

PARTICULARITIES REGARDING THE ESTABLISHMENT OF INSURANCE COMPANIES

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Abstract:

Commercial companies from the insurance field have, under the law, features that distinguish them from other commercial companies in respect of the establishment and the company's operation and control.

For insurance companies there is a unique authorization system, by the member state in which their head office is located (home member state), and based on this authorization they can carry out insurance activities in any member states by opening agencies or subsidiaries, with prior notification to the ISC by the authorities of those States.

Apparently the number of documents required to establish a company in the insurance sector is large and the stages are laborious but necessary because the State has to act prudentially as insurance services are addressed to natural or legal persons potentially vulnerable.

Key words: *Insurance, the establishment, authorization system, insurance companies*

JEL classification: M41, G22

Any establishment of a company cannot be made without an initial financial contribution, however small, of a private entrepreneur or shareholders. This contribution allows the start-up of a company and because of it, the company can achieve the first investment and operating expenditures, and it provides the guarantee that enables, if necessary, the access to a possible loan.¹⁷⁵

The provisions of Law 47/1991¹⁷⁶ stipulated that in Romanian, the insurance business is conducted through insurance companies, insurance-reinsurance companies and reinsurance companies and also by intermediation companies (brokerage agencies), and *the establishment of insurance commercial companies with foreign participation* was to be made only by association with Romanian legal entities and individuals.

According to Law 47/1991, companies that activated in the insurance sector could be established as joint stock companies or limited liability companies, being treated as any other economic company which aims to profit. The Law regulated that insurance commercial companies must be established with the prior approval of the *Office of supervising insurance and reinsurance* within the Economy and Finance Ministry.

With the advent of Law 32/2000 changed the whole legal framework for companies established before the entry into force of the law (1 July 2001) as well as for those established after that date. Thus, as of 2 November 2001 insurers and brokers who wished to continue their activity were forced to request ISC and to obtain the

¹⁷⁵ Colasse Bernard - *Gestion financière de l'entreprise – problématique, concepts et méthodes*, 2e édition, Edituer Presses Universitaires de France, 1987

¹⁷⁶ Legea nr. 47 din data de 16 iulie 1991 privind constituirea, organizarea și funcționarea societăților comerciale din domeniul asigurărilor – în prezent abrogată (Law no. 47 of 16 July 1991 regarding the establishment, organization and functioning of insurance companies - now abrogated)

functioning authorization under the new legislation, respectively Law 32/2000¹⁷⁷ to which have been added the ISC Standards no. 2/2001 and ISC Standards no. 4/2001¹⁷⁸.

Starting with 2000 the insurance business in Romania can be exercised only by joint stock companies, mutual companies, subsidiaries of foreign insurers, constituted as Romanian legal persons, authorized by ISC, as well as subsidiaries of insurers that are foreign legal entities. According to Order no. 14/2009¹⁷⁹ issued by ISC, the insurance business in Romanian can be exerted also by insurers or reinsurers authorized in Member States, through a branch with prior notification to the ISC by that authority.

Currently the insurance business in Romania may be exerted by:

- ☐ **Romanian legal entities**, established as joint stock companies and / or mutual societies, authorized by ISC;
- ☐ **insurers or reinsurers authorized in the Member States**, which carry on insurance or reinsurance businesses in Romania under the right of establishment and freedom to provide services;
- ☐ **subsidiaries belonging to parent companies** governed by the law of a third State, authorized by the ISC, only with prior notice to ISC, which includes a range of information and documents¹⁸⁰;
- ☐ **subsidiaries of insurers or reinsurers from third countries**, authorized by the ISC;
- ☐ **insurers or reinsurers who adopt the European stock company form** (SE - Societas Europaea).

Insurance companies can be established only with the prior approval of the ISC, which verifies the compliance with the conditions relating to establishment; respectively the minimum subscribed and paid up capital, the various clauses of the operating and functioning status of insurance companies (establishing premium tariffs, respecting policyholders' rights and so on).

The establishment of insurance companies presents some particularities regarding the authorization procedure. The authorization of insurers comprises two stages:

- I. prior authorization (establishment authorization)** performed by ISC for registering the insurance company as an insurer at the Trade Register Office;
- II. authorization to operate** as an insurer, based on which it can exercise an insurance business.

According to Law 32/2000¹⁸¹ insurance companies *cannot be registered* with the Trade Register without a prior authorization from ISC, conditioned by the fulfillment of certain conditions.

The authorization request to conduct an insurance business will be submitted to ISC accompanied by the documents provided by the legislation in the field and the standardized format. When applying for authorization, the insurer requesting the authorization has to pay an authorization fee of 7,500 lei, fee that can be updated annually by ISC decision. In case the authorization request is rejected or the documentation is withdrawn by the applicant this fee is not refunded.

¹⁷⁷ concerning the information and documents required for the authorization of insurers and the criteria for approving significant shareholders and significant persons of insurers

¹⁷⁸ regarding the information and documents required for the authorization of insurance brokers

¹⁷⁹ Ordinul nr.14/2009 pentru punerea în aplicare a Normelor privind activitatea de asigurare/reasigurare în România în baza dreptului de stabilire și a libertății de a presta servicii (Order no. 14/2009 for the implementation of the Norms regarding the insurance/ reinsurance business in Romania under the right of establishment and freedom to provide services)

¹⁸⁰ Prevăzute în Art. 15² din legea 32/2000 (Stipulated in Art. 15² from Law 32/2000)

¹⁸¹ Legea 32/2000 privind societățile de asigurări și supravegherea asigurărilor, art. 11, alin (2) (Law 32/2000 concerning insurance companies and insurance supervision, art. 11, paragraph (2))

For obtaining the prior notice necessary for registering as an insurer at the Trade Registry Office, applicant must submit a series of documents to the ISC registry, documents that are presented in Order 16/2009¹⁸². The conditions that a company must meet to be authorized by ISC are¹⁸³:

- ☐ from the feasibility study presented to result that the company will have the statutory solvency margin;
- ☐ the subscribed and paid up capital of the applicant is deposited in an account of a bank authorized by the National Bank of Romania, and must be in accordance with the legal provisions in the field;
- ☐ the company has a satisfactory reinsurance program for its insurance business and justifies the fact that in its case such a plan is not necessary;
- ☐ the company presents specific calculations for its general insurance or life insurance business, or justifies the fact that in its case such a plan is not necessary;
- ☐ the company's name does not mislead the public;
- ☐ the company will only conduct insurance business;
- ☐ in case of a foreign insurer, the applicant must demonstrate that it is legally established in its country of origin;
- ☐ insurers requesting authorization for class no. 10, let. B from Annex no. 1, exclusively the carrier's liability, must appoint a claims representative in each Member State;
- ☐ the insurer has a security fund according with legal provisions.

For third country insurers there are additional requirements:

- the subsidiaries belonging insurance, reinsurance and mutual companies with head offices in third countries are, on Romanian territory, assets worth at least half of the safety fund provided at the date of authorization for insurers or reinsurers Romanian legal entities;
- the subsidiaries belonging insurance, reinsurance and mutual companies with head offices in third countries hold, on Romanian territory, an initial deposit as guarantee to a credit institution authorized by the National Bank of Romania, amounting to a quarter of the security fund provided at the date of authorization for insurers or reinsurers Romanian legal entities.

The authorization granted to an insurer by the ISC is valid throughout the European Community territory and the European Economic Area states, under the right of establishment and freedom to provide services and is granted for all risks in a particular insurance class, the insurer may obtain, if he wants, a permit to cover only certain risks pertaining to that class.

ISC will reject the authorization request if the legal conditions are not met, as well as when is identified one or several situations presented in Order 16/2009. The person involved can make a complaint against the decisions taken by ISC at the Court of Appeal in Bucharest within 30 days from the date of the decision.

The establishment authorization “does not guarantee obtaining the functioning authorization, but only indicates the permission given to shareholders to proceed with the registration of the company according to the establishment documentation and legal provisions. Not granting the functioning authorization automatically attracts the revocation of the establishment authorization”¹⁸⁴.

¹⁸² Ordinul 16/2009 - pentru punerea în aplicare a Normelor privind autorizarea asigurătorilor (Publicat în M.O., Partea I nr. 569 din 14/08/2009), art. 8 (Order 16/2009 - to implement the Norms concerning the authorization of insurers (Published in the Official Gazette, Part I no. 569 of 14/08/2009), art. 8)

¹⁸³ Bratiș Marian - *Constituirea societății comerciale pe acțiuni*, Editura Hamangiu, București, 2008, p.293

¹⁸⁴ Bratiș Marian - *Constituirea societății comerciale pe acțiuni*, Editura Hamangiu, București, 2008, p. 294

In order to obtain the *functioning authorization*, as well as any time during the duration of the activity, an insurer or reinsurer must have labor relations at least with one **actuary**¹⁸⁵.

Granting or rejecting the *prior approval for registering as an insurer at the Trade Register Office* is determined by the ISC within 60 days since the submission date of the complete documentation.

After the insurer obtains the *establishment authorization (prior approval)* can follow the *procedure for registering commercial companies*, which is performed by the Trade Registry Office through a delegated judge.

Setting up a commercial company is achieved by completing some formalities which aim at obtaining the legal personality for the commercial company, certified by the registration certificate of commercial companies. In obtain the registration certificate it should be submitted to the Trade Register Office¹⁸⁶ a file containing the same documentation as for a Limited Liability Company, with some details specific to insurance companies, namely:

- ☐ the name of an insurer must contain the words "insurance", "insurance-reinsurance", as appropriate, or their derivatives, in Romanian or in a language of wide circulation¹⁸⁷;
- ☐ the insurers' object of activity must be unique, respective the insurer must exercise exclusively the insurance business as defined under art. 2 point 1 of Law no. 32/2000, as amended and supplemented, less the brokerage activity;
- ☐ headquarters, the executive management and administrative services must be on Romanian territory.

After registering at the Trade Registry Office, follows the *stage of obtaining authorization to operate as an insurer*.

To obtain the functioning authorization, based on which the insurer may conduct the insurance business; he will submit to the ISC registry the following documents¹⁸⁸:

- ☐ authorization request and copies of documents evidencing the registration of the company as a legal entity, namely: the authenticated constitutive act, court decision of establishment, certificate of registration issued by the Trade Register Office and the certificate acknowledging containing all the identification data of the company;
- ☐ account statement attesting the existence of the social capital from the date of request of the functioning authorization, according to the legal provisions in force;
- ☐ feasibility study, appropriated by the persons proposed for executive management and the managers of the insurer;
- ☐ own insurance requirements falling on insurance classes provided in appendix no. 1 of Law 32/2000, as amended and supplemented;
- ☐ copy of the reinsurance contract, certified for conformity with the original by the person making the original documentation. In the case of reinsurance by a Romanian insurer, is mandatory to present the foreign reinsurance, showing that the presented program is included. The lack of such a program must be justified by

¹⁸⁵ actuary - natural person registered in the Actuary Register, in accordance with the legal provisions and regulations issued for its implementation, specializing in risk assessment through statistical methods, which in the insurance sector are used to calculate premiums, technical reserves and annuities.

¹⁸⁶ Sabău Crăciun, Medinschi Silvia, Buzilă Nicoleta (coordonatori) – *Ghidul antreprenorului privat*, Editura Mirton, Timișoara, 2011 – p. 21-22

¹⁸⁷ Ordinul 16/2009 - pentru punerea în aplicare a Normelor privind autorizarea asigurătorilor (Publicat în M.O., Partea I nr. 569 din 14/08/2009), art. 3 alin (1). (Order 16/2009 - for implementing the Norms concerning the authorization of insurers (Published in the Official Gazette, Part I no. 569 of 14/08/2009), art. 3 paragraph (1).)

¹⁸⁸ Ordinul 16/2009 - pentru punerea în aplicare a Normelor privind autorizarea asigurătorilor (Publicat în M.O., Partea I nr. 569 din 14/08/2009), art. 13. (Order 16/2009 - for implementing the Norms concerning the authorization of insurers (Published in the Official Gazette, Part I no. 569 of 14/08/2009), art. 13)

presenting in the feasibility study some calculations on its own underwriting capacity;

- ☞ description of headquarters equipping, which must be proper to conducting in adequate conditions the insurance activity, according to the feasibility study;
- ☞ copies of the lease contract for the existing headquarter or secondary headquarters/ working points or that will be established, registered at the territorial financial administration, or, as appropriate, a copy of the ownership act over the existing headquarter or secondary headquarters/ working points or that will be established;
- ☞ documentation concerning equipping with software programs and computer networks;
- ☞ curriculum vitae for significant people and the necessary authenticated statements;
- ☞ official documents showing work experience;
- ☞ list and curriculum vitae of qualified personnel;
- ☞ documentation regarding the equipping with adequate technical equipment and the contract with the network assistance that will be used for fulfilling the obligations in case of requesting the practice of general insurance class no. 18 “Assistance insurance for persons in difficulty while traveling or absenting from home or from the permanent residence place”.

From the moment the functioning authorization is granted, the insurer pays during its validity period, an *operating fee*¹⁸⁹ of maximum 0.3% of the gross premiums collected during the period for which they are due. For not paying the operating fee on time, ISC calculates interests for late payments according to the regulations in force regarding tax claims collection.

Also the *functioning authorization may be withdrawn by ISC* if the insurer is in one of the following situations:

- ☞ it has not started to conduct the insurance business within 12 months from the date the authorization was issued;
- ☞ renounces at the insurance activity and expressly requests the withdrawal of the functioning authorization;
- ☞ ceases to conduct the insurance business for a period of 6 consecutive months;
- ☞ no longer fulfills the conditions under which he was authorized;
- ☞ did not fulfill the measures specified in the financial recovery plan or these measures have not reached their purpose, where applicable;
- ☞ violates the provisions of Law 32/2000 and of the regulations issued in its implementation.

About the withdrawal of the authorization of an insurer that performs insurance businesses on the territory of other member states, ISC must inform the competent authorities of those states. The decision to withdraw the authorization is justified and communicated to the insurer. Against the decision to withdraw the authorization, the insurer may appeal to the Court of Appeal in Bucharest within 30 days from the communication.

According to Law 32/2000, art.12, paragraph (6) the authorization granted to an insurer by the CSA is valid throughout the territory of the European Economic Community (EEC) and the European Economic Area states, under the right of establishment and freedom to provide services¹⁹⁰.

Community insurance companies can operate under the freedom of establishment, regime under which they cover a risk or assumes a commitment located

¹⁸⁹ stabilită anual de către Comisia de Supraveghere a Asigurărilor (set annually by the Insurance Supervisory Commission)

¹⁹⁰ Potrivit dispozițiilor directivelor 92/96 CEE și Directiva nr. 92/49 CEE (According to the provisions of Directives 92/96 EEC and Directive. 92/49 EEC)

in a Member State through a branch established in that state. This freedom allows the establishment of a primary basis (to transfer fully and definitively a business' headquarter from a Member State to another) or as secondary basis (to create agencies or subsidiaries in another EU state without being necessary the prior authorization of the state where they are established)¹⁹¹.

According to article 15¹⁹² ISC will publish at least once a year in the OG from Romania, and in a widely circulated publication the updated list including authorized insurers and any other information it considers necessary in law enforcement.

CONCLUSIONS

The establishment of insurance companies has some particularities regarding the authorization procedure. Authorizing insurers comprises two stages: **prior authorization (establishment authorization)** and the **authorization to operate as an insurer (functioning authorization)**.

The current legislation requires a minimum share capital for insurance companies, necessary to start the business, but also for its operation because capital is a balance factor of the economic activity, being preserved after starting the activity and helping insurance companies especially when they register losses, when losses are covered by the social capital.

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¹⁹¹ Lambert - Faivre Yvonne, Leveneur Laurent - *Droit des assurances*, Édition Dalloz, Paris, 2005, p. 68

¹⁹² Legea 32/2000 privind societățile de asigurări și supravegherea asigurărilor (Law 32/2000 concerning insurance companies and insurance supervision)