

### | ON-DEMAND INSURANCE IN SPAIN

The effects of the pandemic that started in 2020 involve a radical change in consumer buying habits and customs. The insurance sector in particular faces unprecedented challenges, given the disruption of the usual distribution chains, the new interests and priorities of consumers when purchasing insurance policies, and other issues.

The possibility of new lockdowns, the push for remote working, a new approach to tourism and leisure spaces, the unprecedented boom in telecommunications and distance selling, among other situations, all require the insurance sector to establish efficient responses to new insurance needs. Concepts such as on-demand insurance appear as urgent responses to this new scenario.

#### 1. Main features of on-demand insurance

On-demand insurance is a legal concept that is characterised by the consumer as being a product that is contracted instantly and immediately. It is usually linked to a consumer good or a service, in such a way that the acquirer is offered the possibility of insuring a contingency linked to that good or service at the same time as purchasing or contracting it. The consumer completes the transaction and has both the desired good or service - a trip, a phone, a computer etc. - and the insurance linked to the related risks - such as cancellation, loss or theft. A classic example is travel insurance, where the techniques of selling insurance linked to the purchase of a plane ticket or other means of transport are well established.

In any case, although instantaneousness has always been the great challenge in the execution of this type of transaction, the real revolution in on-demand insurance products is linked to both an actuarial adaptation and a shift to cater to new consumer needs, which are accentuated by their new habits and lifestyles. For example, in addition to on-demand insurance, which is acquired immediately and instantaneously, there is the option to add, for example, (i) the functionality of activating and deactivating cover - and payment - in line with the use of the good or service by the consumer, so that the policyholder takes on a leading role and has control over the insurance; or (ii) the possibility of paying for the exact number of hours in which the insured good is used, or for its use in certain situations, which shows progress has been made in terms of transparency in costs and balance in the risks that the insurer is covering.

On the other hand, insurance consumers are increasingly more prepared and, in a sense, educated about and oriented toward this type of purchase. A user of a website who interacts with it to decide how many cookies to accept, the former owner of a motor vehicle and occasional taxi user who now rents vehicles for a certain time, or shares them for long trips, or uses one of the many forms of urban travel - such as other ride-hailing services, bicycles and rental scooters, are examples of consumers who would be fully prepared to “turn off” and “turn on” insurance cover.

## 2. International regulatory framework

The regulation and the regulators are taking divergent views on this type of new insurance offering. Notably, in markets where microinsurance has historically predominated, such as Brazil, it was quickly understood that a specific regulation of the concept was needed. Thus, the Brazilian Superintendence of Private Insurance (SUSEP) validated, by means of the Circular it published on 26 August 2019, the nature of insurance products that provide temporary cover for travel, months, days, hours and even minutes, establishing elements to ensure certainty regarding the beginning and end of the insurance period.

In Europe and the United States, however, more than a current regulatory effort, there is a recognition of the need to analyse whether such a change in regulation is necessary and how many steps must be taken in that direction. Lines of work in this regard include the document prepared by the European Insurance and Occupational Pensions Authority (EIOPA) in 2014 on the value chain and new business models that have emerged from digitisation. The EIOPA and the national supervisory authorities of the European Union consider the mere matter of temporality to be perfectly possible, while other degrees of sophistication of on-demand products pose more significant challenges. This is the case for “continuous subscription”, that is, products that rely on a constant flow of data about the policyholder or the insured good (for example, for a home insurance policy, the number of hours that people spend in the home or how much they use appliances and other objects equipped with connectivity and automation functionalities). And that is just the beginning. The integration of home automation and the Internet of Things in the home, or of remote and intelligent connectivity in cars, makes it possible, for example, for health insurance or the provision of services by insurers to be improved and multiplied. We are in an environment that the World Bank (Finance, Competitiveness & Innovation Global Practice, 2018) has not hesitated to rate positively in terms of building a more inclusive world, one where just having a smartphone (something which is almost universal in 2020) is the key to acquiring products and services which would otherwise be impossible or simply inadequate for our needs.

## 3. National regulatory framework

In Spain, the principle of freedom of contract, still protected under the mandatory nature of Law 50/1980, of 8 October, on Insurance Contracts (the “LCS”), allows for a high degree of sophistication. Thus, insuring winter sports equipment - skis, etc. - only in snow season, or extending household insurance to cover the theft of certain categories of objects contained in the home, linked to a period of time in which the policyholder decides to activate or deactivate cover, are legal businesses that are possible and fall within the scope of an insurance contract.

Some regulations seem to go as far as to imply that temporality linked to use is the way forward in the insurance sector. In this regard, in regulating the operation of aerial drones, insurance was required that “covers civil liability against third parties for damage that may arise during and because of the execution of the flight” (article 50 of Law 18/2014, of 15 October, on the adoption of urgent measures for growth, competitiveness and efficiency).

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In any case, on-demand products not only exist in our market, but are a clear expansionary trend, and in this trend, remarkable paradoxes can be found when considering in detail how the insurers and brokers who distribute such products have to operate. For example, no on-demand product insurer can circumvent the difficulty of handling pre-contractual and contractual documentation, which at least involves sending the contract to an email address provided by the policyholder - but often involves offering, if requested, a physical copy of the contract. Ideally, the policyholder would then proceed to accept the contract using an electronic signature, but not completing this step is not considered a barrier of entry for the validity of the contract – unfortunately, the same is not true for the defence of the insurer’s interests in the event of a dispute.

Until a legislative reform is carried out (probably in conjunction with the European Union, in the environment of Solvency II and the provisions on pre-contractual information and other insurance consumer protection measures), on-demand insurance is, as we say, possible in Spain, and an adequate understanding of the limits of the LCS and market practices, as well as the perspective of the supervisory authorities, allows for fine-tuning and minimising of the administrative burden to provide great immediacy. A compromise between complying with the necessary pre-contractual, contractual, post-contractual formalities and making sales “in one click” is feasible with a high degree of legal comfort, as well as in terms of customer experience. The configuration of the steps of the app, the website or the telephone contract are thus key tools to prove to the regulator that insurance consumers have the necessary guarantees and that their rights were respected and the information required by the regulation was clearly transmitted.

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The information contained in this Briefing is of a general nature and does not constitute legal advice. This Briefing was prepared on 15 September 2020 and Pérez-Llorca does not undertake any commitment whatsoever to update or review its content.

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