

Chapter 17

Insurance

1. General

A major actor in the insurance activity development in Romania, after December 1998, is the Insurance Supervisory Commission, a supervision and control body acting on the Romanian insurance market.

Seen in the European and world context, the insurance market in Romania complies with the legal requirements of the European Union.

On the Romanian insurance market, a more and more acute need seems to be the implementation of homeowners' insurance system against calamity risk, since Romania is exposed to major risks (earthquakes, floods etc.). However, the Romanian population lacks confidence as regards the issue of introducing the compulsory homeowners insurance. As a result, despite lengthy discussions, the subject matter is yet unsettled.

2. Main regulations

- Law no. 136/1995 on insurance and reinsurance activities in Romania ("Law no. 136/1995"), as further amended and completed;
- Law no. 32/2000 on insurance companies and insurance supervision, as further amended and completed ("Law no. 32/2000");
- Government Decision no. 1194/2000 on measures related to compulsory third party liability insurance for motor-vehicle accidents ("GD no. 1194/2000");
- Insurance Supervisory Commission Order no. 3110/2004 for the enforcement of the Norms on information and documents required for the authorization of the insurance brokers ("Order no. 3110/2004"), as further amended;
- Order of the Insurance Supervisory Commission no. 3101/2003 for the enforcement of the Norms on insurers and insurance brokers register ("Order no. 3101/2003");
- Order of the Insurance Supervisory Commission no. 13/2008 for the amendment of Guidelines on the Protection of Street Victims Fund;
- Order of the Insurance Supervisory Commission no. 10/2008 for the enforcement of Guidelines on credit insurance.

3. Insurance contract

By means of the insurance contract, the insured binds itself to pay an insurance premium to the insurer, while the insurer undertakes to pay the insured, the beneficiary or the third damaged party, upon occurrence of a certain defined risk, an indemnification, under the limits and terms agreed by the parties thereto.

The insurance contract must be concluded in writing and must include:

- (i) name or corporate name, domicile or registered office of the contracting parties;
- (ii) object of insurance: assets, individuals and liability, credits and guarantees, financial loss etc;
- (iii) the insured risks;
- (iv) time frame of the insurance contract;
- (v) insurance premiums;
- (vi) the insured amount;
- (vii) other elements establishing the parties' rights and obligations as set forth by the norms adopted by the Insurance Supervisory Commission.

In the absence of a written document, witnesses may not be used to prove the insurance contract.

In the limits of the paid allowance, as a rule, the insurer is subrogated in the rights of the insured or of the insurance beneficiary against the persons responsible for damages, and in case a compulsory liability insurance for motor-vehicles accidents was in force, against the civil liability insurer as well, within the limits of its obligations,

4. Main insurance types provided by insurance companies

4.1. Assets insurance

4.1.1. General considerations

Under assets insurance, the insurer commits to pay indemnification upon occurrence of the insured risk to the insured or to the appointed beneficiary.

The insured must have an interest with regard to the insured asset, keep the insured asset in good conditions and in accordance with the legal provisions, and take necessary steps to prevent the occurrence of the insured risk.

The insurer is entitled to verify if the insured asset is properly used or maintained. In the cases set out by the insurance contract, upon risk occurrence, the insured must take measures on behalf of the insurer to mitigate the losses. The insured will be bound to declare the existence of other insurance contracts for the same asset, both upon entering into the insurance contract and during its performance.

Unless otherwise provided by the insurance contract, in case the insured disposes of the insured asset, the insurance contract will be terminated.

4.1.2. Indemnification

The indemnification may not exceed (i) the value of the asset upon occurrence of the insured risk, (ii) the value of the loss, or (iii) the insured amount, inclusively when several insurance policies are concluded for the same asset, in which case each insurer shall pay compensation pro rata with the insured amount.

The insurance contract may contain a clause providing the insured will be its own insurer, for a so-called franchise or a determined amount that will not be compensated by the insurer.

In case the insurance contract is concluded for an amount lower than the asset value, the indemnification will be reduced pro-rata, unless the parties agree otherwise in the contract.

4.2. Personal insurance

4.2.1. General considerations

In personal insurance contracts, the insurer binds itself to pay the amount insured, upon the occurrence of various insured risks, consisting in body injuries, invalidity or death, defined according to the conditions of the insurance contract.

A risk concerning another person than the one concluding the insurance contract may be insured, in which case the person concluding the insurance contract has the capacity of insurance contracting party.

In case of an individual life insurance contract, the insured person may terminate the agreement within 20 days as of its execution, except for the case when the duration of the agreement is of maximum 6 months.

4.2.2. Indemnification

The indemnification will be paid to the insured or to the insurance beneficiary, appointed by the insurance contracting party. In case of death of the insured, the indemnification will be paid to his natural heirs, unless another beneficiary was appointed in the insurance contract.

The indemnification is paid, irrespective of the amounts that the insured or the beneficiary shall be entitled to obtain out of the social insurance, of the repairing of the damage by those liable, as well as out of the amounts received from other insurers on the basis of other insurance contracts.

The insurer does not owe the indemnification if the insured risk occurred as result of the insured committing suicide within 2 years since the execution of the insurance contract or as result of the insured or designated beneficiary deliberately committing some serious deeds set out in the insurance contract.

In case one of the beneficiaries deliberately caused the death of the insured, the indemnification will be paid to latter's other appointed beneficiaries or natural heirs.

4.2.3. Insurance beneficiary

A beneficiary may be appointed either at the time of entering the contract or during its validity term by means of written declaration notified to the insurer by the insured or by the insurance contracting party or by will and may be substituted or revoked any time during the validity term of the contract in the same manner.

Unless the insured decided otherwise, whenever it appoints several beneficiaries, they will have equal rights to collect the insurance policy.

The insured's creditors have no right to pursue the insured amount due to the beneficiary or to the natural heir, as the case may be.

4.3. Liability insurance

4.3.1. General considerations

In liability insurance contracts, the insurer commits to pay an indemnity for the damages the insured may be held responsible for by third persons, according to the law, and for any expenses paid by the insured in the related civil lawsuit.

The insurance contract may also cover liability of other persons than the one that executed such contract.

The rights of the injured person will be exercised against the persons responsible for causing the damage.

The insurer is only liable for damages within the limits of the obligations incumbent upon it under the insurance contract.

4.3.2. Indemnification

The indemnification will be awarded based on (i) the insurance valid at the moment the accident occurred without being necessary the consent of the insured responsible for the damage or (ii) a Court decision, should parties fail to reach an understanding on the amount of damages.

The insurer will pay the indemnification directly to the injured person to the extent it has not been already compensated by the insured; the insured's creditors may not claim such indemnification.

The indemnification will be paid to the insured in case the latter proves it has compensated the injured person.

4.3.3. Compulsory liability insurance

A particular insurance category is the compulsory liability insurance for motor-vehicle accidents.

4.3.3.1. Application field

Natural or legal persons owning motor-vehicles subject to registration in Romania, as well as trams, are bound to be insured for third party liability resulting out of the damages caused by motor-vehicles accidents occurred within the coverage territorial limits (the territory of Romania, of the EU member states and of the states connecting to EU member states). The execution of the civil liability insurance contract for damages caused by motor-vehicles accidents is proved with the insurance policy/Green Card document.

Persons entering the Romanian territory with motor-vehicles registered abroad are deemed to be insured, if they comply with one of the following conditions:

- (i) they have the international insurance documents, valid in Romania;
- (ii) their registration number certifies the existence of the insurance, according to the law of the state the motor-vehicle is registered with or to the international insurance contracts valid in Romania.

Otherwise, such persons have to pay insurance premiums according to the legal provisions.

4.3.3.2. The insured event

The insurer will pay indemnification for damages the insured is liable for towards third parties, according to the law, as result of car accidents, irrespective of the place where the motor-vehicle accidents took place (in motion and while stationary), as well as for all expenses incurred by the insured during the civil lawsuit.

The indemnification also covers damages caused by the existence or operation of any equipment attached to the motor-vehicle, as well as for the damage caused by trailers or sidecars.

In case of physical damage or death, indemnification is granted both for the persons outside the vehicle causing the accident and for the persons inside that vehicle, save for the driver of the respective motor-vehicle.

For damaging or destruction of goods, indemnification is granted for the goods outside the vehicle causing the accident and for the goods inside that vehicle, only if transported outside the scope of an existing contractual relation.

In case of physical damaging, death of a person or goods' damaging or deterioration, compensation is granted if the motor-vehicle causing the accident is identified or insured, even if the author of the accident remains unidentified.

4.3.3.3. Settlement and payment of the indemnification

The indemnification is settled on the basis of the (i) insurance valid at the moment the accident occurred or (ii) a Court decision.

The indemnification is also paid when the damaged persons are not domiciled, do not reside or have their headquarters in Romania.

The rights of the persons damaged by accidents occurred on Romania's territory by motor-vehicles owned by insured persons from abroad are enforced against the insurer by the indemnification representative offices (units appointed in each EU member state by the Romanian insurers in charge with administration and settlement of the indemnification request) or by the Romanian Motor Insurers Bureau (professional body composed of the insurers authorized to perform compulsory liability insurance in Romania).

4.3.3.4. Action in regress

The insurer recovers the indemnification from the liable person in the following situations:

- a) the accident was deliberately caused;
- b) the accident was caused (i) while committing some deeds incriminated by the legal provisions for the circulation on the public roads as crimes deliberately committed, even if such deeds have not taken place on such roads or (ii) while committing other deliberate crimes;
- c) the accident was caused while the author of the deliberately committed crime attempts to escape the criminal pursuit;
- d) the damage liable person drove the motor-vehicle without the permission of the insured person.

4.4. Credits and guarantee, financial loss and other insurance

Credits and guarantee insurance cover general insolvency risks, export credit risks, the risks related to the sale with the price paid by installments, to the mortgage and agricultural loans, as well as to the direct or indirect guarantees.

Unless otherwise provided in the insurance agreement, the compensation for financial loss insurance shall comprise both the effective prejudice and the profit loss, the general expenses and the expenses arising out of the occurrence of the insured risk.

5. Insurance companies and insurance brokerage companies

5.1. Insurance companies

5.1.1. Entities allowed to perform insurance activities:

- (i) Romanian legal persons, incorporated as joint stock companies or as mutual companies and authorized by the Insurance Supervisory Commission;
- (ii) Insurance and reinsurance companies authorized in EU member states, performing insurance and reinsurance activities on the Romanian territory based upon the right of establishment and the free provision of services;
- (iii) Branches of companies governed by third states' laws, authorized by the Insurance Supervisory Commission;
- (iv) Subsidiaries of third states insurance and reinsurance companies, authorized by the Insurance Supervisory Commission;
- (v) Insurance and reinsurance companies incorporated under the form of European joint stock company (SE - Societas Europaea).

5.1.2. Minimum registered capital and similar subsequent requirements

The minimum registered capital, required to be paid up upon the incorporation of a Romanian insurer is periodically up-dated by the Insurance Supervisory Commission.

As of October 2008, the following minimum requirements apply:

- RON 7,000,000 for general insurance, except for compulsory insurance;
- RON 14,000,000 for general insurance activity;
- RON 10,000,000,000 for life insurance activity;

Romanian insurers must also maintain, throughout its activity, the minimum solvency margin and the security fund at the levels required by law.

The minimum solvency margin is calculated according to the provisions of the norms issued by the Insurance Supervisory Commission, depending on the insurance categories, as the difference between assets and liabilities, each adjusted with certain elements.

The security fund of Romanian insurer companies shall be the third part of the minimum solvency margin, but not less than similar EU requirements and shall be periodically up-dated by the Insurance Supervisory Commission depending on subscribed risks categories. In case of mutual companies, the security fund represents at least three quarters of the minimal value of the security fund as established for insurance companies.

5.1.3. Authorization of the Insurance Supervisory Commission

No insurance company is registered with the Trade Registry unless authorized by the Insurance Supervisory Commission.

Insurance Supervisory Commission shall publish in the Official Gazette of Romania at least once a year the updated list comprising the authorized insurers.

5.2. Special legal requirements for the operation of insurance companies

5.2.1. Performance of exclusive insurance category

Insurers may only perform life insurance or general insurance activities.

5.2.2. Technical reserves

Any insurer exercising general insurance activities is bound to set up and maintain the following technical reserves:

- (i) premium reserve - is computed monthly by summing up the gross subscribed premiums for the non-expired periods of the insurance contracts, so that the balance between the volume of gross subscribed premiums and this reserve would reflect the gross premiums allocated to the part of the risks expired on the computation date;
- (ii) damage reserve - is allocated and updated monthly, based on the estimations for the damage notifications received by the insurer, so that the fund created would suffice to cover the payment of such damages;
- (iii) contingent damage reserve - is allocated and adjusted at least once at the end of the fiscal year, if the internal regulations of the insurer do not provide otherwise, based on its estimations, statistical data or actuarial computation, for contingent damages;
- (iv) calamity reserve - is created by applying a monthly percentage of no less than 5% upon the gross subscribed premiums, related to the contracts that cover calamity risks, until the reserve funds reaches at least the level of its own retained amount or 10% of the accumulation of liabilities undertaken by the contracts covering calamity risks. This reserve is meant to cover compensations related to calamity damages;
- (v) non-expired risks reserve - is calculated based on the estimation of damage that will occur after the end of the fiscal year, related to insurance contracts concluded prior to that date, to the extent that their estimated value exceeds the sum of the premium reserve and the premiums to be collected for these contracts;
- (vi) balance reserve - is created during the years with positive yield, in order to constitute the sources to cover damages during the years with negative yield.

5.2.3. Special requirements for life insurance companies

Law no. 32/2000 requires insurers providing life insurance to comply with certain special requirements, such as:

- a) to initiate the examination of the life insurance activity, every 12 months or on shorter intervals, should the Insurance Supervisory Commission deem necessary;

- b) to conclude a report on the life insurance policies, containing the results of the above mentioned examination;
- c) to submit to the Insurance Supervisory Commission a copy of such report on the life insurance policies within 4 months since the examination or within a longer period of time, provided the term was approved in writing by the Insurance Supervisory Commission, upon the written request of the insurer;
- d) after the submitting such report, to deliver the information, documents and supplementary details, as requested by Insurance Supervisory Commission, for the evaluation of the life insurance fund and its financial situation.

5.3. Protection funds

5.3.1. Warranty Fund

In order to protect the insured persons, the insurance beneficiaries and the damaged third persons, insurers contribute to the setting up of the Warranty Fund, aimed to cover compensations arising out from optional and compulsory insurance contracts, in case of bankruptcy of any insurance company.

The Fund will be set up and managed by the Insurance Supervisory Commission, which annually sets a percentage of maximum 10% to be applied upon the gross premiums volume collected by the insurance, companies from the direct insurance activity, and will issue regulations regarding its use.

The Warranty Fund liquidities are either deposited within the State Treasury account, bearing interest, within credit institutions, or placed in monetary market instruments, state or local administration bonds or in other placements.

5.3.2. Protection of the Street Victims Fund

In order to protect the victims of motor-vehicle and trams accidents (i) causing body injuries or death, when the author is unidentified or (ii) causing damages and destructions, the motor-vehicle or the tram not being insured, the Street Victims Fund was created and it is managed by Street Victims Funds Agency.

The Street Victims Fund provides compensation for the damages caused by motor-vehicles accidents occurred (i) on Romanian territory by unidentified authors or uninsured motor-vehicles standing in Romania or on states other then applying the Multilateral Accord; (ii) on any Economic European Area member state territory, by uninsured motor-vehicles, brought from one of those states and which must be registered in Romania, (iv) on the territory of any state member of European Economic Area, by uninsured motor-vehicles registered in Romania; (v) on the territory of any state of which National Bureau adhered to Green Card System.

The persons entitled to benefit of compensation from the above mentioned Fund are Romanian individuals and legal entities, Romania's or European Economic Area states' residents pursuant to the cases previously described.

The Fund liquidities are created by the contribution of the compulsory liability insurers by applying a percentage of no more than 5% upon the gross subscribed premiums paid for the compulsory liability insurance.

5.4. Insurance brokers

The insurance brokers are legal entities which negotiate for their clients the insurance contracts and render professional assistance prior and during the execution of the insurance contracts.

The insurance brokers may be set up and registered pursuant to the prior authorization of the Insurance Supervisory Commission.

The insurance brokers should meet the following conditions:

- (i) to be a legal entity (Romanian legal person or subsidiary of a foreign insurer), whose denomination shall comprise the mention "insurance broker";
- (ii) to have the registered capital paid up in cash of minimum RON 25,000;
- (iii) to have a liability insurance contract valid in the EU member states, with a minimum coverage limit amounting to EUR 1,000,000/event and EUR 1,500,000/year;
- (iv) to have the activity of insurance broker as sole object of activity;
- (v) to have a permanent office for correspondence with the Insurance Supervisory Commission and other authorities;
- (vi) not to be a direct/indirect shareholder of an insurer or insurance agent and not to have an insurer or insurance agent as direct/indirect shareholder or administrator;
- (vii) its significant shareholder and/or the members of the Board of Directors and/or the executive management should not have a criminal record;
- (viii) its chief executive officer should be graduated in superior education and have a minimum 3 years experience in an executive management position in insurance activity or at least 5 years experience in the same position in financial-banking system;
- (ix) its chief executive officer should not hold the same position in other Romanian or foreign legal entities after the operational authorization has been granted;
- (x) to hire proper employers according to the norms particularly issued for insurance brokers.

5.5. Insurers and Insurance Brokers Register

Insurance companies, mutual companies, subsidiaries and branches of foreign insurers as well as the insurance brokers authorized to operate on the Romanian territory will be registered with the Insurers and Insurance Brokers Register. The Insurance Supervisory Commission will keep this Register and the data contained in this register will be permanently accessible to the public.

6. Foreign insurers in Romania

Currently, foreign insurers may perform insurance activities in Romania either by incorporating a subsidiary in Romania, which will be a Romanian insurer and shall thus conduct its activity based on the ISC authorization, or by establishing branches in Romania, which are subject to ISC authorization procedure in case the parent insurance company is registered in a third state.

As regards EU insurers, Law no. 32/2000 implements the EU passport principle according to which EU based insurers may provide insurance services in Romania via a branch or directly, based on the free provision of services principle, without ISC authorization being required.

6.1. Insurers established in EU

Insurers authorized in a EU member state may perform insurance activities in Romania, either by incorporating a subsidiary in Romania, which shall be a Romanian legal person and thus subject to ISC authorization, through their branches, based on a prior notification sent to the Insurance Supervisory Commission or directly based on the free provision of services principle.

The notification for the establishment of a branch must contain the following information: (i) state where the branch will be set up, (ii) the feasibility study, insurance classes and the internal structure (iii) names of representative bodies (iv) the branch's registered office (v) insurer's statement on his member status of National Bureau and National Warranty.

the relevant authorities of other EU member states will be consulted by the Insurance Supervisory Commission before issuing the authorization for performing insurance activities in Romania for any insurer in one of the following situations:

- a) the insurer is a subsidiary of an insurer authorized in other EU member state;
- b) the insurer is a subsidiary of a parent agency company of an insurer authorized in other member state;
- c) the insurer is controlled by an individual or legal entity, controlling an insurer authorized in other EU member state.

The Insurance Supervisory Commission will inform the competent authorities of the EU member state with respect to the conditions required by the Romanian legislation as regards performance of insurance activities in Romania.

The authorization issued by the Insurance Supervisory Commission is valid in the European Communities and in the European Economic Area territory in accordance with the right of establishment and free provision of services principles.

Any insurer performing insurance activities based on the right of establishment or the free provision of services principle, who breaches the Romania law provisions, will communicate all information required by the Insurance Supervisory Commission related to its insurance activities in the same terms as the Romanian based insurers.

In case the insurer does not provide the information requested, the Insurance Supervisory Commission, informs the relevant authority from the origin member state of the insurer in this respect.

Should the insurer continue to infringe the Romanian legal provisions, the Insurance Supervisory Commission is entitled to sanction such insurer, including to prohibit performance of insurance activities in Romania.

6.2. Insurers located in non EU member states.

Any insurer established outside EU territory willing to set up an insurance agency or a branch in Romania must request an official authorization from the Insurance Supervisory Commission.

The Insurance Supervisory Commission will authorize the non EU member state insurer if it (i) is entitled to perform insurance activities, (ii) establishes an agency or a branch in Romania

(iii) opens specific insurance accounts and records all transactions (iv) possesses in Romania assets according to Romanian law, (v) guarantees the maintenance of the solvability limit (vi) presents a feasibility study (vii) provides any information required by the Insurance Supervisory Commission.

Any insurer having already obtained authorizations from other EU member states can request to jointly benefit of advantages in relation to the solvability limit, payment or assets representing securities fund. The application will be filed with the relevant authorities of the EU member states and the advantages will be granted only with the consent of all EU member state relevant authorities where the relevant application has been submitted.

7. Insurance Supervisory Commission

The Insurance Supervisory Commission is an independent administrative authority, with legal personality, exercising the control and supervision of the insurance market.

The Insurance Supervisory Commission has a 7 members board of which a president and 2 vice-presidents.

The Parliament appoints the members of the Insurance Supervisory Commission Board, during a common session of the two Chambers, at the proposal of the reunited commissions for budget, finance and banks of the Senate and Chamber of Deputies. The president and the two vice-presidents are nominated according to the proposal list submitted to the Parliament for approval.

The Insurance Supervisory Commission Board is revoked, in whole or individually, by the authority that appointed it, based on a procedure similar to its appointment.

The mandate of an Insurance Supervisory Commission Board's member is of 5 years. Each member may be re-appointed.

During their mandate, the members of the Insurance Supervisory Commission are jointly liable for their activity, except for the case when they voted against a decision and noted their separate opinion in the minutes of the meeting.

The Insurance Supervisory Commission has as powers:

- (i) drafting or endorsing bills of enactments on insurance or which have implications on this sector and endorsing individual administrative acts, if they are related to the insurance activity;
- (ii) supervising the financial status of the insurers, in order to protect the interests of the insured or potentially insured; for this purpose, it may order the performance of check-ups on the activity of insurers or insurance brokers;
- (iii) taking the necessary measures for the insurance activity to be managed in compliance with specific prudential norms;
- (iv) participating, as member, in international associations of insurance supervisory authorities and representing Romania in international conferences and meetings on insurance supervision;
- (v) approving the significant shareholders and significant officers of the insurer, according to the legal criteria.

The Insurance Supervisory Commission also passes norms for the enforcement of legal provisions and issues decisions whereby:

- (i) imposes restrictions, grants, suspends or withdraws authorizations;

- (ii) amends or waives conditions, requirements or terms imposed in its acts;
- (iii) approves split-up or merger of the insurers;
- (iv) approves transfers of insurance portfolios;
- (v) approves the persons to check up life insurance activity;
- (vi) approves the insurer's significant shareholders and officers.

8. Fiscal regime

Expenditures with the insurance premiums for professional risk insurance are considered as expenditures performed in order to obtain income and are fiscally deductible when computing the profit tax.

Expenditures with the insurance premiums performed for:

- (i) tangible or intangible assets from the business patrimony;
- (ii) assets serving as bank guarantee for the credits used in order to perform the activity the taxpayer is authorized for;
- (iii) insurance premiums for the professional risk insurance;

can be fiscally deducted upon the computation of the profit tax or individual income tax.