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Insurance against innovation risks for business entities

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Abstract. In the context of development of innovative economy, importance is being increasingly attached to stimulating corresponding lines of activity of business entities. One of them is insurance, which presents an important method of reducing risk factors for business entities, providing stimulation of technological modernization, implementation of new forms and methods of production and management. The necessity of the present study is associated with objective difficulties of organizational, legal and economic character in the development of this type of insurance in Russia, overcoming of which requires elaborating exact decisions. In the course of this study both foreign experience of organization and legal regulation of innovative risks and the practice of Russian companies have been explored. At that, rules of insurance elaborated by them and theoretical opinions of scientists regarding the prospects of this type of insurance development have become the subject matter of analysis. All of that has helped to reveal standard models of innovative risks insurance established abroad, on the one hand, and to form the understanding of development problems of this insurance market segment in Russia, on the other hand. Based on that, the peculiarities of innovative risks insurance have been distinguished, its place in the insurance system has been defined and possible directions for its development in Russia have been critically evaluated.

1. Introduction

Turning innovations into a leading factor of economic growth in all sectors of economy, its structural diversification on the basis of innovative technological development specified as the most important component of the Conception of long-term socio-economic development of the RF for the period up to 2020 [1], requires particular attention to innovation risks, as a rule, defined as the possibility of unfavorable consequences which appear as a result of creation, acquisition and distribution of objects of innovation activity [2] which, judging by its normative definition of the latter, includes innovation projects and innovation infrastructure. The first ones constitute a complex of measures aimed at achieving economic effects, including measures for implementation of commercialization, innovations, understood as new and introduced or greatly improved products (goods, services) or processes, new sales techniques or new organizational methods in business practice in organization of work places or in external affairs. The second ones are a complex of organizations contributing to implementation of



innovative projects including providing management, material and technical, financial, professional, consultancy and organizational services.

In developing countries, the issue of property-liability insurance related to the use of protected objects of intellectual property is admitted to be an important element of business strategy in the 21 century [3]. The European Commission considers insurance as one of the most important measures for supporting the use of intellectual property by small and medium enterprises, as it will help them to share or pass to insurance companies financial burden or risks of occurrence of loss as a result of malevolent or accidental disclosure of a commercial secret and also termination or invalidation of rights for results of intellectual activity in accordance with a judicial decision [4]. It is justifiably considered that intellectual property insurance has vital significance for business because of increase of costs of judicial proceedings aroused both by the necessity to protect one's exclusive rights and the wish of market participants to get competitive advantage by means of involving right holders into judicial proceedings.

Taking that into account, the aim of this study was to define the specificity of innovation risks insurance which stipulated setting the following tasks:

- 1) determining the position of innovation risks insurance in the insurance system.
- 2) analysis of practical activity of insurance companies connected with determining the amount of insurance coverage and the range of objects it is extended to.
- 3) revealing the specific character of defining the term of an insurance contract and the amount of the insurance premium.

2. Theory

The issue on the position of innovation risks insurance in the insurance system is a matter of argument. A number of specialists associate property interests of insurers with the specific character of innovation activity and that's not consistent enough. In particular, N. B. Ermasova and S. V. Ermasov analyzing the peculiarities of innovation projects insurance [5], note that insurance coverage may be applied to such groups of risks as: risks associated with changes in the market environment, reliability of innovation project partners, etc.; classic risks (fires, natural disasters, thefts, etc.); specific risks (technological or connected with intellectual property protection); risks of non-payment during foreign trade crediting, etc.)

In total, we can't but admit the possibility of wide and narrow representation of this type of insurance, taking into account that the specific character of rights for intellectual activity results is present at all stages of an innovation process. At the stage of commercialization of innovations, connected with introducing them into the market, such risks appear that make both receipt of profit and reimbursement of incurred expenditure impossible [6]. They include the following risks: implementation of innovations, not efficient enough judging by the general level of technologies development [7]; innovations are not in demand [8], owing also to redundant suggestions of competitors or the specific character of price formation [9]; fast functional depreciation of innovations [10]; risks of unauthorized use of an intellectual property object, its imitation by competitors or their challenging of legally effective patents. At that, we should take into account that not all innovation risks can be recognized as insurance risks. Thus, according to Y. Y. Myagkovaya's opinion, these are risks of impossibility of implementation of results on the technology level, functional depreciation of an innovation activity object, redundancy of new objects of innovation activity (OIA), and also risks of price formation [2].

Correspondingly, it has been suggested to treat "innovation risks insurance" in a broad sense as "a multifunctional mechanism of constructing complex insurance protection with the elements of property insurance, financial and business risks insurance, disruption of production insurance" [11]. However, such an approach appears to be not quite reasonable as evolution of this type of insurance proves. At first it was available only in the framework of liability insurance and appeared as a result of competitive struggle of insurance companies; one of them suggested insurance protection from universal obligations in 1973 which included liability for violation of intellectual property rights. At that, in some cases courts preceded from the need of insurance coverage extension to expenditures related to corresponding court procedures (*Aetna Casualty & Surety Co. v. Watercloud Bed Co.*, U.S. Dist. Lexis 17572 (1988) and

Intex Plastics Sales Co. v. United National Insurance Co., 18 U.S.P.Q. 2d 1567 (C.D. Cal. 1990) [12]. Sometimes they inferred the necessity to reimburse losses from abusive activities from the side of executive heads of companies they were managing [13].

3. Method

Methodological base of the research includes both general scientific cognition methods such as dialectical, induction, deduction, and special methods: formal logical, comparative law methods and modeling.

Innovation risks insurance is presented in dialectical interconnection with the level of science relations development; comparative analysis of its legal regulation and foreign practice is carried out in order to define prospects of its development. When considering possible variants of using this type of insurance it has been noted that several models of its implementation are being formed: first-party IP coverage, IP abatement coverage and IP defense cost [14].

The selected methodology of undertaking a study is based on analyzing the existing approaches to the essence of innovation risks insurance, estimation of its state abroad, revealing models of its implementation with the aim of synthesizing obtained data for elaborating possible directions for its improvement in Russia.

4. Results and discussion

The study undertaken allowed, first of all, to reveal approaches, existing in science and practice, to defining the essence and peculiarities of innovation risks insurance, and also to determine the state of this type of insurance in Russia which affords ground for structural presentation of the results of this study in the form of two relatively independent blocks.

4.1. *The essence and peculiarities of innovation risks insurance*

Understanding the essence of innovation risks insurance as insuring risks, connected with intellectual property, stipulates building protection for business entities according to the innovation risks insurance model. Therefore, the object of insurance is represented by statutorily compliant property interests of an insurer, connected with possible losses in consequence of violation of his author's rights or associated rights or rights for inventions, useful models and industrial designs, or trademark rights [15]. Sometimes insurers treat the object of insurance more broadly as property interests connected with possession, use and disposition of property rights in relation to its intellectual property [16]. As a result, the issue of not applying insurance coverage to property interests related to possessing these or those results of intellectual activity comes into sharp focus and it is being solved on the basis of:

1) specificity of legal protection of intellectual property objects expressed, firstly, in excluding some of them from the category of protectable objects (for example, folklore, inventions), and secondly, in setting time limits for legal protection (in particular, 20 years for inventions, 10 years for industrial designs); thirdly, in the possibility, provided for by law, of performing acts, not acknowledged as a violation of exclusive rights for a work product, an invention, a useful model or an industrial design, etc., which makes insurance impossible in the case of undertaking a scientific study or an experiment over the product containing the invention, useful model or industrial design that are protected by patent rights, one-time production of medicines in pharmacies by medical prescription, using products containing inventions, useful models, industrial designs protected by patent rights, for personal purposes without acquisition of income, etc.

2) referring them to objects for insurance of other types (in particular, financial risks insurance) whereby losses, induced by exchange difference, penalties, late charges and fees for performance of conditions of the authorship agreement, agreement for associated rights, payments related to patent licensing operations, trademark registration charges, other indirect charges, are not covered.

Other exceptions from insurance coverage are also possible for certain categories of intellectual activity results subjectively determined by the insurer. Thus, *ROSINKOR REZERV* does not acknowledge rules and methods for games, intellectual or economic activity, plant varieties, animal

breeds, integrated circuit topographies, and, in the part of industrial designs: decisions stipulated only by the technical function of a product; architectural solutions (except small architectural forms), industrial, hydraulic engineering and other stationary structures, objects of instable form of liquid, gaseous, granular and similar substances, as insurance objects [17].

The problem of applying insurance coverage to court costs related to protection of rights for intellectual property results are being solved differently in theory and practice. According to M. B. Mamsurov's opinion, "only property interests should be objects of insurance: those interests related to losses in the form of loss of profits and unprotected expenses as a result of stoppage in production because of accidental constructive, technological omissions, deficiency of new complicated equipment mastered in this or that form, a technology or a new production product, mistakes of personnel when using novelties and also expenditures for design, technological improvement of a novelty by own efforts of an enterpriser-insurer" [18]. However, it's hard to agree with this approach, taking into account that judicial remedy of rights for intellectual activity results is often the only possible way of restoration of a violated right or compensation of incurred losses.

The analysis of insurance regulations demonstrates that, as a rule, court costs are considered to be a part of the insurer's expenditures which include in such cases: all expenses that the insurer has or will have for restoring a violated rule because of occurrence of loss, including expenses for involving lawyers, experts, evaluators; judicial and notary fees for collecting and preparing corresponding documents in the proper way for restoration of a violated right; other expenses directly connected with occurrence of the insured event which the insurer determines in each particular case taking into account all circumstances of this event. Much less often, property interests related to the insurer's expenses when hearing a case in the court for protection or restoration of property rights for intellectual property objects, violated by third parties, in particular, for payment of fees or costs connected with hearing the case, are considered to be independent objects of insurance [19].

Forming the insurance protection for business entities, which perform innovation activity, in accordance with the model of insuring business risks defines the insured event through infliction of losses to the insurer. In these conditions, determining events which are not admitted as the occurrence of event insured against, and, therefore, excluded from insurance coverage, takes on special significance. Besides the losses which are rarely insured against (losses from a nuclear explosion, radiation or radioactive contamination, military operations, a civil war, civil disorders or strikes, seizure, confiscation, acquisition, arrest or elimination of an intellectual property object of an insurer by the order of the state authorities, and also non-insurable consequences of a violation by the insurer the current legislation or liabilities taken upon oneself through a contract), some insurers consider it necessary to discuss the possibility of including into the contract, by agreement between the parties, other exceptions depending on the degree of risks and other circumstances estimated by the insurer during the contract execution. At that, utterly general statements of potential violations of an insurer's rights used by insurers present a separate issue, and that may cause problems for insuring their interests.

The peculiarities of insurance protection of intellectual activity results stipulate the specificity of determining time limits for insurance which, evidently, can't exceed the term of its duration. Correspondingly, the effective period of an insurance contract can't exceed the effective period of a patent for an invention, a useful model, an industrial design, selective achievement or a trademark exclusive right license, a service mark, an appellation of origin of goods. Otherwise, the matter of insuring unlawful interests may appear.

Determination of the size of insurance premium has its own specificity: the premium is calculated based on basic insurance rates defined by the insurer with application of multiplying and decreasing coefficients defined by expertise, the exact value of which is determined by reference to the type, quantity and significance of risk factors according to their influence on occurrence of the insured event with the aim of accounting for the peculiarities of intellectual property objects, contracts related to them and possible risk factors associated with that. That said, estimation of the insurance risk is implemented on the basis of analysis and investigation of information and documents presented by the insurer with an insurance application, including those additionally requested by the insurer, information obtained by

him independently, findings of experts and evaluators which, in total, allow to reveal the risk factors increasing or decreasing the possibility of occurrence of the insured event for each object of intellectual property and insurance risks included in the insurance contract.

4.2. Innovation risks insurance in Russia

Innovation risks insurance is not related to popular types of insurance in Russia, which predetermines the existence of different approaches to its conditions. Insurance protection, as a rule, is provided through executing an insurance contract for business risks, some of them are very specific.

We have to state that the Russian market segment, being studied, is extremely undeveloped which requires posing the question of possible ways of stimulation of insurers' activity in this sphere. We can't but note that both Russian and foreign specialists consider the state interference into developing relations, which are appearing in this field of insurance, to be most efficient. Only the degree of such interference may arouse discussions which can vary from the directive setting of the obligation of this type of insurance to the application of economic methods of influence on this market segment, including through the use of budget funds.

According to specialists' opinion it may consist in co-financing of a part of the insurance premium, which is used in agricultural insurance, subsidizing administrative and operating expenditures of insurance companies which focus on insuring innovation risks, stimulation of creating a compensation fund for the professional partnership of insurers and applying technologies of mutual insurance in this field [2]. However, not all these initiatives seem to be promising enough for implementation.

Regarding development prospects of innovation risks insurance in Russia, there is an issue with whether it is reasonable or not to introduce a system of obligatory insurance by reason of widespread acceptance of innovations both in production and service sector and also necessity of the state support. We should note that there are both positive and negative moments here. It is evident that the obligatory insurance scheme would help to reduce the size of insurance premiums due to insurance scales, deprivation of the possibility of selecting between risks of potential insurers and their interests, and also distribution of expenses for elaboration and implementation of insurance products between them. On the other hand, the scheme of obligatory insurance will contribute to increasing the number of available court proceedings in relation to intellectual activity rights (if insurance coverage is applicable to corresponding expenses), and that may negatively influence financial stability of insurers. Besides, we should take into account the fact that such insurance premiums will become an additional load upon business, first of all, small and medium business [20]. Therefore, prospects of developing this insurance market segment are, first of all, associated with implementation of the state support, at least, at the stage of its establishing.

5. Conclusion

The study undertaken allows formulating a number of conclusions and suggestions.

1. Insurance of innovation risks has been developing from accepting it as a kind of liability insurance to business risks insurance, and also package insurance and that defines the peculiarities of its legal regulation at the present stage.

2. Determining the essence of this type of insurance, it is necessary to start from its narrow representation as insurance of risks connected with intellectual property, as particular characteristics of its legal treatment preconditions the variety of approaches to defining the object of insurance, insurance event, duration of an agreement, amount of insurance compensation and insurance premium calculation methods. The differences revealed in the contents of insurance rules of different insurers afford ground for suggesting normative consolidation of the basic characteristics of this type of insurance in order to build a relatively universal model of its implementation.

3. Development of this market segment in modern Russia is possible only provided that measures of the state policy are being implemented, at least, at the stage of its establishing: they may be expressed

in providing tax privileges in relation to making innovation risks contracts, and also implementation of programs of corresponding expenditures co-financing.

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