
CHAMBERS GLOBAL PRACTICE GUIDES

Insurance & Reinsurance 2026

Definitive global law guides offering
comparative analysis from top-ranked lawyers

Brazil: Law and Practice

Thiago Junqueira and Daniel Barreto Gelbecke
Junqueira & Gelbecke Advogados



BRAZIL

Law and Practice

Contributed by:

Thiago Junqueira and Daniel Barreto Gelbecke
Junqueira & Gelbecke Advogados



Contents

1. Basis of Insurance and Reinsurance Law p.4

1.1 Sources of Insurance and Reinsurance Law p.4

2. Regulation of Insurance and Reinsurance p.5

2.1 Insurance and Reinsurance Regulatory Bodies and Legislative Guidance p.5

2.2 Writing of Insurance and Reinsurance p.6

2.3 Taxation of Premium p.6

3. Overseas Firms Doing Business in the Jurisdiction p.6

3.1 Overseas-Based Insurers or Reinsurers p.6

3.2 Fronting p.7

4. Transaction Activity p.7

4.1 M&A Activities Relating to Insurance Companies p.7

5. Distribution p.8

5.1 Distribution of Insurance and Reinsurance Products p.8

6. Making an Insurance Contract p.8

6.1 Obligations of the Insured and Insurer p.8

6.2 Failure to Comply With Obligations of an Insurance Contract p.9

6.3 Intermediary Involvement in an Insurance Contract p.9

6.4 Legal Requirements and Distinguishing Features of an Insurance Contract p.9

6.5 Multiple Insured or Potential Beneficiaries p.10

6.6 Consumer Contracts or Reinsurance Contracts p.10

7. Alternative Risk Transfer (ART) p.10

7.1 ART Transactions p.10

7.2 Foreign ART Transactions p.11

8. Interpreting an Insurance Contract p.11

8.1 Interpretation of Insurance Contracts and Use of Extraneous Evidence p.11

8.2 Warranties p.11

8.3 Conditions Precedent p.12

9. Insurance Disputes p.12

9.1 Insurance Disputes Over Coverage p.12

9.2 Insurance Disputes Over Jurisdiction and Choice of Law p.12

9.3 Litigation Process p.13

9.4 Enforcement of Judgments p.13

9.5 Enforcement of Arbitration Clauses p.13

9.6 Enforcement of Awards p.13

9.7 Alternative Dispute Resolution p.13

9.8 Penalties for Late Payment of Claims p.14

9.9 Insurers' Rights of Subrogation p.14

10. Insurtech p.14

10.1 Insurtech Developments p.14

10.2 Regulatory Response p.14

11. Emerging Risks and New Products p.15

11.1 Emerging Risks Affecting the Insurance Market p.15

11.2 New Products or Alternative Solutions p.15

12. Developments in Insurance Law p.15

12.1 Significant Legislative or Regulatory Developments p.15

Junqueira & Gelbecke Advogados is a boutique law firm based in Rio de Janeiro, focused on insurance and reinsurance law. The firm is composed of a specialised team of lawyers dedicated to advisory, regulatory and contentious matters involving insurers, reinsurers, insurtechs and brokers. Its core practice covers insurance and reinsurance regulation, corporate and regulatory matters, policy wording, product development, claims handling and insurance litigation, with close interaction with corporate law,

contracts, data protection and compliance. The firm has particular experience in financial lines insurance, including D&O, E&O and cyber-risks, as well as agricultural insurance, life insurance and surety, acting in both large-risk and mid-market operations. Founded in 2024, the firm has established a prominent presence in the Brazilian insurance market within its first year of operation, supported by the extensive practical and academic experience of its founding partners, Thiago Junqueira and Daniel Gelbecke.

Authors



Thiago Junqueira is a founding partner of Junqueira & Gelbecke Advogados and a senior lawyer with extensive experience in insurance and reinsurance law. His practice focuses on insurance regulation, policy

drafting, complex claims and insurance litigation, with particular emphasis on financial lines, life insurance and reinsurance. Thiago holds a PhD in Civil Law and a master's degree, and is a professor of insurance law at FGV Direito Rio, Instituto Conhecimento Jurídico Sem Fronteiras and Escola de Negócios e Seguros. He speaks frequently at academic and professional forums, and is a member of the Brazilian Bar Association and academic associations dedicated to civil and insurance law.



Daniel Barreto Gelbecke is a founding partner of Junqueira & Gelbecke Advogados and has a strong background in corporate, regulatory and insurance law. His practice focuses on insurance

regulation, corporate governance, compliance and contractual matters related to insurance and reinsurance operations. Daniel previously served as Legal and Compliance Director of a Brazilian insurance company and worked in private practice, advising insurers and corporate clients. He holds a postgraduate degree in Corporate Law and is currently pursuing a Master's in Law, Justice and Economic Impacts, and is a member of the Brazilian Bar Association and professional forums focused on insurance regulation and corporate law.

Junqueira & Gelbecke Advogados

Rua México, nº 31,
Sala 901
Centro
Rio de Janeiro, RJ
Brazil

Tel: +55 21 99821-5773
Email: contato@junqueiragelbecke.adv.br
Web: www.junqueiragelbecke.adv.br



Junqueira & Gelbecke
ADVOGADOS

1. Basis of Insurance and Reinsurance Law

1.1 Sources of Insurance and Reinsurance Law

Brazil operates within a civil law legal system, in which legislation is the primary source of insurance and reinsurance law. Statutory law is complemented by regulatory norms, contractual arrangements, customs and market practices, and judicial interpretation. Unlike common law jurisdictions, judicial precedent is not, in principle, a formal source of law, although it plays an important practical role in interpretation and harmonisation.

The central statutory pillar of Brazilian insurance contract law is Law No 15,040 of 9 December 2024 (Brazilian Insurance Contract Act), which entered into force in December 2025 and fundamentally restructured the legal framework governing insurance contracts. Previously, insurance was regulated by a short chapter of the 2002 Civil Code, comprising only 46 articles. The new Act establishes a comprehensive, standalone regime, with 134 articles, governing insurance contracts in a systematic and detailed manner. It also contains specific provisions on reinsurance and insurance intermediaries.

For analytical purposes, the Brazilian Insurance Contract Act is structured around the following key topics:

- purpose, scope and mandatory application (Articles 1–4);
- insurable interest (Articles 5–8);
- risk, exclusions and risk changes (Articles 9–18);
- premium: payment, default, suspension and termination (Articles 19–23);
- third-party insurance and group insurance (policyholder regime) (Articles 24–32);
- coinsurance and double insurance (Articles 33–36);
- intervening parties: good faith, agents and brokers (Articles 37–40);
- formation of contract, pre-contractual duties, acceptance, duration and renewal (Articles 41–53);
- evidence of the contract and mandatory policy contents (Articles 54–55);
- rules on construction and interpretation of the contract (Articles 56–59);

- reinsurance (Articles 60–65);
- loss: notice, mitigation, salvage, fraud and effects over time (Articles 66–74);
- adjustment and settlement of claims: transparency, deadlines and sanctions (Articles 75–88);
- damage insurance: indemnity limits, underinsurance, “new for old” and subrogation (Articles 89–97);
- liability insurance: trigger, defence costs, co-operation duties and direct action (Articles 98–107);
- transfer of interest and assignment of insurance (Articles 108–111);
- life and personal safety insurance: beneficiaries, waiting periods, suicide and capital protection (Articles 112–124);
- compulsory insurance (Article 125);
- statutes of limitations and suspension (Articles 126–127); and
- final and transitional provisions: regulation, ADR and arbitration, jurisdiction, enforceability, revocations and effective date (Articles 128–134).

The Insurance Contract Act must be interpreted systematically, in co-ordination with the broader Brazilian legal framework. Relevant statutes include:

- the Federal Constitution of the Federative Republic of Brazil;
- Decree-Law No 73/1966 (National System of Private Insurance);
- Complementary Law No 126/2007 (reinsurance);
- the Brazilian Civil Code;
- the Consumer Protection Code;
- the Arbitration Act;
- the Code of Civil Procedure;
- data protection legislation; and
- various sector-specific statutes affecting insurance and reinsurance operations.

Although Brazil is a civil law jurisdiction, jurisprudence plays a significant practical role, particularly decisions of the Superior Court of Justice (STJ), which has final authority over private law matters. Under the Code of Civil Procedure, certain precedents may have binding or quasi-binding effects. With the entry into force of Law No 15,040/2024, the provisions of which depart from previously dominant case law in several respects, the Brazilian insurance market is expected

to experience a transitional period, during which jurisprudence will gradually realign with the new statutory framework.

2. Regulation of Insurance and Reinsurance

2.1 Insurance and Reinsurance Regulatory Bodies and Legislative Guidance

Insurance and reinsurance activities in Brazil are subject to intensive regulatory oversight, combining a comprehensive statutory framework with a dense and detailed body of administrative regulation.

The institutional architecture of the sector is primarily set out in Decree-Law No 73/1966, which established the National System of Private Insurance. Within this framework, regulatory and supervisory functions are mainly exercised by two authorities:

- the National Council of Private Insurance (CNSP), which is responsible for defining general policy guidelines and regulatory principles applicable to the insurance and reinsurance market; and
- the Superintendence of Private Insurance (SUSEP), which acts as the executive supervisory authority, issuing binding regulations, granting licences and authorisations, and supervising insurers, reinsurers, insurance brokers and other regulated market participants.

More recently, Complementary Law No 213/2025 amended Decree-Law No 73/1966 to broaden the regulatory perimeter of the National System of Private Insurance, expressly bringing insurance co-operatives (*sociedades cooperativas de seguros*) and mutual property protection arrangements (*proteção patrimonial mutualista*) within the scope of the CNSP and SUSEP. In practical terms, these new participants are now expected to follow the framework of authorisation, supervision and rulemaking applicable to traditional insurers and other regulated entities, including transitional pathways for the regularisation of pre-existing mutual protection associations.

The reinsurance market is specifically governed by Complementary Law No 126/2007, which estab-

lishes the legal regime for reinsurance, retrocession and related transactions, including the participation of local, admitted and occasional reinsurers. Brazil adopts a regulated open reinsurance model, under which cross-border reinsurance is permitted, subject to registration, reporting and contractual requirements.

In practice, regulatory acts issued by the CNSP and SUSEP, primarily in the form of resolutions, play a central role in shaping market conduct and operations. Together, they regulate prudential requirements, conduct-of-business standards, corporate governance, policy wording parameters, group insurance arrangements, claims-handling procedures, and operational and reporting obligations. This regulatory framework applies across all major lines of insurance, including damage insurance, liability insurance, motor insurance, surety, life and personal safety insurance, as well as reinsurance, retrocession and coinsurance. Notably, current regulation provides for increased contractual autonomy in damage insurance covering large risks, allowing greater flexibility in policy wording and risk allocation, with more limited regulatory standardisation compared to mass market insurance products.

From an international standpoint, Brazil is not a party to multilateral treaties specifically governing insurance or reinsurance, unlike some other jurisdictions. Cross-border insurance and reinsurance relationships are therefore addressed mainly under Brazilian domestic law, including the application rules set out in the Insurance Contract Act and in reinsurance legislation, together with general principles of private international law. Subject to statutory nuances, insurance disputes tend to be connected to Brazilian law and Brazilian forums. Arbitration and other forms of alternative dispute resolution are expressly permitted and, where agreed by the parties, are commonly structured to take place in Brazil and to be governed by Brazilian law.

Overall, the Brazilian regulatory model is characterised by a high degree of normative detail and active supervisory intervention, aimed at promoting financial stability, market integrity, consumer and policyholder protection, and legal certainty – features that are par-

ticularly relevant for international insurers and reinsurers operating in, or seeking access to, the Brazilian market.

2.2 Writing of Insurance and Reinsurance

In Brazil, insurance and reinsurance business may only be written by entities authorised by SUSEP. Insurers must be incorporated in Brazil, obtain prior regulatory approval and comply with ongoing requirements relating to minimum capital, solvency margins, technical provisions, governance and risk management, as provided mainly in Decree-Law No 73/1966 and in regulations issued by the CNSP and SUSEP. Reinsurance is governed by Complementary Law No 126/2007, which permits risk transfer to local, admitted and occasional reinsurers, subject to registration and regulatory conditions.

While authorisation requirements are broadly uniform, the regulatory treatment differs according to the type of insurance. Consumer and SME insurance is subject to stricter conduct-of-business rules, greater standardisation, and enhanced transparency and consumer protection. Corporate insurance – particularly large-risk insurance – is regulated in a more flexible manner, allowing wider contractual autonomy and customised policy wording.

No specific additional rules apply to the underwriting of excess layers, which follow the same regulatory framework as primary insurance. Reinsurance contracts, however, are subject to a separate regime, reflecting their professional, B2B character and allowing broader contractual freedom than direct insurance.

2.3 Taxation of Premium

In Brazil, insurance premiums are subject to a specific tax regime that is currently undergoing a structural transition. Traditionally, insurers have been subject to PIS and COFINS on premium revenues, in addition to corporate income taxes (IRPJ and CSLL). Premiums have also been subject to the Tax on Financial Operations (IOF), levied on the total value of the premium, with rates currently varying according to the line of business:

- 0% for reinsurance, rural insurance, export finance insurance, international cargo transport, aviation insurance and certain airline liability covers;
- 0.38% for life insurance, personal accident insurance and mandatory personal injury insurance;
- 2.38% for private health plans; and
- 7.38% for other insurance transactions.

Following Constitutional Amendment No 132/2023, the taxation of insurance premiums is being restructured. IOF will cease to apply to insurance operations from 2027, and PIS and COFINS will be replaced by the Contribution on Goods and Services (CBS), together with the Goods and Services Tax (IBS), under a specific regime applicable to financial services, including insurance and reinsurance. The new framework introduces non-cumulative taxation and will be implemented gradually during a transition period, with implications for pricing, contractual allocation of tax burdens, and compliance.

3. Overseas Firms Doing Business in the Jurisdiction

3.1 Overseas-Based Insurers or Reinsurers

Brazil adopts a regulated open market approach to overseas insurers and reinsurers, with strict restrictions on unlicensed insurance activity and a differentiated framework for insurance and reinsurance.

Direct Insurance

Overseas-based insurers are generally not permitted to underwrite insurance directly in Brazil without establishing a locally incorporated insurer and obtaining prior authorisation from SUSEP. There is no passporting, equivalence or recognition of foreign insurance licences. As a rule, risks located in Brazil must be insured locally. Limited exceptions apply where coverage is not available in the domestic market, subject to regulatory conditions. In practice, multinational groups commonly operate through global insurance programmes combined with locally issued policies, in order to comply with Brazilian requirements.

Reinsurance

Cross-border reinsurance is expressly permitted under Complementary Law No 126/2007, through local,

admitted and occasional reinsurers, all of which must be registered with SUSEP and comply with applicable regulatory and reporting obligations. There is no automatic recognition of foreign licences, and market access is based on registration and ongoing compliance rather than passporting.

3.2 Fronting

Fronting arrangements are permitted in Brazil.

Brazilian regulation allows insurers to issue policies and cede a substantial portion of the risk to reinsurers, including through fronting structures. The applicable retention requirement is assessed on a global and annual basis, rather than on a per-policy or per-risk basis, which allows insurers to cede most or even nearly all of the risk associated with specific treaties or facultative placements, provided that overall regulatory parameters are respected.

In practice, fronting is commonly used in large and complex risks, cross-border programmes and group structures involving international reinsurers. These arrangements often include claims co-operation or claims control provisions reflecting the reinsurer's economic exposure. In light of the new Brazilian Insurance Contract Act, however, the validity and enforceability of clauses that may interfere with the insurer's exclusive duty toward the insured are currently being debated, particularly where such provisions could affect claims-handling autonomy or the timing of settlement.

Notwithstanding the extent of the cession, the Brazilian insurer remains fully and exclusively liable to the insured under Brazilian law, and reinsurance does not create any direct contractual relationship between the reinsurer and the insured.

4. Transaction Activity

4.1 M&A Activities Relating to Insurance Companies

M&A activity in the Brazilian insurance sector has been consistently active in recent years, with a notable increase in transaction volume in 2024. Market studies indicate a higher number of deals compared

to previous years and, while macroeconomic conditions remain challenging, M&A activity is expected to continue at relevant levels.

The profile of transactions has shifted gradually. Earlier consolidation waves were largely focused on insurers acquiring competitors in order to expand market share by line of business. More recently, a growing portion of transactions has involved distribution channels, particularly insurance brokers, managing general agents (MGAs) and service platforms, reflecting strategic interest in access to clients, operational efficiency and digital integration.

In addition, M&A strategies may increasingly leverage the growing pool of insurtechs fostered by SUSEP's regulatory sandbox, an experimental framework for technology-driven and innovative insurance projects, supported by a more flexible application of certain prudential requirements, which can make the market more attractive to both strategic and financial investors.

Both domestic and foreign investors participate in the market. International insurance and reinsurance groups continue to pursue selective investments, especially in large-risk, specialty and reinsurance-related operations, while transactions among local players have gained relative importance. Outbound investment by Brazilian insurers remains more limited.

From a regulatory perspective, transactions involving insurers, local reinsurers and other regulated entities are subject to approval (prior approval in some cases) or notification to SUSEP, depending on their structure, shareholding and impact. Regulatory review, competition clearance and capital requirements remain relevant factors in deal structuring and timing. Overall, consolidation, technological change and regulatory developments are likely to continue influencing M&A activity in the sector.

5. Distribution

5.1 Distribution of Insurance and Reinsurance Products

Insurance products in Brazil are distributed through multiple regulated channels, reflecting the size and diversity of the market.

Insurance Brokerage

The primary form of distribution is insurance brokerage. Insurance brokers must be authorised by SUSEP and act mainly in the interest of the insured, providing advice on coverage selection and assisting throughout the contractual relationship, including claims handling. Insurance agents also participate in distribution, acting on behalf of insurers under contractual arrangements.

Bancassurance

Bancassurance operates as a distribution channel rather than a distinct category of intermediary. In this model, banks distribute insurance products (often structured as group policies or ancillary coverages) within their broader financial services offerings, particularly in life, personal accident and payment protection insurance. In addition, direct distribution by insurers has expanded, including digital and online sales, supported by regulatory initiatives such as open insurance, which enable new distribution models while preserving consumer protection standards.

Reinsurance Distribution

Reinsurance distribution is more restricted. Facultative and treaty reinsurance contracts must be placed directly between the cedant and the reinsurer or through a licensed reinsurance broker. Reinsurance brokers are subject to specific authorisation and regulatory requirements, including professional qualification standards and mandatory professional liability (E&O) insurance, reflecting the technical and professional nature of reinsurance transactions.

6. Making an Insurance Contract

6.1 Obligations of the Insured and Insurer

Under Brazilian insurance law, disclosure duties during the negotiation and formation of an insurance

contract are based on good faith and follow a questionnaire-driven model.

Insured's Obligations

The insured (or policyholder) must provide accurate and complete information relevant to the assessment of the risk, as requested by the insurer through its questionnaires and communications. There is no general duty to disclose all material facts spontaneously; the obligation is limited to what is requested and to what the insured knows or should reasonably know.

The consequences of non-disclosure depend on fault. Intentional non-disclosure or misrepresentation may result in loss of coverage. Unintentional non-disclosure leads to a proportional reduction of coverage, reflecting the premium that should have been charged. If the undisclosed facts render the risk technically uninsurable or outside the insurer's underwriting standards, the contract may be terminated.

Insurer's Obligations

The insurer has an affirmative duty to proactively seek the information it considers relevant to underwriting, and to clearly inform the applicant of the consequences of failing to comply with disclosure duties.

The insurer must also ensure pre-contractual transparency, particularly with respect to exclusions, forfeiture of rights and coverage limitations, which must be clearly drafted, properly highlighted and presented in Portuguese.

Life and Personal Safety Insurance

In life and personal safety insurance, the regime is more protective. Where a waiting period is agreed, the insurer may not deny coverage based on alleged pre-existing medical conditions. In the absence of a waiting period, exclusions for pre-existing conditions are only valid if the insured was clearly questioned and intentionally omitted the relevant information.

Consumer v Commercial Insurance

The statutory disclosure regime applies to both consumer and commercial insurance contracts. However, in consumer insurance, the disclosure and transparency duties imposed on the insurer are applied more strictly, and consumer protection principles may fur-

ther reinforce the insured's position. In commercial insurance there is greater emphasis on professional negotiation and risk allocation, particularly in large-risk transactions, although the core statutory duties of disclosure, good faith and transparency continue to apply.

6.2 Failure to Comply With Obligations of an Insurance Contract

Under Brazilian insurance law, the consequences of a failure to comply with information and disclosure duties during the negotiation of an insurance contract depend primarily on the insured's degree of fault and on the impact of the omitted information on risk assessment and underwriting.

If the insured intentionally omits or misrepresents relevant information requested by the insurer, coverage may be forfeited, without prejudice to the insurer's right to retain the premium and recover underwriting expenses. If the failure is unintentional, coverage is generally reduced proportionally to reflect the premium that should have been charged had the correct information been provided. Where the undisclosed information renders the risk technically uninsurable or outside the insurer's underwriting standards, the contract may be terminated.

If the insurer fails to comply with its own informational duties, such as clearly requesting relevant information or properly disclosing exclusions and limitations, restrictive clauses may be deemed invalid or unenforceable, and ambiguities will be interpreted in favour of the insured.

For further detail, see **6.1 Obligations of the Insured and Insurer**.

6.3 Intermediary Involvement in an Insurance Contract

Brazilian insurance law distinguishes between different types of intermediaries, with insurance agents and insurance brokers being the most relevant in practice, each performing distinct legal functions.

Insurance Agents

Insurance agents act on behalf of the insurer. Under the Brazilian Insurance Contract Act, the acts and

omissions of agents and other representatives – whether permanent, temporary or provisional – are legally attributable to the insurer. Agents are subject to the same duties of loyalty, good faith and information applicable to insurers, and any breach of these duties produces the same legal consequences as if the insurer itself had failed to comply.

Insurance Brokers

Insurance brokers, in contrast, act primarily in the interest of the insured or policyholder. They are legally authorised intermediaries responsible for identifying the risk and the insurable interest, recommending appropriate coverage and insurers, assisting in the placement, renewal and maintenance of insurance, and providing support to the insured and beneficiaries throughout the contractual relationship, including during claims handling and settlement. Brokers are also responsible for the proper and timely transmission of documents and information.

All intermediaries involved in the negotiation and performance of insurance contracts must act with loyalty and good faith, providing accurate and complete information. While the insurer is directly bound by the conduct of its agents, insurance brokers may be held civilly liable for losses arising from breaches of their statutory or contractual duties, particularly in cases of inadequate advice, failure to convey relevant information, or the provision of deficient assistance to the insured.

6.4 Legal Requirements and Distinguishing Features of an Insurance Contract

Under Brazilian law, an insurance contract is an agreement whereby a duly authorised insurer undertakes to cover a legitimate (insurable) interest of the insured or beneficiary against predetermined risks, in exchange for the payment of a premium.

The contract does not need to be in writing to be valid, but it must be evidenced by legally admissible means, and the insurer must deliver a policy or equivalent document. The contract must be written in Portuguese and recorded in a durable medium. Clauses limiting rights or excluding risks must be clear, highlighted and understandable; otherwise, they may be invalid.

A legitimate insurable interest is essential. If the interest is impossible or does not exist, the contract is null. If it arises at a later stage, the contract becomes effective from that moment. Extinction or reduction of the interest leads to termination or proportional premium adjustment. In insurance on the life or personal safety of a third party, the applicant must have and declare a legitimate interest, subject to statutory presumptions.

The covered risks and exclusions must be clearly defined. Insurance may not validly cover:

- impossible risks;
- risks that have already occurred;
- criminal fines or penalties; or
- losses arising from wilful misconduct.

Payment of the premium is a core element. Non-payment of the first instalment may terminate the contract, while non-payment of subsequent instalments generally suspends coverage after due notice.

At a minimum, the policy must identify the insurer, insured, beneficiary (if any), policyholder, term, insured amount, covered and excluded risks, premium structure and intermediary involvement. Insurance contracts are construed in good faith, and ambiguities are interpreted in favour of the insured.

6.5 Multiple Insured or Potential Beneficiaries

Brazilian insurance law permits third parties who are not named insureds to benefit from insurance coverage, depending on the structure of the policy and the line of insurance involved. In general, the insured or policyholder must hold a legitimate insurable interest, while beneficiaries must be identified or at least determinable under the contract. As a matter of market practice, beneficiaries are typically designated at the time the contract is entered into, although changes may be allowed in accordance with the applicable rules of the relevant insurance line.

Disclosure duties at contract formation are linked primarily to risk assessment and rest with the party negotiating the policy. The involvement of third-party beneficiaries does not, by itself, expand those duties.

6.6 Consumer Contracts or Reinsurance Contracts

Given their different contractual characteristics, the interpretation and practical application of insurance rules vary between consumer insurance contracts and reinsurance contracts.

In consumer insurance, contracts are generally interpreted with heightened attention to the insured's relatively weaker position. Duties of good faith, transparency and information are applied more strictly, and protective standards play a central role in evaluating the insurer's conduct.

In reinsurance, the relationship is treated as a professional and highly technical arrangement between regulated market participants. As a result, contractual autonomy is broader, and the interpretation of reinsurance contracts often takes international market practices and recognised reinsurance usages into account, in addition to Brazilian law. Consumer-oriented protective standards tend to have limited relevance in this context.

7. Alternative Risk Transfer (ART)

7.1 ART Transactions

ART-type structures are used in Brazil mainly through the statutory insurance-linked securities (ILS) framework established by Law No 14,430/2022, which introduced the *Sociedade Seguradora de Propósito Específico* (SSPE) and the *Letra de Risco de Seguro* (LRS).

This framework is already operational. On 30 May 2025, Andrina SSPE (a wholly owned subsidiary of IRB(Re)) issued the first LRS in the Brazilian market, a BRL33.7 million transaction securitising surety (*seguro garantia*) risks, structured with Itaú and registered with B3.

Within this structure, regulators recognise the operation as an economic risk-transfer mechanism, through which the financial consequences of insured losses are transferred to the SSPE and, ultimately, to capital markets investors via the LRS. The SSPE is supervised by SUSEP as an insurance entity, while the issu-

ance and distribution of the LRS are subject to capital markets regulation.

From a regulatory perspective:

- on the insurance side, the SSPE must be authorised and is supervised by SUSEP (Andrina received authorisation in December 2024);
- on the capital markets side, public offerings or distributions of LRS fall under CVM rules; and
- Joint Resolution CNSP/CMN No 9/2024 governs the role of the fiduciary agent, including eligibility criteria, duties, conflicts of interest and disclosure obligations.

The main challenges stem from the recent introduction of the framework, the limited number of market precedents and the need for co-ordination between insurance supervision (SUSEP/CNSP) and capital markets regulation (CVM/B3) when structuring and placing these instruments.

7.2 Foreign ART Transactions

Foreign ART transactions are still uncommon in Brazil and there is no specific regulatory framework addressing them directly. As a result, Brazilian insurers and reinsurers have made limited practical use of offshore ILS, cat bonds or similar structures.

Brazilian solvency regulation is largely principle-based and economically oriented, which allows the regulator to assess transactions based on their substance and risk-transfer effect, rather than solely on their legal form. In this context, a foreign ART transaction may potentially be considered as reinsurance for solvency purposes, provided it results in an effective and measurable transfer of insurance risk.

However, in the absence of express rules or consolidated supervisory practice, such treatment is not assured. In practice, foreign ART transactions tend to be evaluated on a case-by-case basis. Where the structure does not clearly fit within the reinsurance regulatory perimeter, it may be regarded primarily as a financial risk-financing arrangement, rather than as reinsurance for prudential purposes.

8. Interpreting an Insurance Contract

8.1 Interpretation of Insurance Contracts and Use of Extraneous Evidence

Insurance contracts in Brazil are interpreted under general contract law, complemented by specific statutory rules applicable to insurance.

Policies must be construed and performed in good faith. Ambiguities in documents prepared by the insurer, including pre-contractual materials, are interpreted in favour of the insured or beneficiary, and exclusions or limitations of coverage are construed restrictively, with the burden of proof on the insurer.

The approach varies according to the type of contract. Consumer insurance is interpreted more protectively, reflecting reduced contractual autonomy and the adhesive nature of the policy. In large-risk and commercial insurance, greater weight is given to negotiated terms and professional risk allocation.

Extraneous evidence is permitted. Courts may consider pre-contractual communications, the circumstances of placement and, in a limited manner, market usages and customs, particularly in technically complex insurance arrangements.

8.2 Warranties

Brazilian insurance law does not recognise “warranties” as a distinct contractual category in the common law sense; the concept is foreign to civil law systems and is not used as a technical label in insurance contracts governed by Brazilian law.

Clauses with a similar function are typically drafted as duties or obligations of the insured, risk-related conditions or loss-prevention requirements. Their legal effects depend on their substance, not on whether they are labelled as “warranties”.

Such clauses are not treated as stricter or autonomous terms. They are interpreted in accordance with statutory insurance rules and general contract principles, particularly good faith and risk relevance.

A breach does not automatically lead to loss of coverage. Intentional non-compliance by the insured gen-

erally results in forfeiture of coverage, while negligent non-compliance may lead to a proportional reduction of the indemnity, depending on the circumstances.

In certain cases, such as aggravation of risk, the law requires a causal link between the breach and the occurrence or aggravation of the loss. Courts therefore focus on whether the breach was relevant to the risk and causally connected to the loss. If such a connection exists, indemnity may be denied or reduced; if not, coverage is generally preserved.

8.3 Conditions Precedent

In Brazilian insurance law, “conditions precedent” are not recognised as a distinct legal category in the common law sense and are uncommon in practice. Insurance contracts are generally not made contingent on the occurrence of specific prior events for the insurer’s liability to arise.

Clauses that could resemble conditions precedent are usually treated as contractual duties of the insured, and their breach does not automatically exclude coverage. The consequences are assessed under statutory insurance rules and general contract principles, rather than through an automatic forfeiture mechanism.

9. Insurance Disputes

9.1 Insurance Disputes Over Coverage

Disputes over coverage under insurance contracts in Brazil are most commonly resolved through ordinary court litigation. Although arbitration clauses may be included in insurance policies, arbitration is still not predominant in insurance disputes, including in large-risk insurance, although its use is gradually increasing in more sophisticated transactions.

In consumer insurance, arbitration is subject to stricter constraints. Arbitration clauses are not prohibited per se, but they must comply with heightened transparency and consent requirements. Depending on the circumstances, such clauses may be deemed non-binding on the consumer, particularly where they are imposed in an adhesion contract without clear and informed acceptance.

In reinsurance contracts, arbitration is more widely accepted and commonly used, reflecting the professional, B2B nature of such contracts and their broader contractual autonomy.

As a general rule, insurance claims are subject to a one-year limitation period. Under the new Insurance Contract Act, this period typically starts from the insurer’s formal denial of coverage, consolidating a trend already emerging in case law. There are, however, statutory nuances depending on the type of insurance and the nature of the claim. The new framework places greater emphasis on timely notice of loss and transparent communication during claims handling.

Beneficiaries are entitled to enforce insurance contracts even if they are not expressly named, provided they are identifiable under the policy. In liability insurance, injured third parties may bring direct claims against the insurer, typically with the insured joined in the proceedings.

9.2 Insurance Disputes Over Jurisdiction and Choice of Law

Brazilian insurance disputes are governed primarily by mandatory statutory rules on jurisdiction and applicable law. As a general rule, insurance contracts connected to Brazil are subject to Brazilian law and Brazilian courts.

Under the Brazilian Insurance Contract Act (Law No 15,040/2024), Brazilian law mandatorily applies to the following insurance contracts:

- those issued by insurers authorised to operate in Brazil;
- where the insured or policyholder is resident or domiciled in Brazil; or
- where the insured interest is located in Brazil, without prejudice to the limited exceptions for offshore insurance expressly permitted by Complementary Law No 126/2007.

Brazilian courts have exclusive jurisdiction over disputes arising from insurance contracts subject to the Act. The default forum is the domicile of the insured or beneficiary, although they may alternatively sue in the insurer’s domicile. Contractual choice of foreign

courts or foreign law is generally ineffective for insurance contracts governed by Brazilian law.

Arbitration and other alternative dispute resolution mechanisms are permitted. For insurance contracts governed by Brazilian law, arbitration must generally be seated in Brazil and conducted under Brazilian law. However, where the insurance has been validly contracted abroad under the exceptions provided by Complementary Law No 126/2007, disputes may be submitted to foreign arbitration and governed by foreign law. In consumer insurance, arbitration clauses are subject to stricter scrutiny and may not be binding, depending on the circumstances. In reinsurance and certain commercial insurance contracts, broader contractual autonomy applies.

9.3 Litigation Process

In Brazil, insurance disputes are typically resolved through ordinary civil litigation before the state courts.

Proceedings are initiated by filing a statement of claim, followed by service of process on the defendant and the submission of a defence. The case then moves to an evidentiary phase, which may include documentary evidence, expert reports (very common in insurance disputes) and witness testimony, although judges have broad discretion to limit evidence. After closing arguments, the court renders a first-instance judgment.

Decisions may be appealed to the state Courts of Appeal, usually reviewed by a panel of three judges. Further appeals to the Superior Court of Justice (STJ) or the Federal Supreme Court (STF) are limited to matters of federal law or constitutional issues, and do not involve re-examination of facts or evidence.

Provisional and interim relief (injunctions) is widely available at all stages of the proceedings. While litigation can be time-consuming, procedural reforms and increasing judicial specialisation have contributed to greater predictability, particularly in insurance and reinsurance matters.

9.4 Enforcement of Judgments

Domestic judgments are enforced through judicial enforcement proceedings before Brazilian courts.

Foreign judgments are enforceable in Brazil, but only after recognition (*homologação*) by the STJ. Brazil does not require reciprocity treaties for recognition. The STJ does not re-examine the merits; it verifies formal requirements, including proper service of process, finality of the decision, jurisdiction of the foreign court, and compatibility with Brazilian public policy, sovereignty and due process. Once recognised by the STJ, the foreign judgment may be enforced before the competent lower court in Brazil, in the same manner as a domestic judgment.

9.5 Enforcement of Arbitration Clauses

Arbitration clauses in commercial insurance and reinsurance contracts are generally enforceable in Brazil. In reinsurance and large-risk insurance, arbitration is widely accepted and benefits from broad contractual autonomy.

9.6 Enforcement of Awards

Domestic arbitration awards are directly enforceable in Brazil as judicial enforcement titles.

Brazil is a signatory to the New York Convention. Foreign arbitral awards are enforceable once recognised by the STJ, whose review is limited to formal requirements and public policy, without re-examining the merits. After recognition, enforcement takes place before local courts in the same manner as a domestic court judgment.

9.7 Alternative Dispute Resolution

Alternative dispute resolution plays a supplementary and still limited role in the resolution of insurance disputes in Brazil, although its use is gradually expanding.

Mediation is expressly regulated by Law No 13,140/2015 and is legally available for insurance disputes involving disposable rights or rights that admit settlement. In practice, however, mediation remains underutilised in insurance litigation, with disputes still predominantly resolved through ordinary court proceedings.

That said, mediation has growing potential, particularly in technically complex or high-value disputes, as the law allows mediation both before and during judicial

or arbitral proceedings, suspends limitation periods during the procedure, and gives enforceable effect to settlement agreements.

The position varies by contract type. In consumer insurance, mediation may be encouraged but must preserve voluntariness and consumer protection standards. In commercial insurance and reinsurance, where parties enjoy greater contractual autonomy and are professionally sophisticated, mediation is increasingly viewed as a useful risk-management and dispute-containment tool, often combined with escalation or multi-tier dispute resolution clauses.

9.8 Penalties for Late Payment of Claims

In general, Brazilian law does not recognise punitive damages in the technical sense, although there are ongoing legislative initiatives of a broader nature seeking to introduce such a concept into Brazilian law.

Improper delay in claims handling is addressed through specific statutory sanctions. Under the Brazilian Insurance Contract Act (Law No 15,040/2024), the insurer must decide on coverage within 30 days from receipt of the claim and required documentation, under penalty of forfeiting its right to deny coverage. Once coverage is recognised, the indemnity must be paid within 30 days. Failure to comply triggers statutory penalties, including a 2% fine and monetary adjustments, without prejudice to interest and potential civil liability.

Both the 30-day period for coverage determination and the 30-day period for payment may be suspended up to twice for justified requests for additional documents. In cases involving greater complexity (particularly large-risk insurance), the supervisory authority may authorise an extension of these deadlines up to a maximum of 120 days.

9.9 Insurers' Rights of Subrogation

After payment of an indemnity, Brazilian law generally grants insurers a right of subrogation in damage insurance, limited to the amount paid. The insurer is subrogated to the insured's rights against third parties responsible for the loss, without affecting the insured's remaining claim for uninsured losses. The insured must co-operate in preserving and exercising

subrogation rights, and any act that impairs subrogation is ineffective vis-à-vis the insurer.

Subrogation is restricted in certain situations. The insurer has no right of recourse when the loss results from the negligence of close relatives of the insured or beneficiary, or from employees or persons under the insured's responsibility, except where the liable party is itself covered by liability insurance.

In personal insurance (life and personal safety), there is no subrogation: amounts paid for death or bodily injury do not transfer rights against third parties to the insurer.

10. Insurtech

10.1 Insurtech Developments

Insurtech development in Brazil has accelerated, supported by regulatory initiatives such as the SUSEP sandbox, increased investment, and closer collaboration between start-ups and incumbent insurers. Most insurtechs operate through partnership models, particularly as MGAs, technology providers or embedded insurance platforms, rather than as fully licensed insurers.

Collaborations typically involve life, auto, cyber, financial lines and on-demand insurance products, with a strong focus on digital distribution, data-driven underwriting and automated claims handling. Common use cases include usage-based motor insurance, pay-per-use coverage for mobility and consumer goods, embedded insurance integrated into banking and e-commerce journeys, and digital life insurance distributed through brokers and platforms.

The Brazilian market is characterised by pragmatic innovation, with insurers providing underwriting capacity and compliance, while insurtechs contribute technology, customer experience and alternative distribution channels.

10.2 Regulatory Response

In Brazil, the regulator has adopted a supportive and structured approach to insurtech development. The main initiative is the regulatory sandbox implemented

by SUSEP, which allows new business models, products and technologies to be tested under controlled conditions with temporary regulatory flexibility. Since the most recent SUSEP call, the sandbox has become permanently open, enabling the continuous entry of projects rather than limited application windows.

In parallel, the implementation of open insurance represents another major regulatory initiative, fostering data sharing, interoperability and the creation of new digital services, while encouraging innovation and collaboration between insurtechs and traditional insurers.

11. Emerging Risks and New Products

11.1 Emerging Risks Affecting the Insurance Market

In Brazil, emerging risks include cyber-risk and increased automation, climate and catastrophe-related risks, and longevity risk. Cyber and technology-driven exposures have grown with digitalisation and the use of artificial intelligence, leading the regulator to reinforce governance, risk management and operational resilience requirements for insurers.

Climate change has intensified natural catastrophe risks, particularly in rural insurance. In response, CNSP Resolution No 485/2025 sets environmental, social and climate-related guidelines for rural insurance, while CNSP Resolution No 473/2024 establishes criteria for classifying insurance and pension products as sustainable. These measures are complemented by SUSEP Circular No 666/2022, which integrates sustainability requirements into insurers' governance and risk frameworks.

Longevity risk has also gained relevance, addressed through CNSP Resolution No 484/2025, which regulates Universal Life insurance and introduces safeguards related to long-term risk, transparency and product sustainability.

11.2 New Products or Alternative Solutions

In Brazil, insurers are developing new products to address emerging risks through technology, sustainability and innovative structures. Cyber and technology risks have led to the expansion of standalone cyber

and financial lines products, with broader coverage. Climate and catastrophe risks are being addressed through more flexible rural insurance and parametric solutions based on weather indices. Longevity risk has driven the structuring of Universal Life insurance products combining protection and investment features, although their large-scale commercialisation still depends on complementary SUSEP regulation and clearer tax treatment.

12. Developments in Insurance Law

12.1 Significant Legislative or Regulatory Developments

Key additional developments in Brazil include the following.

- The Insurance Contract Act (Law No 15,040/2024) has been in force since December 2025 and is reshaping disclosure, policy wording and claims-handling standards, with ongoing SUSEP/CNSP rulemaking to align secondary regulation.
- Complementary Law No 213/2025 materially reshaped the institutional and regulatory perimeter of the sector by expanding and systematising the legal framework for insurance co-operatives (which already existed in Brazil but operated under a much more limited and fragmented scope), introducing a dedicated statutory regime for mutualistic property protection schemes (*proteção patrimonial mutualista*) and their licensed administrators, and strengthening SUSEP's enforcement toolkit through an updated sanctioning framework, including terms of commitment and more detailed rules for administrative proceedings and penalties.
- Regulatory reform agenda – SUSEP's 2026 Regulatory Plan prioritises reforms linked to the new Insurance Contract Act and recent institutional changes in the sector.
- Tax reform – premium taxation is transitioning to the IBS/CBS system, with the gradual phase-out of IOF on insurance and reinsurance operations, under a specific regime for financial services.
- Alternative risk transfer – the SSPE/LRS framework is operational, enabling insurance-linked securities and reinforcing capital markets-based risk transfer alongside traditional reinsurance.

CHAMBERS GLOBAL PRACTICE GUIDES

Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email Rob.Thomson@chambers.com