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CHARACTERISTICS OF INSURANCE ACCESSORIES

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Abstract. Insurance is a necessary element of modern society, it allows not only to provide compensation for the damage caused to the policy holder, but also to protect him from possible insured risks. The relevance of the article is due to the need to classify insurance as a means of ensuring the fulfilment of obligations. The use of insurance as a means of securing obligations in legal doctrine is still debatable, and there is no unified position among legal scholars as to whether insurance is recognised as a security for the performance of obligations, which would make it possible to determine its accessory nature. At the same time, the possibilities of insurance of the risk of liability for breach of contractual obligations are considered, when insurance becomes dependent on the main obligation. The author studies the classification of forms of security, analyses the specifics of insurance and its types. This helps to reveal the potential of using insurance as security for the principal obligation. The article reveals how the specificities of certain types of insurance contracts, revealing the signs of their accessory nature, the relevant conclusions are made as to whether the insurance contract can act as collateral (related) security of the main obligation, corresponding to the signs of accessory nature.

Key words: accessory, guarantee, insurance, insurer, policy holder, surety.

Introduction. Insurance is the assumption by the policy holder of the risk of possible losses (Insurance and Reinsurance Law of Latvia 2015, art.1). Insurance involves pooling funds from many insured entities (known as exposures) to pay for the losses that only some insureds may incur. The insured entities are therefore protected from risk for a fee, with the fee being dependent upon the frequency and severity of the event occurring. In order to be an insurable risk, the risk insured against must meet certain characteristics. Insurance as a financial intermediary is a commercial enterprise and a major part of the financial services industry, but individual entities can also self-insure through saving money for possible future losses (Gollier 2003). Insurance is a necessary element of modern society; it allows not only to compensate for the damage caused to the policy holder, but also to protect the policy holder from possible risks. The policy holder pays a premium to an insurance company ("insurer") under an insurance policy, which is generally an integrated contract, meaning that it includes all forms associated with the agreement between the insured and insurer (Wollner 1999). According to the legislation, an insurer, when concluding an insurance contract, shall issue a confirmation of the conclusion of the insurance contract – an insurance policy. If there are no signatures of the parties on the insurance policy, it shall not affect the validity of the insurance contract, provided that the provisions for coming into effect of the insurance contract have been complied with (Insurance Contract Law 2018, art.19). In turn, insurance contract is agreement between an insurer and policy holder in accordance with which the policy holder undertakes the obligations to pay insurance premium in the manner, time periods and amount laid down in the contract, as well as

to fulfil other obligations laid down in the contract, and the insurer undertakes obligations to disburse the insurance benefit to the person indicated in the contract in conformity with the insurance contract upon the occurrence of the insurance event, and also to fulfil other obligations laid down in the contract (Insurance Contract Law 2018, art.1, paragraph 7).

In return, the insurance company promises to pay a certain type of compensation (cover) in the case of an occurrence of an insured event. The use of insurance as a means of securing obligations is still debatable in legal doctrine, and there is no unified position among legal scholars as to whether insurance is recognised as a security for the performance of obligations, which would allow determining the accessory nature of insurance. At the same time, the possibilities of insurance of the risk of liability for breach of contractual obligations are considered, when insurance becomes dependent on the main obligation.

Literature review. Among the scientists who have studied the issues of insurance science, should note the contribution of: Smith A., Keynes D.M., Samuelson P.E., Arrow K.J., Mowbray A.H., Mossin J., Raviv A., Blanchard R.H., Wollner K.S., Gollier C., Hoffman F.L., Borscheid P., Haueter N.-V., Viccars P.J.C., Kevin L. G., Stevens J., Zweifel P., Eisen R., Spann A.K. and others. Among Latvian scientists on Insurance law are Alfejeva J. and Mantrovs V. However, the issue of accessory nature of insurance in legal science has not been comprehensively studied.

The goal of the research. In connection with the debatability of the issue of attributing insurance to the methods of securing the performance of obligations, the issue of determining the security features of contractual liability insurance is relevant, which will make it possible to identify the signs of accessory nature of specific types of insurance.

Material and research methods. The complex of interrelated methods of research was used to solve the set tasks, such as: theoretical, analysis, synthesis, deduktion, comparison, generalization and others.

The results and discussion. Based on the classification of contracts, K. Torgans highlights related (accessory) contracts (Torgans 2018, p. 36), i.e. contracts that depend on and are related to the contract of the main obligation. Acccessory obligations are security obligations in relation to the main obligation. The principle that the accessory obligation follows the principal obligation (*accessorium sequitur principale*) is used to characterise the doctrine of security in general (Steven 2009, p. 21). Such understanding of the concept of accessory nature in the legal doctrine gives it essential and mandatory features of any security method. These methods are always legally complementary, since they do not arise on their own, but on a certain basis and to secure an existing principal obligation. Therefore, accessory nature is understood as a functional expression of collateralisation.

It is generally recognised in the legal literature that accessory nature is manifested at all stages of the existence of obligations, from their origin to termination, and accessory nature is characterised by the following features:

1) occurrence of accessory nature;
2) accessory nature of the scope of the claim;
3) adherence of the accessory nature to the main obligation;
4) termination of the accessory nature;
5) enforcement of the accessory obligation by examining these aspects separately from each other (Kaser 1971, p. 457).

Thus, accessory nature exists at all stages of the existence of an obligation (emergence, transfer, proper or enforced fulfilment, termination), therefore, the signs of accessory nature should be clarified separately, establishing whether the corresponding security of the obligation possesses all the mentioned signs of accessory nature or only part of them, or does not possess these signs at all.

Acccessory means of securing the fulfilment of obligations are civil law tools that have stimulating and compensating effect, providing the creditor with additional protection of its property interests.

Based on a number of studies, it is possible to identify protective and stimulating properties characteristic of these functions, which are most often pointed out by researchers:

1) *Protective* – provides for the protection of the creditor's rights and interests in the event of a debtor's non-performance of obligations;

2) *Stimulating* – aims to force the debtor to fulfil its obligations, realising the occurrence of unfavourable consequences;

3) *Compensatory* – provides for the creditor's right to claim liens and damages in the event of a debtor's non-performance of obligations.

In insurance law, the issue of accessory succession to the main claim is decided depending on the type of insurance. An insurance contract has a certain independent legal nature; such a contract can be concluded in the absence of an underlying obligation. The insurance contract or agreement is a contract whereby the insurer promises to pay benefits to the insured or on their behalf to a third party if certain defined events occur. Subject to the "fortuity principle", the event must be uncertain. The uncertainty can be either as to when the event will happen (e.g. in a life insurance policy, the time of the insured's death is uncertain) or as to if it will happen at all (e.g. in a fire insurance policy, whether or not a fire will occur at all) (Mowbray, Blanchard 1961, p. 52). The law applicable to the regulation of contractual relations arising from an insurance contract is determined in accordance with the Rome I Regulation of the European Union (EC Regulation No 593/2008, 2008). In Latvia the legal regulation of contractual relations is realised in accordance with the Insurance Contract Law (Insurance Contract Law of Latvia 2018).

There is still no consensus as to whether the termination of additional obligations arising from insurance is related to the termination of the underlying obligation. An insurance contract does not have such an additional feature as termination – an insurance contract is terminated not because the obligation secured by it has ceased, but because the insurance risk has ceased to exist. Only voluntary insurance of the borrower against the risk of his obligations is allowed as an additional method of securing the fulfilment of loan obligations.

The protective function in contractual liability insurance is fulfilled by the insurance indemnity for the losses incurred. The function of compensation in contractual liability insurance is fulfilled by the insurance indemnity, which cannot exceed the amount of the creditor's (beneficiary's) claim against the policy holder according to our law – it is when the insured is deceased. For security obligations, the reason is the related nature of these obligations and the main claim, while in property and guarantee insurance the reason is its compensatory nature.

1. Guarantee or surety insurance. Guarantee or surety insurance is applied in Latvia, which provides insurance protection against risks of commercial activities due to non-fulfilment of contractual obligations. (Insurance and Reinsurance Law of Latvia 2015, art.19, paragraph 14-16). The most common types of surety insurance are the following:

1) Tender guarantee (in procurement),

2) Bid security,

3) Guarantee of prepayment (advance payment),

4) Guarantee of fulfilment of a performance contract:

a) performance of credit obligations;

b) obligations arising from commercial pledge (for preservation, prohibition of alienation, etc.);

c) payments of value added tax, excise tax, customs payments, etc.

5) Guarantee of performance of contracting services (works);

6) Guarantee of warranty period.

Under loan agreements, the insurer does not make an insurance payment in connection with the debtor's delay in fulfilling its loan obligations, but in connection with the occurrence of an insured event, regardless of whether the debtor is in breach of its insurance obligations.

However, liability insurance certainly fulfils a guarantee function. In accordance with the contract, the creditor simultaneously becomes a beneficiary under the insurance contract, and in the event of the debtor's failure to fulfil its obligations, it has the right to apply to the insurer for payment of insurance compensation, which becomes the fulfilment of the obligation.

Guarantee insurance is provided in favour of the insurer who is the client under the contract of work performance or service provision, but the insurance contract is concluded with the insured whose obligations are insured and who is the contractor or service provider under the contract of work performance or service provision. Consequently, warranty insurance is an additional guarantee of the obligations assumed by the contractor or service provider – in the event of default, the insurer covers losses resulting from the default in accordance with the insurance rules.

The rules of the Insurance Contract Law of Latvia (Insurance Contract Law of Latvia 2018) and the provisions of the Civil Law on Surety shall apply to the guarantee insurance contract. Surety is a contractual obligation to be liable to the creditor for the debt of a third party, without, however, releasing the latter from the debt (Civil Code of the Republic of Latvia 1937, art.1692). In a contract of guarantee insurance, the creditor is the customer under the contract of work performance or service provision, and as a party to the insurance contract is the insured – the person to whom the insurance indemnity is paid. Such sureties are irrevocable and may be with or without conditions. For example, the insurance contract may contain a condition that the insurance indemnity shall be paid only upon the insolvency, liquidation or bankruptcy of the contractor or service provider, as well as the sum insured and the limit of the insurance period.

In a warranty insurance contract, the surety (guarantor) is the insurer and the debtor is the contractor or service provider who is the insured under the insurance contract. The rules of the Civil Law provide that when a claim is brought against a guarantor, it may require the creditor to first address it to the principal debtor, if recovery from him can be equally successful. However, this obligation falls away if the insurer has clearly waived it (Civil Code of the Republic of Latvia 1937, art.1702). By such a waiver, the fact that the surety assumes the obligation as the debtor himself. The service customer has no such obligation, even if a surety or guarantee of the first claim has been issued. Consequently, the surety (guarantee) for non-performance of the mentioned obligations is a collateral (accessory) contract having the accessory nature in relation to the main contract (subcontract, rendering of services, etc.) and has two properties characteristic of accessory nature – protective and compensatory.

2. Insurance of commercial collateral under loan agreement. Practically, business risk insurance is taken out to protect against risks, in accordance with the rules of the Commercial Pledge Law of Latvia (Commercial Pledge Law of Latvia 1998, art.34), in case of alienation of pledged property without the authorisation of the commercial pledgee. In addition, guarantee insurance or surety can be used in such types of activities and sectors where the regulatory enactments define a guarantee policy as mandatory, for example: tour operator's guarantee, customs guarantee, excise guarantee, waste manager's guarantee, construction guarantee.

The rule of following the insurance contract in business risk insurance and liability insurance does not apply, as the insured risk in these types of insurance is related to the activities of a specific policy holder. With the change of the policy holder, the degree of risk is subject to change, because when concluding the insurance contract, the insurer assesses the risk on the basis of the data about the original policy holder. The insurer cannot extend the same data to the new policy holder. Since the degree of risk has changed, the insurance contract cannot be valid on the same terms as before.

Consequently, it can be concluded that the types of insurance that fulfil the security function meet the criterion of the accessory nature of the scope of the claim. In property insurance, the sum insured limiting the insurer's obligation shall not exceed the insurable value, i.e. the actual value of the property. In all types of property and grant insurance, the insurer's obligation is limited to compensa-

ting for actual losses in accordance with the principle of compensation arising from an insured event (Insurance Contract Law of Latvia 2018, art.1, paragraph 18).

3. Insurance of creditor's civil liability. In accordance with the requirements of the Regulations of the Cabinet of Ministers on Consumer Credit (Regulations of the Cabinet of Ministers of Latvia No. 691, 2016), when pledging movable property against a loan, the lender shall ensure storage of the transferred pledge. For this purpose, the creditor's liability for the preservation of the pledge during the term of the loan agreement shall be insured against the creditor's civil liability for damage caused by the creditor to the pledge in storage. Thus, insurance for the preservation of collateral concluded in connection with another contract (primarily a loan contract) can be perceived within the framework of the doctrine of related transactions (*linked contracts*).

Insurance complies with the criterion of accessory nature of arising, according to which only a debt that has already arisen can be secured. This criterion is observed, for example, in the insurance of the subject of pledge. But this criterion is not fulfilled in the case of insurance of liability under a contract: at the time of conclusion of the contract it is not known whether the obligations under the contract will be duly fulfilled or will be violated. Only in the latter case the liability of the policy holder and the insurer's obligation to pay the insurance indemnity will arise.

4. Insurance of immovable property and debtor's liability. In order to fulfil the obligations under the loan agreement, which is secured by a mortgage, paragraph 2.11. of the mentioned Regulations of the Cabinet of Ministers stipulates that the consumer shall be informed about the mandatory insurance of the pledge – property, if the conclusion of the agreement is necessary to obtain a loan. Clause 56.15. of the mentioned Regulation stipulates that the loan agreement shall clearly and briefly specify (unless otherwise stipulated for certain types of loan agreements) the collateral and insurance. Paragraph 2.1.8.1. of Annex No. 2 to the Regulation "European Standard Information for loan agreements for the purchase of real estate or loan agreements, the repayment of which is secured by a mortgage of immovable property" defines the requirements for the inclusion in consumer credit agreements of obligations such as the obligation to insure real estate, purchase life insurance – life insurance of the loan recipient, etc.

Consequently, in order to fulfil the obligation to insure real estate and mortgage insurance, it is necessary to conclude a relevant insurance contract, which in this case is recognised as a side (additional) contract to the contract of the main obligation – the loan agreement. The insurance contract has the function of guaranteeing or strengthening the obligation, which affects the main obligation as an auxiliary means of fulfilment of the obligation.

The defined effect of an insurance contract is based on the creditor's security interest, i.e. its legitimate interest in establishing a guarantee for proper performance under the underlying contract and when the interest in the preservation of the property is transferred, the rights and obligations under the insurance contract are transferred.

Therefore, the property insurance contract may be a way of securing the fulfilment of obligations and has features of accessory nature. Hence, it can be concluded that in case of breach of the main obligation, an additional obligation arises and is terminated upon its fulfilment.

5. Accessory nature of termination of insurance obligation. The invalidity of the contract of the main obligation entails the invalidity of the contract of commercial pledge (accessory pledge), and the invalidity of the accessory pledge, on the contrary, cannot lead to the invalidity of the main one. These two provisions are inherently imperative. An insurance contract must be recognised as invalid upon invalidity of the main obligation, it must also, as a general rule, terminate upon termination of the main obligation. It should be noted that an insurance contract is terminated not because some obligation secured by it has ceased, but because the insured risk has ceased to exist. The insured risk is a necessary element of the insurance contract. This element is inherent in the insurance contract and not in any other type of contract. Therefore, as far as the termination of the obligation is concerned,

the insurance contract is not acccessory. If the obligations under the contract are fulfilled ahead of schedule, the related pledges and the insurances established thereunder also become null and void.

Some of the differences between insurance and traditional collateral relate to the termination of the obligation by novation. Traditional collateral is terminated in this case. In contractual liability insurance, novation alone does not terminate the insurance contract. The resolution of this issue depends on how the insured risk is formulated in the insurance contract. If it is related to a specific obligation that has terminated, the insurance contract will also terminate, and the basis for this will be the accessory nature of insurance. If the risk is formulated as a liability of any kind arising in connection with a certain contract or even more so in connection with a certain activity of the policy holder, then novation may be a ground for termination of the insurance contract, as the new obligation may not correspond to the insured risk.

Thus, when terminating an obligation, an insurance obligation may meet the accessory nature, as it may terminate following the main obligation if the scope of the insurance risk under the insurance contract coincides with the scope of liability under this main obligation.

Conclusions. Based on the results of the research, several conclusions can be drawn regarding the accessory nature of insurance.

1. As a general rule, insurance is not contractual security. It can be perceived as quasi-security or security in a broad sense, so it is wrong to extend to all types of insurance the general rules on security obligations.

2. Surety (guarantee) for non-performance of obligations is a collateral (accessory) contract having the accessory nature in relation to the main contract (subcontract, rendering of services, etc.) and has two properties characteristic of accessory nature – protective and compensatory.

3. Types of insurance that fulfil the security function meet the criterion of the accessory nature of the scope of the claim. In property insurance, the sum insured limiting the insurer's obligation shall not exceed the insurable value, i.e. the actual value of the property. In all types of property and grant insurance, the insurer's obligation is limited to compensating for actual losses in accordance with the principle of compensation arising from an insured event.

4. The property insurance contract may be a way of securing the fulfilment of obligations and has features of accessory nature. Independent property consequences may be secured by insurance contracts, and the payment of insurance benefits may be linked to a breach of the main obligation. Hence, it can be concluded that in case of breach of the main obligation, an additional obligation arises and is terminated upon its fulfilment.

5. The issue of accessory succession to the main claim is decided depending on the type of insurance. The rule of succession of the insurance contract to the main obligation does not apply to business risk insurance and civil liability insurance due to the fact that the insured risk under these types of insurance is related to the activity of a specific person - the policy holder.

6. The claim limitation for insurance disputes is established imperatively and applies independently of the claim limitation for the main obligation.

7. Parties interested in using insurance as collateral may bring the above types of insurance contracts closer to the classical collateralisation method. For this purpose, in particular, the description of the insured risk under the insurance contract shall coincide exactly with the secured obligation. In this case, upon termination of the obligation, the insurance risk is excluded and the insurance contract is also terminated.

8. If the termination of the main obligation has not resulted in the payment of insurance indemnity due to the absence of risks for which the termination of the main obligation should be recognised as an insured event, it is possible to use the concept of conditional accessory nature, whereby payment for non-performance or improper performance will not be made against all risks that may occur, but only against those specified in the agreement on securing the main obligation. The possibility of

specifying in an additional (related) obligation the conditions under which this agreement is valid or terminates after the main one will enable the development of insurance as a method of securing the fulfilment of an obligation.

9. An insurance contract is not automatically invalidated if the main obligation is invalidated.

10. Upon termination of the main obligation, the insurance obligation may meet the accessory nature, as it may terminate following the main obligation if the scope of the insurance risk under the insurance contract coincides with the scope of liability under this main obligation.

11. Rights under an insurance contract do not pass together with the rights under the underlying obligation. The limitation period for insurance disputes is established imperatively and applies independently of the limitation period for the main obligation.

12. Arbitrarily extending the security theory to insurance contracts that do not meet the characteristics of security for obligations is a mistake in view of the fact that only certain types of insurance have sufficient features of accessory nature.

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