

## **INSURANCE LAW IN THE MIRROR OF ECONOMIC CRISIS**

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### **Abstract in original language:**

A biztosítási jog alapvetően három szerződéstípussal segítheti elő a gazdasági válság káros hatásainak csökkentését tompítását. Mindhárom módszer a fizetendő biztosítási díjra, valamint az alkalmazott önrészre és egyéb biztosítástechnikai megoldásokra tekintettel általában csak csökkent, de nem nullifikálja a biztosítási események bekövetkezésének káros hatásait, azonban álláspontom szerint mindegyik szerződéstípus alkalmas a kockázatok jelentős mérséklésére, valamint a szerződéskötéshez szükséges bizalom helyreállítására, azaz összefoglalva a gazdasági válság hatásainak tompítására.

### **Key words in original language:**

Hitelfedezeti biztosítás; exporthitel-biztosítás; munkanélküliség elleni biztosítás.

### **Abstract:**

Insurance law can help on cutting down the damaging effects of economic crisis with mainly three types of contract. All the three methods usually only lower, but not nullificate the damaging effects of the insured events – considering the payable insurance premium, franchise and other insurance technical solutions, but in my opinion all three types of contract are capable of relevant risk lowering, recovering trust needed by formation of the contract, so to sum up to mellow the effects of economic crisis.

### **Key words:**

Credit protection insurance; export-credit insurance; insurance against unemployment.

All three contracts belong to non-life insurance branch, it means damage insurance, which exempts – party or totally – the insured person from negative financial effects of a damaging event.

The insurance contract is an excellent method for risk management. Insurance premiums are nowadays calculated into normal contractual transaction costs, because it's cheaper to avoid losses than repairing it posteriorly.

Credit protection insurance contract

According to loan contracts a credit-loan insurance contract is primarily destined for defending the creditor's property interests, whereas insurance against unemployment is mainly connected to property interests of the debtor, but naturally indirectly they protect the financial safety of the other contracting party too.

In the case of credit protection insurance contract non-payment of the debtor is qualified as insured event, the insurer so vaporizes non-payment risk among creditors being exposed to similar or same perils. Credit protection insurance is usually group insurance, that is to say its premium depends not on single debtor's perils, but averaging these can we get it by the insured payable insurance premium.

In credit protection insurance contracts the insurer promises – partly or totally – to save the insured from loss that could result from insolvency of debtors.

“The peril of loss by the insolvency of customers is just as definite and real a peril to a merchant or manufacturer as the peril of loss by accident, fire, lightning, or tornado, and is, in fact much more frequent. No reason is perceived why a contract of indemnification against this ever-present peril is not just as legitimately a contract of insurance as a contract which indemnifies against the more familiar, but less frequent, peril by fire.”<sup>1</sup>

Contracts are always categorized by their content, and never by their topic, so it is understandable, that some of these contracts looks like a conditional sale of “poisoning“ debts, while others contain direct rules for save the creditor from the losses caused by insolvent debtors.

Insurers often limit their “responsibility“ to those debts where debtors seems to be in good financial conditions and to be able to pay the montly repayment.

The insured event is in most cases the loss by insolvency of debtors, but the term “insolvency“ isn’t to be interpreted as its legal sense, so a debtor is doubtless insolvent when he/she is unable to pay his/her regular monthly obligation. It means that official bankruptcy isn’t necessary.

As a duty of damage prevention, the insurers always wish to know some parameters of the insured persons, for example their credit control system focusing any history of non-payment and their general contract terms and conditions.

As a duty of disclosure the insured person is obliged to report regularly (for example monthly) the value of goods or services, because these circumstandes determine mostly the by the insured person payable insurance premium.<sup>2</sup>

The risk level can be altered by relevant reduction of regular payment by the debtor during the period of insurance contract, in that case it’s possible to offer a modification of the contract by implication of new warranties and conditions to strenghten the contractual position of the insurer.

There is a relevant legal document in the field of credit protection insurance, the so called UCP 600 by International Chamber of Commerce are the lastest revision of the Uniform Customs and Practice that govern the operation of letters of credit.

Insurance documents and coverage according to credit protection insurance ar now governed by UCP 600 Art. 28. (UCP 500 Art. 34.)

According to UCP 600 an insurence document can ba an insurance policy, an insurance certificate or a declaration inder an open cover. The above mentioned document has to be issued and signed in all cases by an official insurance company.

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<sup>1</sup> Vance, William Reynolds: Handbook of the Law of Insurance, 601. p.

<sup>2</sup> Jess, Digby C.: The Insurance of Commercial Risks: Law and Practice Digby C. Jess 374. p.

For legal safety reasons all originals must be presented when more than one insurance document has been issued.

The amount of insurance coverage has to be nominated by the insurance document in the same currency as the credit.

The insurance coverage has to be percentage of the invoice value of the goods. If the credit contract contains no rule about the amount of insurance coverage, it must be at least 110% of the CIF (Cost, Insurance and Freight Incoterms clause) or CIP (Carriage and Insurance Paid To Incoterms clause) value of the goods.

An insurance document mentioning “all risks“ notation or clause has to be accepted by credit contracts requiring “all risks“ insurance, whether or not bearing the heading “all risks.“

An insurance company can lower his insured amount by referring to any exclusion / limitation contract clause.

Overinsurance contracts are void, but underinsurance is of course permitted, so any kind of franchise or deductible contract clause is valid.

#### Insurance against unemployment

Insurance against unemployment recovers the debtor's ability to pay in the case of his / her regular source of income's falling out in such way, that the insurer pays its monies paying service directly to the creditor, as a beneficiary of the insurance contract, that is to say it turns off the peril connected to the debtor's willingness to pay.

A person may be in employment although he / she receives no payment for his work: in this case he / she is in employment from the viewpoint of labour law, but he / she can be defined as unemployed according to the rules of an insurance contract.

The insured person can be disqualified, if he / she has lost his /her employment through his /her misconduct, or if he /she voluntarily leaves his / her employment without so called “just casue“.

“There may be just cause for leaving where the claimant has difficulty in looking for better work while in employment. As a rule, he is not justified in leaving his occupation unless he has a definite offer or good prospects obtaining better work.“<sup>3</sup>

The insured person can obtain the insured sum if he/she is registered for employment and have applied in the prescribed manner.

The above mentioned two insurance contracts give excellent possible solution in such economic environment, where parties are distrustful against each other, debtors struggle liquidity problems, the creditor's financial reserve is missing, at the same time parties don't want to hold aloof unduly to form loan contracts.

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<sup>3</sup> Emanuel, M. R.: Insurance Law, Theory and Practice, 312. p.

## Export-credit insurance

“In an international commercial transaction, it is no longer true to consider that its success depends only on the quality, delivery and price of the goods or services. There is now a factor of equal importance – the ability to give and willingness to take credit.”<sup>4</sup>

Any contracting party has to take into account with the amount of risk of the transaction, goodwill and liquidity of customer and duration of the payment term.

Risk management raises the normal contractual costs, but it's a proper way to hold cash flow and liquidity at acceptable levels.

In the United Kingdom export credit guarantees are administered by the Export Credits Guarantee Department, which doesn't want commercial profit, so premium rates are at low level.<sup>5</sup> Export credit insurance helps to eliminate or lower special risks, which are – in general – not covered by transport insurance policies.

An export credit insurance can offer a valuable security at various perils, for example political risks, which are normally not covered by private (commercial) insurers.

In the UK, there are the following subtypes of export-credit insurance: project financing scheme, export insurance, policy, bond insurance policy, insurance for overseas investments and one stop shopping with the ECGD.

„Project finance is the term used to describe lending in respect of major projects, when the lenders place primary reliance on the revenues of the new project for repayment, as well as using the assets and contracts of the project as security“<sup>6</sup> It offers two options: Arr Risks cover and Political Risk cover.

The Export Insurance Policy (EXIP) can be used by an exporter to get insurance cover against political risks and the buyer's / debtor's non-payment risk

## One Stop Shopping with the ECGD

The sub-contractor's export-credit agency vaporizes the risk among other insurers with the help of reinsurance contracts

Short term export credit insurance contract in an excellent way to prevent misusing of insurance offers: the policyholder can't elect only hazardous contracts, because it covers as a framework contract all risks arising from businesses with buyers / debtors for the insured countries.

As a framework contract insurance cover is continuous, safeguarding the exporter to the time of receipt of payment.

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<sup>4</sup> C. T. Chuah, Jason: Law of International Trade: Cross-Border Commercial Transactions 499. p.

<sup>5</sup> <http://www.ecgd.gov.uk>

<sup>6</sup> Murray, Carole et al.: Schmitthoff's Export Trade: The Law and Practice of International Trade, 446. p.

Typically the insured event can be the insolvency of the buyer, or the buyer's mistake to pay the contractual value. Of course other legislative, administrative measures of a foreign government can be taken into account as insured event if they prevent performance of the contract.

Export-credit insurance transaction is an instrument for serving lowering exchange rates in the period of between formation and accomplishment of the contract. Economic crisis comes together with notable volatility of (hard) currency rates, especially legal currencies of smaller states can become defenceless victims of international processes. Rapid and large-scale disadvantageous changing of exchange rates being valid at the time of formation of the contract can ruin economically the financial position of exporting companies and their financing banks. In worst case, the institution of export-credit insurance provides for this situation a reassuring solution.

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