INSURANCE IN THE CONSTRUCTION INDUSTRY

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Under Article 742 of the Civil Code of Russia ("the Civil Code"), the construction agreement may require that the contracting party, which accepts the risks of accidental loss or damage of the building, material, equipment or any other property used during the construction or liability for third party damage during the construction, insure the relevant risks.

The party responsible for the insurance under the agreement has to provide its counterpart with the evidence proving that it has duly entered into an insurance contract on the terms and conditions required by the construction agreement.

In view of the above, the terms and conditions of property insurance depend on the terms and conditions of the construction agreement. It is true, in particular, in respect of the duration of the construction agreement. Longer duration of the construction, e.g. as result of suspending the work on the site ('mothballing of the construction project') may mean higher insurance risk, and therefore, an additional insurance premium becomes payable under Article 959 of the Civil Code.

Article 742 of the Civil Code mentions diverse property insurance types, such as: insurance against loss of or damage to the property; third party civil liability insurance.

Let us discuss the above property insurance types in detail.

It should be noted here that it is rather complicated to estimate the construction project for property insurance purposes. Article 1 of the Urban Development Code of Russia ("the Urban Development Code") defines a capital construction project as a completed or semi-finished house, building or structure, excluding temporary structures, kiosks, sheds and other similar structures.

However, the capital construction deliverable is generally not yet in existence at the date of the construction agreement. The inexistence of the construction deliverable makes it impossible to estimate the property being insured and consequently to conclude a property insurance contract because the property estimate clause is an essential clause of the insurance contract (Article 942 of the Civil Code).

The property estimate is also complicated for insurance purposes in case of a semi-finished project because the changes of the project deliverable in the process of its construction make it difficult to determine the individualizing characteristics of the insured property and to perform its valuation, and therefore, to calculate the insurance amount; whereas, the insurance amount clause is an essential clause of the insurance contract (Article 942 of the Civil Code).

The third party civil liability insurance is a method of securing the liability for third party damage. The Urban Development Code promotes its use by requiring a smaller contribution to the compensation fund of self-regulatory associations in the construction industry, in the event such associations require that their members conclude third party civil liability insurance contracts (Article 55.4.2.2 of the Urban Development Code).

At the same time, the standard insurance terms offered currently by insurance companies are often worded to reflect the interests of the insurer and to depreciate the rights of the policy holder (the insured party). Some of such insurance terms are discussed below.

1. The insurance terms often say that the policy holder (the insured party) may not accept independently his liability for the damage incurred to a third party without the insurer's consent. The insurer has no liability to pay the insurance money in the event the policy holder (the insured party) accepts its liability independently.

However, Article 1.2 of the Civil Code says that a legal entity can acquire and exercise its civil rights of its own free will and in its interests. According to Article 9.2 of the Civil Code, a waiver of any right does not cause termination of that right, unless the law provides otherwise. As no law provides otherwise, the policy holder retains the right to accept liability and reimburse the incurred damage of its own free will.

A similar right of the insured party may not be restricted by an agreement between the policy holder and the insurer because no obligations may be imposed on any party, which is not a participant in the agreement.

2. The insurance terms under which the insurer has no liability to pay the insurance money in the event the policy holder (the insured party) accepts its liability is not contrary to the Civil Code. However, if the insured party reimburses the damage voluntarily, he has valid grounds to recover the corresponding amount from the insurer as the latter's unfair enrichment according to Article 430 of the Civil Code.

3. The insurance terms often provide for a limited period available to give a claim to the insurer. The Russian Law does not limit the time for submission of insurance claims, and therefore, such limiting terms are illegal, unless the limited term for submission of insurance claims has been provided for in the agreed definition of the insured risk (Article 942.1.2 of the Civil Code).

4. The terms which exclude from the insured risks the damage incurred as result of the policy holder's (the insured party's) insured activities, performed without a license or any other statutory special permission are null

and void, because performing any activities without a statutory license/permission is a gross negligence. At the same time, Article 963 of the Civil Code says that the insurer is discharged unconditionally from the liability to pay the insurance money solely where the insured risk is realized due to willful action or omission to act of the policy holder, the insured party or the beneficiary. The law does not discharge the insurer from the liability to pay the insurance money in the event the insured risk is realized as a result of gross negligence.

5. The standard insurance terms often provide for an extensive list of the documents, which the policy holder (the insured party) must submit to the insurer, in addition to the notice of the realization of the insured risk for decision-making on payment of the insurance money. At the same time, Article 961.1 of the Civil Code says that the policy holder must notify the insurer or his representative promptly upon becoming aware of the realization of the insured risk. Therefore, according to the above piece of law, the notice may be given to the insurer, without any accompanying documents required by the insurance terms.

6. Certain insurance terms say that any expenses intended to reduce the damage resulting from the realization of the insured risk may be incurred by the policy holder solely upon the insurer's consent or instructions to the effect.

This limitation is null and void, because it is contrary to Article 962.2 of the Civil Code, under which, the expenses intended to reduce the damage reimbursable by the insurer – where necessary or incurred according to the insurer's instructions – must be reimbursed by the insurer, even in the event the respective measures are not successful. Therefore, the insurer must reimburse the reasonable expenses – even if they were incurred without his instructions.