

## PARTICULARITIES OF LEGAL REGULATION OF INSURANCE CONTRACT IN CIVIL AVIATION

The article focuses on research of particularities of subjective structure of an insurance contract in civil aviation, types of insurance contracts in civil aviation, as well as content of insurance contract and order of its conclusion and termination.

Today insurance in the sphere of civil aviation in Ukraine is extremely important *fat* financial system and aims at hedging against occasional but probable losses of citizens and organizations, therefore the research of legal regulation of insurance contract is vital in our country since it contains many problematic and controversial issues. The legal relationships between persons interested in insuring their life, property, liability and other property interests that do not contradict the current law of Ukraine (Insured), for one part, and persons fulfilling insurer\* (Insurer), for the other part, are covered by an insurance contract.

Let's consider validity terms of an insurance contract in civil aviation, its content, subjective structure and procedure of conclusion.

But prior to considering this type of contracts it is worth while defining what is an insurer\*: contract and by what regulations it is governed.

Legal regulation of an insurance contract is governed by the Civil Code of Ukraine [1], the Law of Ukraine "On insurance" [2] and other regulations. Official interpretation of this term in Ukraine is specified in the article 16 of the Law of Ukraine "On insurance" according to which insurance contract is a written agreement between insurer and insured under which the insurer undertakes in case of insurance event occurrence to pay the insurance indemnity to the insured or other person, specified in the contract as policyholder, to the benefit of which the insurance contract has been concluded (help provision, service rendering etc), and the insured undertakes to pay the insurance premium at set dates and to fulfill other terms of the contract [2]. The identical definition of the insurance contract is stated in the article 979 of the Civil Code of Ukraine.

After analyses of this definition some conclusions can be drawn. First, insurance contract to the sphere of civil aviation is a payment-based contract, since actions of the insured meet the obligation of the insurer to do the counteraction. Second, this contract can be bilateral or trilateral (agreement in favor of beneficiaries), since each of its parties have rights and responsibilities. Third, insurance contract is real since it comes in force upon payment of the insurance premium or the first insurance payment by the insured. Insurance contract belongs to aleatory (hazardous) contracts. According to the theory whether certain circumstance occurs or not, one party wins and the other losses [3, C.318]. Insurance contract in civil aviation is concluded in writing. The fact of its conclusion can be confirmed by the insurance cover note (policy, certificate), which is a form of insurance.

Aviation insurance is a general name of the complex of property, life and liability insurance, arising from operation of air transport and protects property interests of entities and individuals in case of certain events specified by the insurance contract or law [4, C.109].

There is obligatory and voluntary aviation insurance. Certain types of aviation insurance are obligatory due to international conventions in civil aviation, to which Ukraine has joined, and internal legislative acts. It applies to all air-operators of Ukraine within the territory of Ukraine and beyond its boundaries. Obligatory insurance covers: 1. air carrier liability insurance for damages caused to passengers, baggage, post, mail, cargo; 2. liability insurance of the aircraft operator for losses caused to third parties; 3. insurance of the aircraft crew and other aviation personnel; 4. insurance of employees of the aviation works customer, personnel involved in performing technological process maintenance during aviation works; 5. aircraft insurance.

Voluntary types of aviation insurance is a wide range of property insurance and liability insurance of various companies and organizations which participate in operation of civil aviation

includes: 1. accident insurance; 2. air transport insurance; 3. liability insurance of the air port owners (including air carrier liability).

The procedure and conditions of aviation insurance are specific and require detailed treatment. In particular, due to the following factors:

- aviation insurance deals with specific, different from other types property risks;
- significant insurance amounts require agreed coordination of insurers and re-insurers;
- aviation risks may imply devastating and cumulative losses;
- aviation insurance is closely linked with international insurance market;
- aviation insurance is controlled by both national and international law;
- for operations in aviation insurance a developed specialized infrastructure is required;
- aviation risks have high requirements to professional training of the specialists fulfilling their insurance.

Thus, aviation insurance is quite complicated in its concept, and its realization requires a Special approach from the insurer.

The following scholars dedicated their works to coverage of theoretical and practical framework of insurance and reinsurance in the filed of aviation: I.L. Morozava, O.Y. Shmatko, V.M. Furman, Y.V. Yevchenko, S.S. Osadetsj, V.D. Bazydevych etc.

The legal background of this type of insurance is very diverse. It implies norms of international treaties and conventions (Warsaw Convention, Guadalajara Convention, Rome Convention etc) to which our county has joined; regulations of civil aviation organizations, a member of which is Ukraine (IKAO, IATA; norms of internal legislation governing civil aviation and insurance (Air Code of Ukraine, Law of Ukraine "On insurance").

Subjective structure of the insurance legal relationships includes two groups of subjects. The first group consists of insurer and insured, i.e. persons that are parties of the insurance contract.

The second group of insurance legal relationships is represented by insured persons and beneficiary - third parties.

According to art. 2 of the Law of Ukraine "On insurance" insurers are financial institutions established in form of joint-stock companies, full, limited partnerships or additional liability companies, which have duly obtained insurance license [2]. Insurer is a legal body (insurance company) which under insurance contract or according to rules of law undertakes for a certain fee to reimburse the insured or other insured person losses incurred as a result of certain events (insurance events) [4, C. 110].

In order for an insurance company to perform aviation insurance it must meet some obligatory requirements, namely: 1. It must have professional experts who have not only a good command of insurance economics but have profound knowledge of aircraft maintenance, certification in civil aviation, rules of flights, and, of course, international law; 2. Wide reinsurance system. Insurance amounts of aviation risks are one of the most high among all kinds of insurance (tens, hundreds of millions and sometimes even billions of dollars). Certainly, placement of such risks requires involvement of not only financial capacities of national insurance market but also resort to international insurance market. Such work cannot be performed without reinsurance contracts with national insurance companies and international insurance brokers; 3. Experts in international law and agreements with international law companies. In case of an insured accident occurrence in civil aviation laws of many countries are usually confronted: those of the country on the territory of which the accident happened, laws of the country where the air carrier is registered, country-owner of the plane and laws of the countries whose citizens were injured in aircraft accident. Therefore, settling of any serious insurance event in aviation insurance requires knowledge and correct application of all these laws; 4) Availability of accurate calculations of risks accumulation. Calculation of the insurer's own retention due to considerable risks accumulation is an essential condition for acceptance of any risks from aviation insurance. Usually insurers differentiate between total or accumulated quota - clearly defined percentage of financial assets (100%) for all types of aviation insurance. Assessment of the insurer's own retention quota for each type requires calculations. At calculation of risk accumulation it is taken into account that in case of plane disaster (crash) it is necessary to pay for a plane itself- damaged property (e.g. 50% of the accumulated quota) and for the dead crew members (5-7 persons, 10% of the accumulated quota)

and for the dead passengers (An-24 - 46/48 passenger seats, Tu 154 - 168 passenger seats, e.g. 20 % of the quota), cargo taken for carriage and damaged by aircraft wrecks property on the ground (20% of the quota).

According to art. 3 of the Law of Ukraine "On insurance", insured is a legal body or a competent citizen who has concluded the insurance contract with insurer or is insured under the law» of Ukraine. L.L. Kinashchuk believes that this definition is too narrow and offers to recognize insured as legal or physical body which has an insurable interest and enters into relations with the insurer as prescribed by law, participates in creation of insurance fund by paying fees and has a right for indemnity in case of insurance event [5, p. 72]. Definition of A.L. Khudyakov seems to be justified - he considers insured as a subject of insurance law relations, who has clear insurable interest and has a right to demand insurance coverage of this interest from the insurer [6, p. 251 ].

As determined in the article. 4 of the Law of Ukraine "On insurance", the objects of insurance may be the property interests that do not contradict legislation of Ukraine related to - life, health, ability to work and additional pension of the insured or the insured person; - possession, use and disposal of property; - compensation by the insured for damages out of his fault to the person or his property as well damages caused to legal entity (liability insurance).

The content of the insurance contract in civil aviation, as of mutual legal act of volition, is framed by conditions on which the relevant agreement was concluded. Definition of the contract's content is of great practical importance since depending on it, specific formation of rights and liabilities and possibility of proper obligations fulfillment are defined. The law specifies conditions that must be covered in the insurance contract (art. 16 of the Law "On Insurance"), it is also stated that the insurance contracts are to be concluded according to insurance rules. Rules of insurance are local regulations of the insurer, which contain provisions as to specific type of insurance contract and are subject to registration with the State Commission for Regulation of Financial Service\* Market at issuing license for the relevant type of insurance.

As stipulated by civil legislation, the contract is considered to be concluded if the parties have duly agreed on all its essential conditions. Essential condition are the subject of the contract, conditions determined by legislation as vital and necessary for agreements of this type, as well as all conditions on which, upon the request of one of the parties, consensus must be achieved. Such conditions of the insurance contract in civil aviation, apart from subject-matter of the insurance and insurance fee (premium), also include condition concerning insurance event. Events recognized as insured accidents involving payment of amount insured must be clearly stipulated in the contract and agreed by the parties.

The order of contract conclusion is set by the civil legislation of Ukraine, in particular, by the Law of Ukraine "On insurance". There are two stages of contract conclusion: 1. Proposal of one of the parties to enter into contractual relations (offer); 2. Proposal receipt and acceptance by the other party - acceptance that signals about consent of the latter to conclude agreement on terms suggested in the proposal. The issue regarding legal characteristics of the offer cannot be considered without reference to theoretical provisions developed by science and regulations of civil legislation. A proposal to conclude contract can be defined as an offer if it meets certain requirements, for example, the offer reveals willingness to conclude contract and not just provides information about possibility of contracting. The offer should be addressed to a specific person. Legal definition of offer and specification of characteristics with which it must comply is stipulated in civil legislation. According to it, a contract proposal to one or several particular persons is an offer if it is clearly defined and reflects intention of the person placing the proposal to consider it contractually bound in case of its acceptance. The proposal is clearly defined if it specifies essential conditions of the contract and procedure of its definition.

The legislation of Ukraine classifies the order of contracts conclusion depending on proposals, made by one party to the other with setting terms for reply or without their determination.

If the proposal to conclude contract includes term for reply, the contract is considered to be concluded if the person who has placed an offer received an answer about proposal acceptance within this term. If the proposal to conclude contract has no specified term for reply, the moment of contract conclusion is defined depending on proposal submission in oral or writing. In the first case the contract is considered to be concluded if the party informed the person making the proposal

about its acceptance immediately. In the second case the agreement is considered to be active and the contract concluded if the notification regarding proposal acceptance is received prior to day defined by law, and should such term not be defined - within the period required for it.

Therefore, the offer states certain legal consequences, i.e. the party by which the proposal was submitted. In case of contract conclusion with the third party (or refusal to conclude the contract) the offerer undertakes to compensate the losses to the party to which the offer was made earlier, provided that the latter accepted it and incurred losses while fulfilling the contract.

General rules set for contract form are applied to insurance contract in civil aviation. If under the law the contract must be concluded in writing, it can be concluded by document issuing and signing by both parties, correspondence exchange, teletype programs etc. and signed by the sending party. According to law the insured undertakes to submit an application of the set form or to inform about his intention to conclude insurance contract. Written acknowledgement of the insurance contract requires not only written statement of the insured but also written consent of the insurance organization as to conclusion of such contract, which is confirmed by the insurance certificate (insurance policy) issued by the insurer.

Validity term of an insurance contract in civil aviation is terminated by mutual agreement of the parties and in the following cases: 1. if it expires; 2. if the insurer's obligations towards the insured are completely fulfilled; 3. the insured failed to effect insurance payments at the stated in the contract date. However the contract is considered to be early terminated provided that the first (or next) insurance payment was not made upon written request of the insurer within ten working days from the day of such request to the insured, if not otherwise stipulated by the contract. 4. liquidation of the insured as a legal body or death of the insured as a citizen or his disablement except as stipulated in the articles 21-23 of the Law "On insurance"; 5. liquidation of insurer in accordance with the laws of Ukraine; 6. court decision according to which the insurance contract is declared invalid; 7. in other cases under the laws of Ukraine. Insurance contract can be early terminated upon request of the insured or insurer if it is foreseen by the terms of insurance contract.

### Conclusions

Summarizing the research certain conclusions can be drawn. First, insurance contract in the sphere of civil aviation is an independent civil-law agreement which combines general features typical for any civil-law service provision agreements with the specific ones. Second, insurance policy is the main confirmation of the insurance contract conclusion. The latter cannot be recognized as security. The main types of aviation insurance are: 1. third parties liability insurance of the aircraft operator, passengers liability insurance, liability insurance for cargo and mail; insurance (CNC insurance) of the aircraft fuselage; insurance of the crew members. Third party liability insurance of the airports and liability insurance of aviation products manufacturers can be also referred to aviation insurance. Legal coverage of aviation insurance comprises norms of international treaties and conventions joined by Ukraine; regulations of the international civil aviation organizations, of which Ukraine is a member (ICAO, IATA); norms of internal legislative acts controlling civil aviation and insurance. Obligatory aviation insurance is set by International Civil Aviation Conventions joined by Ukraine, Air Code (article 103), Law of Ukraine "On insurance".

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