

Enacted after two decades of technical and political discussions, the new Insurance Law establishes rules and principles applicable to (re)insurance contracts in Brazil

Law No. 15,040/2024 (Insurance Law) was enacted in Brazil on December 9, 2024. Although it focuses on insurance contracts, the law also establishes rules applicable to reinsurance contracts.

While all provisions of the Insurance Law will indirectly impact reinsurers' operations in Brazil, this article concerns certain key provisions that may have direct impacts.

Tacit acceptance of reinsurance proposals

Pursuant to Article 60, Paragraph 1 of the Insurance Law, if a reinsurer remains silent 20 days after having received a proposal from a ceding company, this silence will be deemed automatic acceptance of the reinsurance proposal and result in the formation of the reinsurance contract.

Paragraph 2 allows the Brazilian Insurance Authority (Susep) to extend this period 'in the event of proven technical need'. However, it does not provide specific criteria nor explain what a 'technical need' would be. Furthermore, in contrast to so-called 'insurance proposals', the law does not make clear what a 'reinsurance proposal' would be or what it should contain for the purpose of this automatic acceptance.

As such, reinsurers will need to adapt their operations to avoid unintentionally accepting a given risk. It is expected that there will be room for discussions with Susep on putting in place rules to provide some comfort to reinsurers.

Cut-through

Article 61 states that the insured does not have a direct relationship with the reinsurer as a rule. Its sole paragraph allows reinsurers to make direct payments to the insured in the event the insurer becomes insolvent.

This is, however, inconsistent with Brazil's Reinsurance Law (Lei Complementar No. 126/2007), which states that reinsurers may make direct payments to insureds if the insurer becomes insolvent whenever a cut-through provision or endorsement exists or, regardless of that, in the case of facultative reinsurance.

While the Reinsurance Law would be expected to prevail over the new Insurance Law, any such final decision will not be in the hands of market players. Therefore, it will be important for Susep to clarify this, as the issue of cut-through payments in insolvency scenarios is a sensitive matter where certainty is key to reinsurers.

This may become even more important depending on how Article 65 of the Insurance Law is interpreted. In particular, if it is understood that, when the insured has a direct claim against the reinsurer if an insurer becomes insolvent, the reinsurer will not be authorized to pay (and possibly make setoffs with) the ceding company before paying the insured.

Automatic ECO/XPL

Pursuant to Article 64 of the Insurance Law, unless otherwise agreed by the parties, reinsurance must cover the reinsured interest in its entirety, including the effects of the ceding company delaying in meeting its obligations under the insurance contract.

As a result, in the absence of contractual provisions, reinsurers will bear the financial consequences of the insurer delaying or denying a claim that is eventually understood to be in breach of the insurer's contractual or statutory obligations.

This will trigger a need for reinsurers to be vigilant on contract wording – for example, whether or not to include ECO and XPL provisions and how to negotiate and draft them.

Statute of limitations

After years of a lack of clarity on this matter, Article 126, Item I(d) of the Insurance Law finally establishes a one-year statute of limitations for reinsurance and retrocession contracts.

On the other hand, there is no clear rule about when the period for the statute of limitations is triggered. Although it is reasonable to assume that this one-year term would start when the party becomes aware of the event that originates the party's right to be paid, the new rule on the statute of limitations for insurance may play a role in its interpretation. Based on this new rule (which will have an important indirect impact on reinsurers), the one-year term would only begin once the insurer denies the claim, no matter how long it takes the insured to notify the insurer of the claim.

In summary, while it is clear that a one-year statute of limitations will apply to reinsurance and retrocession relationships, doubts remain over the starting date of this term and how it will be counted.

Although the Insurance Law is only set to come into effect in December 2025, players must begin assessing how their business and operations will be impacted as soon as possible, as policies issued today will have claims adjusted under the new framework. Moreover, Susep still has much work to do in passing new regulations (and amending existing ones), and companies should consider how they could contribute to this process. The clock is already ticking, and there is plenty to be done by December 2025.

For more information on this topic, please contact Mattos Filho's [Insurance, Reinsurance & Private Pensions](#) practice area.

Fonte: [Mattos Filho](#), em 27.12.2024