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The Role of Consent in Liability Insurance Contracts in Construction Companies: Comparative Study

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Abstract

Iraqi law does not address the general provisions of the insurance contract and the legal value of the insurance claim. However, French law explicitly states that the insurance claim alone is not binding on the insurer or the insured parties. French law considers the insurer's silence as acceptance of the insurance in the event of a contract amendment. Iraqi and Lebanese law, however, do not contain a similar provision within the general provisions of the insurance contract.

The Iraqi legislator is supposed to add a provision to the general provisions of the insurance contract specifying the legal value of the insurance claim. Since the general rules of Iraqi civil law does not include a provision specifying a deadline for acceptance by the obligor. Rather, the Iraqi legislator must intervene and include in to the insurance contract a provision obligating the insurer to notify the insurance applicant of a negative or affirmative response to his application within a period of fifteen days.

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دور التراضي في عقد التأمين من المسؤولية في مقاولات البناء " دراسة مقارنة "

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الخلاصة

لم يتناول القانون العراقي في الأحكام العامة لعقد التأمين القيمة القانونية لطلب التأمين، بيد أن القانون الفرنسي نص صراحة على أن طلب التأمين وحده ليس ملزماً للمؤمن والمؤمن له. وإن القانون الفرنسي اعتبر سكوت المؤمن قبولاً للتأمين في حالة تعديل العقد. في حين خلا القانون العراقي والقانون اللبناني من نص مماثل ضمن الأحكام العامة لعقد التأمين.

يفترض بالمشرع العراقي أن يضيف في الأحكام العامة لعقد التأمين نصاً يبين القيمة القانونية لطلب التأمين. وبما أن القواعد العامة في القانون المدني العراقي لم تتضمن حكماً لتحديد الموجب ميعاداً للقبول، وهذا الأمر لا يعدّ كافياً، بل على المشرع العراقي التدخل وتضمين نصوصه المتعلقة بعقد التأمين حكماً يتضمن إلزام المؤمن بضرورة تبليغ طالب التأمين بالرد بالسلب أو الإيجاب على طلبه خلال مدة خمسة عشر يوماً.

الكلمات المفتاحية: التراضي، المسؤولية المدنية، التأمين، عقد التأمين.

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1. Introduction

Insurance is defined as "a contract by which the insurer guarantees to the insured the damages resulting from a third party's claim of liability, whereby the insurer takes the compensation that the insured responsible for the damage is obligated to pay to the affected beneficiary. It is not possible to define liability insurance in construction contracts without defining what is meant by the term 'contract" . The Iraqi legislator defined a contract as: "A contract in which one party undertakes to make something or perform a work in return for a fee undertaken by the other party, while Lebanese law defined it as: "A contract in which one of the contracting parties undertakes to make something or perform a work in return for a fee undertaken by the other contracting party.

Based on the definitions of construction contracts in Iraqi and Lebanese law, we can conclude that both definitions are general, encompassing all types of contracts, including construction contracts. Accordingly, liability insurance in construction contracts can be defined as "a contract whereby the insurer undertakes to guarantee the insured – the party involved in construction contracting operations – against damages arising during the execution of the contracting work and the ten-year warranty period resulting from third-party claims for liability in construction contracts."

According to the provisions of our Civil Code relating to the insurance contract, it becomes clear that insurance contracts are consensual contracts like other contracts, as they are concluded as soon as the offer matches the acceptance, i.e., the two wills issued through contracting match without the need to express the consent in a specific way. And if the practice has been to express consent in a written form, this does not prevent the contract from being concluded in another way, if there is no difficulty in proving it.(1)

Since insurance, like other contracts, requires the will of the contracting parties to enter it and express this will through the first element of the contract, namely, consent, this consent in construction liability insurance contracts requires specific mechanisms that may differ from consent in other contracts due to the unique nature of this type of contract.

1.1. The importance of the Study

This research has a great importance in clarifying the role of consent in civil liability insurance contracts for construction projects and how it differs from the general rules of consent in other contracts, given the importance of construction liability insurance following the widespread adoption of this type of contract.

1.2. The Problem of the Study

The problem arises from the difference in the provisions governing consent and its expression in construction liability insurance contracts compared to the mechanisms for expressing consent in other contracts, especially since Iraqi legislation has not precisely regulated these provisions.

Is it possible to adapt the general provisions of civil law to address the problem? Is it also possible to benefit from comparative legislation, especially Lebanese and French legislation?.

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(1) Ahmed Hassan Al-Barai, General Principles of Social Insurance and its Applications in Comparative Law, Third Edition, Dar Al-Fikr Al-Arabi, Cairo, 2002, p. 58.

1.3. Research Methodology

In this study, we adopted a descriptive-analytical approach, examining the opinions of legal scholars and comparing the legislation under study in both Iraqi and Lebanese law, with reference to French legislation.

The paper will be divided into two chapters:

Chapter One: The Validity of Consent in Construction Liability Insurance.

Chapter Two: The Practical Expression of Will.

2. Validity of Consent in Liability Insurance for Construction Contracts

Since the will to enter a contract is central to the condition of consent, this desire manifests itself externally through the agreement of the parties' wills. Therefore, the expression of will be issued by a person with the legal capacity to produce this legal effect.

Consent is the convergence of two wills, but it is not enough for it to exist; it must be valid, meaning it must be issued by someone with legal capacity and free from defects of will. The expression of will in an insurance contract has specific characteristics and is practically manifested in two stages, starting from the submission of the insurance application and ending with the conclusion of the contract. Furthermore, it is considered a commercial contract, and its effects extend to the beneficiary in addition to the parties.

The contracting party whose consent must possess legal capacity, especially the insured, and their will must be free from any defects of consent. This will be explained in the following two sections:

Section One: Legal Capacity, Section Two: Defects of Consent

2.1. Legal Capacity

In this section of Capacity will be divided into two types.

A) first type is the capacity to acquire rights and fulfill obligations stipulated by law.

B) second type is the capacity to exercise one's will in a manner that produces the desired legal effect.

The issue of capacity arises practically only from the perspective of the insured, since the insurer is always a public or joint-stock company engaged in insurance activities, possessing legal or corporate personality after its establishment and registration according to the relevant law. The concept same applies to the insured if it is a corporate entity engaged in construction contracting. However, the issue of capacity may arise if the insured is a natural person.

Since the insurance is considered a commercial activity, it must have contractual capacity because those activities possess commercial capacity, the Iraqi legislator did not mention the rules related to commercial capacity in the current Commercial Law No. 30 of 1984. In this case, it is necessary to refer to the general provisions of capacity in the Iraqi Civil Code, which considers any person competent to contract unless the law stipulates their incapacity or limits it (1), given that the age of maturity is eighteen years (2) Therefore, for a person to possess commercial capacity, they must be at the age of eighteen.

That is why there is no legal impediment preventing him or her from engaging in insurance activities or any other legal actions, such as being under guardianship due to insanity, prodigality, or imbecility.

Similarly, a bankrupt person whose control over his assets is relinquished and transferred to a bankruptcy trustee operating under the judge's supervision has actions related to his business that are voidable during the period of suspicion and after bankruptcy. As for the actions of a minor, the matter differs depending on whether they are issued by a minor with discernment or one without. Actions taken by a minor without discernment are void. However, it is not absolutely void, but rather relatively void, because it is contingent upon the guardian's approval, since actions authorized by a minor with the guardian's permission are considered equivalent to those of an adult of legal age.

Therefore, a discerning minor can exercise [their rights/authorities] Business transactions are permissible if authorized by the guardian. This authorization can be general, covering all commercial transactions, or specific to certain types. In this case, the minor must not exceed the limits of the granted authorization. The general provisions regarding legal capacity did not differentiate between the legal capacity of men and women. The legal texts were absolute, suggesting that the legislator's aim at the time was to unify the provisions related to legal capacity in civil and commercial matters by codifying them in the Civil Code to govern similar issues. Comparing the provisions of the current Iraqi Commercial Law with the provisions of the repealed Commercial Law No. 49 of 1970, it is noted that it organized the provisions of commercial capacity in a detailed and precise manner, as its provisions and texts addressed the determination of the legal age of those who have the right to practice trade in Iraq with regard to Iraqis and foreigners (3) , and it gave the right to the minor or the incapacitated person after the court’s permission to practice trade according to what his interest requires, (4)

The repealed legislation did not stop at this limit, since the age of majority is eighteen years (5), so for a person to be able to enjoy commercial capacity, he must complete eighteen years of age and there is no impediment between him and the practice of insurance business or any of his legal actions, such as being under guardianship, for example, due to insanity, prodigality, or dementia.

Also, the bankrupt person who is relieved of his control over his money and this management is transferred to the bankruptcy trustee who works under the supervision of the judge, and the actions issued by him and related to his business are voidable during the period of suspicion ((6 and after bankruptcy. Moreover, the actions of a minor differ depending on whether they are performed by a minor with discernment or one without. The actions of a minor without discernment are void, even with the permission of their guardian (7) However, the actions of a minor with discernment who has reached the age

(1) Dr. Basim Muhammad Salih, Commercial Law, Part One, General Theory, Baghdad University Press, 2006, p. 260.

(2) Dr. Basim Muhammad Salih, Commercial Contracts: Theoretical and Practical Foundations of Conclusion and Execution, a research paper published in the Journal of Legal Sciences, Volume 8, Issues 1 and 2, published by Baghdad University, College of Law, 2000, p.47.

(3) Dr. Anwar Sultan, Summary of the General Theory of Obligation, Sources of Obligation, the University publisher, Cairo 2012, p. 40.

(4) See Article 93 of the Iraqi Civil Code No. 40 of 1951, as amended.

(5) See Article 106 of the Iraqi Civil Code No. 40 of 1951, as amended.

(6) Abdul Hamid Al-Shawarbi, Bankruptcy considering Jurisprudence and Legal Reasoning, Al-Maaref Establishment, Alexandria, 2000, p. 207.

(7) See Article 96 of the Iraqi Civil Code No. 40 of 1951, as amended.

of fifteen [(1)]and has been given permission are voidable but not absolutely void. Rather, they are relatively void because they are contingent upon the guardian's approval. Actions authorized by a minor with the guardian's permission are considered equivalent to those of an adult.[(2)] Therefore, a minor with discernment can exercise...but its provisions addressed the capacity of the married woman and the foreign wife who practices trade after her husband's permission. Therefore, the Iraqi legislator must reconsider the legal capacity required of those engaged in commercial activity, as the unification of civil and commercial capacity is no longer justifiable.

The general provisions on legal capacity did not differentiate between the legal capacity of men and the legal capacity of women. The legal texts were absolute, as it appears that the legislator's goal at that time was to unify the provisions relating to legal capacity in civil and commercial matters by formulating them in the civil law. Civil law coordinates between similar matters.[(3)]

Comparing the provisions of the current Iraqi Commercial Code with those of the repealed Commercial Code No. 49 of 1970 reveals that the former regulated commercial capacity in a detailed and precise manner. Its provisions addressed the legal age for engaging in commerce in Iraq, for both Iraqis and foreigners.[(4)] It also granted minors or those under guardianship the right, with court authorization, to engage in commerce as deemed to be in their best interest.[(5)] Furthermore, the repealed legislation did not stop there; its provisions also addressed the capacity of married women and foreign wives who engage in commerce with their husbands' permission.

Therefore, the Iraqi legislator must reconsider the legal capacity required of those engaged in commercial activity, as the unification of civil and commercial capacity is no longer justifiable. The absence of an explicit provision for commercial capacity in Iraqi commercial law is a deficiency that must be addressed, given the different nature of commercial and civil transactions in terms of the applicable law

The absence of an explicit provision for commercial capacity in Iraqi commercial law is a deficiency that must be addressed, given the different nature of commercial and civil transactions in terms of the applicable law.

Insurance activities, being commercial, fall under commercial law, while civil activities are governed by civil law. This is particularly relevant given the evolution and diversification of commercial activity, which is no longer limited to traditional methods. Commercial activity has entered a new realm with the use of modern communication technologies, most notably the internet, and the conclusion and advertising of countless commercial contracts, including insurance contracts.

Considering the significant transformation of the country's economic system, while the distinction between commercial and civil activities may not be important to Iraqis in terms of legal capacity under current Iraqi law, this distinction becomes crucial when practiced by non-Iraqis

2.2. Defects of will

For consent to be valid, it must not be tainted by any defect of will. The general rules regarding defects of will apply to the insurance contract. In Iraqi law, the defects of will are duress, fraud with undue influence, mistake, and exploitation.

(1) See Article 98 of the Iraqi Civil Code No. 40 of 1951, as amended.

(2) See Article 97 of the Iraqi Civil Code No. 40 of 1951, as amended

(3) See the Law on Reforming the Legal System No. 35 of 1977, Commercial Legislation Section, Paragraph Five, p. 28.

(4) See Articles 5 and 10 of the repealed Commercial Code No. 49 of 1970.

(5) See Articles 11, 12, and 13 respectively of the repealed Commercial Code No. 49 of 1970.

These defects, excluding exploitation, make the contract contingent upon the ratification of the person whose will was affected by one of these defects, or upon the ratification of his guardian, custodian, or the court, as in the case of a minor of discernment, provided that the ratification is issued within three months from the date on which the person's will was affected by these defects [(1)].

However, such defects of consent are generally rare in commercial contracts, especially in insurance contracts, which undergo a series of procedures during their formation. The insured enters an insurance contract with the insurer voluntarily, and vice versa. Similarly, the insurer enters the contract of their own free will or desire to produce the legal effect. It is inconceivable that the insured could be tainted by coercion in entering an insurance contract with a specific insurer, because the insured has the right to choose the insurer they wish to subscribe to willingly, without coercion, even if they are subject to special conditions. [(2)]The legislator intervenes to protect the insured from such conditions, which are invalidated without affecting the validity of the contract [(3)] This is because the insured is not so much exposed to fraud by the insurer as to arbitrary conditions imposed upon them. Furthermore, it is difficult to imagine an insurer entering a contract under duress.

However, if the insured suffers unfair treatment, even if this unfair treatment is substantial, without being accompanied by deception using fraudulent verbal or physical methods that could influence the will of the other party, then the contract remains valid. This is something difficult to imagine the insurer experiencing against the insured, whether the unfair treatment is accompanied by deception.

While coercion and deception combined with unfair treatment are difficult to imagine occurring in practice in an insurance contract, errors can still occur.

The insurer may fall into a fundamental error as a result of the insured concealing certain matters that should be disclosed at the time of contracting, or as a result of providing incorrect information that, had it not been for this, would have prevented the insurer from entering into the contract, based on a false impression of the insured.

The nature, type, and extent of the risk to be insured, and the resulting incorrect determination of the premium.[(4)]

If the insurer enters the contract due to this mistake, they have the right to one of two things: either to raise the insurance premium upon ratification of the contract after the mistake has been rectified, or to invalidate the contract, provided that the mistake is fundamental. This is the established position of Egyptian jurisprudence in this regard, as stated in the Court of Cassation rulings: “(…) For a contract to be invalidated due to a mistake, whether factual or legal, it must be fundamental…” [(5)], meaning that the mistake must be the reason for entering into the contract.

it can be said that it is difficult that the will is tainted by the defects stipulated by law in the insurance contract, due to the advantages that this contract enjoys in its conclusion, which make it different from traditional contracts in terms of the technical aspect, which occupies an important space no less than the legal aspect. Therefore, it is not possible to imagine the conclusion of the insurance contract by coercion or deception with fraud. As for the mistake, it may occur sometimes, but in a limited way and is almost

(1) See: Article 136 of the Iraqi Civil Code No. 40 of 1951, as amended.

(2) Basem Muhammad Saleh, Commercial Law, Part One, previous source, p. 261.

(3) See: Article 985 of the Iraqi Civil Code No. 40 of 1951, as amended.

(4) Muhammad Hassan Qasim, Civil Law - Obligations, Sources, Contract, Al-Halabi Legal Publications, Beirut, 2018, p. 86

(5) Appeal Decision No. 132 of 1980, Session of February 27, 1980, p. 622, and Appeal Decision No. 127 of 1990, Session of November 29, 1990, p. 833.

very rare, due to what this contract contains of details and procedures that make the insurer take sufficient time to study the insurance request, and to wait before completing the conclusion of the contract in a way that avoids this contract with any defect.

3. Expressing Will in Practice

The general rule is that an insurance contract takes effect immediately upon the meeting of offer and acceptance, whether this agreement is formalized in writing. However, practical reality and established custom dictate that the contract formation process takes place in stages. [1] Often, an insurance application consists of a standard form prepared in advance by the insurer, containing a series of questions directed at the applicant, who is expected to answer them accurately and truthfully.

The applicant then signs the application and submits it to the insurer, either directly or indirectly through an intermediary. Simultaneously, the insurer does not give even preliminary approval for accepting the risk coverage, as this allows them to determine the premium payable upon acceptance. Once preliminary approval is granted, the insurer issues the policy[2]

The insurer does not give even initial approval to accept or reject the risk guarantee to determine the premium payable upon acceptance. Upon issuing initial approval, the insurer issues what is called a provisional cover note to guarantee the risk that may occur between initial acceptance and the issuance of the insurance contract, expressed as the insurance policy. The insurance contract is concluded in three stages, and the mechanism for concluding the contract, from both a practical and legal perspective, provides a comprehensive overview of how intent is expressed in an insurance contract. These stages can be completed through the following two sections:

First: Submitting the insurance application

Second: Issuing the provisional cover note and issuing the insurance policy

3.1. Submitting an insurance application

An insurance contract goes through a preliminary stage during the negotiations usually take place between the applicant and the insurer. These negotiations may be direct or indirect, as the negotiations do not necessarily result in a final agreement. It has no legal effect, as each negotiator is free to break off the negotiation at any time he wishes, without being exposed to any liability, or providing a justification for his withdrawal. Often, the insurer prepares a written document called the "Insurance Application Form," which includes a set of questions, some of which relate to the personal data of the insurance applicant, and some of which relate to objective data.

We can formulate what the Insurance Application Form includes regarding liability in construction contracts, taking into consideration the general context in preparing insurance documents used by the National Insurance Company, as follows:

A- Personal Data

(1) Khaled Gamal Ahmed Hassan, The Mediator in Insurance Contracts, Dar Al Nahda Al Arabiya, Cairo, 2004, p. 96

(2) The same reference above, p. 102.

This data includes a set of general questions related to the applicant's name, address, occupation, and educational qualifications to determine the level of risk associated with their profession. It also includes questions regarding whether they have previously entered other insurance contracts with other insurers (1) , the nature of these contracts, whether they are still valid at the time of application, whether any contracts have been rejected, and the reasons for rejection, etc.

B- Substantive Data

This data also includes a set of questions concerning the nature of the risk to be insured, whether it has previously materialized, and the amount of insurance intended to determine the insurer's liability as a maximum limit during the insurance period.

It also includes specifying the insurance period for which the risk is to be covered.

The period is divided into two phases: the first is the execution period for construction contracts, and the second is the ten-year warranty period, or one of these, as agreed upon or stipulated by law, if applicable(2).

The Insurance Applicant's

This undertaking includes the applicant's declaration that the data and information provided in the application form are true and accurate. This declaration constitutes the foundation for concluding the contract between the applicant and the insurer.

It should be noted that the answers to these questions are usually included on the application form itself, unless it is necessary to answer them on a separate sheet. This separate sheet, which is an integral part of the application form, is signed by the applicant and submitted to the insurer. This signature constitutes an acknowledgment of the accuracy of the information. However, this does not preclude the insurance applicant from providing information related to personal and objective data and submitting the undertaking in a manner other than the application form, if it includes all relevant information pertaining to the contract. The insurer's purpose in preparing a standardized application form is to facilitate the applicant's provision of the essential information and data necessary for concluding the contract.

therefore, the insurance application can be considered as the practical formula for directing the offer from the insurance applicant to the insurer (3), and the Iraqi judiciary has settled on considering the insurance application form as the basis of the insurance contract to be concluded between the insured and the insurer(4) .

because providing information not only contributes to enabling the insurer to accept or reject the insurance but also helps in determining the appropriate premium to cover the risk.

The is understood from the above that filling out an insurance application form does not constitute a contract, as it is merely an inquiry or questionnaire about the terms of the contract and how to enter a contract. It is merely a preliminary offer and therefore has no significant legal value. The insurer putting it

(1) Abdelkader Al-Arawi, Contract Theory - A Comparative Study considering the New Amendments, Part One, First Edition, Dar Al-Aman for Publishing and Distribution, Morocco, 2021, p. 113.

(2) Hussein Abdel Latif Hamdan, Social Security – Its Provisions and Applications – A Comprehensive Analytical Study, Third Edition, Al-Halabi Legal Publications, Beirut, 2002, p. 132.

(3) Dr. Basem Muhammad Saleh, Commercial Law – Part One, op. cit., p. 268.

(4) See Court of Cassation Decision 1687/M4/1992 dated 20/10/1998.

on the market or handing it over to the insurance applicant does not constitute an offer because simply filling out the form, signing it, and handing it over to the insurer does not constitute an offer either. On this basis, neither party is bound by its content.

Iraqi law does not address the general provisions of insurance contracts regarding the legal value of an insurance application. However, French law explicitly states that an insurance application alone is not binding on the insurer and the insured. [1]

The French legal provision is commendable, and therefore we hope that the Iraqi legislator will add a similar provision to the general provisions of insurance contracts, taking into account that the insurer, when accepting or rejecting an insurance application, is not obligated to notify the applicant and respond within a specific timeframe unless there is an agreement between them. On this basis, the general rules in this regard should be applied, and a reasonable response timeframe should be considered.

This deadline is determined based on the circumstances and nature of the transaction, especially since the general rules of Iraqi civil law do not include a provision specifying a deadline for acceptance. This is insufficient; rather, the Iraqi legislator should intervene again and include in its provisions related to insurance contracts a provision obligating the insurer to notify the applicant of a response, whether positive or negative, to their application within fifteen days.

The data and information contained in the insurance application form are considered an integral part of the contract upon its conclusion, and this is often stipulated in the insurance policy. This allows the insured to rely on it in any future proceedings.

The insurance applicant must submit all defenses, whether they are included in the policy or in the insurance application. The insurer's silence cannot be considered acceptance of the insurance application, because the insurer is not obligated to respond in the first place. However, French law considered the insurer's silence as acceptance of the insurance in the case of amending the contract [2] , while Iraqi and Lebanese law lacked a similar provision within the general provisions of the insurance contract. This is a trend worthy of adoption so that the insurance applicant is not left in an unjustified state of waiting, which may affect his activity in one way or another if insurance is considered a mandatory condition for the insured to carry out construction contracting work.

3.2. Issuance of a temporary cover note and issuance of the insurance policy

- Issuance of a temporary cover note

After the insurers receive the insurance application, they need to study and evaluate it in terms of the nature and severity of the risk to be guaranteed to determine the insurance premium. Then he announces his acceptance or rejection of the guarantee to cover the risk. If the insurer intends to accept the guarantee initially, he cannot announce his final acceptance until the technical bodies affiliated with the insurer study the application in detail.

This takes a considerable time, leaving the applicant uncertain whether to accept or reject the application, especially since the risk of denial may occur during the period between accepting the insurance application and issuing the insurance policy.

(1) See: Article 112/Paragraph 2 of the French Insurance Law No. 89 of 198.

(2) See: Article 112, paragraph 3 of the French Insurance Code.

Since the contract has not been concluded and the obligations of the parties have not been defined, the insurer is not obligated to guarantee the risk. Consequently, the policyholder bears the consequences of liability when it arises. Therefore, practical reality has given rise to what is known as a "provisional cover note."

A provisional cover note is a written document based on a guarantee undertaking, issued by the insurer to the policyholder before the final insurance policy is issued, and informing them of the acceptance of provisional guarantees.

The Scholars have differed opinion on the nature of the cover note. Some scholars believe that the temporary cover note is an intermediate stage between submitting the application and issuing the insurance policy, which provides temporary coverage that ends with the expiry of its specified date. Its purpose is to reassure the insurance applicant until the application is finalized. It is considered a temporary agreement that will end either with the expiry of its term or with the issuance of the insurance policy in its place.

In the second case, the insurance policy is not effective from the date of its issuance, but rather retroactively to the date of issuance of the temporary cover note. Consequently, the insurer bears the guarantee of the risk retroactively.(1)

However, the final contract is not considered to have been concluded in this case as soon as the temporary cover note reaches the insurance applicant, and it does not fall outside the scope of the temporary agreement.

Another group of Egyptian jurists holds the view that the provisional cover note constitutes a preliminary contract preceding the final contract (2), and that all essential details pertaining to the final contract are agreed upon within. It seems that the **first view**, that the provisional cover note is a temporary agreement with each party retaining the right to withdraw if the insurance policy has not yet been issued, is more likely correct.

The second view, that the provisional cover note is a preliminary contract, is not supported because the agreement on the essential elements of the contract—such as risk coverage, term, premium, and sum insured—makes these essential and agreed-upon elements in this preliminary agreement a contract in its final form. In other words, the preliminary contract is the final contract. As for the direction of the French judiciary, it came in line with the position of its legislator that the temporary cover note is considered an agreement and establishes its existence, but it does not create it (3). in practice, the issuance of a temporary cover note requires the insured to pay the insurance premium or at least part of it, especially since the insurer guarantees the risk during the term of the note. However, if the insurer refuses to guarantee the risk during the term of the temporary cover note, the insurer must return everything he received in exchange for insurance (the insurance premium) equivalent to the remaining period of the temporary cover note.

(1) See Article 112/1 and 2 of the French Insurance Law, as well as Article 963 of the Lebanese Code of Obligations and Contracts, which states that "...these provisions do not prevent the guarantor from being obligated towards the insured even before the delivery of the list of conditions or the additional appendix, if the insured proves that the guarantor accepted the contract by virtue of the cover note."

(2) Dr. Muhammad Kamil Morsi Pasha, Named Contracts, Part Three, The Insurance Contract, Dar Al-Fikr Al-Jami'i, Alexandria, 2014, p. 76.

(3) Dr. Ahmed Abu Al-Saud, The Insurance Contract: Theory and Application, First Edition, Dar Al-Fikr Al-Jami'i, Alexandria, 2008, p. 145.

Therefore, the Iraqi legislator must intervene and include in the general provisions of the insurance contract a clause obligating the insurer to guarantee the insured against the risk even before the issuance of the insurance policy or its addendum, provided that the insured has proven, prior to the contract, that the insurer accepted the guarantee by virtue of the provisional cover note.

Iraqi law and comparative laws do not specify a particular form for issuing the provisional cover note; therefore, it can be issued in any form if it is expressive. However, it is usually prepared in writing, in which case the insurer must sign it, and it must include the essential elements of the insurance contract to be concluded.

in addition, it is subject to the terms and conditions of the insurance policy that will be used by the insurer, and it has been practiced that the insurer often prepares a model of a temporary cover note that is consistent with the terms and conditions of the insurance policy.

Issuing an Insurance Policy

It is customary for the insurer to provide the insured with a written document, signed by the insurer, called the insurance policy, which constitutes the contract itself. This is defined in both Iraqi and Egyptian law. An insurance policy is a written document that records the contract between the insurer and the insured after they have agreed on all matters necessary for the contract to be valid, including the rights and obligations of each party (1). The general rules of insurance contracts in Iraqi law do not specify the clauses or conditions that an insurance policy must contain. However, French and Lebanese law specify the clauses that an insurance policy must include, some relating to personal data and others to other data. (2)

Objectivity. This is essentially a confirmation of the personal and objective data contained in the insurance application form. Regarding the format of the insurance policy, neither Iraqi, Lebanese, nor French law specifies a particular format. The matter is left to the insurer, which has led them to prepare pre-printed templates for each type of insurance, regardless of whether the policy is based on an agreement or a legal text. Therefore, insurers take great care to ensure that their insurance policies are drafted to a high standard of legal accuracy.

4. Conclusion

In conclusion, our research entitled "The Role of Consent in Liability Insurance Contracts for Construction Contracts" yielded the following results and recommendations:

4.1. Results

1. Liability insurance for construction contracts is a contract that covers the civil liability that will arise for the insured because of their work related to construction.

(1) Dr. Muhammad Kamil Morsi Pasha, Named Contracts, Part Three, Insurance Contract, previous reference, p. 83.

(2) See Article 112/3 of the French Insurance Law. The Lebanese Code of Obligations and Contracts explicitly stipulate in Article 964 what the insurance policy shall include, as it states: “The guaranteed contract shall be dated on the day of its conclusion and shall specify: 1. The insured thing. 2. The names of the guarantor and the insured and their place of residence. 3. The type of insured risk. 4. The start date of the risks and the end date of them. 5. The insured value. 6. The premium or guarantee payment. 7. The contracting parties’ submission to the arbitration of the judges in the event of a dispute if they have agreed to this.”

2. Iraqi law does not address the legal value of an insurance application within the general provisions of an insurance contract. However, French law explicitly states that an insurance application alone is not binding on the insurer and the insured.

3. French law considers the insurer's silence as acceptance of the insurance in the event of contract amendment. Iraqi and Lebanese law, however, lack a similar provision within the general provisions of an insurance contract.

4.2. Recommendations:

1. We hope that the Iraqi legislator will add to the general provisions of the insurance contract a clause clarifying the legal value of an insurance application.

2. Since the general rules of the Iraqi Civil Code do not include a provision specifying a deadline for acceptance, this is insufficient. The Iraqi legislator should intervene and include in its provisions related to insurance contracts a clause obligating the insurer to notify the applicant of a response, whether positive or negative, to their application within fifteen days.

3. We recommend that the Iraqi and Lebanese legislatures consider the insurer's silence as acceptance of the insurance policy in the event of contract amendments. This is to prevent the insured from being left in a state of unjustified waiting, which could negatively impact their business if insurance is a mandatory condition for the insured to commence construction contracting work.

4. The Iraqi legislature should intervene and include in the general provisions of the insurance contract a clause obligating the insurer to guarantee the insured against the risk even before the issuance of the insurance policy or its addendum, provided the insured has established prior to the contract that the insurer accepted the guarantee under the provisional cover note.

5. Reference

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5.3. Codes

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2. Lebanese Code of Obligations and Contracts of 1932, as amended

3. Law on Reforming the Legal System No. 35 of 1977

4. Repealed Iraqi Commercial Code No. 49 of 1970

5. French Insurance Law No. 89 of 1989

5.4. Cases

1. Appeal Decision No. 132 of 1980 (45th Judicial Year), Session of February 27, 1980, p. 21, p. 622, and Appeal Decision No. 127 of 1990 (56th Judicial Year), Session of November 29, 1990, p. 4

2. Iraqi Court Decision No. 1687/M4/1992, dated October 20, 1998