

## INSURANCE

*The presentation hereby has in view the legal provisions in force on the 31<sup>st</sup> of March 2004*

### **Applicable legislation in this field**

- Law no. 136/1995 on insurances and reinsurances in Romania, published in the Official Gazette no. 303/30<sup>th</sup> of December 1995
- Law no. 32/2000 on insurance companies and supervision of insurances, published in the Official Gazette no. 148/10<sup>th</sup> of April 2000 amended by the Law no. 76/2003 for the amendment and completion of the Law no. 32/2000 on insurance companies and insurances supervision
- Order of the president of the Insurance Supervisory Commission no. 3/2001 for the enforcement of the Norms 3/2001 on classes of insurances that may be practiced by insurance companies, published in the Official Gazette no. no. 501/24<sup>th</sup> of August 2001
- Order of the president of the Insurance Supervisory Commission no. 8/2001 for the enforcement of the Norms on the enforcement of the law in the field of insurances, published in the Official Gazette no. 837/27<sup>th</sup> of December 2001
- Order of the president of the Insurance Supervisory Commission no. 6/2002 for the enforcement of the Norms on the minimum margin of the paid up registered capital, respectively of the paid up free reserve fund of the insurers, published in the Official Gazette no. 554/29<sup>th</sup> of July 2002
- Order of the president of the Insurance Supervisory Commission no. 8/2002 for the enforcement of the Norms on prudential measures for the practicing of the compulsory liability insurance for damages to third parties by car accidents outside the Romanian territory (Green Card), published in the Official Gazette no. 740/10<sup>th</sup> of October 2002

- Order of the president of the Insurance Supervisory Commission no. 3101/2003 for the enforcement of the Norms on insurers' and insurance brokers' registry, published in the Official Gazette no. 97/17<sup>th</sup> of February 2003
- Order of the president of the Insurance Supervisory Commission no. 3111/2003 for the enforcement of the Norms on the conditions of life insurances fund management, assets investment and evaluation and calculation of technical reserves, published in the Official Gazette no. 770/3<sup>rd</sup> of November 2003
- Order of the president of the Insurance Supervisory Commission no. 3109/28<sup>th</sup> of October 2003 for the enforcement of the Norms on methodology of calculation and keeping record of the minimal technical reserves for the general insurances activity, published in the Official Gazette no. 770/3<sup>rd</sup> of November 2003

### ***I. Scope of the legal provisions in the field of insurance***

In Romania, the insurance activity takes place in the form of compulsory and optionally insurances and of the reinsurance operations. Thus, certain commodities (buildings, machines, merchandise, etc.), a person's attribute (life, health, etc.) and liability to third parties for material damages or injuries, may constitute the *object of insurance*.

The insurance activity is performed by insurance – reinsurance trade companies, reinsurance companies and mutual companies, termed insurers.

### ***II. Insurance Companies***

The insurance activity in Romania may only be exercised by:

- a) joint stock companies, mutual companies, branches of certain foreign insurers, established as Romanian legal persons, authorized by the Insurances Supervision Commission;
- b) branches of certain insurers, foreign legal persons, authorized by the Insurances Supervision Commission.

### ***Specification***

In order to obtain the authorization of establishment, the foreign insurer should, among other things, bring proof that in the country in which

it is registered it is legally established and performs an insurance activity for at least 5 years, similar to that for which the authorization in Romania is requested.

### **1. Requirements regarding the insurers' registered capital**

For the performance of the activity, each company performing activity in the field of insurances is bound to maintain, cumulatively:

- a) **the paid-up registered capital**, in the case of a mutual company, **the paid-up free reserve fund**, which has to be entirely paid up in the form of cash only upon establishment;

According to the Norms regarding the maximum limit of the paid-up registered capital or, in the case of a mutual company of the paid up free reserve fund is updated and cannot be lower than:

- lei 15 billion for the general insurances activity, excepting compulsory insurances;
  - lei 30 billion for the general insurances activity;
  - lei 21 billion for the life insurances activity;
  - the sum of the values stipulated under the previous points, as the case may be, depending on the performed insurance activities.
- b) **solvency margin**, representing the amount to which the value of the assets exceeds the value of liabilities; this must be higher than the value established through norms.

### **3. Types of reserves which the insurers exercising a general insurances activity are bound to set up and maintain:**

- premium reserve – is computed monthly by summing up the quotas of the net subscribed premiums for the non-expired periods of the insurance contracts;
- damage reserve – is allocated and updated monthly, based on the estimations for the damage notifications received by the insurer;
- 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, statistic data or actuarial computation, for contingent damages;
- calamity reserve – is created by applying a monthly percentage of no less than 5% of 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 which cover calamity risks; this reserve is meant to cover compensations related to calamity damage;
- non-expired risk 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;
  - balance reserve – is created during the years with positive yield, in order to constitute the sources covering damages during the years with negative yield.

### ***III. Bodies having duties in the field of insurances***

By the Law No. 32/2000, the **Insurance Supervisory Commission** was formed, specialized autonomous authority, having as object of activity the supervision and control of the compliance with the legal provisions in the field of insurances. Among other things, the Insurances Supervisory Commission has powers like (Art. 5 from Law no.32/2000):

- a) supervises the insurers' financial situation, for the protection of the insured persons' interests or of the potential insured persons.
- b) approves the direct or indirect significant shareholders, natural or legal persons, as well as the insurers' significant persons;
- c) approves the division or merger of an insurer registered in Romania;
- d) approves the portfolio transfer;
- e) authorizes annually the practicing of the compulsory insurances and cashes as personal incomes a percentage contribution from the value of the gross premiums cashed afferent to respective insurances, for the exercising of the supervision and control of the compulsory insurance activity;
- f) enforces the sanctioning measures stipulated by law regarding the exercising of a direct or indirect influence, which is incompatible with the principles of prudential management of the insurers' activity.

### ***IV. Insurance Mediators***

In the insurance activity the following have the capacity of mediators:

- a) **insurance agents.** Insurance agents are natural or legal persons qualified, on the basis of an insurer's authorization, to negotiate or to conclude on behalf and for the insurer insurance contracts with third parties, according to the conditions stipulated in the concluded contract of mandate, without having the capacity of insurer or insurance broker;

In order to perform their activity, insurance agents must fulfill the following conditions:

- must possess written valid authorization (agent contract) from an insurer in order to act on his behalf;
- must be registered at the Labor Chamber in the jurisdiction of which he domiciles (for natural persons);
- cannot mediate the same insurances classes for more than one insurer.

- b) **insurance brokers.** They are Romanian or foreign legal persons authorized according to the law, who negotiate for their clients, legal or natural persons, insured persons or potentially insured persons, the conclusion of insurance or reinsurance contracts and give assistance for the entire period of the validity of the contracts or in connection with the damages regularization, as the case may be.

In order to perform their activity, insurance brokers must fulfill the following conditions:

- must possess an authorization for functioning from the Insurances Supervisory Commission;
- must have a paid-up capital in cash, whose value cannot be lower than lei 150 million; this value shall be updated through norms by the Insurances Supervisory Commission;
- must have in force a professional insurance liability contract, according to the requirements stipulated by norms;
- to have as their object of activity only the activity of insurance broker;
- to keep and put at the disposal of the Insurances Supervisory Commission, upon request, the accounting books and registrations which to highlight and explain the performed operations during the activity, including information about concluded insurance contracts and of the agreement with the insurers;

- to conform to the requirements of the Insurances Supervisory Commission regarding the reports and the performed activities, as they shall be established by norms.

The non-compliance with the conditions written at the points e), f) and g) is, according to the law, a contravention.

## ***V. Insurance contract***

### **1. Parties of the Insurance Contract**

The insurer and the insured are parties of an insurance contract.

**The insurer** is the trade company obliged that at the moment of the occurrence of the insured event to pay an amount of money, termed insurance compensation.

**The insured** may be any natural or legal person, who concludes with the insurer the insurance contract with the purpose of being compensated in the event of the occurrence of the insured case.

The insurance contract may be concluded in favor of a third party, hereinafter referred to as the **beneficiary**, like in the case of **life insurances**, where a beneficiary is designated for the event of the occurrence of the insured person's death. The insured person (**contractor**) is the one concluding the insurance contract with the insurer and obliges himself or herself to pay the insurance premiums.

### **2. Form of the insurance contract**

Insurers are obliged to place at the insured's disposal or of the potentially insured's, before the conclusion of the insurance contract, the following information at least: duration of the insurance contract, modalities of execution, its suspension or cancellation, means and terms of payment of the insurance premium, methods of calculation and of distribution of the financial results, procedures of settlement of potential disputed resulting from the execution of the contract, as well as other information necessary for protecting their interests.

Insurance contract is concluded in writing. **The proof of conclusion of the insurance contract** results from the issuance and sending of an insurance document, like the policy or the certificate, application for the payment of the premium or from the writing through which insurer's will to conclude the contract appears.

## **VI. Types of insurances**

### **1. Assets insurance**

The object of insurance is the asset mentioned in the insurance contract (assets determined by indicating a group may be insured too; future assets may be insured too, for example crops or future crop).

*The insured amount* shall be smaller or at least equal to the insurance value of the good, but under no circumstances it must not exceed the real value of the good.

#### ***Specification***

The insured is under obligation to declare the existence of other insurance contracts for the same assets from different insurers, both upon entering into the insurance contract and during its execution. In case several insurance have been concluded for the same asset, each insurer shall pay pro rata from the insured amount without the insured to collect a higher compensation than the actual loss suffered as a direct consequence of the risk.

#### **Types of assets insurance contracts met in practice**

- insurance contract for auto vehicles in event of damage or theft (auto insurance CASCO) is concluded between the insurer and the owner of the auto vehicle;
- insurance contract for buildings or any other constructions for the risks of fire and other calamities; the buildings or any other constructions shall be insured at the value declared by the insured, value that cannot exceed the value from the moment of the commissioning or their market value;
- insurance contract for assets inside the buildings or other constructions for the risk of fire or other calamities; through this type of insurance, not only the assets which are in the insured's property may be insured, but also any other assets received by him or her for use of which are at him for keeping or repairing etc.

## 2. Personal insurance

In the personal insurances, the insurer obliges to pay, upon occurrence of the insured risk, an insured amount to the insured or to his designated beneficiary.

The insurance for a risk of another person than the one concluding the insurance contract may be concluded in the conditions stipulated in the insurance contract.

To the personal insurances, is characteristic the fact that the **insured amount is not limited to a certain value** and is owed independently from the amounts due to the insured or to the beneficiary, from social securities, for the compensation of the prejudice by those responsible for the occurrence, as well as for the amounts received from the insurer on the ground of the compulsory liability insurance for the damages caused through car accidents.

## 3. Liability insurance

In liability insurance, the insurer is obliged to pay compensation for the prejudice for which the insured is legally responsible besides damaged third parties and for the expenditures made by the insured in the civil lawsuit.

By the insurance contract, the liability of other persons than the one that has concluded the contract may be included, like the insured's wife/husband or other persons, which are under his support. The third party may be any natural or legal person damaged by the prejudice brought to his assets through the health injury or death causing.

**Compensation** shall be established on the basis of the agreement between the insured, the damaged person and the insurer, according to the insurance contract or by a court order.

If the parties do not reach an agreement, in the case of the events that have taken place on the Romanian territory, the relevant Romanian jurisdiction body shall settle the litigations.

## 4. Compulsory Liability Insurance

Law no. 136/1995, as further amended and completed, stipulates that the tort liability insurance for damages caused by car accidents is compulsory.



Thus, any natural or legal person, holding **cars subject to incorporation in Romania**, is obliged to insure them for the cases of liability as a result of the damages caused by car accidents on the Romanian territory. In order to be considered insured, these persons must fulfill one of the following conditions:

- a) possess the documents for international insurance valid on the Romanian territory;
- b) the license number attest the existence of insurance according to the bilateral agreement concluded between the Car Insurers Office from Romania and the Car Insurers Office from the country of origin.

No type of contract is concluded for this type of insurance, but a certificate is issued, confirming the payment of the insurance premium.

Only the authorized insurers by the Insurances Supervisory Commission practice the liability insurance for automobiles.

### ***VII. Sanctioning regime***

Violations of the legal provisions in the field of insurances are sanctioned according to the provisions of Law no. 32/2000, as further amended and completed. For example: the performing of insurance activity in or from Romania, by any person without the authorization from the Insurances Supervisory Commission is offence and is punishable with imprisonment from 3 months to 3 years or with a fine from lei 50 million to lei 100 million.