

# BRAZILIAN INSURANCE CONTRACT ACT

Law No. 15,040, known as the Insurance Contract Law, is in effect. Insurance contracts must comply with the new legislation, except for acts perfected under previous law, acquired rights, and res judicata. The new law covers all participants in the sector, including insurers, reinsurers, insurance and reinsurance brokers, insurance distributors (retailers, marketplaces, banking channels, among others), and the insured themselves, whether large or small.

Therefore:

- ✓ Brazilian Civil Code (Insurance Contract Chapter) was revoked, as well as some articles of Decree-Law No. 73/1966, which provides for the National Private Insurance System.

Check out below the main provisions of the Law.

## STRUCTURE OF THE INSURANCE ACT AND MAIN PROVISIONS

 **134 articles**

### CHAPTER I – GENERAL PROVISIONS (arts. 1 to 88)

Section I: **Object and Scope of Application** (arts. 1 to 4); Section II: **Interest** (arts. 5 to 8); Section III: Risk (arts. 9 to 18); Section IV: Premium (arts. 19 to 23); Section V: **Taking out Insurance in Favor of a Third Party** (arts. 24 to 32); Section VI: **Coinsurance and Cumulative Insurance** (arts. 33 to 36); Section VII: **Intervening Parties** (arts. 37 to 40); Section VIII: Execution and Term of the Contract (arts. 41 to 53); Section IX: Proof of Contract (art. 54 and 55); Section X: Interpretation of the Contract (arts. 56 to 59); Section XI: **Reinsurance** (arts. 60 to 65); Section XII: **Claim** (arts. 66 to 74); and Section XIII: **Claims Settlement** (arts. 75 to 88).

### CHAPTER II – DAMAGE INSURANCE (arts. 89 to 111)

Section I: General Provisions (art. 89 to 97); Section II: Liability Insurance (arts. 98 to 107); Section III: Transfer of Interest (arts. 108 to 111).

### CHAPTER III: LIFE AND PHYSICAL INTEGRITY INSURANCE (arts. 112 to 124)

### CHAPTER IV: MANDATORY INSURANCE (art. 125)

### CHAPTER V: STATUTE OF LIMITATIONS (arts. 126 and 127)

### CHAPTER VI: FINAL AND TEMPORARY PROVISIONS (art. 128 to 134)

## CHAPTER I – GENERAL PROVISIONS (ARTS. 1 TO 88)

### SECTION I: SUBJECT MATTER AND SCOPE OF APPLICATION (arts. 1 to 4)



#### Concept of Insurance

The insurer is required, by receiving the premium, to guarantee the legitimate interest of the insured or the beneficiary against predetermined risks.



#### Cession of Contractual Position

Partially or fully without prior consent of the insured or without prior and specific authorization from SUSEP = joint and several liability with the assignee insurance company.



#### Portfolio Cession

Partially or fully = must be authorized by SUSEP. The assignor is jointly and severally liable with the assignee, if the assignee is or becomes insolvent in the period of validity of the insurance or within 24 months.



**The Law is applicable to all types of insurance contract.**

### EXCLUSIVE APPLICATION OF BRAZILIAN LAW

- Insurance contracts issued by insurers authorized by SUSEP to operate in Brazil;
- When the insured or the policyholder is a Brazilian resident; or
- When the risks guaranteed by the insured are located in Brazil.

### SECTION II: INTEREST (arts. 5 to 8)

- Introduction to the **concept of partial interest**.
- If the interest is partial, nullity will not affect the useful part.
- If the interest is impossible, the contract will be null.
- Reduction of interest: the amount of the premium will be proportionally refunded.
- Life insurance and physical integrity: the policyholder is required to declare its interest in the insured's life and physical integrity, under penalty of nullity of the contract.
- Presumed interest: when the insured is the spouse, partner, ascendent or descendent to the third party whose life or physical integrity is guaranteed by the insurance.

### SECTION III – RISK (arts. 9 to 18)

#### THE RISKS BELOW ARE CONSIDERED VOID:

(i) Fines for criminal offenses; (ii) Intentional acts of the insured, beneficiary or representative (except in case of intentional act in detriment to the insured).

- The deadline has been changed from 15 to 20 days for the insurer to declare aggravation of risk and decide whether it will charge a difference of the premium amount or terminate the contract.
- The Act explains the aggravation of risk and how the premium should be calculated in this case.
- The Act establishes the consequences for not communicating the aggravation of risk, whether it is intentional or not.



The aggravation of risk will be considered relevant when it results in a substantial and continuous increase in the probability of occurrence of the risk specified in the questionnaire or in the probability of severity of this occurrence.

**SECTION IV – PREMIUM** (arts. 19 to 23)

Receiving the premium before the execution of the contract is **forbidden**, except in the case of temporary coverage.



DEFAULT on the **single installment or first installment** = the contract is **terminated**.



DEFAULT on the **remaining installments** = **suspension of the guarantee**, without prejudice to the insurer's credit for the premium, after sending a notification to the insured granting him/her a period of no less than fifteen days to pay the amount, counting from the date on which the notification is received.

In case of group life insurance and physical integrity, the contract will only be terminated within **90 days** after the policyholder is notified.



The notification to the policyholder or the insured must be sent by any valid means and contains warnings that failure to pay within the new deadline will suspend the guarantee and that, if the delay is not avoided, the insurer will not make payments relating to claims occurring after the original due date of the unpaid installment.

**ENFORCEMENT OF THE PREMIUM**

If the insured or the policyholder does not pay the premium after being notified by the insurer, and the insurer guarantees the risk, the insurer should collect the premium.

**SECTION V – TAKING OUT INSURANCE IN FAVOR OF A THIRD PARTY** (arts. 24 to 32)

- When the insurance guarantees the interest of a third party.
- If the interest of a third party and self-interest are guaranteed at the same time, self-interest will prevail. However, the interest of a third party will be guaranteed, considering the difference between the amount of the self-interest and the limit.
- The policyholder may procedurally replace the insured and the beneficiary to demand, in exclusive favor of them, the fulfillment of obligations arising from the contract.



**The insured must personally fill out the insurance enrollment form** so that the insurer's allegations regarding the information given by the insured to execute the contract are valid.

**POLICYHOLDER**

- Only those who have a previous, non-insurance link with the group of insured for the benefit of which insurance is to be purchased.
- Remuneration of the policyholder must be highlighted.

**SECTION VI – COINSURANCE AND CUMULATIVE INSURANCE** (arts. 33 to 36)

- The **lead insurer manages coinsurance**, representing the insurers in the execution and performance of the contract, and **replace them in arbitration and in lawsuits**.
- When the lawsuit is filed against the lead insurer, the lead insurer must **inform the existence of coinsurance and notify the reinsurer**.
- The decision rendered against the lead insurer represents res judicata against the insurers, **which will be judged in the same records**.
- **There is no joint and several liability among insurers**. Therefore, each insurer must pay its own guarantee, except if the contract states otherwise.
- The insured, the beneficiary or the third party can't be harmed by the insurers' failure to fulfill their obligations.



CUMULATIVE INSURANCE = distribution between several insurers is made by the insured or the policyholder by force of independent purchases, without limitation to a guarantee quota.

In the case of damage insurance, if the sum of the limit is higher than the amount of the interest, each insurance contract's limit will be proportionally reduced.

**SECTION VII – INTERVENING PARTIES** (arts. 37 to 40)**BROKER:**

- Deadline to present the documents (5 business days), except in case of extinction of right.
- The insurer's representatives and agents (even if temporaries) make the insurer's relationship binding for all purposes, regarding their actions and omissions.

The policyholder must be aware of the insurance contract in advance.

The contract must be written in **Portuguese**.

**NULLITY** of clauses that are written in a foreign language or solely refer to rules of international use.

Deadline of **25 days to refuse the proposal**, under penalty of acceptance.

**SECTION VIII – EXECUTION AND TERM OF THE CONTRACT** (arts. 41 to 53)

- The proposal does not require written form.
- It could be made directly by the insured or by its intermediary.
- The insurer cannot claim omissions in its proposal after the execution of the contract.

In any case, **for the refusal to be valid, the insurer must inform its justification** to the policyholder.

**QUESTIONNAIRE OF THE RISK**

**When the insured intentionally makes a mistake upon filling out the questionnaire** = loss of guarantee.

**When the insured unintentionally makes a mistake upon filling out the questionnaire** = the guarantee will be proportionally reduced considering the premium paid.

**Impossible guarantee** = termination of the contract.



The insurance company must inform the insured of the relevant information to be provided in the questionnaire.





## REGULATORY REGRESSION

There is a concern about some articles of the Act that could be interpreted in the sense that only policies registered in models approved by the regulator would be valid, resulting in a regulatory regression for large risk insurance and tailor-made policies.

## SECTION IX – PROOF OF CONTRACT (arts. 54 and 55)

- The contract is proven by all admissible means, except for exclusively testimonial evidence.
- Deadline of **30 days** for the insurer to provide the documents for proof of contract.

## SECTION X – INTERPRETATION OF THE CONTRACT (arts. 56 to 59)

## Good faith

If there are any questions or omissions regarding the interpretation of the documents provided by the insurer, such as marketing advertisement or contracts etc., **the documents must be interpreted in favor of the insured, beneficiary or third party.**



Excluded Risks and Limited Clauses = must be interpreted in a restricted manner – always in favor of the insured (the insurer must prove its arguments).

## SECTION XI – REINSURANCE (arts. 60 to 65)

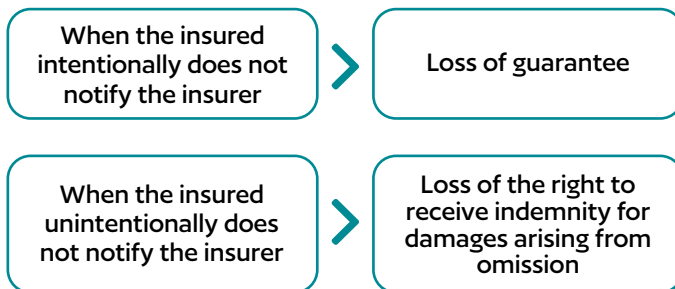
**Reinsurance contract** = formed by the **silence of the reinsurer during the period of 20 days**, counting from receipt of the proposal, and in the event of proven technical need, SUSEP may increase this acceptance period (granting more than 20 days).

**The payment made directly by the reinsurer to the insured is valid, when the insurer is insolvent.** It is important to clarify that there is an exception in article 14, sole paragraph, of Ancillary Law No. 126/2007, which states that, in case the insurer is under fiscal direction, intervention or liquidation, the insured's, beneficiary's and third party's credits have absolute preference over the other credits that need to be paid by the reinsurer to the insurer.

When the insurer is summoned to review or to fulfill the obligations of the insurance contract, **the insurer must notify the reinsurer**, except if the reinsurance contract states otherwise. The reinsurer can intervene as a third party in lawsuits filed by the insured against the insurer.

The insurer cannot allege to the insured, the beneficiary or a third party that the reinsurer did not fulfill its obligations.

The payment made in advance by the reinsurer to the insurer must be immediately paid to the insured, the beneficiary or a third party. **The reinsurance guarantees the whole reinsured interest**, including the insurer's interest to be reimbursed of expenses for non-fulfillment of any insurance contracts, claims settlement, indemnity payment and salvage charges.

**SECTIONS XII, XIII: CLAIM AND CLAIMS SETTLEMENT** (arts. 66 to 88)**CLAIM NOTIFICATION**

**NO FIXED DEADLINE FOR REPORTING THE CLAIM:** the insured must notify the insurer immediately, by any valid means.

**CLAIMS SETTLEMENT**

- Exclusive responsibilities of the insurer.
- Simultaneously, if possible.
- Payment in advance to the insured/beneficiary: 30 days.
- Questions about criteria and calculation formulas? **They will be the most favorable to the insured.**
- **Report and documents: common to the parties, except confidential ones.**



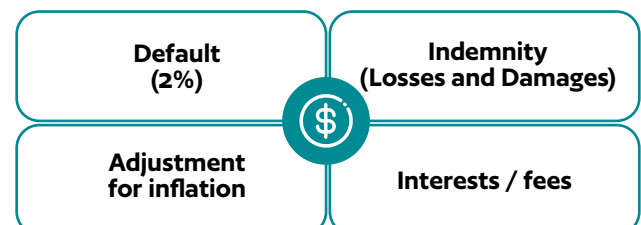
Salvage charges borne by the insurer; limit of 20% (general rule).

**DEADLINE****REFUSAL**

- **General rule:** 30 days
- **Up to 120 days** for complex cases
- Innovation is prohibited, as a general rule.

**INSURANCE AMOUNT**

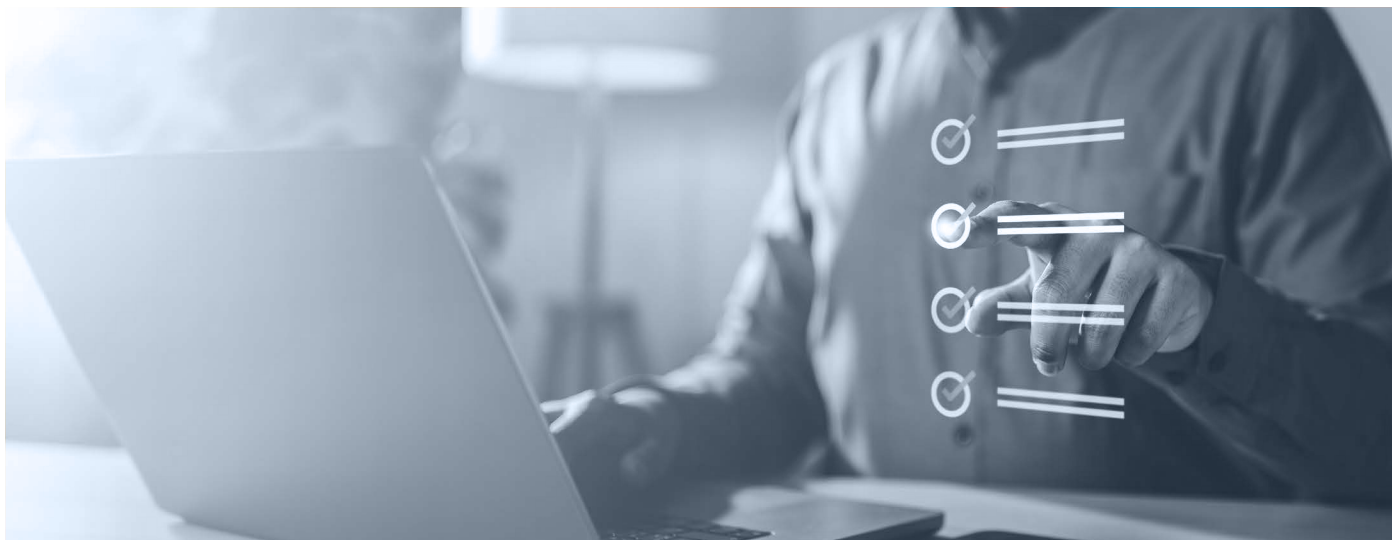
- **General rule:** 30 days
- **Up to 120 days** for complex cases

**DEFAULT****LOSS ADJUSTER**

Suspension due to request for additional documents: only twice, except in the case of a car insurance and insurance amount < or = 500 minimum wages= 1 suspension

Delay on the investigation and settlement of a claim: **joint liability**

Remuneration should not be based on the insurer's savings



## CHAPTER II – DAMAGE INSURANCE SECTION I: GENERAL PROVISIONS (ARTS. 89 TO 97)

### **PARTICIPATION OF THE INSURANCE (COSTS)**

Partial claim - the insurance amount due will not be subject to coinsurance due to insurance taken out for an amount lower than that of the interest, unless otherwise specified.

When coinsurance is expressly agreed, the insurer will illustrate the formula for calculating the compensation in the policy.

Supervening infrainsurance will be limited to cases in which the adjustment regime is expressly excluded in the policy, and the increase in the amount of the damaged interest results from a voluntary act by the insured.

### **SUBROGATION**

The insurer is subrogated for compensation paid under damage insurance.

The insurer will not have its own action or action derived from subrogation when the loss arises from non-serious fault of:

- I - spouse or relatives up to the second degree, blood or affinity, of the insured or beneficiary;
- II - employees or people under the responsibility of the insured.

When the person responsible for the accident is covered by liability insurance, exercising the right of subrogation is permitted against the insurer that guarantees it.

The insurer and the insured will share the goods affected by the loss, in proportion to the loss incurred.

### **INDEMNITY PURPOSE**

Insurance against the risk of death and loss of physical integrity of a person that aims to guarantee the property right to third party or that has compensation purposes is subject, where applicable, to the rules of damage insurance.

When, at the time of the accident, the amount of the guarantee exceeds the amount of the guaranteed property right, the excess will be subject to the rules of life insurance, and the creditor of the difference will be the person on whose life or physical integrity the insurance was taken out and, in the event of death, the beneficiary.



## CHAPTER II – DAMAGE INSURANCE SECTION II: LIABILITY INSURANCE (ARTS. 98 TO 107)

**CONCEPT**

It guarantees the insured's interest against the effects of attribution of responsibility and its acknowledgement, as well as that of injured third parties. The risk can be characterized by the occurrence of the triggering event, the manifestation.

**THIRD PARTY ACTION**

Direct lawsuit from the third party is possible, in joint agreement with the insured (except if they are domiciled abroad).

**INSURED**

The insured must notify the insurer regarding a lawsuit filed by the third party, and the insured may intervene in the lawsuit (be party of).

**“DISCLOSURE” OF INSURANCE****Duty of the insured**

The insured must make every effort to inform the injured third parties about the insurance existence and content.

**“RESPONSIBLE PARTY GUARANTEED BY INSURANCE”**

Must: (i) promptly inform the insurer of communications received that may give rise to a future claim; (ii) provide documents; (iii) respond to subpoenas; (iv) not act unfavorably against the insurer.

**THIRD-PARTY SETTLEMENTS**

- (i) not demand the consent of the insurer;
- (ii) the insurer can settle, without any liability of the insured.

**Exception**

The insurer will be free to provide all compensation resulting from the insurance guarantee to one or more injured parties, whenever it ignores the existence of the others.

## CHAPTER II – DAMAGE INSURANCE SECTION III: TRANSFER OF INTEREST (ARTS. 108 TO 111)

**TRANSFER OF INTEREST**

- The transfer of guaranteed interest results in cession of the insurance, which means that the cessionnaire takes place over the cedent.
- The cession of the insurance **DEPENDS** on the insurer's previous consent, when the cessionnaire activity results in relevant aggravation of risk or does not meet the requirements of the insurance. In this case, the contract will be terminated, and the premium will be proportionally refunded, considering that the insurer has the right to discount any incurred expenses.
- If the transfer of insurance involves a change in the premium rate, the adjustment will be made, and the difference will be credited to the favored party.
- The cedent's bonuses, special taxes and other very personal advantages are not shared with the new holder of the interest.
- The cession of the corresponding insurance will no longer be effective if it is not communicated to the insurer within 30 days after the transfer of the guaranteed interest, and the insurer may, within 15 days of communication, terminate the contract.
- The refusal must be notified to the cedent and the cessionnaire and will take effect 15 days after the notification is received.
- The assignment of the right to compensation must only be informed in order to prevent the insurer from making a valid payment to the putative creditor.

**Mandatory Insurance**

The transfer of the guaranteed interest means the assignment of the corresponding insurance, regardless of communication to the insurer.



### CHAPTER III: LIFE AND PHYSICAL INTEGRITY INSURANCE (ARTS. 112 TO 124)

- Insured capital (in case of death) is not considered inheritance – equivalent to the guarantee of death of the participant in private pension plans.
- Freedom to indicate a beneficiary.
- A grace period cannot be agreed when it comes to renewing or replacing an existing contract, even if the insurer is a different one. In no case may it exceed half of the term of the contract.
- If the accident occurs within the grace period, the insurer is required to deliver to the insured or the beneficiary the amount of the premium paid, or the mathematical reserve, if any.
- It is lawful to exclude from the guarantee claims whose exclusive or main cause corresponds to pre-existing pathological conditions at the beginning of the contractual relationship. Exclusion can only be claimed when there is no agreed grace period and provided that the insured, when clearly questioned, voluntarily omits the pre-existence information.
- **Suicide: 2 years.**
- The insurer is not exempt from paying the insured capital, even if contractually provided for, when death or disability results from work, military services, humanitarian acts, the use of risky means of transport or sports.
- Insured capital (in case of death or loss of physical integrity) cannot be seized.
- The  $\frac{3}{4}$  rule remains in group insurance (prior consent of the insured group for modifications with contrary effects to policyholders).

#### NOVELTY INCLUDED IN THE FINAL VERSION OF THE SENATE

##### Art. 115. (...)

§ 4º If the insurer, aware of the loss, does not identify any beneficiary or dependent of the insured for subsistence within the statute of limitation period of the respective claim, the insured capital will be considered abandoned, as provided for in item III of the head of art. 1,275, of Law No. 10,406, of January 10, 2002 (Brazilian Civil Code), and will be added to the National Fund for Public Disasters, Protection and Civil Defense (Funcap).

#### LONG TERM

Refusal to renew individual life and physical integrity insurance that has been **renewed successively and automatically for more than 10 years must be preceded by communication to the insured and accompanied by an offer of other insurance that contains a similar guarantee and actuarially renegotiated prices**, depending on the reality and balance of the portfolio, **at least 90 days in advance, with no grace periods and the right to refuse payment due to pre-existing facts.**

### CHAPTER IV: MANDATORY INSURANCE (ART. 125)

Mandatory insurance guarantees **will have minimum content and amounts**, in order to allow the fulfillment of their social function.

In mandatory insurance, **any legal transaction that directly or indirectly implies fully or partially waiving compensation or insured capital in cases of death or disability is null.**



The provisions of the Law apply, where applicable, to insurance governed by specific laws

## CHAPTER V: STATUTE OF LIMITATIONS - DEADLINES (ART. 126)

### ● 1 year

After awareness of the respective triggering event

The insured's intention to demand compensation, capital, mathematical reserve, overdue installments of temporary income or for life, and refund of the premium in their favor, **upon receipt of the insurer's express and motivated refusal.**

The insurer's claim to collect the premium or any other claim against the insured and the policyholder.

The intention of the insurance broker, agents, representatives, policyholders, to collect their payment.

The intentions of co-insurers, among themselves.

The existing claims between insurers, reinsurers and retrocessionaires.

### ● 3 years

After awareness of the respective triggering event

The intention of beneficiaries or injured third parties to demand compensation, capital, mathematical reserves, overdue installments of temporary or lifetime income.



There is no specific rule for liability insurance, and the general rule applies

### **Suspension of the deadline (art. 127)**

In addition to the causes provided for in the Civil Code, the deadline of the claim relating to the receipt of compensation or insured capital will be **suspended once when the insurer receives a request for reconsidering the refusal to pay.**

The suspension ends on the day the interested party is notified by the insurer of its final decision.

## CHAPTER VI: FINAL AND TEMPORARY PROVISIONS (arts. 128 to 134)

### **PROCEDURAL ASPECTS AND STRONG INFLUENCE ON ARBITRATION**

#### **Alternative means of resolving conflicts (art. 129)**

- They are allowed, provided that: through an instrument signed by the parties, they are in Brazil and subject to the **rules of Brazilian law (EVEN IN THE CASE OF ARBITRATION).**
- SUSEP will regulate the **mandatory disclosure** of conflicts and respective decisions, without particular identification, in a **repository that is easily accessible to interested parties.**

#### **Jurisdiction (art. 130)**

- Absolute jurisdiction of the Brazilian courts to settle disputes relating to insurance contracts subject to the Law, except for alternative means.

### Competent forum (art. 131)

- Domicile of the insured or beneficiary, unless the insurer or its agent chooses the domicile.
- The **insurer, the reinsurer and the retrocessionaire, for actions and arbitrations held between them**, in which conflicts are discussed that may directly interfere with the performance of insurance contracts subject to the Law, **respond in the jurisdiction of their domicile in Brazil**.

### Instruments enforceable out of court (art. 132)

- Life insurance contract (conditional on proof of the existence of the contract and which contains the essential elements for verifying the certainty and liquidity of the debt, accompanied by the necessary documents to prove its enforceability).



#### Attention

Insurers and reinsurers will need to adapt their operations according to the new rule.



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