DOBREV & LYUTSKANOV
LAW FIRM

Back to Insurance: Comments on the Financial Risk Insurance for a Car Lease Agreement in Favour of a Bank

Against the backdrop of the recent boom of financial lease agreements for the purchase of vehicles, the practice of signing insurance contracts in favour of a third party has largely developed, i.e. the lessor insures the expected financial income from the lease agreement by stipulating that, in the case of non-payment of two or more installments, the insurer will pay the bank which has extended a loan to purchase the vehicle.

The third-party beneficiary, i.e. the bank in this case, is not a party to the insurance contract. Its rights ensue from its agreement with the insured person (the stipulant), which provides that the security under the loan agreement for the purchase of the leased vehicle is in the form of a clause in favour of a third party under the financial risk insurance policy. The clause in favour of the third party under the insurance contract is conditional. In other words, it generates effect with the signing of the contract but in the case of its repeal or the third-party waiver respectively, the clause is cancelled retroactively.

What happens when the insurance event occurs? The bank has the legitimate right to receive the indemnity. It has to cat and bring the case to court. But, for purely objective economic reasons, the bank prefers to receive its money from the lessor in full rather than to engage in lengthy and cumbersome legal disputes with the insurer.

Being the insured party, the lessor has legal interest in the settlement of the case but the lessor cannot claim the insurance indemnity for himself because he has transferred this right to the bank. The lessor has to file a claim, requesting the award of the insurance indemnity to the third party, i.e. the bank which has financed the purchase of the leased vehicle, and not to himself. The whole burden falls on the lessor: costs are incurred, litigation takes years. It is no secret that although the Civil Procedure Code has been amended, court proceedings still take two to four years to go through all instances.

It is possible to identify some more favourable options for the lessor. The law provides for ways to amend the insurance contract, whereby the insured person who has promised the receipt of the insurance indemnity may repeal this clause before it is accepted by the third party or retain his right under the contract to repeal the clause in favour of the bank at any time during the validity term of the contract. The beneficiary, i.e. the bank, may waive the benefit under the contract.

Furthermore, it is possible to replace the beneficiary or, if the bank as the third party is satisfied, the insurance may be received by the insured person himself.

In many cases, the bank has not explicitly accepted this clause of the insurance contract in its favour and when the payments under the lease agreement are discontinued, the bank grants this right to the lessor (the bank waives the agreed clause prior to any acceptance of the clause) basically in exchange for the lessor’s commitment to engage in litigation with the insurer.

There is a series of judgments in which the Supreme Court of Cassation holds that, upon the third-party waiver of the clause in its favour, the right remains within the patrimony of the party granting the benefit. By way of interpretation of the provisions of Article 22 of the Obligations and Contracts Act, it can be assumed that the right to receive the insurance indemnity is returned to the patrimony of the party granting the benefit which is the lessor in these cases. This refers to property insurance which does not contain elements of intuito persone.

Where the bank waives the clause in its favour under the insurance contract, the Supreme Court of Cassation assumes that the insured person may request the insurance indemnity for himself also in court proceedings.

In other cases, the bank is meanwhile fully satisfied by the lessor and it has no legal interest in suing the insurer because it has received the payment from the insured lessor.

The cases of full satisfaction of the bank before and also after its acceptance of the contractual clause agreed in its favour under the insurance policy are a disputable issue in case law. In the event of full satisfaction of the bank as a third-party beneficiary, it should be recognized that the bank has no legal interest in receiving the insurance because otherwise it would be a case of unjust enrichment.

There are disputes on this issue in the case law. Court proceedings have been opened. The Supreme Court of Cassation is bound to give an answer on this matter, which actually is resolved in the existing legislation and it can be drawn in a straightforward and definitive manner through the implementation of the relevant legislative provisions.

An important circumstance should be taken into consideration so that to avoid disputes between the individual entities in these legal relationships. It is the need for regulation of the legal relationships in each of the cases described above, while strictly observing the formal requirements. The Commercial Code and the Obligations and Contracts Act specify that the written form for any amendment to the existing contracts is required not only as a proof but also as a condition for the validity of the agreement. The insurance contract is formal and it has to be given in writing. Therefore any amendment to the contract, including an amendment due to repeal of the agreement in favour of the third party or to waiver, has to be given in writing so that to have the desired legal effect. This conclusion is based on the provisions of Article 293, paragraph 6 in conjunction with paragraph 1 of the Commercial Code.

There is an exception, as is seen in business practices. It is the case of full satisfaction of the third party, when, on grounds of lack of legal interest, the third party cannot be expected to take part in the settlement by submitting a waiver in writing. In such cases, the waiver of the clause in favour of the third party is made through concludent action.

Generally, the law does not require any special form of the third-party waiver, i.e. the waiver could be given explicitly in writing, including the option to exchange letters sent to the insured person and to the insurer, which is recommendable. It is also possible to give the waiver through concludent action to demonstrate it clearly and unambiguously to the two parties under the insurance policy

which is in favour of the bank as a third-party beneficiary, noting that this option for the waiver is still disputable in the case law.