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LIFE INSURANCE AS COLLATERAL FOR BANK CREDIT

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Abstract: *This article will cover issues related to the obligations of the parties to the contract and the subject of the insurance contract concluded in connection with a bank loan agreement. Who are the parties to the contract and who benefits from the insured amount when the insured event occurs? What is the purpose, what does the Insurance Code provide and how does it guarantee the creditor's rights? Insurance as additional collateral for the bank.*

Keywords: insurance, bank credit, collateral, debtor, creditor

1. Introduction

Insurance for securing a loan or bank loan under Chapter 37 of the Bulgarian Insurance Code (IC) is of significant theoretical and practical interest. The reasons for this are the relatively recent regulation of these contracts and their specifics compared to the "classic" insurances. However, works are almost non-existent, and the role of legal theory in revealing the essence of these new treaties is unquestionable. Due to its limited format, the present study aims to address only some of the issues related to bank credit insurance in the light of modern insurance theory.

2. Essence

"Life" and "Accident" insurance for collateral for a loan or bank loan is regulated in Article 382 IC, although it is not specified in the insurance classes under Annex № 1 of the Code. The contract for securing an obligation is concluded by a creditor who is an insurer with an insurer in respect of property or non-property goods of a debtor. The debtor is the insured person under the contract. This type of contract is an exception to the requirement of family ties when insuring the life, health or physical integrity of the insured person. An insurance contract between an insurer who is a creditor and an insurer in respect of property or non-property goods of a debtor is concluded in favour of a creditor to secure the creditor's claim only with the explicit prior written consent of the debtor, as the written consent is not required when declaring the receivable as pre-term due - Section 382, Subsection 2 IC [1].

The Code provides for the contract under Section 382 IC to be concluded under general conditions. Before concluding the contract, which serves as collateral for a bank loan, the debtor should be provided with the general conditions and he should declare in writing that he accepts them. In case of discrepancy between the insurance contract and the general conditions, the stipulations for which the debtor has been notified in advance shall apply. The specificfeature of concluding this contract is that the questions asked by the insurer are answered by the creditor, who is a party to the contract and has the quality of insurer. The creditor is obliged to provide the debtor in advance with all the information in connection with the conclusion and

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execution of the insurance contract. You also need in 15 days' term from concluding the contract to provide the debtor with a certificate with information about the insurer, the subject of the insurance, the sum insured, the term of the contract and the persons entitled to receive payment under it. During the term of the contract, the creditor is obliged to immediately notify the debtor of circumstances that may result in termination of the insurance contract, reduction of the sum insured or indemnity or otherwise affect the interests of the debtor. This information is also due by the insurer if the debtor requests it from him.

A loan or bank loan insurance contract is a separate type of personal or property insurance contract. It is not a contract in favour of a third party, as the creditor is a party to the contract as an insurer, and he also receives the sum insured, which is equal to the outstanding part of the obligation for which the insurance contract is concluded, including principal, interest and expenses as of the date of occurrence of the insurance event. In case the sum insured for an insured person is not of a fixed amount, it is equal to the principal under the loan agreement, together with the overdue interest.

In case of a life insurance contract of borrowers, which has as its subject the life, health and physical integrity of third parties, the bank has the legal status of an insurer. It is she who has an insurance interest in insuring the life, health and bodily integrity of her borrowers, because in case of injury, death or incapacity for work, they, as debtors of the bank, will not be able to pay their instalments. Although he does not directly conclude a life insurance contract with the insurance company, the borrower has the status of an insured because the contract has no force without his knowledge and consent, as long as the subject of the contract is his own life and the risk is related to his death or permanent loss, working capacity.

"Life" and "Accident" insurance can also be concluded by a debtor in favour of a creditor with an insurer with a subject - ensuring the fulfilment of the debtor's obligation under the loan agreement. In these cases, the debtor insures his own life, health and physical integrity in favour of the creditor, who is not a party to the contract, but upon occurrence of the insured event is entitled to receive the sum insured equal to the outstanding part of the obligation, including principal, interest and expenses as of the date of occurrence of the insurance event. In case of death of the debtor, the creditor is obliged to take all necessary actions regarding the claim and payment by the insurer of the sum insured under the contract. The insurer shall make a payment to the creditor up to the amount of the outstanding part of the obligation arising under the credit agreement between the creditor and the debtor, and the balance, if any, shall be paid to the debtor or his heirs or to the pledgee or mortgage debtor, when he is an insurer under the contract.

3. Consequences of the occurrence of the insured event

The occurrence of the insurance event, which leads to covered risk under the insurance contract has a double meaning - on the one hand in favour of the insurer (beneficiary) arises a claim to demand payment of the sum insured (the exercise of this right is left to the beneficiary), and on the other hand - repays the obligation of the insured person-borrower, whose performance has been secured by the conclusion of the insurance contract.

Upon occurrence of the insurance event, the creditor receives the relevant part of the sum insured to repay the debtor's obligations under the loan, and if the amount exceeds the outstanding part of the creditor's claim, the balance is received by the debtor or his heirs. With regard to the payment of the suminsured, respectively indemnity, the debtor has all the rights of the insured with the exception of the right to receive the indemnity up to the amount of the outstanding part of the obligation.

The Insurance Code does not allow the creditor to receive simultaneous payment under the loan agreement and the sum insured upon occurrence of the insured event. According to Section 456 of the IC, when the insurance "Life" and "Accident" is concluded in favour of a creditor to secure the obligation of an individual, then his heirs are entitled to a direct claim against the insurer, although they are not parties to the contract when they paid the obligation to the creditor in case of an insured event. This right is also granted to the guarantors, who are persons who have legally paid the obligation to the creditor. In these cases, the insurer may make all objections arising from the insurance contract. Upon the occurrence of the insurance event, the creditor has a claim for payment of the sum insured, as the IC imposes an obligation on him to take all necessary actions regarding claiming and payment of the indemnity by the insurer. The creditor has several types of collateral - in addition to the liability of the debtor's heirs in the event of his death, the claim may be secured by a mortgage or surety. The creditor may prefer to exercise his mortgage right by referring to the heirs or guarantors in the order proceedings, without having exercised his right under the insurance contract. Therefore, the creditor may not take care of a good owner, which is imposed on him by Section 382, Subsection 3 of the Criminal Code and through its inaction under the contract to hinder or thwart the exercise of this right. In such a case, the debtor may defend himself in accordance with the procedure described in Item 4 of the statement.

Under the “Life” insurance contract, fixed amounts can be paid - one-time or in the form of annuities - pension or annuity. In the case of annuity insurance contracts, the insurer undertakes to make lifetime or term periodic payments against payment of a lump sum or periodic premium. It is admissible, according to the Insurance Code, for the premium, in these cases, to be agreed instead of transferring real rights over real estate (Section 439, Subsection 2 of the Insurance Act).

Unlike property insurance and the insurance indemnity due to it, in the case of a life insurance contract, the sum insured is due both in the event of an unexpected occurrence of the insured event and if other conditions are agreed in the contract. In cases of incapacity for work that can be restored (except in case of loss of a limb or other organ), the insurer may provide for a period for the restoration of incapacity for work, which may not be longer than one year, by paying an advance which cannot to be less than the minimum undisputed amount of the payment, according to the provision of Section 448, Subsection 4 of the IC.

Another response from the property insurance is the inability of the insurer to refuse to pay in full the sum insured under the life insurance contract, when the insured has intentionally caused the occurrence of the insurance event. In the case of property insurance, the intentional provocation of the insured event by the insured is a ground for releasing the insurer from the obligation of the insurer to pay indemnity. In the case of insurance with a covered risk of "death", in case the insured person knowingly causes his own death or attempted suicide, as a result of which the injury, damage to the physical integrity or loss of ability to work is caused, when he understands the nature and significance of the act before the expiration of three years from the conclusion of the contract, the insurer is not obliged to pay the sum insured. In these cases, however, the insurer owes to the heirs of the deceased or to third party beneficiaries the so-called "Redemption value" of the insurance (mathematical reserve). The redemption value is defined in Section 452 of the IC and constitutes the sum insured in the contractcorresponding to the savings part of the accrued premiums, reduced by unrecovered acquisition costs (these are the costs of preparation of contracts - direct and indirect - for

advertising and administrative costs related to the preparation of offers, conclusion of contracts and renewal of already concluded contracts), due premium instalments and outstanding amount of granted loan, if any.

4. Exercise of the right in case of inaction by the creditor

The systematic and historical interpretation of the provisions of Section 382, Subsection 3, Sentence-last of IC and Section 382, Subsection 3, Sentence 1 for payment of compensation in the event of an insurance event, the heirs of the deceased debtor under the loan agreement, as well as any person liable under the loan agreement, have the right to sue the insurer. The claim is for ordering the insurer to pay in favour of the creditor the due insurance indemnity up to the amount of the outstanding part of the loan obligation. In this case, the court must constitute as an accomplice the creditor in whose favour the insurance was concluded - Argument of Section 26, Subsection 4 of the Civil Procedure Code (CPA).

The norm of Section 456 IC regulates the hypothesis of a direct claim in case of already made payment by the debtor to the creditor, while the special norms of Section 382, Subsection 1 and 3 IC regulate the right of the debtor, respectively his heirs and co-debtors to bring an action in case of inaction of the creditor.

Unlike the repealed IC, in the new IC in the provision of Section 383, Subsection 3 shall be explicitly provided that in case of death of a debtor - insured person under an insurance contract on the occasion of his non-property good according to Subsection 1, the creditor shall be obliged to take with the care of a good owner all necessary actions regarding the claim and payment by the insurer of the sum insured under the insurance contract. With regard to the payment of insurance indemnity under sentence one, the heirs of the debtor shall have the rights of the insured, in addition to the right to receive the indemnity up to the amount of the outstanding part of the obligation. Pursuant to Section 383, Subsection 4 IC in the cases of occurrence of an insurance event and according to the terms of the main contract between the creditor and the debtor and the terms of the insurance contract the insurer shall make payment to the creditor up to the amount of the outstanding part of Subsection 1. The balance of the insurance indemnity, if any, shall be paid to the debtor or to his heirs, or to third party beneficiaries where the debtor is the insurer. Despite the lack of regulation in the repealed IC, the case law had unequivocally established the legal interest of the same group of legal entities to file the creditor's claim against the insurer on the grounds of Section 134 of the CPA [2]. The borrower who has insured his life against certain risks, respectively the heirs of the insured under the life insurance group "borrower" have a legal interest and active procedural legitimacy to file a claim against the insurance company in defence of the bank's property rights by requesting the insurance company to pay to the beneficiary under the insurance contract - the bank the sum insured due to the realization of the insurance event, in the presence of the prerequisites of the provision of Section 134 CPA. In this case there is a procedural substitution under Section 26, Subsection 2 of the Civil Procedure Code - exercise of another's substantive right under the conditions of Section 134, Subsection 1 CPA. In view of the explicit legal regulation currently in Section 383, Subsection 3 of the Insurance Code, giving the rights of insured persons to the heirs of the borrower, for them the exercise of their quality of insurance rights is legally enshrined and no longer need to justify Section 134 of the CPA. Since the exercise of the substantive right under Section 383, Subsection 3 of the Insurance Code is almost identical to that under Section to apply Section 134, Subsection 2 of the CPA, and also in view of the lack ofan explicit provision in the IC for constitution as an accomplice of the person, beneficiary

of the insurances, then by analogy should be applied Section 134, Subsection 2 of the CPA [3].

Procedural substitution through advocacy arises in the exercise of the debtor's rights by the creditor under Section 134 of the CPA [4]. This claim is provided in favour of a person who has the capacity of a creditor, exercising property rights of the debtor - receivables arising from transactions, tort or unjust enrichment. Only a person who is a creditor of the debtor can exercise the rights of the latter. In case the plaintiffs are not found to have this quality, the insurer is not obliged to pay the sum insured. In the case of insurance concluded in favour of a creditor and in the event of an insured event, the insurer shall be liable to the creditor up to the amount of the outstanding part of the obligation for which the insurance contract was concluded, and only when the indemnity exceeds the amount of the credit. or to his heirs. Therefore, in the event of an insured event, the creditor is entitled to receive insurance indemnity, but not the borrower or his heirs. The only hypothesis of a claim in favour of the heirs of the borrower against the insurer in connection with the concluded insurance is when the borrower is a natural person, respectively his heirs have repaid the obligations under the loan agreement. When they have not repaid the obligations included in the residual value of the loan as of the date of death, no claim against the insurer has arisen in their favour.

5. Conclusion

The peculiarities of the loan or bank loan agreement, its novelty and the resulting inadequacy of case law give grounds for more active participation of the theory, whose task is not only the critical analysis of the accumulated case law, but also the search for answers to questions and solving the problems posed by the regulation of new types of contracts.

References

[1] State newspaper - The legislator has not provided for a retroactive effect of the new law - with regard to the origin, implementation and termination of existing insurance relationships, therefore for the legal facts related to the implementation of legal obligations under these insurance contracts, arising before the entry into force of the current IC. - Subsection 22 of the IC, the new IC does not apply.

[2] Decision 138-2016-II Commercial Division of the Supreme Court of Cassation of the Republic of Bulgaria

[3] Decision 45-2019-District Court – Radnevo

[4] For the so-called "indirect claim" or actioobliqua – Kalaydzhiev, A. Contractual law. Common part. Fifth edition. Publishing house: Sibi, 2010 page 575 and next.