

Chapter 17

Insurance

1. General

Upon accession to the European Union, the insurance market in Romania substantially amended as to comply with the legal requirements of the European law.

A major actor in the insurance activity development in Romania, after December 1998, is the Insurance Supervisory Commission, supervision and controlling body of the Romanian insurance market.

On the Romanian insurance market, the implementation of homeowners' insurance system against calamity risk became more and more necessary as Romania was exposed to major risks such as earthquakes, floods etc. Thus, although already in force, Law No. 260/2008 on the mandatory insurance of dwellings against earthquakes, floods and earth slides, has been implemented only in July 2010, due to the fact that adequate technical infrastructure to make it feasible was just then finalized.

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. 15/2010 for the enforcement of the Norms on information and documents required for the authorization of the insurance brokers ("Order No. 15/2010"), 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;

- Law No. 260/2008 on the mandatory insurance of dwellings against earthquakes, floods and earth slides.

3. Insurance contract

By means of the insurance contract, the insured undertakes to pay an insurance premium to the insurer and the insurer undertakes that upon occurrence of a certain defined risk it shall pay the insured, the beneficiary or the third damaged party 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, civil 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, unless in force majeure cases when insurance documents disappeared and no duplicate may be obtained.

Within the limits of the paid allowance, the insurer generally subrogates in all the rights of the insured or of the insurance beneficiary against the persons responsible for damages (except for persons insurances). In case of a compulsory liability insurance for motor-vehicles accidents, this subrogation also operates 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 to the insured or to the appointed beneficiary upon occurrence of the insured risk.

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 the necessary steps to prevent the occurrence of the insured risk.

The insurer is entitled to verify whether the insured asset is properly used or maintained. In the cases set forth by the insurance contract, upon risk occurrence, the insured is compelled to take measures on behalf of the insurer to mitigate the losses. The insured is 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 agreed under the insurance contract, in case the insured transfers the ownership over 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. The foregoing shall be applicable inclusively when more 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 specific amount that will not be compensated by the insurer.

In case the insurance contract is concluded for an amount lower than the asset' actual value, the indemnification will be proportionally reduced, unless otherwise agreed in the contract.

4.2. Personal insurance

4.2.1. General considerations

In personal insurance contracts, the insurer undertakes to pay the insured amount, upon the occurrence of various insured risks related to the personal status of the insured person, such as body injuries, invalidity or death, as these may be defined under the insurance contract.

A risk concerning a different person than the one concluding the insurance contract may be insured. In such 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 unilaterally 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 insured's death, the indemnification will be paid to his legal heirs, unless another beneficiary was expressly appointed in the insurance contract.

The indemnification becomes due, irrespective of the amounts that the insured or the beneficiary may be entitled to obtain as social security rights, the repairing of the damage by the liable persons or the amounts received from other insurers pursuant to other insurance contracts.

The insurer does not owe the indemnification if the insured risk occurs as result of (i) the insured committing suicide within 2 years as of the execution of the insurance contract or (ii) the insured or designated beneficiary deliberately committing some severe acts provided for 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 legal 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. Such beneficiary may be substituted or revoked any time during the validity of the contract in the same manner as above.

Unless the insured otherwise decided, whenever more beneficiaries are appointed, they will have equal rights to benefit from the insurance indemnification.

The insured's creditors are not entitled to pursue the insured amount due to the beneficiary or to the legal heir, as the case may be.

4.3. Liability insurance

4.3.1. General considerations

Under liability insurance contracts, the insurer commits to pay an indemnity for the damages the insured may be legally held responsible for by third persons, as well as 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 executing the contract.

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

The insurer is liable for damages only within the limits of the incumbent obligations 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.

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

Individuals or legal entities owning motor-vehicles registered in Romania 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 considered 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 where the motor-vehicle is registered or to the international insurance agreements 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 for both persons outside and inside the vehicle causing the accident, 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 and insured, even if the actual 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 shall be paid even if the damaged persons are not domiciled, do not reside or have their headquarters in Romania.

The rights of the persons prejudiced by accidents occurred in Romania by motor-vehicles owned by persons insured abroad are enforced against the insurer by the indemnification representative offices (units created in each EU member state by the Romanian insurers, in charge with administration and settlement of the indemnification request) or by the Romanian Motor-Vehicles 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 intentionally committing crimes regarding the circulation on the public roads regime, even if such crimes were not committed on such roads or (ii) while committing other intentional crimes;
- (c) the accident was caused while the author of the intentionally committed crime attempts to escape the criminal pursuit;
- (d) the person liable for the damage 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 risks relating to general insolvency, export credit, sale with the price paid by installments, mortgage and agricultural loans, as well as to direct or indirect guarantees.

Unless otherwise agreed under the insurance agreement, the compensation for financial loss insurance shall comprise both prejudice and loss of profit, as well as general expenses and expenses directly or indirectly deriving from 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 entities, incorporated as joint stock companies or as mutual companies (*i.e.* companies held by both insurers and insured) and authorized by the Insurance Supervisory Commission;
- (ii) Insurance and reinsurance companies authorized in EU member states, performing insurance and reinsurance activities in Romania based upon the right of establishment and the freedom of services' providing;
- (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.

The following minimum requirements apply:

- RON 700,000 for general insurance, except for compulsory insurance;
- RON 1,400,000 for general insurance activity;
- RON1,000,000 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.

At least once a year, the Insurance Supervisory Commission shall publish in the Official Gazette of Romania and in a widely spread publication 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 perform only life insurance or only 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 ongoing 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 be sufficient to cover the payment of such damages;
- (iii) contingent damage reserve – is allocated and adjusted at least at the end of the fiscal year, unless otherwise provided by the internal regulations of the insurer, 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 per cent 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 per cent 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 may 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:

- (i) to initiate the examination of the life insurance activity, every 12 months or sooner, should the Insurance Supervisory Commission deem necessary;
- (ii) to conduct a report on the life insurance policies, containing the results of the above mentioned examination;
- (iii) to submit with the Insurance Supervisory Commission a copy of such report on the life insurance policies within 4 months as of the examination or within a longer term, provided such term was approved in writing by the Insurance Supervisory Commission, upon the written request of the insurer;
- (iv) after 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 Warranty Fund will be set up and managed by the Insurance Supervisory Commission, which annually sets a percentage of maximum 10 per cent 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 with the State Treasury account, bearing an interest, deposited with 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

The Street Victims Fund was created in order to protect the victims from motor-vehicle or trams accidents (i) causing body injuries or death, when the author remained unidentified or (ii) causing damages, destructions, injuries or death when the motor-vehicle or the tram is not insured. The Street Victim Fund 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 usually standing in Romania,(ii)on states other than applying the Multilateral Accord, (iii) on any Economic European Area member state territory, by uninsured motor-vehicles, brought from one of those states and which is supposed to be registered in Romania, (iv) on the territory of any state member of European Economic Area, by uninsured motor-vehicles standing 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 per cent 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 only upon the prior authorization of the Insurance Supervisory Commission.

The insurance brokers should meet the following conditions:

- (i) to be a legal entity (Romanian legal entity or subsidiary of a foreign insurer), whose denomination shall comprise the mention "insurance broker", "re-insurance broker" or "insurance and re-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 1,121,000/event and EUR 1,700,000/year;
- (iv) to have the activity of insurance and/or re-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 shareholder(s) and/or the significant management' members should not have registered in the criminal record crimes against patrimony or fiscal-accountancy crimes;

- (viii) chief executive officers thereof 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) chief executive officers thereof should not hold the same position in other Romanian or foreign legal entities after the operational authorization has been granted;
- (x) to hire properly trained 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 (i) by incorporating a subsidiary in Romania or (ii) by establishing branches in Romania.

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.

6.1. Insurers established in EU

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

The notification for the establishment of a branch must contain the following information: (i) the 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 membership of National Bureau and National Warranty.

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

- (i) the insurer is a subsidiary of an insurer authorized in another EU member state;
- (ii) the insurer is a subsidiary of a parent insurance company of an insurer authorized in other EU member state;

- (iii) 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 in accordance with the right of establishment or the free provision of services principle, who does not observe the Romanian 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. Moreover, the Insurance Supervisory Commission may also require such insurer to remedy the respective breach of legislation. In case the insurer does not remedy the breach of legislation, the Insurance Supervisory Commission, informs the relevant authority from the origin member state of the insurer, with the purpose of remedying the breach.

Should the taken remedy measures prove insufficient and/or the insurer continues to infringe the Romanian legal provisions, the Insurance Supervisory Commission is entitled to sanction such insurer, including prohibiting its 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 in case it fulfills the following conditions (i) it is entitled to perform insurance activities according to Romanian law, (ii) it establishes an agency or a branch in Romania, (iii) it undertakes to open specific insurance accounts and to record all transactions (iv) it holds in Romania assets with a value established by Romanian law, (v) it guarantees the maintenance of the solvability limit, (vi) it presents a feasibility study, (vii) it provides any information required by the Insurance Supervisory Commission and (viii) it appoints a representative, upon Insurance Supervisory Commission approval.

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

7. Insurance Supervisory Commission

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

The Insurance Supervisory Commission has a 7 members board out of which one 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.

Revoking of one or all members of the Insurance Supervisory Commission Board is made by the same authority appointing 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 field and endorsing individual administrative acts related to the insurance activity;
- (ii) supervising the financial status of the insurers;
- (iii) in order to protect the interests of the insured or potentially insured it may perform check-ups on the activity of insurers or insurance brokers;
- (iv) taking the necessary measures for the insurance activity to be managed in compliance with specific prudential norms;
- (v) participating, as member, in international associations of insurance supervisory authorities and representing Romania in international conferences and meetings on insurance supervision.

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

- imposes restrictions, grants, suspends or withdraws authorizations;
- amends or waives conditions, requirements or terms imposed in its acts;

- approves split-up or merger of the insurers;
- approves transfers of insurance portfolios;
- 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.