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***INSURANCE BROKER AND INSURANCE AGENT – LEGAL COMPARISON
ACCORDING TO THE BULGARIAN LEGISLATION***

Annotation

An initial comparison regarding the commercial and legal status of an insurance broker (IB) and insurance agent (IA) is made in this paper. Specific features of the legal relations in which the IB, unlike the IA, enters with users of insurance services are also considered. Differences in the scope and range of insurance products that the two types of insurance intermediaries can offer are presented. The requirements regarding educational qualifications and professional experience, maintaining Professional Liability Insurance as well as the guarantees that should be provided to insurance brokers and insurance agents in the course of their work as intermediaries are systematized and compared.

Keywords: insurance broker; insurance agent; insurance intermediary; insurance intermediaries; Professional Liability Insurance;

Introduction

Insurance intermediaries are an extremely important factor in insurance processes, as they are the connecting element between insurers and users of insurance services. The insurance intermediaries are leading figures on both the Bulgarian and international insurance markets. The growing number of legal entities willing to conclude insurance contracts requires the expert assistance of insurance intermediaries to offer different types of insurance to different insurance companies.

Such legal entities are insurance brokers and insurance agents that are of particular importance for optimizing the processes in the field of insurance and reinsurance, ensuring quality and reliability of insurance legal relations.

The present paper makes a detailed comparison between the two legal figures.

Methods and Results

In the field of insurance and reinsurance mediation, the closest to insurance brokers are the insurance agents as legal figures, whose activities are an important contribution to the development of insurance processes.

The legal framework of insurance agents is defined in Chapter 31 of the Insurance Code (IC) - (Article 313 - Article 321).

In the first place, unlike the insurance brokers, the insurance agents do not have to be traders in order to be able to carry out intermediary activities.

According to Art. 313, para.1 of the Insurance Code, an insurance agent is a natural person or trader who, for remuneration, performs insurance intermediation on behalf and for the account of an insurer. Insurance agents can be dependent and independent agents. According to Art. 314, paragraph 2 of the Insurance Code, the performance of activities as an insurance agent by a natural person is a free profession (Goleva, 2012, p. 68) .

The exemption from the obligation for the insurance agent to be a trader greatly expands the range of legal entities willing to carry out this type of intermediary activities.

Another significant difference between the two types of insurance intermediaries is highlighted in Article 313, paragraph 1 of the Insurance Code. Unlike the insurance brokers who, for remuneration for assignment by a user of insurance services perform insurance mediation, insurance agents cannot be bound by individuals intending to insure themselves. Insurance agents perform intermediary activities only on assignment of the insurers, on their behalf and at their expense. This reveals the distinctive strong dependence of insurance agents on the insurer, which is greater compared to that of insurance brokers.

The dependence is determined by the representative authority of the insurance agents, which is provided to them through the insurance mediation contract and its entry in the register of the Financial Supervision Commission (FSC). With this contract, the insurer provides the agent with the right to conclude and execute insurance contracts on their behalf and for their account. It can be summarized that an insurance

agent is a contract representative of the insurer that is relatively close to the commercial agent under Article 26 et seq. of the Commercial Law (CL) with special authorization (Goleva, 2012, p. 68). However, it is not necessary for the insurance agent to be authorized in writing with a notarized signature of the insurer as the authorization is technically formed as a clause in the contract for an insurance agency, which must be concluded in writing, i.e. it is not required that the unilateral authorization transaction be contained in a separate document (Power of attorney) (Goleva, 2012, p. 68). The representative power is also conditioned by being a dependent insurance agent or an independent insurance agent as indicated in the contract. The representative power of the dependent insurance agents is limited by law, as they cannot collect premiums and make payments to users of insurance services (see Article 313, paragraph 2 of the Insurance Code).

According to the marketing research of some specialists in the field of insurance, when conducting insurance mediation, insurance agents expand their contingent mainly among their relatives, acquaintances and colleagues, as the trust that the agent earns in these circles can be much easier to transfer to the respective insurer (Ivanova, 2005, p. 94).

Regardless of whether an insurance broker performs insurance mediation protecting the interests of users of insurance services or reinsurance mediation representing the interests of insurers or reinsurers, in both cases an insurance broker always acts in favour of those who intend to insure or reinsure. Thus, while an insurance broker selects for these entities the most appropriate types of insurance according to their individual needs among different insurance companies, an insurance agent offers priority insurance products only to the insurer they have concluded a contract with.

In this regard, the Bulgarian legislation does not provide a restriction for insurance brokers to provide their intermediary services in respect of insurance products to only one insurer. Insurance brokers are independent on the insurance market; therefore, they can simultaneously be in contractual relations with several insurance or reinsurance companies, performing intermediary activities. This allows

the users of insurance services to be provided with various offers for insurance and reinsurance (Iliev, B. & Erusalimov, R., 2007, p. 40). In addition, an insurance broker can be an intermediary for supplementary voluntary pension funds and health insurance companies. In this way, each user of insurance services, through the respective insurance broker, can choose which insurer to refer to for the respective type of insurance. The advantage of the insurance broker over the insurance agent in this respect is of particular importance for the insurance processes. This is due to the fact that when clients in the insurance market resort to the services of an insurance agent, their choice of insurer is limited, as in practice the agent offers the product most often only to one insurance company (Iliev, B., & Erusalimov, R. , 2012, p. 40).

However, according to Art. 315, paragraph 1 of the Insurance Code, an insurance agent may mediate simultaneously for one insurer licensed to carry out insurance classes under Section I of Annex I № 1 of the IC (Personal insurance), as well as for one insurer holding a license for carrying out insurance activity, including insurance classes under Section II of Annex № 1 of the Insurance Code (Property insurance).

This provision is dispositive in nature, because with the consent of the above-mentioned insurers, outside the scope of their insurance, the agent may mediate for other insurers – cf. Art. 315, para. 2 of the IC (Iliev, B., & Erusalimov, R. , 2012, p. 111).

Like the insurance broker, who cannot perform insurance mediation as an insurance agent, one of the main restrictions on the activity of the insurance agent is that they cannot work for the insurance broker, either - Article 314, paragraph 3 of the Insurance Code.

With regard to an insurance agent – a natural person, as well as with respect to the persons who manage and represent an insurance agent – legal entity, it is provided by law that they have at least secondary education and meet the requirements of Article 303, paragraph 1 of the IC. This is one of the main differences between insurance agents and insurance brokers, as they both – the insurance broker acting as a natural person, and every person managing the insurance broker – a legal entity and

responsible for the activity of insurance mediation, need to have university degree as well as relevant professional experience.

In this regard, under Article 317, paragraph 1 of the Insurance Code, the insurer is obliged to provide training to the insurance agents they have concluded contracts with, as well as the employees of the insurance agency who offer insurance products. The insurer is obliged to conduct the training periodically. In order to certify the conducted training, the insurer is also obliged to conduct an examination, on the basis of which the insurer issues a certificate to those who have successfully passed it - Article 317, paragraph 2 of the Insurance Code.

The professional skills examination of insurance agents under Article 317, paragraph 2 of the Insurance Code has a similar purpose to the professional qualification examination of the insurance brokers, organized by the Financial Supervision Commission, under Article 303, paragraph 2, item 2 and paragraph 7 of the Insurance Code. However, the two examinations may differ in subject matter and scope. The insurer can conduct training of the insurance agents for certain types of insurance only. Upon completion of training, the agents are limited to perform intermediary activities only in the specific insurance field.¹ Another difference that should be mentioned is that the subjective element in the Financial Supervision Commission is limited, unlike the personal judgment of each insurer, when conducting the examination.

An insurance agent, just like an insurance broker, is obliged to maintain compulsory Professional Liability Insurance, valid for the entire territory of the European Union and the European Economic Area. The PLI is designed to cover liability for damages incurred on the territory of a Member State in the course of insurance intermediary activities as a result of any culpable act or omission on the part of insurance agents.

Again, as in the case of insurance brokers, as far as insurance agents – legal entities are concerned, the provisions of Article 306 of the Insurance Code regarding

¹ More on professional and personal qualities that an insurance agent has to possess – See (Draganov, 2008, pp. 207-209).

the guarantees for carrying out activities as insurance brokers shall be applied. The difference lies in that insurance brokers declare to the Deputy Chairperson of the Financial Supervision Commission which of the two alternative property guarantees they have chosen, while insurance agents declare their choice to the insurer with whom they have concluded a contract for insurance agency activities (Article 316, paragraph 5 of the Insurance Code).

There is also another difference with regard to the insurance agent - a natural person, where, unlike the case of the insurance broker – a sole trader, the guarantee that is provided is only the opening of a special client account. In this regard, as in the case of the mandatory guarantees for performing insurance intermediary activities, as well as in the case of the compulsory Professional Liability Insurance, certain specifics are observed.

There is a similarity between insurance brokers and insurance agents in terms of their registration, as both types of insurance intermediaries are entered in the register kept by the Financial Supervision Commission under Article 30, paragraph 1, item 11 of the Financial Supervision Commission Act (FSCA). The main similarity is that the application for registration of an insurance agent is submitted by the insurer, not by the insurance agent. An exception is made when an insurance agent provides mediation for an insurer from another Member State, operating on the territory of the Republic of Bulgaria under the conditions of freedom to provide services. In such a case, the insurance agent is obliged to independently submit a request for entry in the register - Article 319, paragraph 2 of the Insurance Code.

Upon entering the insurance agent in the register, the insurer is obliged to issue a certificate of identification according to a model form approved by the Deputy Chairman of the Financial Supervision Commission (Iliev, B., & Erusalimov, R. , 2012, p. 111). The Deputy Chairman shall directly issue the registration certificate to the insurance broker.

Regarding the deletion of an insurance agent from the register of the Financial Supervision Commission, the same grounds are applied, which are provided for insurance brokers under Article 312, paragraph 1 of the Insurance Code.

Conclusion

Insurance intermediaries are distinguished by a good reputation, high qualifications, excellent professional competence and responsibility. These legal entities have a key role in consolidating the dynamic insurance processes and contribute to the consolidation of the insurance markets of the EU member states. Insurance intermediary is a prestigious and promising profession, which requires constant improvement and development.

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