

Insurance Relations Arising on the Basis of Insurance Contract

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Abstract: *The paper discusses the features of the relationship between the insurer and the insured arising on the basis of an insurance contract. The establishment of the amount of insurance premiums is especially highlighted depending on the subject of the insurance contract, the insured property interest, the insured risk, the conditions upon the occurrence of which the insurer has obligations to make insurance payments, as well as the procedure for determining and the amount of insurance payments.*

Key words: *insurance contract, insurance risk, insurance payment, insurer, compulsory insurance, policyholder, interest, policyholder's potential, insurance object.*

Introduction. In modern conditions of deepening globalization processes, fierce competition, crisis phenomena covering the economy for political, economic and natural reasons, the role of insurance and insurance protection is growing significantly. That is why insurance relations arising on the basis of an insurance contract need special attention and research. An insurance contract can be represented as a system of civil law norms, a civil law institution that regulates legal relations that appear in the process of concluding and executing insurance contracts. Of particular importance are the relations themselves, which arise in the process of implementing contractual conditions. In particular, the provisions of the concluded agreement affect the conditions for the formation and management of the funds of the specialized insurance fund, the financial stability and financial policy of the insurer. This function of the contract is used mainly to protect private interests in the process of insurance relations. However, in some cases, the insurance contract is used to implement relations that are socially binding. The peculiarity of such relations is the presence of a public obligation of the state, regardless of the existence of an insurance contract. Here, not the conditions for the performance of any obligation depend on the terms of the contract, but, on the contrary, the terms of the contract depend on the conditions for the performance of the obligation. Such relationships determine the cases of using the insurance contract as compulsory state insurance.

Literature review. The development tasks of insurance relations and insurance were studied by many foreign and domestic scientists, among them, scientists from the CIS countries: V.N. Burkov [5], N.M. Vnukov [6], Yu.M. Zhuravlev [7], D.A. Novikov [5] and others. Their works deal with both theoretical and practical issues of insurance coverage, mechanisms for implementing insurance coverage, present, among other things, the experience of the evolution of insurance relations, as well as modern mechanisms for the formation and use of a specialized fund of funds intended for the payment of insurance compensation, the implementation of preventive events, as well as the formation of investment and innovation activities of the insurance company.

The issues of contractual relations are also touched upon in the above-described works of scientists, however, there are no in-depth studies that fully reveal their essence from the point of view of compulsory and voluntary insurance.

Tasks of insurance relations development were also paid attention in our republic, in particular by I.Kh. Abdurakhmonov [4], Zh.R. Zainalov [3], Kh.M. Shennaev [11], I.K. Ochilov [11], S.E. Shirinov [11], I.G. Kenzhaev [11], K. Uzakova [12], M. Khotamkulova [12, 13]. Their works reflected issues on the factors hindering the development of insurance in Uzbekistan, the development of proposals aimed at eliminating these factors. Particular attention was also paid to the legal regulation of the insurance companies activities in the context of the evolution of modernization and strengthening of market mechanisms in the country.

Main part. Insurance relations in commercial insurance arise on the basis of an insurance contract, while (with the exception of types the compulsory insurance) none of the parties (the insurer and the policyholder) is forced by law to conclude it. At the same time, one of the characteristic features of commercial insurance is the freedom of an insurance contract, the Parties establish their rights and obligations, the procedure for protecting these rights and resolving disputes, guided by the general requirements of the Civil Code for the law on an insurance contract.

The establishment of the insurance premiums amount depending on the subject of the insurancecontract, the insured property interest, the insured risk, the conditions upon the occurrence of which the insurer has an obligation to make an insurance payment, as well as the procedure for determining and the amount of insurance payment, is typical for commercial insurance. At the same time, contracts of the same type of insurance concluded with different policyholders may contain a different amount of the party's obligations and conditions of insurance, including the amount of the insurance premium.

The insurance contract is concluded on the basis of the free will of the parties: there is no coercion of the insured to conclude an insurance contract, just as the insurer has the right for refuse to assume the risks of the insured. However, in certain cases, when compensation for damage and the participation of the insurance organization in this area of public interest and necessity, the degree of the parties freedom to the insurance contract is significantly limited. In this case, instead of the right to conclude a contract, the policyholder has an obligation to conclude an insurance contract, and the insurer has an obligation to accept the risk for insurance. The emergence of such obligations is possible only in cases provided for by special resolutions of the Government or laws establishing the procedure and conditions for conducting types of compulsory insurance.

Such an understanding of compulsory insurance was formed in the Republic of Uzbekistan after the entry into force on April 5, 2002 of the Law "On Insurance Activities" [1] (lost force on February 25, 2022), the adoption of legislative acts on compulsory liability insurance of motor vehicle owners, employers, etc. and finds confirmation in the current new edition of the Law of the Republic of Uzbekistan "On Insurance Activities" dated November 23, 2021 [2]. To an even greater extent, the legislative basis for compulsory insurance is determined by the articles of the Civil Code of the Republic of Uzbekistan, effective from 01.03.1997. Prior to the appearance of these laws, the legislation of the Republic of Uzbekistan did not contain general norms related to the conduct of compulsory types of insurance. In each particular case, their appearance was associated with the adoption of a special Government Decree, which mainly establishes the obligation of the insured to conclude an insurance contract, the conditions for carrying out insurance. Insurance bodies have always acted as insurers in them. However, even today such types of compulsory insurance continue to operate, often breaking up conflicting assessments of the legality of such compulsory insurance, which is associated with a change in the general foundations of civil and insurance legislation. These types of compulsory insurance

include: compulsory insurance of property owned by citizens; compulsory free personal insurance against the risk of radiation damage and some others.

The procedure for conducting compulsory insurance in certain economic situations may give rise to the view that compulsory insurance arises by virtue of law, and not by contract. Under the conditions of the state monopoly on the insurance procedure, there is no need to regulate the procedure for concluding and executing an insurance contract, to establish legislative requirements for the insurer that determine its legal capacity to conduct a particular type of compulsory insurance. It should be noted that under the above conditions, an insurance legal relationship can arise exclusively between the insured and the insurer. It is impossible to assume the existence of an insurance legal relationship between the insurer and the entire set of potential policyholders without excluding the insurance contract, because the insured risk and the object of insurance are always specific, even in cases where the general conditions of compulsory insurance are established by law.

The need to conclude an insurance contract when the law establishes the obligation of the insured to insure certain property interests is also indicated by the modern forms of the Civil Code, while such contracts, depending on the insurance industry, are concluded in accordance with the general rules governing insurance legal relations.

International law and the law of foreign countries connect the need for the mandatory conclusion of insurance contracts with possible cases of damage to the interests of third parties. The only exceptions are the requirements for international transportation of goods and obliging to insure the interests associated with the transported goods. This, of course, obliges the Republic of Uzbekistan to participate in international agreements obliging air, road and sea carriers to conclude insurance contracts for their liability when making international transportation. At the same time, no such obligations have been established by any national sources of law.

The most common in the world practice are the types of compulsory insurance associated with the activities of sources of increased danger. Such sources can be both citizens and legal entities. Perhaps the most widespread is the compulsory insurance of civil liability of car owners. In each country, the list of types of compulsory insurance is different (in Portugal, for example, more than twenty) [8].

Such a requirement for a source of increased danger is understandable. If someone is harmed, he must be compensated, regardless of whether the harmer has enough funds. The conclusion of an insurance contract in such cases guarantees the protection of the victim's interests and the payment of amounts to them in the amount of the damage caused by the insured or in the amount established by the legislation of the country and international agreements.

The same goal - protecting the interests of the victims - is also pursued by the norms of the Civil Code of the Republic of Uzbekistan. This is evidenced by the following rules governing compulsory insurance (Part 2, Chapter 52, Article 923 of the Civil Code of the Republic of Uzbekistan): if such insurance is associated with the risk of civil liability of a citizen or organization (any legal entity), which may occur as a result of harm to life, health or property of other persons, or violation of contracts with other persons (compulsory liability insurance), as well as if such insurance involves the obligation to conclude an agreement in favour of a third party (other than the insured) on insurance of his life, health or property in case of harm to the specified property interests (compulsory personal insurance and compulsory property insurance in favour of third parties).

In cases where the insured is the state represented by its bodies or state unitary enterprises, and the payment of insurance premiums is carried out at the expense of funds provided from the

relevant budget, such compulsory insurance is called compulsory state insurance (Part II, Chapter 52, Article 961 of the Civil Code Republic of Uzbekistan). At the same time, the law cannot establish the obligation of the insured to insure life or health by law (Part II, Chapter 52, Article 922 of the Civil Code of the Republic of Uzbekistan).

One of the criteria for compulsory insurance is its universality, which implies that all entities established by the law on compulsory insurance are required to conclude insurance contracts in relation to established property interests on conditions specified by law.

At the same time, it is necessary to distinguish between the obligation to conclude an insurance contract, established by law, and the obligation of insurance, which is one of the conditions for concluding another transaction. For example, the lessor may provide as one of the terms of the lease agreement the obligation for the tenant to conclude an agreement on insurance of the leased asset in case of its destruction or damage. In the sense of the insurance legislation requirements, such a condition is not considered compulsory insurance.

Such a distinction between the reasons obliging the insured to conclude an insurance contract must be borne in mind when interpreting the consequences in case of violation of the rules on compulsory insurance (Part II, Chapter 52, Article 924 of the Civil Code of the Republic of Uzbekistan). There are few such features, and they are related to the protection of the rights of the person in whose favour the compulsory insurance contract is to be concluded. The rights of the beneficiary in cases where the law establishes the obligation to conclude an insurance contract in his favour are protected in court (the beneficiary may sue the violator of the law and require the conclusion of the contract by court decision) and economic methods: the policyholder remains liable to the victim for the amount of damage not compensated by the insurer in force of improper conclusion of the insurance contract. In addition, a fine in the amount of the insurance premium payable and accrued interest is collected from the person who is obliged, but has not concluded an insurance contract, to the budget.

As a rule, control over compliance with such a general obligation to conclude a compulsory insurance contract is carried out by an authorized state body or a public organization. For example, when carrying out compulsory insurance of civil liability of car owners, such control is provided by services similar to the state automobile inspection.

Conclusion. Changes in the legislative framework for compulsory insurance after the entry into force of Chapter 52 "Insurance" of Part II of the Civil Code of the Republic of Uzbekistan require bringing the previously adopted legislative decisions into line with the new norms and eliminating contradictions between them. It should be noted that the number of legislative and regulatory acts that mention the obligation to conclude an insurance contract was adopted about fifty. At the same time, such norms are established both in laws and in Decrees of the President and Decrees of the Republic of Uzbekistan Government. However, none of these acts entails the obligation of the persons indicated in it to actually conclude a compulsory insurance contract; the conditions and procedure for its implementation must be established. In the absence of such regulatory criteria for the essential terms of the insurance contract, the procedure for its conclusion, operation and execution, etc. compulsory insurance is not possible.

It is necessary to pay attention to the fact that the obligation to conclude an insurance contract can arise only by virtue of law. All other legal acts do not have such legislative force. Therefore, compulsory insurance cannot be introduced by a resolution of the head of the administration of any territorial entity, by a decision of committees for the management of state property, by executive authorities, including the Government of the Republic of Uzbekistan. It is precisely because of the need to fill the legal gap in the implementation the number of compulsory

insurance types that at present it is necessary to prepare relevant bills, in particular, laws on compulsory insurance of civil liability of notaries, insurance of military personnel, judges, civil servants, etc.

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