

# Insurance as a way of protection against terrorist risks

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**Abstract.** The risks of property losses caused by terrorist activities have not been isolated by insurers for a very long time. The situation has changed dramatically due to the events of September 11, 2001, which demonstrated the need to form a new approach to solving the problem of insurance coverage of damage caused by terrorist attacks. Accordingly, the purpose of this particular study was to determine the optimal model of insurance against terrorist risks. Therefore, several approaches, based on the analysis of Russian and foreign legislation, to solving this problem have been identified. At the same time, reinsurance has become a common mechanism aimed at protecting the interests of insurers, which in most cases is carried out with the participation of the state. However, state resources are formed for these purposes and are used in such cases in different ways. The targeted use of funds is ensured through the use of special funds, the funds of which in some states (France, Israel) are formed at the expense of targeted tax deductions. In addition, differences can be traced in the scope and procedure of State participation in covering the damage caused. In some countries (for example, in Belgium), this obligation arises only if the problem cannot be solved through a reinsurance system.

**Keywords:** terrorist attack, risks of damage, insurance models, circumstances not recognized as insured events, insurance rules

## 1 Introduction

For a rather long time, insurers did not consider domestic (intra-national) or international terrorism as a risk that should be taken into account while making insurance contracts. This happened due to the fact that historical losses from it were relatively small and there was not enough data to assess future losses; also the terrorist attacks themselves may not be considered as accidental events. Due to the above, they did not appear either as special conditions or as exceptions to insurance coverage. The situation changed on September 11, 2001, when the insurance industry suffered a loss of \$47 billion as a result of terrorist attacks [1].

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The growth of such threats raised the question of the sources of coverage of property damage caused by both terrorist activities and measures to curb it, since after the events mentioned, insurers either massively stopped offering insurance coverage against such risks or demanded payment of very significant insurance premiums.

One of the key questions was who is ultimately responsible for the financial losses associated with terrorism. It was also necessary to decide how this responsibility should be balanced between the various stakeholders [2]. There is even an opinion that the responsibility of the state for maintaining public safety gives grounds to insurers who have made insurance payments in such cases to make a claim by way of subrogation to the state and, possibly, officials [3].

Based on all of the above, it should be noted that the purpose of this particular study was to determine the optimal model of insurance against terrorist risks, which should be facilitated by solving such tasks as: 1) analysis of the reasons for changes in the practice of insurance coverage of such risks; 2) identification of the main models of their insurance, including in Russia. Accordingly, its subject is formed by existing approaches to the organization of insurance protection against terrorist risks, which requires an analysis of not only national legislation and insurance rules, but also doctrinal approaches to solving this problem.

## 2 Materials and methods

The methodological basis of the study was dialectical, teleological, formal legal and comparative legal methods [4-6].

The implementation of the dialectical method of cognition made it possible to identify patterns in solving the question of the reasons for changing the practice of insurance coverage of terrorist risks. Thanks to the application of the teleological method associated with the interpretation and study of problematic issues through the prism of goal-setting and taking into account the goals and strategies for the development of public relations, the existing models of insurance of terrorist risks and prospects for their further use were analyzed as well.

The application of the formal legal method ensured the implementation of such a system of processing and analysis of the current norms of law and existing legal practice, which made it possible to evaluate the legally fixed legal concepts and constructions, to identify the features of legal phenomena and the prospects for their regulatory regulation.

Taking into account the existence of various approaches to the development of the terrorist risk insurance system, the comparative legal research method was of particular importance, which made it possible to identify existing approaches to solving this problem in foreign countries and correlate them with the practice existing in Russia.

## 3 Results

The problems of insurance of terrorist risks are caused by their specifics. First of all, actuarial calculations are difficult in relation to them due to the contradictory nature of terrorist activities and the unpredictability of the relevant events, even in comparison with natural disasters. In relation to this, it is possible to deduce some patterns, to simulate possible consequences and to calculate potential losses. In relation to terrorist attacks, neither the laws of distribution nor the diversification of risks depending on the territory work. It is impossible to foresee the scale and method of committing a terrorist attack, as a result of which the maximum damage from one insured event becomes extremely uncertain.

Unlike other risks, terrorist attacks are deliberate, purposeful actions committed in certain places in order to cause maximum damage [7-9].

All this makes it much more difficult to choose the optimal insurance coverage model. The events of September 11, 2001 showed that the private sector does not have sufficient resources for this and that public-private partnerships are not only necessary, but also desirable to help stabilize commercial markets. The realization of this caused the intervention of states in the regulation of the insurance market against terrorist risks. Thus, a number of legislative acts have been adopted in the United States to overcome the crisis in this area: the Terrorist Risk Insurance Act of 2002 (TRIA) [10], the Law on the Extension of Insurance against Terrorist Risks of 2005 [11] and the Law on the Reauthorization of the Terrorist Risk Insurance Program [12]. The validity period of the TRIA in 2019 was extended for the fourth time until December 31, 2027. The rules provided for by them assume the distribution of the burden of financial expenses between the federal government, state governments, insurers and policyholders. A reinsurance company established for these purposes provides reinsurance coverage to insurance companies after an event recognized as an act of terrorism. Similar practice takes place in other States.

In France, insurance against terrorism has been mandatory since September 1986 in relation to terrorist acts committed on the territory of France or in its overseas departments. According to the Article L. 126-2 of the Insurance Code [13], property insurance contracts against fire give the right to compensation for direct material damage caused as a result of a terrorist attack. While insuring against operational losses, this guarantee also applies to damage caused as a result of terrorist attacks, on the terms stipulated in the contract.

In order to ensure the stability of the insurance market, a reinsurance system was established in 2001, providing unlimited reinsurance coverage to insurance companies. At the same time, an Agreement was signed with the associations of insurers (FFSA and GEMA), providing for their refusal of recourse and subrogation in such cases. In accordance with Article L. 126-1, full compensation for damage caused to life and health is provided through the Guarantee Fund for Victims of Terrorist Acts and Other Crimes, which is financed by collecting property insurance contracts (Article L 422-1).

In Belgium, a multi-level model based on the experience of the Netherlands was developed. According to this model all the Belgian insurers provide financial compensation in the amount of up to 300 million euros. If this amount is insufficient to cover the losses, the second level will be involved, which is provided through the reinsurance market in the amount of up to 400 million euros. In the event that this amount is not enough, the Belgian state will additionally cover the damage up to 300 million euros. In order to ensure the functioning of this system, a Pool of insurance against terrorist risks was created [14].

In Israel, terrorist risks are mainly covered by the Compensation Fund formed in accordance with the Property Tax and Compensation Fund Act of 1973, embodying the idea of insurance by the State providing compensation for damage caused by war and hostile actions (including terrorism). The Minister of Finance is given the authority to determine the right to compensation, its amount and the mechanism of payment. Compensation is provided for both direct damage and indirect losses, including in specified cases outside the country. At the same time, it is possible to purchase additional insurance coverage in the amount of up to 0.3% of the real estate value. In order to protect local individuals, a social security system has been formed, including various benefits and payment for necessary medical services, the appeal to which excludes the use of alternative ways to protect violated rights. Accordingly, the presentation of claims for compensation for the damage caused, for example, to the airline, involves the return of the benefits received [15].

A kind of insurance protection system against such risks has been formed in Russia. The leading place here is occupied by the Russian Anti-Terrorist Insurance Pool, created on December 20, 2001 by six major insurers to meet the needs for reinsurance of the risks of “terrorism” and “sabotage” in the national insurance market and currently unites 22 companies. The main directions of its activity are the development of conditions for the insurance of risks “terrorism” and “sabotage”, the formation of a unified tariff, the development of a national reinsurance capacity for insuring such risks and ensuring interaction for timely and high-quality settlement of losses.

An analysis of the insurance rules developed by Russian insurers shows that in most of the cases it is possible to talk about the possibility of providing insurance coverage for damage from death and damage to insured property as a result of a terrorist attack as an additional condition of the contract being discussed [16, 17]. Sometimes the object of insurance is recognized only the property interests of the policyholder associated with the risk of civil liability for obligations arising as a result of harm to third parties as a result of an accident at the facility that arose in connection with a terrorist attack [18].

The rules of voluntary insurance of property against terrorist attacks are developed much less frequently and they are characterized by several features [19]. Firstly, insurance mainly applies to immovable property and movable property belonging to fixed assets located on the territory of the insured object, although insurance of other objects may be provided for by a separate agreement. The contract may cover property interests related to non-receipt of the expected profit, compensation for direct material damage related to the prevention of a terrorist attack or reduction of possible losses, as well as the resulting interruption in economic activity.

Secondly, insurers consider it necessary to identify situations that are not considered as an insured event. We are talking about the consequences of a nuclear reaction, radiation and ionizing radiation or radioactive contamination, leakage or dispersion of any pollutants or toxic substances, biologically or chemically hazardous substances, as well as a terrorist attack by committing a crime in the field of computer information.

## 4 Discussion

Therefore, the use of each of these models may demonstrate its advantages and disadvantages, but in all the cases the key point is the attribution of an event to a terrorist attack. In particular, the difficulties that may arise in establishing “terrorist motives” are noted, since “they include abstractions that can be interpreted in many possible ways ... it is difficult to predict how ... to assess whether a particular act has an “effect” in terms of intimidation, coercion or destruction of an economical segment” [20]. The solution of this issue looks especially problematic when it comes to the actions of a lone terrorist [15]. From a formal legal point of view, the basis for recognizing an event as an insurance event, as a rule, is the fact that a criminal case has been initiated under the relevant articles of the Criminal Code.

The issue of the ratio of public and private participation in resolving the problem of compensation for damage to victims of terrorism is being ambiguously resolved. This concerns both the amounts paid and the forms of state participation in solving this problem, which is due to various factors: from the specifics of building the insurance market in terms of regulatory influence from the state to the level of the estimated terrorist risk [21].

The problem of stability and universality of the compensation system for victims of terrorism deserves attention. In this sense, the model formed in the United States is criticized as focused on compensation for the victims of the September 11, 2001 terrorist attack, the standard of which was determined by public opinion and the opinion of Congress, formed only by one event [15]. Meanwhile, a stable system of compensation for

harm (damage) caused by terrorist attacks would make it possible to increase the efficiency of the distribution of funds, take into account the costs of administration, form an understandable and transparent compensation mechanism, while ensuring the psychological effect of protection.

## 5 Conclusion

It is possible to state that there is no universal approach to solving the issue of insurance coverage of terrorist risks, which is due to their specifics.

In these particular conditions, different states solve the problem of using the insurance potential in different ways in order to increase the effectiveness of protecting the property interests of citizens and organizations from terrorist risks. The most constructive is the participation of the state not only in determining the key parameters of this insurance type, but also the provision of guarantees of insurance compensation through a reinsurance system implemented through funds specially created for this purpose, in the formation of which tax instruments can be used.

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