal) can be insured against many and the most varied risks.

Within the limits allowed by law, insurance companies shall determine the types of assets they can insure, as well as the risks that these are willing to cover according to the company policy.

- In the insurance of properties or of civil liability, we can speak of the *principle of indemnity* of the compensation, because the level of the indemnity cannot exceed the value of the damages or the real value of the insured properties, following the patrimonial support of the insured, and not its enrichment.

- The insurance is concluded only for properties and risks clearly determined by the insurance contract. *The individualization* of the insured or of the beneficiary of the insurance is made by means of the policy issued by the insurer, and regarding the risks, by the insurance conditions that are an integral part of the contract.

- *The principle of mutuality of insurances* is based on the existence of a risk community, within the meaning that several natural or legal persons threatened by the same risks will pay certain amounts of money in order to form a fund (insurance fund).

- *The principle of economic efficiency* follows that the insurance offer, as well as the risks, the amounts included in the contract correspond to some real requirements of the economic agents and not only (Iliescu 1999, 11-12).

Classification of properties

The distribution of the insurances, according to their object, determines three categories of insurances: of persons, of civil liability and the property insurance.

The property insurance can be found in different forms in other categories of insurance obtained according to different classification criteria.

In order to determine generically what could be the proprieties that can be covered by insurance, we found it interesting to present them based on the structure of the classification of property from civil law (Iliescu, 1999, 20-21).

According to the physical characteristics, the properties can be corporeal, that is, those that have a body, a tangible existence, such as movable or immovable properties by their nature:

- ***Intangible properties*** are those that have an ideal, abstract existence, such as claim rights and real rights, except ownership right (Prediger, 2011, 72).

Regarding ***movable properties***, we have to make the following distinction:

- Movable proprieties by their nature are those that can be transported from one place to another.

- Movable properties by law (bonds and shares that have as object amounts due or real estate effects).

- movable properties by anticipation (those properties which, by their nature are immovable, but which the parties of a legal deed consider as movable in consideration of what will become, for example: fruit and harvests not yet harvested, but alienated by legal deed, in advance).

With regard to ***immovable properties*** the following distinctions must be made:

- Immovable properties by their nature.

- Properties according to the object to which it is applied.

- Properties by destination (Constantinescu, 2000, 83).

Those properties that can be acquired or transferred by means of a civil legal deed are part of the category of the properties from the civil circuit.

Individually determined properties are those properties that are individualized by means of own, special (unique) characteristics. Generically determined properties are those properties that are individualized by the special features or the category they belong to (Constantinescu 2000, 85).

Fungible properties are those properties that can be replaced by one another in the performance of an obligation. In principle, all properties of kind and consumptive ones are fungible.

Non-fungible properties are properties that cannot be replaced in the performance of an obligation. Single properties are properties of this kind (Prediger 2011, 80).

Properties that can be divided into several parts, without thereby changing their economic destination, are called ***divisible properties***.

The properties which, by dividing them into several parts, lose their former economic purpose are ***indivisible properties***.

The properties that serve the use of other properties, which are linked by an economic purpose, are called ***accessory properties***, and the ones that they serve are called ***main properties*** (Lupulescu, 1998, 73).

Regarding the classification of properties into properties that belong to the public or private domain of the state, we specify that the ***properties - public property*** belonging to the private domain of the state can be ensured the same as the ***properties - private property***, without any restriction (Constantinescu, 2000, 86).

The specific elements of this type of contract

The insured interest is a condition generally imposed on insurance contracts and arises from the principle of damage compensation. A person may require the performance of the services provided in the insurance contract only if he/she has an insurable interest.

The insured interest represents the effective damage and assessable in terms of money that the person interested in insuring the property can have in case of occurrence of the insured event (Constantinescu 2000, 90-91).

The lack of the insurance interest results in the insurer's refusal to conclude the insurance, and the loss of interest during the insurance contract determines its termination.

Specifically, when the total or partial loss of the property fails to cause any damage to the assets of a person, he/she has no interest in insurance and thus cannot conclude, on his/her own behalf, an insurance regarding that property (Nemeş 2011, 255).

The *insured risk* is a future event, possible, but uncertain, to which properties or the assets of a natural or legal person are exposed throughout the insurance, an event that does not occur from the will of the insured or of the insurance beneficiary.

The conditions that an event must meet in order to be a risk included in the insurance are as follows:

- The event should be future and possible
- The event should be uncertain, both in terms of moment and intensity
- The occurrence of the event should be subject to hazard
- The occurrence of the event can be subject to statistical evidence and the probability of its occurrence can be calculated.

The properties can be insured for risks such as: complete or partial destruction, theft, fire, floods, earthquakes, landslides, strong winds and any other events that could have harmful consequences on the property and implicitly on its owner (Nemes, 2011, 255).

The insured case is the insured risk that occurred. Unlike risk, which is a future and uncertain event, the insured case is the event that occurred (Constantinescu, 2000, 90-91).

Conditions of validity of the insurance contract

In order to be valid, the insurance contract must comply with all the legal provisions regarding: the ability to conclude contracts, the consent, the object of the contract and the cause.

The ability to conclude a contract

The essential, general and substantive condition that consists in the ability of the subject of civil or commercial law to become a subject with rights and obligations for the conclusion of legal deeds is called, as a rule, the ability to conclude a contract.

The natural persons, the insured, can be subjects of a legal insurance report, insofar as they fulfil the conditions required by the law to contract and have the necessary discernment for this.

An insurance contract is considered valid, as far as there is an ability to conclude a contract, only if the insured has full legal competence. For those who have a limited legal competence, their legal representatives, parents or guardians can conclude the insurance (Tudor and Almajanu 2003, 116-117).

Consent must meet the following conditions:

- To be given by a person with discernment
- To be given (expressed) with the intention to bind
- To be outspoken
- The will manifested has to be free; it should not be manifested under external pressure
- The expression of the will has to be conscious (Niţoiu, 2003, 32).

The object of property insurance is the one specified in the insurance contract, which may consist of properties owned by natural or legal persons, or properties held under another title (based on a lease, concession agreement, etc.); existing goods but also future goods can be insured. Regarding the condition of the properties from the moment of the conclusion of the contract, generally, the insurance companies do not accept to insure properties which, due to degradation, can no longer be used according to their purpose. The insured undertakes to maintain the insured property in good conditions and in accordance with the legal provisions, in

order to prevent the occurrence of the insured risk, as the insurer has the right to check how the insured property is maintained.

In the event of non-compliance with these obligations, the insurer may terminate the insurance contract, while the reinstatement of the insurance will be made after the insured proceeds to remedy the deficiencies.

Properties are insured according to the amounts declared by the insured, the insurer counting on his/her good faith, as the insured amount cannot exceed the value of the property from the date of the insurance.

The insurance produces effects only within the limits of the value of the insured property from the moment the risk occurs. If, before the insurer's liability takes effect, the insured event occurred and the insurance remained without object, or if the occurrence of the insured event became impossible, the insurance contract is terminated as of right, and the insurance premiums paid for the period subsequent to termination will be returned to the insured.

Following the occurrence of the risk, the representatives of the insurer will check the authenticity of the facts declared by the insured regarding the causes and the size of the damages, while the facts found on the site will be recorded in a minutes signed by both parties. No compensation shall be granted if the damage was intentionally caused by the insured, the contractor or the beneficiary, or by a member of the insured legal person's management.

Regarding the occurrence of damages caused to the properties insured due to natural disasters, some insurance companies grant damages only insofar as the policy includes special clauses regarding these additional risks, the insurance premium being increased accordingly.

The insurer undertakes to pay the damages only insofar as the material damages suffered are a direct consequence of the insured case. The insured undertakes to declare the existence of other insurance for the same property at different insurers, both upon the conclusion of the insurance contract and during its performance. The insured has the possibility to opt for the increase of the insurance amount, the insurance premium being increased accordingly in this case. The insurer can opt for the termination of the contract after the compensation is granted, and shall return to the insured the premiums paid for the period subsequent to the termination. The property insurance contract can be concluded by any interested person, natural or legal, provided it is not declared incapable by means of the law (Constantinescu 2000, 87-90).

The *cause* in the insurance contract is that element which consists in the object pursued upon the conclusion of an insurance contract. Together with consent, the cause forms the legal will. The elements of the cause of the contract are the immediate purpose and the mediated purpose.

The immediate purpose lies in the fact that one party is bound, knowing that the other party also binds itself. The mediated purpose consists in the determined reason of the conclusion of such a contract, which refers to the characteristics of certain services or the qualities of certain persons (Tudor and Almăjanu, 2003, 121).

Termination of the property insurance contract

The property insurance contract is subject to the causes of termination of insurance in general. The property insurance contract ceases due to the expiry of the term for which it was concluded, by unilateral termination, by termination for failure to perform or improper performance of the contractual obligations. But the property insurance contract also ceases for certain specific causes, such as the loss of interest in insurance and occurrence of the insured risk.

Besides the general causes of termination of insurance specific for the termination of the property insurance contract is the loss of interest in insurance. A person who suffers a damage if the insured event happens has an interest in insuring a property.

If the owner sells the insured property, he/she loses interest in the insurance, because the total or partial loss of the property does not result in any consequences regarding the assets of the seller. Therefore, when the natural or legal person loses any relation to the property the total or

partial loss of which could not cause it any damage, the insurance contract of the respective property is also terminated.

The effects of the insurance contract as a result of the occurrence of the insured case will differ with respect to the extent of the damage. If the insured risk had as a consequence the total loss of the property, the contract ceases due to the loss of interest in insurance. When the damage is not total, namely the occurrence of the insured risk caused only the partial loss of the property, the contract survives until the occurrence of the causes of termination, but the insurer will indemnify in relation to the value of the damage occurred.

In case of partial damages, the insurance contract does not cease, because, after the reinstatement of the insured property in a state of use, the interest of the insured expressed by the continuation of the exploitation of the property is reactivated. Therefore, the occurrence of the insured case is the cause of termination of the insurance contract in the circumstances in which the insured property perishes (Nemeş, 2011, 261-263).

Conclusions

The need for a property insurance results from the need of humans for protection against uncertain, future events. By opting for such insurance, any natural or legal person can choose what properties can be insured, such as those found in storage, repair, processing etc. The insured will more easily overcome the problems that arise both in terms of the time for the remedy of the damages, as well as of the financial part, regardless of the risks to which they will be exposed.

Insurance represents protection against natural disasters or losses, thefts, robberies. The insured property must exist so that the insured has a patrimonial interest if an event that causes a damage occurs. The benefits of such insurance are that the vast majority of them are flexible and can be shaped according to the needs of each one. More and more companies encourage natural or legal persons to conclude such contracts, precisely to help them discover the benefits and in what category each person's properties may be included. Therefore, concluding an insurance has become a priority.

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