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Insurance contracts on tourism

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INSURANCE CONTRACTS ON TOURISM

Abstract

The business life in the modern world is developed upon the logic of the domination of the rules and within them an important role play those that are related to implementation of the standards that are connected with the security and insurances. Due to the need for an economic transformation it resulted with the creating of a new set of new contracts which commencing from several general principles of the obligatory law, that regulate the situation which were not established insofar, which in fact are established in practical life. These constructions of the contract law largely begin to be distinguished from the so-called classic contracts out of the civil law. The contracts, often similarly with the classic ones, with their content and intention, the differ so largely from the classical ones that now cannot be argued anymore for one of their existing contracts but for the new type of contracts, independent, sui-generis. Viewed from this plan the contract on insurance is known from the early times, but now it has been so largely transformed thus now transaction or operation within the domestic or international trade is not conducted without involvement of this contract.

Key words: Contract, insurance, insurance company, tourism, business, policy, imperative rule.

Introduction

The operation of each business activity constitutes in itself certain risks not only in economic nature but particularly poses potential specific risks that can be related to damage or destruction of certain goods or services. Aiming to reduce respectively to prevent the risk, from the ancient times the need for an establishment of certain organization (associations) was required which enabled in certain cases to compensate the caused damage to its members for various damage reasons². The insurance can be treated also in the sociologic, economic and legal aspect or nature. are characterized by increasing commercialization to greater security, that special importance for the development of modern insurance has Loyd-a (1779).

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² (1779). It is historically known that Hammurabi's Code has regulated the reimbursement of the damages of the passenger caravans when burglarized. Rhodes Law in III Century B.C has legally regulated the responsibility of merchants whose goods were jettisoned during storm or sinkage. In countries recognized for trade such as Italy during the Middle Ages, insurance institutions were established that are similar to those of present time. The first insurance contracts were introduced during XIV century. More recent periods are characterized by increasing commercialization where the special importance lays down to LOYD for developing the modern insurance (1779).

Viewed from the economical aspect, the insurance intends to involve all economic consequences that have caused the damage, aiming to enable the compensation of the damages. A study subject for the economists in this area is the aspect of insurance of the source of the mans and their accumulation, premium structures, preservation of the property, economical effects, etc. Viewed from the legal aspect, the main elements considered are the statutory issues of the insurance companies (the status of the insurance company, form and the type of the company, co-participation at risk, new companies- security etc), afterwards comes the issue of the business law within the international sphere as well as the private law (outland activities of insurance companies, contracts that include foreign -international elements etc.). Viewed from the national aspect the insurance as a legal-obligatory relationship is established when entering in insurance contract.

Insurance contracts is a contract in which the contractor of insurance is obliged from the moment of admission in the reciprocity and solidarity to merge a range of means within the insurance community, namely the so-called community risk (the insurer), whereas the community – entity is obliged in case of occurrence of an event which is determined for insurance, to pay to the insured or to any third party a reimbursement (remuneration), or a certain amount or do something else³.

Insurance contract on business activities

The operation of the tourism activities and tourist activities during travel and placement in touristic placement, is potentially considered that might be a subject of various risks. The sources of these risks may be, above all, means of transport, increased physical activities in different climatic conditions, bodily injuries etc. For reasons of mentioned risks, insurance contracts have a special relevance for the progress of tourist activities, namely the fact that aims to achieve the tourists' integrity and personality by ensuring an effective and quality treatment. The contract on insurance may be entered by the tourist himself or by the tourist agency on his/her behalf.

The main types of insurances

The scope of insurance in today's modern world is developed far enough that there is an opportunity to insure for any kind of risk. Unerringly because of the variety of the insurances which are now provided creates the justification for undertaking such treatments as well as to be subject of scientific studies. Based on the location where the risk threatens, the insurance may be: land, sea and air. According to subjects we may distinguish insurances in: property and personal. Property insurance is divided in: provision of items and liability insurance. The liability insurance is the insurance where the insured provides the insurer the transfer of responsibility for a damage caused. In such cases the insurance is liable for the damage which is determined in the contract that to the damaged person the damage is to be compensated.

³ Prof..Dr. M.Hetemi; E drejta me njohuritë e të drejtës afariste, page. 440 (Business Law)

Liabilities of the persons involved

Insurance Contract is a contract that determines the legal liabilities of both parties that are set forth in two reciprocal basic liabilities: that the insurer is required to pay the insurance premium, in certain cases also the interest for the insurance, with the payable contracted amount. Therefore both parties involved are responsible for their liabilities when entering into a contract as when setting the terms as well as after the insurance act.

Liabilities of the insured persons

When entered in the insurance contract the insured has the obligation to disclose the circumstances that apply to determining risk of first payment of insurance premiums. Since the insured knows better circumstances which are available for determining the risk he/she is in charge of them to notify the insurance company when making the contract. Regulation on insurance⁴ provides a set of provisions for insurance rights in cases which may lead to the nullity of the contract, i.e in case of causing intentional damage or failed to disclose the full situation.

When entering on contract of insurance, the insured is liable to pay the first premium. During the duration of the insured has liability insurance: the payment of regular premium insurance, insurance for the notifications of the changes associated with the risk and avoid the possibility of ensuring appropriate action. Waiting to have the opportunity to meet the obligations of the insurance, the insured is required until the term of the insurance contract, to pay premiums under the contractual terms without delay.

Entering in the insurance contract does not relieve the insured from liability to the items provided to act without proper care. The insured person, constantly, is obliged to undertake legal, contractual, other actions or omissions in order to avoid obstruction of the insured case. If the insured subject does not ensure the proper behavior in the way and can not convincingly argue that debt then the insurance company's liability for damage caused, reduced to the extent that it can completely exclude it.

If an event occurs, the insured has an obligation to notify insurance to ensure the existence of the insured case as well as the commitment, caring and individual measures to reduce the presented damage. Deadline for submission of the case to ensure that as shown in reality is defined in the insurance contract or by law. If the insured fails to take actions specified under the contractual or legal obligation to present the case that security is forced to pay damages caused. The potential insured case which it has been actually filed it automatically obliges the insured to actively conduct toward limiting the consequences caused.

⁴ UNMIK Regulation No.2001/25 On Licensing, supervision and regulation of insurance companies and insurance intermediaries.

Liabilities of the Insurance Company

When entering in the insurance contract, the insurance company has the obligation to notify the insured about the conditions and obligations of insurance so that the insured voluntarily or compulsory to accept the offer of insurance. The insurance company must notify the insured about the contents of general business conditions which represent an autonomous part of the formal right, which he signed while one party owes the other party. The contracts on insurance, the insurance company is obliged to notify the contractor of the general insurance and individual insurance, respectively, are integral components of the contract and options to deliver their text if these conditions are not printed in the insurance policy.

Obligations to be executed should be printed in the insurance policy. According to the Law on obligatory relations, the insurance company has the right to refuse to offer insurance and silence as a rejection but does not mean acceptance of the offer. However, considering that the parties in the area of insurance law the legislator defines the security not only for the insured but the insurance company for the contract on insurance.

During the duration of the insurance, the security company is liable to the insurer and on his behalf will undertake respective actions. Primarily, is related to financial preparedness of the ongoing maintenance of reserves related to insurance and taking preventive measures in order to prevent damage that can be threatening and their possible consequences. In cases of loss of insurance of insurance, the insurance company must issue a new policy and contractual obligations may be prescribed other liabilities for the duration of insurance.

If the insured event occurs, the insurance company is liable to pay compensation to policyholders or the total amount which is specified in the contract. Such liability insurer is obligated to perform at a particular time under contract or under the law governing the issue. If it is necessary to determine the amount of damage caused, the insurance company owes to collect a part of compensation on behalf of the insured to determine the total damage. Part of the total payment is realized when determining damage. If the insurer and the insured fail to agree on the type, causes or consequences of disaster, the issue resolved in the competent court with the help of an expert.

There are many types of insurance that apply to the contemporary world. Their treatment is virtually impossible because of the specific relations will therefore be treated here only those types of insurance are also specific to the field of tourism.

In legal terms the relevant section of the types of insurance is:

- compulsory insurance or legal action is the result of imperative legal provisions, and
- voluntary or contractual insurance which is the result of creating a voluntary set of relations between the insurer and the insured.

Legal nature of insurance contract

The contract for the provision according to its legal nature is consensual, mutual, with cargo and labeled with agreeable elements (Contract on Fate), and formal as to connect the mayor should be respected the legal provisions on compulsory insurance. Insurance contract as an adhesion contract because the rule entirely, partially or commutatively meet conditions that insurer has provided the occasion of signing the insurance of insurance, which previously was drafted and printed.

Insurance elements

Essential elements of insurance are specific social-economical relations which are expressed according to total amount of insurance, risk, case insured, interest of insurance, premise of insurance, insurance compensation, insurance policy, insurance reserves and reinsurance. Real values of insured interest and total amounts of insurance should be compatible, which in reality may not be. These relations are also known as sub-insurances and post-insurances. There is sub-insurance when total amount of insurance is lower than the real value of insured interest and in case of damage the insurance insures the particular damage to the insured person and does not compensate the real value of the caused damage. There is a post-insurance when the total amount of insurance is higher than the real value of particular interest insurance. This form of insurance is often illegal and against insurance purpose because by using the advantages of this insurance form, the insured person has the possibility to mislead and to cause damage which would be in use by the insured person for unlawful enrichment and harmful to the insurance company. If total amount of the contracted insurance is higher than the value of insured interest and in which case both parties have been irresponsible, the contract remains in force, total amount reduces to the real amount for the interest insured, and the premises decrease to the real amounts too.

Volunteer insurance in tourism

For the development of tourist activities insurance takes an important place due to legal imperative norms enforcing tourist enterprises in specific cases to bind contracts on insurances.⁵ Raising awareness to use insurance in tourism, but also in other respects of social and economical life has lead to forming and binding a series of different contracts on volunteer insurance, due to the tourists or receivers of services being exempt from liability for eventual damages. Since tourism is a specific activity and the chance to cause damages is high and the chance of individuals to pay is low, contracts bound voluntarily make these segments of economical life safer. If there were no such contracts the damage would have been compensated by tourist organizations or the physical subject. The weigh of this contract is considered in case when tourist relations are created abroad, since tourists manage to be insured fro m the highest rate of risk which could be faced by receiving tourist services. By binding particular contracts on insurance, both tourists and tourist service providers are able to be widely insured from any risk in order to avoid or reduce harmful consequences if the insured case happens.

⁵ Law on Tourism and Toursitic Services [2010/03-L-168](#), Law on Business Organizations [2007/02-L123](#)

One of the basic principles for tourism insurance is voluntary, respectively contractual insurance. By reviewing several contracts which regulate development of tourism activities, there are ascertained and identified specific obligations of tourist organizations, hotels and travel agents regarding the compensation of caused damages either be material or immaterial in the account of service receivers. Thus different tourist companies bind contracts on insurances related to insurance responsibility for the caused damage, with which they manage to widely minimize the amount of compensation which emerges from obligations stipulated in the contract. Possible contracts on insurances which are considered interesting and bound by tourist organizations are:

- ☞ Contracts to insure hotel guests from possible consequences in case of disaster. Contractor could be every business organization or physical person who is provided with hotel and tourist services. The contract on guest insurance is bound according to evidence of guests which begins to be effective at the moment the guest is shown in the hotel register, respectively at the moment the guest gains the status. The insurance has obligations towards the guest during the time he stays in the hotel or outside it up to the end of contract. In the hotel guest insurance there is also included insurance for hotel liability in relation to the insured guest for physical hurt and harm, and losing or disappearing guest's things. ;
- ☞ Contract on additional insurance of different association members (judge associations, fishermen association, etc.) from incidentals of eventual disasters ;
- ☞ Contracts on additional insurance of guests in public places for showers and refreshments from possible eventual incidentals;
- ☞ Contracts on additional insurance of tourists from disaster consequences during the time of organizing trips in all kinds of traffic;
- ☞ Contracts on additional insurance of people during vocations in summer and winter, lodges, etc. from consequences of eventual disaster;
- ☞ Contracts on additional insurance of travelers in relation to public traffic from consequences of eventual disasters.

Except insurance contracts binding juridical subjects, currently almost at the same level these contracts bind tourists individually. In practice most cases of tourist insurance forms are as following:

- ☞ Insurance contracts for luggage;
- ☞ Insurance contracts from disaster during the travel;
- ☞ Insurance contracts for liability o damage the tourist causes during the travel;
- ☞ Insurance contracts in case of illnesses during the travel;
- ☞ Insurance contracts from damages caused by car, airplane, ship, etc.;
- ☞ Insurance contracts for repayment if the tourist does not take or cancels the trip the travel agent has organized;
- ☞ Insurance contracts for renovation or repair expenses which may rise during the travel, etc.

Tourists respectively service receivers beside insurances on individual things can be provided with “insurance packages” which include particular kinds-combinations of insurances mentioned

above. It's worth mentioning that if it is not stipulated differently in the contract, the insurance contract begins to have juridical effects from the first 24 hours of signing the insurance policy, which is stipulated in the conditions of insurance policy.

If duration of insurance is decided in the insurance contract, then the relations of insurance end according to the date stipulated in the contract. If the deadline of insurance contract is not stipulated in the contract then each of the parties is able to breach it in case of reaching the premise, under the obligation of informing in written the other party at least three months before the premise expiration. Insurance contract is ended if the insured object has disappeared or the related object on the basis of which the liability insurance contract has been bounded.

Conclusions

Insurance is a scope of great interest for the public and the development of modern society and state cannot be imagined without including it in all segments of social economic life. Insurance and insurance contracts which regulate social and economic life now are characterized with flexibility and adjustment towards the reflexes raising new situations. These developments now are quite heterogenic and to the positive bloom of international trade these insurances have made an essential contribution. In post-modern economies both legal and economical institutions with no doubt compensate damages which have been insured in the scope of business development and people's casual life. Insurance mechanisms used currently due to economical-legal content are found almost in every pore and cell of social life. Because of its place in society, it is impossible to ascertain if insurance belongs to economical or juridical sciences. Juridical science is listed in the way of insurance due to legal disciplines and insurance regulations which form law and contract. On the other hand, economical science states economical principles such as insurance, liquidity and break even with the absence of which insurance could not exist. Identification of insurance as an event of negative economical risk gives only one slight advantage to the economical sciences. Risk characteristics are: risk should be possible, taking risk and possible economical damage, growth of risk should be insecure and accidental, and risk cannot be managed. In the legal plan insurance contract has its own characteristics dealing with consulting, mutuality, liability label, elements, and formal rigor because to be perfectly bounded legal dispositions must be respected for insurance. In this plan this contract is considered as adhesion because according to regulation the insured person accepts entirely, partly or cumulatively to fulfill conditions foreseen from insurance by signing the insurance policy, primarily compiled and printed.

It is to be evaluated that most of contracts in the branch of insurances in tourist and hotel activities are specific due to the fact that they are treated as legal contracted mechanisms. This happens because the range of relations of tourist and hotel activities is extremely high and taking responsibility for their insurance not only facilitates communication of service providers and receivers but also manages to mark e record increase of mobility in tourist activities.

Reviewed and used literature

- 1) Krasniqi A., Law on tourism and hotels, Peja 2004
- 2) Hetimi Dr. M., E drejta me njohuritë e të drejtës afariste (Busines Law), Prishtina 2005
- 3) Regulation no. 2001/25 on licensing, supervision and regulation of insurance companies and insurance intermediaries;
- 4) Law on tourism and touristic services 2010/03-L-168
- 5) Law on Business Organizations 2007/02-L123
- 6) Administrative Directive No. 2009/15 for licensing, classification, and categorizing hotel and tourist facilities
- 7) Administrative Directive No. 2009/01 for licensing travel agents and deciding fee rate for licensing