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INSURANCE
IN
INTERNATIONAL TRADE

Summary of the Ph.D. thesis

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ARGUMENT

The idea of insurance originates from people's preoccupations to cope with various hazards threatening their life, goods and activities.

Throughout history, individuals faced the unleashed forces of nature and were put in the situation of counteracting them, looking to prevent damages. When they have occurred nevertheless, they tried to join efforts to make them easier to bear.

This form of mutual aid şi solidarity in front of hazards causing sufferance and losses represents a constant in the evolution of mankind.

The concept of insurance took shape along with the development of society, as the economic and commercial relations between human communities reached a certain degree of complexity. The individual was no longer enjoying the family or tribe protection, like in the primitive era, but he became exposed to all risks, particularly nature's risks. In this respect, some examples are the civilizations of Phoenicia, Egypt, Greece and Rome, where trade by sea was a significant economic occupation, yet often exposed to risks.

The evolution of the idea of insurance took place along with the development of economic relations between human communities, between states. The practice and need led, step by step, to the coagulation of the concept, which, by numerous legal regulations, gained an increasingly adequate form.

Insurance came as a response to the need of protection against various risks threatening people and their goods.

The experience gathered in the field of insurance in the European area show the similitude of the determinants of such concept, the fact that people and society can protect themselves better and develop by resorting to insurance.

On this day, due to the changes occurring in the world economy, to the strong impact of the integration and globalisation phenomenon, to the development of the means and techniques of communication, of the economic and cooperation relations between countries, the insurance has made significant progress, but, in the same time, the risks increased. A constant remained the natural calamities which still represent this day a permanent source of concern and which the community must cope with, strengthening and developing the insurance system.

A new reality was configured and gets a foothold, the one of globalisation, in which the interdependencies between states, in particular those of economic nature, become increasingly obvious, and the evolution of each one of them is dependent on its participation, in one form or another, to the world economic circuit.

The accentuation of the phenomenon of economy globalisation has led to the development of world trade and, implicitly, of the international transport of goods by water, by air, by rail or by road.

Given the intensity and amplitude that the international trade now has, the carriers, the owners of means of transportation, the manufacturers and owners of goods, the banks and crediting companies are subjects interested in decreasing or even covering any damages that they might incur.

After having crossed an entire period of evolution and development, after having obtained a significant place in human life and in human activity, as well as in the activity of the society, the insurance system knows today a special diversification, especially within international trade operations.

The insurance issues are extremely complex and current. On this day, no sustainable and long-lasting progress can be conceived any longer, in any field of activity, without considering the purpose of insurance in decreasing or covering the losses caused by possible unwanted events.

The complexity of insurance results from their wide scope, from the diversity of the forms they take, as well as from the inventive spirit that insurers, reinsurers and brokers prove in finding forms of protection that should cover new risks, unknown beforehand.

Insurance is general in nature, as it covers almost every form of human activity. The history of insurance represents, actually, the history of mutual aid and human solidarity relations, of relations related to jointly bearing any common damages incurred by the members of a community.

Insurance is configured as an operation by which an insurer (an insurance company), based on mutuality, proceeds to establish an insurance fund with the help of the contribution of several insured parties, which are exposed to the occurrence of certain risks. The insured parties that suffer damage are indemnified by the insurer from the fund established from the premiums received and from the other incomes of the operations carried out by the insurance company.

The risk protection takes the form of a specific good, respectively a specific service which is traded on the insurance market. Thus, by insurance the risk is transferred from one person to a group that can bear the damages incurred, in exchange for an insurance premium. With the help of the compensations received from the insurance company, the insured economic operators can reconstitute the goods that were destroyed or damaged, therefore they can resume their economic activities.

The insurance operation achieves its purpose by the interdependence of its three perspectives of existence, i.e.: legal, technical and economic.

The legal framework of insurance is given by the insurance contract, the content of which is formed by the rights and obligations of the parties with regard to the item subject to insurance.

The action of organisation and implementation of insurance falls under its technical dimension. For this purpose, it is significant the mathematical substantiation of the insurance operation, which is based on the calculation of probabilities and the application of the law of large numbers.

The economic dimension of insurance falls under its basic purpose, replacing the insured in the pecuniary situation existing prior to the occurrence of the disaster.

This thesis emphasises the legal approach method, as that makes the insurance to exist by the contract with the same name.

The significant development of international trade has a strong impact on the insurance system. On this day, the scope of international trade includes an entire range of economic, banking, financial operations, by which the international economic and

technical-scientific cooperation is achieved. Also, the international trade is expressed by complex affairs, carried out on a long-term basis, which can no longer be accomplished with the help of traditional legal institutions, like the sale contract, the leasing contract or the contractor agreement etc. There is a need of new forms of contracts and methods that should adapt to the current economic situation. Thus, supply contracts for industrial equipment, contracts concerning licenses, patents, technical assistance, technology or know-how transfer, leasing contract etc. are increasingly used.

In agreement with the current development, which involves the existence of a large production and of a mass consumption, as well as of means of communication and transportation without precedent, the international practice has put forward new contracting methods and techniques, and, then, started tending to homogenise them. The space and dynamics of insurance in the area of international trade gained new dimensions, expressed by the development, diversification and specialisation thereof, the field of insurance gaining systemic valences, supporting the life of economic flows.

The ensemble of insurances has no limits in space, being a dynamic and comprehensive sector, whose evolution is strongly related to the economic, technological and social progress. The liberalisation of the international trade with insurances, the globalisation of such services, as well as the crossing of the cultural frontiers between countries have determined an homogenisation, respectively a standardisation of the terminology, form and content of insurance contracts. This trend had beneficial results on streamlining such activity, extending it, developing the insurance market, representing an indicator of the economic progress of the society.

The common terminology, the standardisation of insurance contracts and of reinsurance contracts, increases the efficacy of the procedure of conclusion thereof and provides the access to more information. Thus, those insurers that provide the most advantageous insurance terms shall be selected.

In their intent to increase their profit, the insurance companies are willing to take over the risk for certain events, undertaking to indemnify the owner for the loss incurred, for the damage or destruction of the insured goods.

Insurances cover all the fields of human activity, as they become a systemic component, helping to maintain the economic stability of a country and to stimulate international trade relations. Insurances play an important part in the development of the economy of states, as they actually represent one side of the economy.

Insurance is part of the human way of thinking and acting, a human being who feels the need to protect himself against possible damage-generating events.

This thesis approaches current and complex issues, those of insurances in international trade. It has numerous theoretical and practical implications. It is expressly aimed at international insurance contracts for road vehicles, ships, aircrafts, as well as for export credits.

This thesis also approaches the law applicable to the international insurance contract.

In fact, the insurance in the fields shown above represents the manner in which the contemporary insurance system acts, contributing decisively to the achievement and development of international trade.

CHAPTER I

General considerations on insurance

The notion of *insurance* includes various regulatory measures (economic, legal, managerial etc.) that should be taken in order to remove the adverse effects caused by the occurrence of events.

The concept of insurance can be approached from the legal, technical and economic point of view, being complex in nature.

All these dimensions succeed in covering various aspects falling under the insurance's reason to be.

The legal concept is the one consecrating insurance and giving it a legal form, while the technical element makes it become real.

It is deemed that the operation of offsetting risks by organising a mutuality and applying the statistic laws represents basic components of the classical technique of insurance.

The insurance represents the financial protection against losses generated by a wide and varied category of risks.

Being based on an agreement concluded between the insurer and the insured, the insurance contract provides the insured with protection against the insured risks.

The insurer undertakes to cover the equivalent value of damages to the insured in case of occurrence of the insured event or to pay the insured amount (in case of life insurance), in exchange for the payment by the insured of a sum of money called *insurance premium*.

The beginnings of insurance are strongly related to the people's needs to protect themselves against various risks determined by the various events that were threatening their life, goods and activities.

This field of human activity takes shape along with the first organised forms of trade, when they felt the need to divide risks, so that their effects could be easier to bear.

The historical proofs show that the dispersion of risk, for insurance purpose, was practiced in ancient times by Chinese merchants, who used to distribute goods on several ships, thus reducing the risk that all the goods that had to reach the destination might be lost.

The insurance has several functions.

The most important function of insurance is that of *financially offsetting the losses determined by the occurrence of a certain risk*.

Another important function of insurance refers to *financing activities in order to prevent the occurrence of risks, as well as educational programmes for the insured parties*.

For life insurance in particular, the insurance also has a *saving function*.

The conclusion and implementation of any insurance contract must comply with certain principles, i.e.: insurable interest, maximum good faith, *causa proxima*, compensation, subrogation and contribution.

By using certain criteria, different types and categories of insurance were established.

Starting from *the type and nature of the insured risks*, the insurances were classified into two categories: *life insurances* and *non-life* or general insurances.

Having as criterion *the manner in which they are born* (the manner of achievement of the legal insurance relations), the insurances are divided into: *insurances by law* (or mandatory) and *optional* (or contractual) *insurances*.

Starting from *the field of insurance*, we can distinguish the following categories of insurance: *insurance of goods*, *insurance of persons*, *civil liability insurance* and *financial interest insurance*.

Having as criterion *the insured risk*, the insurances are divided into: *insurance for natural risks*; insurance for the protection of crops; insurance for the protection of animals; accident insurance; death insurance aimed at insuring the risk of death and in which the beneficiary of the policy shall receive the insured amount in case of occurrence of the event; the civil liability insurance is aimed at covering the damages caused by the insured to third parties, damages caused by the occurrence of accidents, error or negligence.

Starting from the *criterion of the territory* where the protection by insurance is provided, we can distinguish *internal insurances* and *external insurances*.

By *the nature of the relations established between the insured and the insurer*, we can distinguish *direct insurances* and *indirect insurances* (or reinsurances).

By the legal nature of the insurance contract, we can distinguish *commercial insurances* (both parties are merchants) and *commercial-civil insurances* (the insured is an individual).

The most important categories of insurances used in international trade are: *insurance of goods (cargo insurance)*, *insurance of means of transportation (casco insurance)* and *civil liability insurance*.

In the field of international business, the reinsurance plays an important part, and that, the more so as the value and volume of traded goods increase.

By reinsurance, the initial insured can increase its financial capacity in order to cover risks which it cannot bear by itself. As a result, the insured that takes over a high risk, which exceeds its insurance capacity, can resort to reinsurance companies, in order to assign as reinsurance some part of the risk, and sometimes the entire risk even.

Reinsurance can be *unilateral* or *reciprocal*. Reinsurance is *unilateral* when one of the contracting parties takes over some part of the risks undertaken by the other party under the insurance contract. In case that, under the same contract or under different contracts, each one of the parties assigns or takes over some part of the risks undertaken under insurance and reinsurance contracts, the reinsurance is *reciprocal*.

The reinsurance contract has the following characteristics: it is a consensual, synallagmatic, onerous, random, contract of successive performance and adhesion. As the parties to the reinsurance contract are from different countries, a particularity of this contract is the element of foreignness.

The reinsurance contract exists at the same time as insurance contract, it is dependent on it, yet it has a distinct characteristic.

As the reinsurance operations took place at international level, the good faith principle plays a very important part.

Most frequently, the reinsurance contracts are concluded in written form. The clauses of the reinsurance contract refer to the following elements: name of the parties in the reinsurance contract, their registered office and exact address, type of the insurance contract, covered risks, extension of the liability from the value and territory point of view, omissions and errors, effective date of the contract, duration of the contract, force majeure situations, amount and method of payment of the reinsurance premium and of the premium reserves, suspension damages, retention of the assignor company, fee, brokerage, account settlement, reserve fund, method of payment of compensations, excluded risks, resolution of disputes between the contracting parties.

If disputes appear between the parties of the reinsurance contract, they can be solved in an amicable manner (by agreement, conciliation or arbitrage), and if an amicable solution cannot be reached, they shall use the court procedure.

Reinsurance contributes to increasing the insurer's financial capacity, providing it with the possibility to receive several risks. In this manner, the risk dispersion shall take place, that is the risk being divided to several insurers.

Also, by reinsurance, the direct insurers are protected against losses caused by the occurrence of high risks, which might even endanger their solvency. At the same time, reinsurance increases the insurer's flexibility, as well as insurer's capacity to underwrite several risks.

Reinsurance has two forms: proportional and non-proportional.

Mainly two basic methods are used in international reinsurance operations: *optional method* and contractual or *mandatory method*.

The optional-mandatory method is also used (method of insurance *pools*).

CHAPTER II

Legal framework of insurance

The legal framework of insurance evolved in time, continuously improving.

It is composed of two categories of sources: internal and international.

The internal sources in the matter of insurance are the **2009 Civil Code** and a series of special laws. Amongst such laws, the most important are **Law No. 136 of 29 December 1995** on insurance and reinsurance in Romania and **Law No. 32 of 3 April 2000** on insurance companies and supervision of insurance, norms that went through numerous amendments and additions.

In the international law, we can distinguish several conventions as sources, especially multilateral conventions. Amongst them, we remind: **1919 Paris Convention**, **International convention concerning the carriage of goods by rail (CIM)**, **1929 Warsaw Convention** and **1955 Hague Protocol**, **1980 Vienna Convention**.

The EU sources are the **Treaty of Rome** and the European directives.

CHAPTER III

Formation and effects of the international insurance contract

According to **art. 2199 par. 1** of the **2009 Civil Code**, the insurance contract is the contract by which the insurance contractor or the insured undertakes to pay a premium to the insurer, while the latter undertakes to pay, in case of occurrence of the insured risk, an indemnity, as the case may be, to the insured, to the beneficiary of the insurance of to the injured third party.

The parties of the contract are the insurer and the insured. Sometimes, the contract can also be concluded by a third party called insurance broker.

The insurance contract has several legal characteristics amongst which we enumerate: it is a consensual, synallagmatic, onerous contract, of successive performance, random and, in principle, an adhesion contract.

As it regards the form of the contract, the law requests the written form as an *ad probationem* and not *ad validitatem* condition.

As it regards the proof of contract, such proof can only be brought as documentary evidence, the evidence by witnesses being forbidden by the law.

The insurance contract has certain specific elements like the risk, the insured amount and the insurance premium.

The conditions of validity of the contract are the parties' capacity to contract, the parties' freely given consent, the determined and licit item and the licit and moral cause.

The insurance contract involves correlative rights and obligations for the insurer and the insured.

The main rights of the insured shall occur at the time of occurrence of the insured event and throughout the implementation of the contract. In principle, the insured shall be responsible for paying the insurance premium. The insurer shall have a series of rights throughout the implementation of the insurance contract, until the occurrence of the insured event.

The contract shall come to an end by expiration of its duration, by consent of the parties, or by occurrence of the insured event. The contract can also be terminated.

CHAPTER IV

International road insurance contract

In the contemporary economy, road insurance plays an important part. The legal form of such insurance is represented by the insurance contract with the three categories: cargo insurance during transportation, insurance of the means of transportation (casco insurance) and civil liability insurance.

This type of insurance includes a wide range of risks covered by the general insurance terms.

This chapter deals with the international motor vehicle insurance contract, the international road freight insurance contract and the international contract of civil liability insurance for car owners in the "Green Card" system.

The international road freight insurance contract has certain mandatory elements that must be included in the insurance policy. These are the contracting parties, the scope and the insured amount, the means of transportation, the insured risks and the excluded risks and the insurance premium.

The contracting parties are the insurer and the insured. The scope of the contract is represented by any goods transported in international traffic or which is stored pending transportation. The road vehicles to be used for transporting the goods must ensure the integrity of the goods during transportation. A wide range of risks is covered by the general insurance terms – "all risks". Compared to general risks, the special risks can be insured separately. Such separate insurance shall be made in exchange for an additional premium. During road transportation, the goods can be insured for general risks and for special risks.

According to the insurance term in which the policy is taken out, the insurer shall be allowed to grant compensations like in the system of maritime insurance.

The international motor vehicle insurance contract has some particularities concerning its importance, the method of conclusion of the contract, the statement of insurance, the calculation report for the technical value and the insurance premium, the

risks covered by the general terms and the special terms, as well as the situations of exclusion.

The instrumentation of the claim files and the assessment of compensation are reviewed, as well as the procedure for establishing compensations.

The international contract of civil liability insurance for car owners in the “Green Card” system ensures the protection of persons and goods in case of car accidents occurred abroad.

Based on the **Decision of the Board of Ministers No. 354 of 1964**, Romania has adhered to the “Green Card” system.

CHAPTER V

International maritime insurance contract

The maritime insurance originates from ancient times and it is based on the strong connection between trade and navigation.

The maritime insurance contract represents the understanding between the insured and the insurer by which the latter undertakes to indemnify the insured for losses incurred as a result of a maritime event.

The components of the maritime insurance interest are ships, goods, sea freight, hire, payment for travel based on the maritime passenger transport contract, profit expected from the achievement of goods and contribution to general average.

Also, the maritime insurance contract is approached from a triple perspective: casco insurance, cargo insurance and civil liability insurance.

CHAPTER VI

International civil aviation insurance contract

Aviation insurance can be included in a category of specialised insurance. In 1784 appears the first proposal for legal regulation of flight. Subsequently, in 1911 appears the first air code.

Insurance in civil aviation has several particular characteristics.

The policies used for insuring aircrafts can be classified depending on the insurance terms. One of such policies is the “all risks” term which yet excludes the risk of war, terrorism and hijacking. The additional term shall cover such these risks as well as the risk of theft. The special term in case of occurrence of the insured risk is the one establishing a decreased franchise.

The international air freight cargo insurance contract is aimed at goods transported by air. In case of transport of goods by air also the three large groups of

protection by insurance are applicable, that is: insurance “against all risks”, insurance “with particular average” and insurance “free from particular average”.

The procedure of conclusion of the international aircraft insurance contract involves the fact that the insured (airline company) fills in an application, followed by the assessment performed by the insurer. Amongst the fundamental elements of this contract we remind the insurance value, the insured amount and the insurance premium.

The contract must indicate the possible risks and the insurance terms. The covered risks must also be expressly indicated.

There are also exceptions form the coverage by the general insurance terms.

The international contract of civil liability insurance for air carriers covers all the amounts that the insured, according to the law, is obligated to pay for material damages or body injuries produced by it to a third party. Several types of third party liability insurance are identified, amongst which: insurance for aviation accidents, liability insurance for airport operators, aircraft owners and manufacturers, liability insurance for passengers and their luggage, insurance for the loss of incomes (lack of use) and insurance for the loss of license.

CHAPTER VII

International export credit insurance contract

In French legal literature, the credit is defined as the deed by which a person makes or promises to make funds available to another person or undertakes a commitment by signature, for instance, endorsement, bond, attaching also the insured operations to the credit, for instance, French leasing.

The credit is an economic-financial category, its initial element is the exchange in time respectively the separation by a time interval of the moment of transfer of a sum of money from the moment of reimbursement thereof.

The credit insurance is an attribute of the business world.

The credit insurance provides protection for the risk of default removing the seller’s concern that the sums payable to it cannot be paid by purchaser. The purpose of credit insurance is to protect against financial losses resulted from default or insolvency.

The credit insurance includes the following categories: internal credit insurance; export credit insurance; credit instalment insurance and investment credit insurance.

The parties of the export credit insurance contract are the insured (creditor) and the insurer for export credits.

The insured item is represented by export credits.

In the current economy it is remarked the existence in common of insurance companies (trading companies) and export credit insurers. The latters can be private insurers, legal entities of public law or even public institutions.

Selecting the category of insurance contract and the insurance technique is particularly important.

The formation of the contract is reviewed (the elements involved in this process, the procedure of conclusion of the contract, taking out the insurance policy, ascertaining and establishing the losses, as well as paying the compensations) as well as the parties' obligations (both the insured's and the insurer's, as well as the sanctions applied for the failure to fulfil the contractual obligations).

At the end of this chapter it is presented the export credit insurance by the Export-Import Bank of Romania (Eximbank S.A.).

CHAPTER VIII

Law applicable to the international insurance contract

Unlike **Law No. 105 of 22 September 1992** concerning the regulation of international private law relations (abrogated), which distinguished separate issues for the unilateral legal deed (chapter 7) and the contract (chapter 8), the current regulation presents a single regulation of the legal deed, no matter if it is unilateral or bilateral (contract), to which an article including the regulation with regard to the law applicable to contractual obligations is added.

The issues of conflicts of law in the matter of contracts is regulated in the **2009 Civil Code**, Book VII (*Dispositions of international private law*), Title II (*Conflicts of law*), Chapter V (*Legal deed*), in **art. 2637 – 2639** and Chapter VI (*Obligations*), in **art. 2640** (with the marginal denomination *Law applicable to contractual obligations*).

The *lex voluntatis* principle is expressly consecrated in the 2009 Civil Code.

Although the legislator is treating distinctly the content of the contract from the form, the solution selected is the same.

Thus, on the one hand, **art. 2637 par. 1** of the **2009 Civil Code** specifies as follows: "***the content*** *of the legal deed is established by the law selected by the parties*". According to **par. 2** of **art. 2637** of the **2009 Civil Code**, "*the selection of the law applicable to the deed must be express or must result without a doubt from its content or from circumstances*". The Romanian regulation further shows that "*the parties can select the law applicable to the entire legal deed or to some part of the legal deed*" (**art. 2637 par. 3**).

On the other hand, **art. 2639 par. 1** of the **2009 Civil Code** specifies that, as it regards the content of a contract, "*it is established by the law governing the content*".

The regulation of this issue in the EU law is provided by the Rome Convention and European directives in this matter.

Rome Convention concerning the law applicable to contractual obligations (adopted on 19 June 1980) is trying to unify the solutions with regard to the conflicting norms of the member states of the European Economic Community (currently the

European Union), solutions applicable to the contractual obligations that include elements of foreignness.

This Convention applies to all the member states of the European Union.

The provisions of this Convention shall not apply to insurance contracts covering risks produced on the territories of the member states of the European Union. In order to establish whether a risk is produced on the territory of a member state of the European Union, the court shall apply its internal law (**art. 1 par. 3**).

Rome Convention entitles the parties of an insurance contract to select the law applicable thereto (in its entirety) or only to some part of the contract. For that purpose it is necessary that the selection made by the parties expressly results from the contractual provisions or is inferred from the circumstances of the case.

If the parties of the insurance contract failed to make an express choice, according to the *lex voluntatis* principle, the law to apply to the contract shall be the law of the state with which it has the strongest connections, that is the law of the state where the party providing the characteristic service (protection against risk) has, at the time of conclusion of the contract, its registered office.

When the contract is concluded in exercising the professional activity of a party (in case of insurance contract, the insurer), the applicable law shall be the one of the state where its registered office is found. In case that, according to the contractual provisions, the specific service shall be in charge of a different (secondary) office found in a different state than the registered office, the law of the state of such secondary office shall apply.

In case the insurer is represented by a branch of an insurance company established in a different state than the one where the contract is concluded, the applicable law shall be the one of the state where such branch was established, as the branch shall provide the characteristic service.

There are several European directives concerning insurance, adopted in three stages.

The most important directive with regard to establishing the law applicable to insurance contracts is **Directive No. 88/357/CEE of 22 June 1988** concerning the coordination of law, regulations and administrative provisions related to direct insurance activities, other than life insurance.

According to the norms included in this European directive, the law applicable to the insurance contract shall be the law of the state where the risk included in the insurance is situated or the law of the state where the insured's residence or office is situated.

Nevertheless, in case of insurance of major risks, the directive allows the parties to select the law applicable to the contract.

Under the conception of the directive, "the place where the risk is situated" is the territory of the member state of the European Union where the insured's residence is situated (if the insured is an individual).

If the insured is a legal entity, "the place where the risk is situated" is the state where the insured's registered office is situated (**art. 2 letter d**).

In principle, the directive limits the possibility of choosing the applicable law.

The regulatory deed shows that, when all the elements of the contract are localised in a single member state of the European Union, the law chosen must not affect the imperative provisions of the law of that state.

In case the law of the member state stipulates so, the imperative provisions of the law of the state where the risk is situated or of the law of the state that requires the conclusion of a certain insurance, shall prevail against the law chosen by the parties, if such provisions are applicable according to the legislation of these countries, regardless of the law governing the contract.

Also, subject to the regulations specified above, the member states are allowed to apply to insurance contracts the general rules of international private law in the matter of contractual obligations.

As we have also shown in the case of 1980 Rome Convention, the directive specifies that the selection of the applicable law by the parties must be express or easily inferred from the circumstances in which the insurance contract was concluded.

As it regards the North America regulation, it is given by the **Inter-American convention on the law applicable to international contracts** (CIDIP).

According to this convention, in the American law, as it regards the law applicable to the international insurance contract, the rule is also represented by *lex voluntatis*.

In the absence of a choice made by the parties with regard to the applicable law, the law of the insured’s residence or office at the time of conclusion of the contract shall apply. Changing the insured’s residence or office subsequent to the time of conclusion of the contract shall have no relevance with regard to the applicable law, as the contract shall still be governed by the initial law.

Such legislative solution is different from the one of most of the law systems (which, in the same situation, prefers the law of the insurer’s office) and it is justified by the intent to protect the insured in front of large insurance companies.

CONCLUSIONS

The issues of insurance in international trade are aimed at an extremely varied and dynamic reality, which the economy of the contemporary society emphasises in a conjunction that has never been met in history, materialised by the amplification and diversification of the forms of international cooperation and the development of international trade.

In this complex mechanism of economic exchanges, the insurances and their system find their space for improvement, diversification and specialisation.

The development of world economy reflects essentially by the intensification, on the one hand, of road, maritime and air transports, which represent the basic infrastructure of international trade, and on the other hand, of the insurance and credit system, as they, at their turn, support economic exchanges and cooperation.

These phenomena take place in a context where the purpose of general or only local economic and legal conditions, which govern the implementation of international commercial relations, is constantly increasing.

This thesis, under methodological aspect, is articulated by reuniting the following perspectives: historical perspective, explanatory-argumentative perspective and comparative perspective.

The historical perspective is aimed at the evolution of insurance, respectively their origins and their progress in time. The idea of insurance is as old as mankind, yet the forms it gained are related to the general and specific conditions that the social development made possible.

The explanatory-argumentative perspective has in view the entire logical and legal apparatus involved in the insurance phenomenon, in order to observe the main categories and concepts necessary for understanding, explaining and reasoning some realities and domains, as well as to observe various connections or trends.

The comparative perspective is using the method of comparison between various elements, processes, entities, in order to observe the evolution thereof.

By using these perspectives, the thesis has tried to emphasise the significant aspects of the issue of insurance in international trade.

The thesis is building a synthetic image over insurance, it is analysing the notion of insurance, the functions and purpose of insurance and reinsurance, the risk and its issues, respectively risk management, the evolution and classification of insurance.

The legal definition of insurance is given by the **2009 Civil Code** which, in **art. 2199 par. 1** specifies that the insurance contract is the contract by which "*the contractor of insurance or the insured undertakes to pay a premium to insurer, while the latter undertakes to pay, in case of occurrence of the insured risk, compensation, as the case may be*, to the insured, the beneficiary of insurance or the injured third party". In **par. 2** *the contractor of insurance* is defined as "*the person that concludes the contract for insuring against a risk regarding another person or the person's goods or activities and undertakes towards the insurer to pay the insurance premium*".

From the definitions given in the doctrine, as well as from those provided by law, it results the perspectives of delimitation of the notion of insurance, the fact that it equally meets legal, technical and economic aspects.

The financial compensation of the losses caused by the occurrence of a certain risk represents the most important function of insurance, together with the function of financing some activities aimed at preventing the occurrence of risks and educational programmes.

The necessity for the insured to have a preventive conduct and maintain in an appropriate manner the insured item has determined the use of franchise to be possible in the practice of insurance.

The central and specific element of insurance consists of determining and insuring the risks.

In fact, the risk represents a possible, future and uncertain event to which a person's goods, assets, life or health are exposed. There is a complex typology of risks, amongst which we mention the one whose criterion is the impact on insurability, i.e.: insurable risks and non-insurable risks. The insurable risks, at their turn, include the following categories: general risks, special risks and non-insurable or excluded risks. These categories are the most frequent in any insurance policy. Administering risk situations or the risk management has an important place in understanding the changes that take place in the economy of the contemporary society.

Section two of the first chapter (dealing with the evolution of insurance) includes the development of insurance from the ancient civilisations (Phoenicia, Egypt, Greece, Rome etc.) until the moment when the concept gained a legal foundation, once the maritime insurance law of 1601 was adopted (*Act Touching Policies Assurance used among merchants*).

Like in the other countries of Europe, in Romania, insurance, in its modern form, appear in the 19th century, yet the beginnings of the insurance activity are much older. The first organisation that was aimed at insurance was the General Pension Institute, established in Braşov in 1848 by the Craftsmen Association, which ensured an annual pension to its members. Several insurance companies were established later on, and after 1930 the insurance activity in Romania has much increased. All the types of international insurance were developing. During the period 1949-1990 the centralised economy was established in our country and the state monopoly on the insurance activity was introduced.

Significant legislative changes also took place after 1990. They removed, in time, the state monopoly in this area and led to the appearance of several insurance companies.

The legal framework of insurance is approached in the second chapter of this thesis and it has in view the following aspects: the internal regulation in our country, the international regulation – international conventions with impact on insurance regulation, the European Union law concerning insurance, respectively the European directives in the matter of insurance.

It should be specified the fact that the legal base of insurance in Romania was configured step by step, having always in view the opening towards the European and international legislation.

The main laws that contributed to the development and consolidation of the insurance system in our country were the following: **Law No. 47 of 1991** on establishment, organisation and operation of insurance-reinsurance companies, **Law No. 136 of 1995** on insurance and reinsurance in Romania, **Law No. 32 of 2000** on insurance companies and supervision of insurance (as subsequently amended) and, currently, the **2009 Civil Code**. The elaboration and implementation of these laws took place on a continuous basis under the shaping action of the international regulations and EU directives. In the international regulation, conventions had a significant impact on the insurance system. These are the international conventions formulating norms of uniform material law and those establishing norms of uniform conflicting law.

If, within the commercial relations, the bilateral international conventions are aimed at maintaining favourable auspices in international exchanges, the multilateral conventions, by their area of action, tend to unify the norms of material and conflicting law in the international trade activity.

An important part is also played by the regulations concerning the insurance against contractual risks in international trade. Amongst others, we can identify **1919 Paris Convention** which set out the rules for carrying out the international air transport activity, **International convention concerning the carriage of goods by rail** (CIM), promulgated and signed in Bern in **1952**, **1929 Warsaw Convention** and **1955 Hague Protocol** concerning the unification of rules on the international air transport şi a uniform legislation on the legal liability of air carriers for passengers and goods, **1980 Vienna Convention**, which applies to sale contracts between parties whose registered offices are in different states or when the norms of the international private law lead to the application of the law of a contracting state.

The European Union law in the field of insurance was configured along with the establishment of the European Economic Community by signing the **Treaty of Rome** on 25 March 1957, by which the contracting parties established the main regulatory objectives. The priority was to remove the barriers on the free movement of persons, goods, services and capitals and the achievement of the harmonisation of the national legislation from the member states of the European Economic Community. The directives of the European Union represent the form and means of implementation in the national legislation of the EU provisions in the matter of insurance. The three "generations" of directives had the following objectives: the regulations of the first generation provide the conditions for establishing insurance companies, i.e.: form of the company, minimum number of shareholders, minimum capital, licencing procedures, conditions for establishment in a different EU country than the one of the registered office etc.; the second generation of directives refers to the free provision of insurance services. The directives of the third generation were aimed at creating the single European law in the field of insurance.

Chapter III of the thesis approaches the international insurance contract. The delimitation of the notion of insurance contract took place depending on the definitions

given in the doctrine and in the legislation. Also, the legal characteristics of the insurance contract were analysed.

With regard to the typology of insurance contracts, the main categories of insurances in international trade are being analysed, i.e.: insurance of goods (of the cargo of the means of transportation), insurance of the means of transportation and civil liability insurance.

The insurance of goods or of the cargo of the means of transportation (also called CARGO insurance) is aimed at import-export operations for the duration of the transport (by river, by sea, by land or by air).

The insurance of the body of the means of transportation (called CASCO insurance) includes motor vehicles, rail vehicles, ships and aircrafts.

Another category is the civil liability insurance which is aimed at covering the damages caused by accidents to third parties.

In order to insure the goods, according to the CARGO insurance contract we can use one of the following terms: "*free from particular average*" – FPA; "*with particular average*" – WPA; "*all risks*" – AR.

According to CASCO insurance policies, the insurance contract is concluded under the following conditions:

- with liability for damages and averages (WA or WPA);
- without liability for averages, except in case of collision, stranding, fire or explosion or shipwreck (for ships);
- with liability for total loss only (TLS) – including here the rescue expenses also.

The international civil liability insurance covers the risks of occurrence of the events causing damages to a third party. The form of this contract is practiced especially in the fields of road, maritime and air transportation. Hereinafter, the conditions of validity (parties' consent, parties' capacity to contract, a determined and licit item, a licit and moral cause), and the principles of the insurance contract (insurable interest, maximum good faith, *causa proxima*, compensation, subrogation and contribution) were subject to analysis.

The operation of forming the insurance contract, the mandatory and the specific elements, the insured amount, the insurance premium, the conclusion of the insurance contract, the effects of the insurance contract and the cessation of the insurance contract were analysed.

Within the thesis, the international insurance contract for road vehicles has an important place. The development of road transports, the increased number of vehicles and the diversification thereof determined the road vehicle insurance to represent a distinct category. Today, the motor vehicles have become a common good, of first necessity.

The frequency of accidents caused by motor vehicles determined the necessity of insurance in this field. Auto insurances are not limited to the insurance of the means of transportation only. From the point of view of the use of motor vehicles, the insurance that can be concluded includes several types, i.e.: cargo insurance during transportation, carrier's liability insurance, motor vehicle insurance, civil liability

insurance, passenger insurance, accident insurance for persons duly transported in motor vehicles.

According to the insurance term in which the auto insurance policy is concluded, the insurer shall grant compensations just like in the system of maritime insurance. Therefore, the same three insurance terms: A, B and C shall be applied in the cargo insurance procedure. The widest, but also the most expensive is term A – "all risks for loss and/or average". During road transportation, the goods are subject to this term, except for the risks provided at exclusions. Less comprehensive is term B which covers losses and/or averages caused to goods during transportation. This term includes a small number of risks which are expressly specified within it. Term C covers the losses and/or averages caused to goods during transportation. This term covers the losses caused by less risks than those included in terms A and B.

It should be specified, yet, that any one of the terms mentioned can be extended also (in exchange for an additional premium) to the coverage of special risks. By the special insurance terms, the insured requests an additional protection for certain risks (risks of war, risks of theft, robbery and failure to deliver or risks related to the nature of the goods: heating, altering, breaking, scattering).

The carrier's liability insurance for the transported goods must be in accordance with the provisions of the Convention concerning the contract for international transport of goods by road (C.M.R.). Thus, according to **art. 17** and **art. 23** of this Convention, the carrier shall be liable for the following situations: total or partial loss of the goods, damaged products during the period from the receipt of the goods until the delivery of goods, exceeding the delivery term etc.

The motor vehicle insurance is approached in detail, along with the procedure of conclusion of the road vehicle insurance contract, respectively the insurance policy and the insured amount, the insurance terms and the risks covered by the general insurance terms and the special insurance terms, the exclusion situations, as well as the procedure of instrumentation of the claim files and the payment of compensation.

The protection of persons and goods in situations of auto accidents that take place at an international level has determined the appearance of the international auto insurance and the construction of the "Green Card" system for this purpose.

This project was launched in 1947 by the EEC-UNO sub-commission of road transport. According to the project, the insurance concluded at insurers from the country of origin is valid in the visited country, pursuant to the mandatory insurance law of that country. It should be specified the fact that Romania adhered to the "Green Card" system pursuant to **Decision of the Board of Ministers No. 354 of 1964**, and on such legal basis inter-office conventions were concluded with the National Offices affiliated to this system.

Chapter V approaches the international insurance contract for ships. The contemporary realities show that the international maritime insurance market is strongly influenced by the evolution of the international trade by sea, by the development of the commercial fleet worldwide, but also by the technical and economic characteristics of ships. Risks whose occurrence causes losses determined by the nature of maritime transport are covered by the maritime insurance contract.

Essentially, the property interests related to the commercial activity forms the scope of the maritime insurance contract. The maritime commercial activity mainly refers to the use of ships for transporting goods, passengers, luggage and post. Such transport also has in view activities like fishing, extraction of minerals from the sea, as well as economic, scientific, cultural activities and others. The main interests considered in maritime insurance are aimed at the following components: ships, goods, hire, payment for travel based on the maritime passenger contract, achievement of goods and obtaining the expected profit, contribution to general average. The main objective of the maritime insurance is represented by indemnifying the insured parties for the losses incurred, as a result of occurrence of the events related to maritime transport. Within maritime insurance, the insurance terms are grouping the risks for which the insurance companies provide protection for the insured item.

Risks are classified into insurable risks and non-insurable risks. Insurable risks, at their turn, can be general risks and special risks. General risks are those with a well-known frequency, they enter the category of "sea hazards" and are covered by the usual insurance terms. We are talking about events like: collision, fire, theft, storm, shipwreck, stranding etc.

Special risks or "named risks" are insured separately, being categorised into similar groups or individual groups, for a single risk, which is named. Risks that are not subject to coverage form the category of excluded risks. Such damage-causing events falls under the nature and the physical and chemical characteristics of the insured goods, as such events occur as a result of negligence or failure to comply with the technical norms and the risk management terms imposed by the insurance company.

Material losses that the ship, goods or sea freight can incur during the maritime travel, involving loading, unloading or transport operations are forming the content of the notion of average. Depending on the nature of the insured item, the intensity of the risks occurred, the extension of damage, the possibility for recovery, as well as the interests they affect, the averages were classified into three categories: total average (total loss); partial or particular average (*particular loss*); general average (*general average loss*).

The methods of covering risks take place by the insurance terms, which are forming the content of the maritime insurance contract. By the nature of insurance, there are several types of terms. This, the "all risks" term has a wide range and covers all the events, with certain exclusions separately and expressly formulated in special clauses. There are yet terms that refer to certain risks, "named risks", which are expressly designated in the insurance clauses or in the general terms of the insurance contract.

In the matter of insurance, the British tradition imposed itself worldwide, with the three terms: "*Free from Particular Average*" – F.P.A., "*With Average*" – W.A. and "*All Risks*" – A.R.

The progress of maritime transports and the necessity of adaptation to the new requirements imposed the modification of the insurance terms, a fact that was achieved by the Institute of London Underwriters, which in 1982 has elaborated a set of

insurance terms which, essentially, are valid on this day also. We are talking about term A, term B and tem C. The order of such terms refer to their scope. Thus, term A is the widest, it includes all the risks for loss and damage of the insured item, except for the risk groups presented separately. Term B maintains the same exclusions as term A, but it covers a less comprehensive range of risks. The insurance term C maintains the same exclusions and covers the loss and damage to goods caused by a smaller number of risks.

The insurance terms for maritime ships are: “total loss, average and liability for collision”; “total loss”; “total loss and average”; “total loss and general average”. The first term is the widest and, therefore, the insurance premium is the largest. The difference between the terms included in the maritime insurance contract refers to their range, thus to the degree of protection they can offer and to the size of the insurance premium.

Hereinafter we approach the issues referring to the maritime insurance policy, the procedure of conclusion of the maritime insurance contract and the effects of such contract, respectively to the obligations of the contracting parties until the occurrence of the insured risks and afterwards, the insurer’s subrogation in the insured’s rights.

An important space in the thesis is reserved to the analysis of the international aircraft insurance contract. The aircraft insurance, on the insurance markets, is included in a category of specialised insurances, due to its international component.

At first, aviation insurance was deemed as accident insurance, but, in time, they became a distinct category, given by the complexity of the field and the increased need of protection. In the field of insurance there were constant preoccupations for the creation of bodies that would determine a unification in the practice of aviation insurance. On 4 June 1934 the International Union of Aviation Insurers (IUAI) was established, with its registered office in London.

An important part for international air transport was played by the **1944 Chicago Convention**, and under this convention the International Civil Aviation Organisation (ICAO) was established, which was aimed at supervising the international air traffic and solving the related problems. The legal aspects related to risk insurance for aircrafts were elaborated by the collaboration between IUAI and ICAO.

Given the complexity of air transport, the insurance companies, when concluding an aircraft insurance contract, undertake certain risks caused by events that may occur on the ground or during flight. The most often events met in the air insurance procedure are those of “total loss” or “catastrophe”. For an aircraft (*hull loss*), the compensation amounts are extremely high (can reach up to 125 million dollars), amounts that the insurer would not want to pay. A threat for the security of civil aviation consists of the increased risks of boarding and quasi-boarding. A policy of prevention from the technical and legal point of view was proposed for the prevention of collisions.

The technical aspect considers the development of autonomous systems for prevention of flight accidents. The legal prevention considers tracking the irregularities, incidents and accidents.

Today, airplanes are built for a larger period of time (20-30 years), which provides higher flight security, while the air insurance companies provide better insurance terms.

The aircraft insurance policies are classified by insurance terms and by the period established. Thus, the "all risks" term represents a policy that yet excludes the risk of war, terrorism and hijacking; the additional term covers the risk of war, terrorism, hijacking and, possibly, theft; the special term, in case of occurrence of the insured risk, establishes a reduction of the franchise.

As it regards the period of time established, insurance policies are time policies and travel policies. In the aviation insurance system an important place belongs to aircraft insurance for total loss or for partial loss to the hull, respectively the component parts and equipment. The insured value represents the insured amount and it means the maximum level of the insurance value in case of occurrence of a total loss. In agreement with the premium tariff in force, the insurance premium is calculated on the date of conclusion of the aircraft insurance contract.

When establishing the risks that may occur, in the air transport activity they must take into account a series of criteria, like: characteristics of the aircraft to be insured, respectively type of aircraft, number of passengers and accompanying crew members, specificity of its configuration, professional skills of the pilot, considerations related to the geographical area, conditions on site, atmospheric conditions, factors related to the location of airports or the frequency of flight periods.

According to the doctrine and practice in the field of air insurance, the insurer shall grant compensations for the following conditions: effective or constructive total loss of the aircraft or damage due to any cause, while the aircraft is in the air, moving on the ground or standing on the ground; disappearance of the aircraft; damages caused to the aircraft by the rescue measures; necessary expenses made for rescuing and preserving the aircraft, for transporting the aircraft from the site of damage to the repair site; court expenses, arbitrage expenses and other costs.

Just like the maritime insurance, a constructive total loss of the aircraft is considered if at least 75% of the aircraft insurance value represent amounts necessary to recover the aircraft to operational status. A total loss is considered if the aircraft can no longer be recovered, if it crashed and the required repair value is higher than ¾ of the insurance value. The aircraft insurance terms include two categories of risks, i.e.: all risks during flight, while moving on the ground or standing on the ground; all risks while standing on the ground.

The same chapter also reviews the particularities of the aircraft insurance contract. As it regards the types of liability insurance towards third parties practices in the aviation insurance, there are approached aspects regarding the aviation accident insurance, the liability insurance for airport operators, aircraft owners and manufacturers, liability insurance for passengers and their luggage, insurance for the loss of incomes (lack of use), insurance for the loss of license.

The particularities of the insured's obligations and the procedure for ascertaining and assessing the damages, for establishing and paying the compensations are also reviewed.

Chapter VII of the thesis approaches the export credit insurance contract. The international trade has become a significant vector in the development of the contemporary society. The need for present and future financial safety represents an important landmark that must be taken into consideration when carrying out various business and investments.

Committing the payment for the future, by resorting to credits, is what characterises today's world economy and business. The loans contracted for the purpose of achieving or developing business are based on a crediting relation. The financing decision, both worldwide and nationwide, is oriented by the same general principles aimed at the financing cost and the risks undertaken. International financing is yet distinguished by a high degree of complexity, as a series of elements occurs at this point, like: geographical distance, period of time, monetary exchange risks, aspects related to the general risks, characteristic to foreign trade operations.

The activity of granting credits is a complex activity that involves undertaking specific risks. The credit most often used in the financial insurance system is the commercial credit. Financial insurance protects the insured against the risks of financial losses that may appear in the activity it carries out.

The credit insurance is aimed at protecting creditors against financial losses resulting from default or insolvency of purchasers that acquired goods on credit. As in the trade with other countries the risks are very high, the credit insurance is carried out via special bodies established at government level, like the Export Credit Guarantee Department in England, or the Export-Import Bank of Romania – Eximbank. The basic activity of such companies consists of insurance, as well as securing credits by the government of that state and promoting the export operations of their merchants.

Financial risks that can be insured are divided into two categories: commercial risks and political risk. Commercial risks refer to purchaser's situation and regard its insolvency and, therefore, the failure to pay its debt; the purchaser's temporary or permanent impossibility to pay for the goods acquired or services provided; purchaser's refusal to accept the contracted goods for reasons not depending on the seller.

The political risk only occurs when insuring export credits and it represents an important category in assessing the payment risk. The forms in which the political risk appears are aimed at difficulties and delays in the process of money transfer from the purchaser's country.

Most part of the category of political risks is represented by the transfer risk, the risk of the impossibility to pay due to a lack of convertible currencies in purchaser's country. Hereinafter we analyse the process of assessment, conclusion and implementation of the export credit insurance contract, taking out the insurance policy, ascertaining and establishing the losses and paying the compensations. An important place in this chapter is dedicated to insuring export credits by the Export-Import Bank of Romania Eximbank.

The final chapter of the thesis approaches the law applicable to the international insurance contract. The first relevant issue was clarifying, respectively defining the element of foreignness of the international trade contract. In this regard two

conceptions were configured. The first, which considers that an international trade contract is the one containing in its structure an element of foreignness together with the following aspects: nationality of the contracting parties, their registered office, domicile or residence, which are in different countries; place of conclusion or signing place; sometimes the place where the scope of the contract is changed. We find this conception in the Romanian legislation also.

The second conception belongs to the French doctrine and considers that the element that qualifies a contract as an international contract is the economy of two different countries, and therefore what matters is the economic interest. It should be specified the fact that *lex contractus* regulates most of the problems related to the content and the effects of the contract in their entirety. The forms that *lex contractus* can take refer to the law independently selected by the parties (*lex voluntatis*), as such law can be any law in force, while in the absence of such law, it shall be the law determined by regulatory means or the law resulting from practice by the subsidiary conflicting norms.

In order to determine the law applicable to the international insurance contract, in the absence of a material uniform framework, they shall proceed to select amongst the competitive law systems, operation that can take place via the mechanism of legal conflicting norms, provided by law or not, possibly by those resulting from the relevant court and arbitrage practice. In this regard, the *lex voluntatis* principle represents the fundamental conflicting norm in this field. In the Romanian legislation, the *lex voluntatis* principle was initially regulated in **art. 73** of **Law No. 105 of 1992** (abrogated in 2011), and it is now provided in the **2009 Civil Code** (**art. 2640**, reported to **art. 2637 and foll.**). Currently, in most of the law systems the *lex voluntatis* principle was consecrated, by which the parties have the possibility to choose the law applicable to the relevant contract. Such solution is provided in the Regulation of Rome I dated 17 June 2008 concerning the law applicable to contractual obligations and in the Inter-American convention on the law applicable to international contracts (CIDIP), regulations aimed at homogenising the subsidiary conflicting solutions and determining the law applicable to an international contract in the absence of the parties. If, in most of the states with economies governed by a free market, the insurance system has a tradition that also created a culture in the field, thus consolidating the efficiency of insurance, in our country the national legislators intervened, regulating this activity. Thus, credit insurance proves to be a legal institution with multiple implications on international cooperation, by supporting the international trade. In this regard, the export credit insurance policy represents a strategic direction of economic and social development, while the improvement of the legal foundations of the insurance system is a condition of valorising the possibilities provided by the current international context.

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