Pérez-Llorca

*Novedades Jurídicas de Seguros*
*Insurance Legal Update*

# Actualidad Iberoamericana de Seguros
# Ibero-American Insurance Update

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Q3

Queridos clientes, compañeros y amigos:

Como avanzábamos en el número anterior, tenemos el placer de anunciar que, a partir de esta edición, nuestra Actualidad Iberoamericana de Seguros cuenta ya con una sección dedicada al mercado peruano, elaborada por nuestros especialistas de Seguros y Reaseguros de la oficina de Lima. Con ello, Perú se incorpora plenamente a esta publicación conjunta, completando el mapa de jurisdicciones -Colombia, España, México, Portugal y ahora Perú- desde las que el equipo de Pérez-Llorca ofrece asesoramiento coordinado al Sector Asegurador y Reasegurador en algunas de las jurisdicciones más críticas de Iberoamérica.

Esta fuerza conjunta nos ha permitido recientemente evaluar multijurisdiccionalmente una cuestión que nos plantean cada vez con mayor frecuencia nuestros clientes: la irrupción de la IA en el Sector. La IA ya no es una tendencia incipiente, sino una realidad operativa que atraviesa toda la cadena de valor del seguro. Su uso se extiende de forma creciente a la tarificación, la suscripción, la gestión de siniestros y la detección de fraude, y trae consigo ganancias evidentes de eficiencia y de precisión en la evaluación del riesgo, pero también nuevos riesgos derivados de la limitada explicabilidad de algunos sistemas, que puede incrementar el riesgo de sesgo y de resultados discriminatorios.

En el ramo de vida, por ejemplo, la suscripción tradicional basada en cuestionarios médicos y análisis actuarial manual está siendo sustituida progresivamente por modelos de aprendizaje automático, tarificación dinámica apoyada en dispositivos y fuentes de datos alternativos que permiten emitir pólizas en cuestión de minutos, lo que reabre debates jurídicos clásicos -buena fe, mutualidad, no discriminación- bajo una óptica nueva. Frente a este fenómeno, los marcos regulatorios de nuestras jurisdicciones han optado por aproximaciones distintas.

En España y Portugal, como Estados miembros de la Unión Europea, resulta de aplicación directa el Reglamento (UE) 2024/1689 de Inteligencia Artificial, que clasifica como sistema de alto riesgo la IA destinada a la evaluación de riesgos y fijación de precios en el seguro de vida y de salud respecto de personas físicas, sometiéndolo a un régimen estricto de gobernanza, gestión de riesgos, documentación técnica y supervisión humana. Los proveedores y usuarios de estos sistemas de alto riesgo deben cumplir un conjunto exhaustivo de requisitos, mientras que el resto de los sistemas de IA en seguros, no prohibidos ni de alto riesgo, siguen sujetos a la legislación sectorial existente, con obligaciones adicionales limitadas de transparencia. En este sentido, EIOPA ha publicado una opinión que exige a aseguradoras y distribuidores evaluar el riesgo de cada sistema de IA y desarrollar medidas de gobernan-

Dear clients, colleagues and friends,

As we mentioned in the previous issue, we are pleased to announce that, from the publication of this issue onwards, our Ibero-American Insurance Update now features a section dedicated to the Peruvian market, which is compiled by our Insurance and Reinsurance team from Pérez-Llorca's Lima office. As a result, Peru is now fully integrated into this collaborative publication, which completes the map of jurisdictions — Colombia, Spain, Mexico, Portugal and now Peru — from which the Pérez-Llorca team provides coordinated advice to the insurance and reinsurance sector in some of the most critical jurisdictions in Ibero-America.

This combined strength has recently enabled us to conduct a multi-jurisdictional assessment of an issue that our clients are raising with us with increasing frequency: the emergence of AI in the sector. AI is no longer an emerging trend, but an operational reality that permeates the entire insurance value chain. Its use is increasingly spreading to pricing, underwriting, claims management and fraud detection, bringing with it clear gains in efficiency and accuracy in risk assessment, but also new risks arising from the limited explainability of some systems, which may increase the risk of bias and discriminatory outcomes.

In the life insurance sector, for example, traditional underwriting based on medical questionnaires and manual actuarial analysis is gradually being replaced by machine learning models and dynamic pricing supported by devices and alternative data sources, which allow policies to be issued in a matter of minutes. This brings classic legal debates about good faith, mutuality, and non-discrimination back into the spotlight from a new perspective. In response to this phenomenon, the regulatory frameworks in our respective jurisdictions have adopted different approaches.

In Spain and Portugal, as Member States of the European Union, the Artificial Intelligence Regulation (EU) 2024/1689 is directly applicable; it classifies AI intended for risk assessment and pricing in life and health insurance for natural persons as a high-risk system, subjecting it to a strict regime of governance, risk management, technical documentation and human oversight. Providers and users of these high-risk systems must comply with a comprehensive set of requirements, while other AI systems in the insurance sector – those that are neither prohibited nor high-risk – remain subject to existing sector-specific legislation, with limited additional transparency obligations. In this regard, EIOPA has published an opinion that requires insurers and distributors to assess the risk of each AI system and to develop proportionate governance measures in the areas of fairness and ethics,

za proporcionadas en materia de equidad y ética, gobernanza de datos, documentación, transparencia, supervisión humana y ciberseguridad.

En Latinoamérica, el panorama es más heterogéneo. Perú aprobó en septiembre de 2025 el Reglamento de su Ley N.º 31814, que sitúa al país entre los primeros de la región con un marco normativo integral de IA, articulado igualmente sobre una clasificación por niveles de riesgo, con usos prohibidos y usos de alto riesgo sujetos a condiciones estrictas, bajo la autoridad técnico-normativa de la Secretaría de Gobierno y Transformación Digital.

Colombia cuenta desde 2025 con el CONPES 4144, que define la Política Nacional de IA y cuya ruta contempla la adopción de un marco normativo; en esa línea, se tramita ante el Congreso un Proyecto de Ley de Inteligencia Artificial, inspirado expresamente en el Reglamento europeo y que adopta también un enfoque de clasificación por niveles de riesgo (prohibido, alto, limitado y bajo). Adicionalmente, Colombia se ha adherido, como país no miembro, a los Principios de la OCDE sobre Inteligencia Artificial, aunque todavía no cuenta con una norma sectorial específica para el uso de IA en seguros.

México, sin una ley general de IA, aborda la cuestión desde la regulación prudencial y de protección de datos ya existente: la Circular Única de Seguros y Fianzas de la CNSF exige que la tarificación y selección de riesgos respondan a bases actuariales objetivas y a una correlación técnica demostrable con la probabilidad del siniestro cuando se sustituyen las tablas tradicionales por modelos predictivos, en combinación con las exigencias de consentimiento y explicabilidad de la Ley Federal de Protección de Datos Personales en Posesión de los Particulares.

El resultado es un mosaico regulatorio en plena formación, con un denominador común -el enfoque basado en el riesgo- pero con distinto grado de madurez y de especificidad sectorial. Mientras Europa y Perú ya cuentan con normas de aplicación directa, Colombia avanza hacia un régimen general inspirado en el modelo europeo y México sigue apoyándose en su marco prudencial y de datos personales existente. Es precisamente en este terreno cambiante donde nuestros equipos de Seguros y Reaseguros pueden aportar mayor valor, ayudando a nuestros clientes a anticipar obligaciones, diseñar la gobernanza de sus sistemas y operar con seguridad jurídica en las distintas jurisdicciones.

data governance, documentation, transparency, human oversight and cybersecurity.

In Latin America, the picture is more varied. In September 2025, Peru approved the Regulation of Law No. 31814, which places the country among the first in the region to have a comprehensive regulatory framework for AI, structured around a risk-level classification system, with prohibited uses and high-risk uses subject to strict conditions, under the technical and regulatory authority of the Secretariat of Government and Digital Transformation.

Since 2025, Colombia's CONPES 4144 has defined the National AI Policy, with a roadmap that includes the adoption of a regulatory framework; in line with this, a Draft Artificial Intelligence Law is currently before Congress, expressly inspired by the European Regulation, which also adopts a risk-based classification approach (prohibited, high, limited and low). Furthermore, Colombia, as a non-member country, has acceded to the OECD Principles on Artificial Intelligence, although it does not yet have a specific sectoral regulation governing the use of AI in insurance.

Mexico, which lacks a general AI law, addresses the issue through existing prudential and data protection regulations: the CNSF's Sole Circular for Insurance and Surety Bonds requires that pricing and risk selection be based on objective actuarial grounds and a demonstrable technical correlation with the probability of a claim when traditional tables are replaced by predictive models, in conjunction with the consent and explainability requirements of the Federal Law on the Protection of Personal Data Held by Private Parties.

The result is a regulatory landscape that is still taking shape, with a common denominator — the risk-based approach — but with varying degrees of maturity and sector-specific detail: while Europe and Peru already have directly applicable regulations, Colombia is moving towards a general regime inspired by the European model, and Mexico continues to rely on its existing prudential and personal data framework. It is precisely in this ever-changing landscape that our Insurance and Reinsurance teams can add the most value, helping our clients to anticipate obligations, design the governance of their systems and operate with legal certainty across different jurisdictions.

Esperamos que los contenidos de este ejemplar os resulten de la mayor utilidad e interés, y aprovechamos para enviaros un afectuoso saludo en nombre de todo el equipo de Seguros y Reaseguros de Pérez-Llorca.

Un cordial saludo,

Equipo Pérez-Llorca

We hope you find the contents of this issue both useful and interesting, and we would like to take this opportunity to send you our warmest regards on behalf of the entire Insurance and Reinsurance team at Pérez-Llorca.

Kind regards,

The Pérez-Llorca Team

Co-heads de la práctica global de Seguros y Reaseguros de Pérez-Llorca



**Joaquín Ruiz Echauri**
Socio de Seguros y Reaseguros
Partner, Insurance and Reinsurance
jruiz-echauri@perezllorca.com
T: +34 607 711 962



**Rafael Corzo**
Socio de Banca, Seguros y Reaseguros
Partner, Banking, Insurance and Reinsurance
rafael.corzo@perezllorca.com
T: +51 1 625 1439

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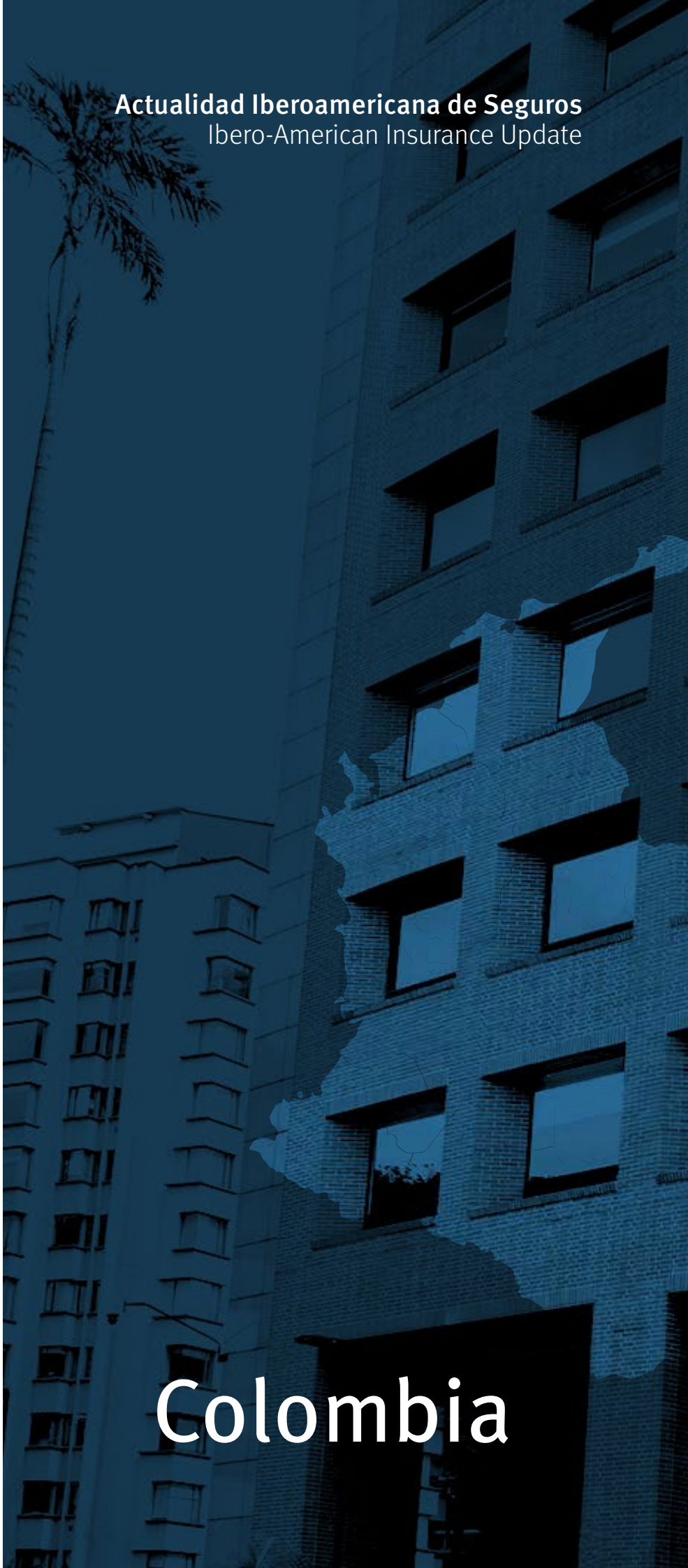
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COLOMBIA

**Actualidad Iberoamericana de Seguros**
Ibero-American Insurance Update



# Colombia

# Principales novedades normativas y de supervisión
Key regulatory and supervisory developments

## Regulación

### Decreto 1171 de 2026 de la Presidencia de la República

Mediante el Decreto 1171 del 11 de agosto de 2026, el Presidente de la República declaró la situación de desastre de carácter nacional para los departamentos de Antioquia, Caldas, Cauca, Chocó, Quindío, Cundinamarca, Risaralda, Huila, Valle del Cauca, Tolima, Putumayo y Norte de Santander, entre otros afectados, por un término de doce meses prorrogables. La declaratoria responde a un sismo de magnitud 7,4 Mw ocurrido el 10 de agosto de 2026 con epicentro en San José del Palmar (Chocó), considerado el más fuerte registrado en el país en 47 años y el segundo más fuerte en los últimos 100 años, que dejó afectaciones importantes en el país.

Para el sector asegurador, el decreto activa el régimen especial del Capítulo VII de la Ley 1523 de 2012, que habilita medidas de alivio financiero, protección a los usuarios del sistema financiero afectados y la posibilidad de suspender procesos ejecutivos. Además, se crea la Subcuenta SISMO 2026 dentro del Fondo Nacional de Gestión del Riesgo de Desastres, destinada a manejar de forma separada los recursos para la respuesta y recuperación del desastre, y se ordena al Ministerio de Hacienda garantizar recursos suficientes para que las entidades nacionales y territoriales adelanten las labores de respuesta y recuperación. Las aseguradoras que operen en las zonas afectadas, particularmente en ramos como terremoto, todo riesgo, incendio, vida y seguros de vivienda, deben anticipar un incremento en reclamaciones y revisar sus procesos de atención de siniestros a la luz de estas medidas excepcionales.

### Decreto 1261 de 2026 de la Presidencia de la República

Mediante el Decreto 1261 del 19 de agosto de 2026, el Presidente de la República declaró el Estado de Emergencia Económica, Social y Ecológica por grave calamidad pública en los departamentos de Antioquia, Caldas, Cauca, Chocó, Quindío, Cundinamarca, Risaralda, Huila, Valle del Cauca, Tolima, Putumayo, Norte de Santander, Bolívar, Nariño y Sucre, por el término de treinta días calendario. La declaratoria se fundamenta en el sismo de magnitud 7,4 Mw del 10 de agosto de 2026, cuyas afectaciones actualizadas ascienden a 314 personas fallecidas, 4.437 heridas, 262 desaparecidas, 30.664 viviendas destruidas y 136.946 averiadas, 302 edificios colapsados y afectaciones en 471 municipios de 15 departamentos, y en que los mecanismos ordinarios (incluida la declaratoria de desastre nacional del De-

## Regulation

### Decree 1171 of 2026 of the Presidency of the Republic

Through Decree 1171 of 11 August 2026, the President of the Republic declared a nationwide disaster situation for the departments of Antioquia, Caldas, Cauca, Chocó, Quindío, Cundinamarca, Risaralda, Huila, Valle del Cauca, Tolima, Putumayo, and Norte de Santander, among other affected areas, for a term of 12 months, extendable for an equal period. The declaration follows a 7.4 Mw earthquake that occurred on 10 August 2026, with its epicenter in San José del Palmar (Chocó), considered the strongest recorded in the country in 47 years and the second strongest in the last 100 years, which caused significant damage across the country.

For the insurance sector, the decree triggers the special regime under Chapter VII of Law 1523 of 2012, which enables financial relief measures, protection for affected users of the financial system, and the possibility of suspending enforcement proceedings. It also creates the SISMO 2026 Subaccount within the National Disaster Risk Management Fund, intended to keep funds for the disaster response and recovery separate from other resources, and instructs the Ministry of Finance to guarantee sufficient resources for national and territorial entities to carry out response and recovery activities. Insurers operating in the affected areas, particularly in earthquake, all-risk, fire, life, and homeowners' lines, should anticipate an increase in claims and review their claims-handling processes considering these exceptional measures.

### Decree 1261 of 2026 of the Presidency of the Republic

Through Decree 1261 of 19 August 2026, the President of the Republic declared a State of Economic, Social, and Ecological Emergency due to a severe public calamity in the departments of Antioquia, Caldas, Cauca, Chocó, Quindío, Cundinamarca, Risaralda, Huila, Valle del Cauca, Tolima, Putumayo, Norte de Santander, Bolívar, Nariño, and Sucre, for a term of 30 calendar days. The declaration is based on the 7.4 Mw earthquake of 10 August 2026, whose updated toll has risen to 314 fatalities, 4,437 injuries, 262 missing persons, 30,664 destroyed homes and 136,946 damaged homes, 302 collapsed buildings, and effects across 471 municipalities in 15 departments. It also rests on the finding that ordinary mechanisms (including the national disaster declaration under

creto 1171 de 2026) resultan insuficientes frente a la magnitud de las necesidades, dado que la subcuenta principal del Fondo Nacional de Gestión del Riesgo de Desastres solo cuenta con $47.265.782.863, mientras que las pérdidas económicas estimadas alcanzan al menos 30 billones de pesos, equivalentes a 1,5% del PIB.

Para el sector asegurador, el decreto es especialmente relevante porque habilita al gobierno a expedir decretos legislativos que, entre otras materias, contemplan medidas para facilitar el acceso a líneas de crédito de emergencia con condiciones especiales y la suspensión excepcional de sanciones por incumplimiento de obligaciones de protección al consumidor derivadas de fuerza mayor, así como ajustes temporales a la legislación financiera y del mercado de valores para facilitar el acceso de los damnificados a recursos propios y a financiación formal. El decreto también identifica expresamente que el sector bancario y asegurador ha sido afectado por la catástrofe, lo que anticipa un incremento significativo en reclamaciones en las zonas declaradas en emergencia. Se espera que en los próximos días el gobierno expida decretos legislativos sectoriales con medidas específicas que las aseguradoras deberán monitorear de cerca.

## Supervisión

### Carta Circular 042 de 2026 de la Superintendencia Financiera de Colombia

La Superintendencia Financiera de Colombia (en adelante "**SFC**") expidió la Carta Circular 042 del 8 de julio de 2026 para recordar a las aseguradoras sus obligaciones de información frente a los seguros con participación de utilidades, productos donde el tomador, asegurado o beneficiario tiene derecho a una parte de las utilidades generadas por la aseguradora según el desempeño técnico y financiero de la cartera. Aunque la circular no crea reglas nuevas, se fundamenta en la Ley 1328 de 2009 y en la Circular Básica Jurídica para exigir que la información sobre estos productos sea transparente, clara, veraz y verificable durante toda la relación contractual, no solo al momento de la oferta.

Decree 1171 of 2026) are insufficient given the scale of the needs, since the main subaccount of the National Disaster Risk Management Fund holds only COP$47,265,782,863, while estimated economic losses reach at least COP$30 trillion, equivalent to 1.5% of GDP.

For the insurance sector, the decree is particularly significant because it authorizes the government to issue legislative decrees that, among other matters, provide for measures to facilitate access to emergency credit lines with special conditions and the exceptional suspension of penalties for non-compliance with consumer protection and fair trade obligations arising from force majeure, as well as temporary adjustments to financial and securities market legislation to facilitate affected individuals' access to their own resources and to formal financing. The decree also expressly notes that the banking and insurance sector has been affected by the disaster, which anticipates a significant increase in claims in the areas under the emergency declaration. Sector-specific legislative decrees with concrete measures are expected in the coming days and insurers should monitor them closely.

## Supervision

### Circular Letter 042 of 2026 of the Financial Superintendency of Colombia

The Financial Superintendency of Colombia ("**SFC**") issued Circular Letter 042 on 8 July 2026, to remind insurers of their disclosure obligations regarding profit-sharing insurance policies, products in which the policyholder, insured, or beneficiary is entitled to a share of the profits generated by the insurer based on the technical and financial performance of the portfolio. Although the circular does not establish new rules, it draws on Law 1328 of 2009 and the Basic Legal Circular to require that information regarding these products be transparent, clear, accurate, and verifiable throughout the entire contractual relationship, not just at the time of the offer.



Concretamente, la SFC precisa que las aseguradoras deben informar sobre seis elementos: el cálculo de la participación (metodología y variables), su periodicidad, el resultado efectivo en cada periodo, el plazo para el pago, la forma de pago y los canales disponibles para exigir su cumplimiento. Aunque la circular no establece plazos de adecuación ni sanciones propias, su expedición señala una supervisión activa por parte de la Delegatura para Seguros, por lo que las aseguradoras deberían revisar sus condicionados, comunicaciones y procesos de atención al cliente para garantizar el cumplimiento de estos deberes de información.

Specifically, the SFC stipulates that insurers must disclose information on six elements: the calculation of the profit-sharing amount (methodology and variables), its frequency, the actual result for each period, the payment deadline, the payment method, and the channels available to enforce compliance. Although the circular does not establish compliance deadlines or specific penalties, its issuance signals active oversight by the Insurance Division. Insurers should therefore review their policy terms, communications, and customer service processes to ensure compliance with these disclosure requirements.

## Carta Circular 0054 de 2026 de la Superintendencia Financiera de Colombia

La SFC recuerda la obligación de aplicar el procedimiento de "Quejas Exprés" previsto en el literal j), numeral 8.6 del Capítulo II, Título IV, Parte I de la Circular Básica Jurídica, con ocasión del evento sísmico de considerable magnitud ocurrido el 10 de agosto de 2026, que afectó el territorio nacional y sus condiciones de vida y actividad económica, y frente al cual el Gobierno Nacional declaró la situación de desastre de carácter nacional mediante el Decreto 1171 del 11 de agosto de 2026, con fundamento en la Ley 1523 de 2012.

En consecuencia, las entidades vigiladas deberán clasificar y tramitar como "Quejas Exprés" las inconformidades radicadas a partir de la fecha que se refieran a hechos relacionados con el sismo y se originen en alguno de los doce departamentos señalados en el Decreto 1171 de 2026, o que sean presentadas por consumidores financieros domiciliados en Chocó, Risaralda, Valle del Cauca, Caldas y Quindío, sin que ello implique cargas adicionales para el consumidor ni traslado de los tiempos de gestión entre entidades. Cuando la atención involucre a dos entidades vigiladas, estas deberán dar una respuesta directa, integral y de fondo, sin trasladar al consumidor la carga de determinar la entidad competente.

## Circular Letter 0054 of 2026 of the Financial Superintendency of Colombia

The SFC recalled the obligation to apply the "Express Complaints" procedure set forth in subparagraph j), numeral 8.6 of Chapter II, Title IV, Part I of the Basic Legal Circular, on the occasion of the significant seismic event that occurred on 10 August 2026, which affected the national territory and living and economic conditions, and in respect of which the National Government declared a national disaster situation by means of Decree 1171 of 11 August 2026, on the basis of Law 1523 of 2012.

Accordingly, supervised entities must classify and process as "Express Complaints" any complaints filed from that date onward that relate to facts connected with the earthquake and that originate in any of the 12 departments identified in Decree 1171 of 2026, or that are filed by financial consumers domiciled in Chocó, Risaralda, Valle del Cauca, Caldas and Quindío, without this entailing additional burdens for the consumer or a shifting of processing times between entities. Where the matter involves two supervised entities, they must provide a direct, comprehensive and substantive response, without shifting onto the consumer the burden of determining the competent entity.



# Principales novedades jurisprudenciales
Main developments in case law

## Seguro electoral

### ▸ No hay póliza sin pago

**El Consejo de Estado confirma la legalidad del rechazo de la inscripción de una lista al Senado por parte de un Grupo Significativo de Ciudadanos, al no haberse acreditado el pago de la prima de la póliza de seriedad de la candidatura**

*Sentencia del Consejo de Estado, Sala de lo Contencioso Administrativo, Sección Quinta. Rad. 85001-23-33-000-2022-00052-01. 18 de junio de 2026. Magistrado Ponente: Luis Alberto Álvarez Parra*

El Consejo de Estado resolvió el recurso de apelación interpuesto contra la sentencia de primera instancia, que negó las pretensiones de nulidad y restablecimiento del derecho formuladas por un grupo significativo de ciudadanos contra la Registraduría Nacional del Estado Civil (en adelante "**RNEC**"), el Consejo Nacional Electoral (en adelante "**CNE**") y la compañía de seguros. El litigio se originó cuando el comité inscriptor de dicho grupo, tras certificar 53.921 firmas válidas para postular una lista al Senado en el período 2022-2026, gestionó ante la aseguradora la póliza de garantía y seriedad de la candidatura exigida por no contar con aval de un partido con personería jurídica. La aseguradora expidió únicamente una referencia de pago por valor de COP $131.000.000, fijando como fecha límite el 7 de diciembre de 2021, sin que dicha suma fuera cancelada, por lo que la RNEC rechazó la inscripción el 14 de diciembre de 2021 al no acreditarse el requisito de la póliza.

Frente a lo anterior, la Sala descartó el error probatorio alegado por la parte actora, al concluir que el contrato de seguro nunca llegó a perfeccionarse, pues conforme al artículo 1046 del Código de Comercio, dicho contrato se prueba por escrito o por confesión, y al expediente no se allegó la póliza suscrita ni se acreditó el pago de la prima dentro del plazo fijado. Precisó que, de acuerdo con el artículo 1066 del Código de Comercio, el tomador está obligado al pago de la prima, y que en el seguro de seriedad electoral pueden distinguirse el tomador o candidato sin aval, el riesgo asegurable fijado por el CNE, el siniestro configurado por la falta de votación mínima y el beneficiario, que es la organización electoral. Además, la Corporación señaló que la regla según la cual las pólizas no expiran por falta de pago de la prima solo opera cuando las partes han pactado su amortización o pago diferido, supuesto que no se configuró en este caso, en el que se exigió un pago único con fecha exacta de cancelación.

## Electoral Insurance

### ▸ No premium, no policy

The Council of State confirms the legality of the rejection of the registration of a list of candidates for the Senate by a Significant Citizens' Group, on the grounds that payment of the premium for the seriousness-of-candidacy policy had not been evidenced

*Ruling of the Council of State, Administrative Litigation Chamber, Fifth Section. Case No. 85001-23-33-000-2022-00052-01. 18 June 2026. Presiding Judge: Luis Alberto Álvarez Parra*

The Council of State decided the appeal filed against the first-instance judgment, which denied the claims for annulment and restoration of rights brought by a Significant Citizens' Group against the National Civil Registry ("**RNEC**"), the National Electoral Council ("**CNE**") and the insurance company. The dispute arose when the group's registering committee certified 53,921 valid signatures to nominate a list of candidates for the Senate for the 2022-2026 term, arranged with the insurer for the guarantee and seriousness-of-candidacy policy required due to the lack of endorsement by a party with legal standing. The insurer issued only a payment reference for COP$131,000,000, setting 7 December 2021 as the deadline, and that amount was never paid, such that the RNEC rejected the registration on 14 December 2021 on the grounds that the policy requirement had not been evidenced.

In light of the foregoing, the Chamber dismissed the evidentiary error alleged by the claimant, concluding that the insurance contract was never perfected, since under Article 1046 of the Commercial Code such a contract is proven in writing or by confession, and the case file did not include the executed policy nor evidence of payment of the premium within the stipulated term. It clarified that, pursuant to Article 1066 of the Commercial Code, the policyholder is obliged to pay the premium, and that in seriousness-of-candidacy insurance a distinction may be drawn between the policyholder or unendorsed candidate, the insurable risk set by the CNE, the loss event constituted by the failure to obtain the minimum vote, and the beneficiary, which is the electoral organization. The Court further noted that the rule under which policies do not lapse for non-payment of the premium applies only where the parties have agreed to installment or deferred payment, which was not the case here, where a single payment with an exact due date was required.



Respecto de la falsa motivación, la Sala consideró que los distintos actos administrativos expedidos el mismo día debían valorarse como una decisión integrada, que en conjunto sustentó de forma suficiente el rechazo de la inscripción por ausencia de la póliza. Sobre la falta de indicación de los recursos procedentes, indicó que dicha omisión no afecta la legalidad del acto, pues el artículo 161 del Código de Procedimiento Administrativo y de lo Contencioso Administrativo (en adelante "**CPACA**") exime al administrado de agotar la vía gubernativa cuando la autoridad no informó los recursos disponibles, y en todo caso el demandante interpuso los recursos que estimó pertinentes. Finalmente, descartó la vulneración del control de convencionalidad invocada respecto de los artículos 1.1, 23 y 29 de la Convención Americana sobre Derechos Humanos, al considerar que la exigencia de la póliza de seriedad constituye una restricción legítima y proporcional de los derechos políticos, avalada previamente por la Corte Constitucional en su jurisprudencia. En consecuencia, el Consejo de Estado confirmó la sentencia de primera instancia que negó las pretensiones de la demanda.

As to the alleged misstatement of grounds, the Chamber considered that the various administrative acts issued on the same date had to be assessed as an integrated decision, which sufficiently supported the rejection of the registration for lack of the policy. Regarding the failure to state the available remedies, it noted that such omission does not affect the legality of the act, since Article 161 of the Code of Administrative Procedure and Contentious-Administrative Matters ("**CPACA**") exempts the administrated party from exhausting administrative remedies where the authority failed to inform of the remedies available, and that in any event the claimant filed the remedies it deemed appropriate. Finally, it dismissed the alleged breach of conventionality control invoked with respect to Articles 1.1, 23 and 29 of the American Convention on Human Rights, considering that the requirement of the seriousness policy constitutes a legitimate and proportionate restriction on political rights, previously upheld by the Constitutional Court in its case law. Accordingly, the Council of State confirmed the first-instance judgment denying the claims.

## Seguros de responsabilidad civil

### ▸ Quien cobra el seguro, debe avisar del cambio

**La Corte Suprema de Justicia confirma la sentencia que negó la tutela interpuesta por una cooperativa de transportadores contra la providencia que la declaró contractualmente responsable**

*Sentencia de la Corte Suprema de Justicia, Sala de Casación Laboral. Rad. 11001-02-03-000-2026-01432-01. 06 de mayo de 2026. Magistrado Ponente: Juan Carlos Espeleta Sánchez*

La Corte Suprema de Justicia (en adelante "**CSJ**"), en su Sala de Casación Laboral, resolvió la impugnación formulada por la cooperativa de transportadores, la demandada, contra la sentencia emitida por la misma CSJ, en su Sala de Casación Civil, la cual, negó el amparo constitucional solicitado contra la Sala Civil Familia del Tribunal Superior de Bucaramanga, dentro de un proceso de responsabilidad civil contractual iniciado por el propietario de un semirremolque destruido por un incendio ocasionado

## Civil Liability Insurance

### ▸ Whoever claims under the insurance must give notice of the change

The Supreme Court of Justice confirms the judgment denying the tutela filed by a transporters' cooperative against the ruling that found it contractually liable

*Ruling of the Supreme Court of Justice, Labor Cassation Chamber. Case No. 11001-02-03-000-2026-01432-01. 6 May 2026. Presiding Judge: Juan Carlos Espeleta Sánchez*

The Supreme Court of Justice ("**CSJ**"), through its Labor Cassation Chamber, resolved the challenge filed by the transporters' cooperative, the defendant, against the judgment issued by the same CSJ, through its Civil Cassation Chamber, which denied the tutela sought against the Civil-Family Chamber of the Superior Court of Bucaramanga, within contractual civil liability proceedings initiated by the owner of a semi-trailer destroyed by a fire caused during fuel unloading operations.

durante las labores de descargue de combustible. El Tribunal, al resolver la apelación, revocó la sentencia de primera instancia que había negado las pretensiones y declaró a la demandada civil y contractualmente responsable por haber omitido informar a la aseguradora el cambio de propietario del tráiler, condenándola de forma subsidiaria al pago por más de COP $70.000.000 por concepto de daño emergente, monto correspondiente al valor asegurado menos el deducible de la póliza colectiva, exigible solo ante la imposibilidad de cobro al otro demandado.

A su vez la cooperativa de transportadores alegó en la impugnación defectos sustantivos y fácticos, al considerar que el Tribunal omitió examinar los efectos relativos a que el transporte se ejecutara sin la documentación habilitante y le impuso las consecuencias de la objeción de la reclamación por parte de la aseguradora. Por su parte, la Corte constató que el Tribunal fundó su decisión en que la demandada había aceptado, desde la contestación, que el vehículo estaba vinculado a la cooperativa y que se le descontaban mensualmente sumas por la prima del seguro colectivo, lo que constituía confesión sobre la existencia de la póliza.

Así mismo, con fundamento en el artículo 1039 del Código de Comercio, el Tribunal señaló que el seguro puede celebrarse por cuenta de un tercero, de modo que el tomador asume las obligaciones y el tercero beneficiario el derecho a la prestación asegurada, concluyendo que la demandada tenía pleno conocimiento del cambio de propietario. A su vez, calificó de injustificado mantener asegurado a quien ya no tenía relación jurídica con el bien, lo que además de incumplir las obligaciones del tomador (artículo 1107 del Código de Comercio) indujo al demandante a confiar legítimamente que estaba amparado, precisando que dicha omisión causó el rechazo de la reclamación ante la aseguradora, sin que ello se desvirtuara por el hecho de que el demandante también hubiera incumplido su deber de informar el cambio o usado un documento del anterior propietario.

Respecto del conductor demandado, el Tribunal determinó que las labores de descargue del hidrocarburo no eran competencia del transportista sino del propietario de la carga y de la estación de servicio (Decreto 1079 de 2015), concluyendo que el siniestro ocurrió bajo custodia y control de los operarios de dicha estación, sin que se acreditara la diligencia que le correspondía demostrar (artículo 1604 del Código Civil). Por lo anterior, la Corte concluyó que la decisión del Tribunal no resultaba arbitraria ni irrazonable, pues se fundamentó en la realidad probatoria y en la normativa aplicable al contrato de transporte y de seguro, y que los reparos de la accionante pretendían reabrir un debate probatorio ya resuelto por el juez natural, lo que excede el ámbito de la tutela contra providencias judiciales. En consecuencia, confirmó la sentencia que negó el amparo solicitado.

The Superior Court, on deciding the appeal, reversed the first-instance judgment that had denied the claims and declared the defendant civilly and contractually liable for having failed to notify the insurer of the change of ownership of the trailer, ordering it, on a subsidiary basis, to pay more than COP$70,000,000 for actual damages, an amount corresponding to the insured value less the deductible of the group policy, payable only where recovery from the other defendant proved impossible.

In its challenge, the transporters' cooperative alleged substantive and factual defects, contending that the Superior Court had failed to examine the effects of the transport having been carried out without the required authorizing documentation, and had imposed on it the consequences of the insurer's objection to the claim. The Supreme Court found that the Superior Court based its decision on the fact that the defendant had admitted, from its answer to the complaint onward, that the vehicle was affiliated with the cooperative and that monthly amounts were deducted for the group insurance premium, which constituted an admission as to the existence of the policy.

Likewise, on the basis of Article 1039 of the Commercial Code, the Superior Court held that insurance may be taken out for the account of a third party, such that the policyholder assumes the obligations and the third-party beneficiary the right to the insured benefit, concluding that the defendant had full knowledge of the change of ownership. It further characterized as unjustified the continued insuring of a party that no longer had any legal relationship with the asset, which, in addition to breaching the policyholder's obligations (Article 1107 of the Commercial Code), led the claimant to legitimately believe that it was covered, noting that such omission caused the rejection of the claim before the insurer, without this being undermined by the fact that the claimant had also failed to report the change or had used a document belonging to the previous owner.

With respect to the co-defendant driver, the Superior Court determined that the hydrocarbon unloading operations were not the transporter's responsibility but that of the cargo owner and the service station (Decree 1079 of 2015), concluding that the accident occurred under the custody and control of the station's operators, without the diligence it was required to demonstrate having been evidenced (Article 1604 of the Civil Code). On this basis, the Supreme Court concluded that the Superior Court's decision was neither arbitrary nor unreasonable, since it was grounded in the evidentiary record and in the rules applicable to the transport and insurance contracts, and that the objections raised by the claimant sought to reopen an evidentiary debate already resolved by the competent judge, which exceeds the scope of tutela against judicial rulings. Accordingly, it confirmed the judgment denying the relief sought.

## El reloj de la aseguradora no corre igual que el de la víctima

**La Corte Suprema de Justicia concede la tutela interpuesta por la aseguradora y deja sin efectos la sentencia que declaró infundada la excepción de prescripción frente al llamamiento en garantía**

*Sentencia de la Corte Suprema de Justicia, Sala de Casación Civil, Agraria y Rural. Rad. 11001-02-03-000-2026-02020-00. 22 de mayo de 2026. Magistrado Ponente: Juan Carlos Sosa Londoño*

La CSJ resolvió la acción de tutela promovida por la aseguradora contra la Sala Civil del Tribunal Superior del Distrito Judicial de Medellín, dentro de un proceso declarativo de responsabilidad civil médica en el que una sociedad médica, amparada por un contrato de seguro de responsabilidad civil extracontractual y profesional para clínicas y hospitales, realizó un llamamiento en garantía contra la aseguradora. Esta se opuso alegando que la acción se encontraba prescrita conforme a los artículos 1081 y 1131 del Código de Comercio, al considerar que el término de 2 años corría desde el 28 de noviembre de 2013, fecha de la solicitud de conciliación prejudicial formulada por la víctima, mientras que el llamamiento en garantía solo se presentó el 25 de julio de 2022.

El Tribunal Superior de Medellín, al resolver la apelación, había desestimado la excepción de prescripción al considerar que la reclamación extrajudicial únicamente interrumpe el término si el asegurado, dentro de los 2 años siguientes, presenta también la demanda con pretensión resarcitoria y llama en garantía a su aseguradora. De lo contrario, el término solo empieza a correr desde la petición judicial que la víctima formule contra el asegurado. Bajo ese entendimiento, precisó que la reclamación extrajudicial de 2013 no le dio al asegurado la posibilidad real de llamar en garantía a la aseguradora, por lo que el término prescriptivo debía contarse desde la presentación de la demanda el 27 de abril de 2022, resultando oportuno el llamamiento realizado el 25 de julio de ese año.

La Corte encontró que el Tribunal incurrió en un defecto sustantivo al otorgar a los artículos 1081 y 1131 del Código de Comercio un alcance distinto al fijado por el legislador y su propia jurisprudencia. Precisó que dichas normas consagran dos subreglas diferenciadas: (i) para la víctima frente a la aseguradora, el término de prescripción corre desde la ocurrencia del hecho externo imputable al asegurado; mientras que (ii) para el asegurado, el término de prescripción frente a la aseguradora corre desde que la víctima le formula reclamación judicial o extrajudicial. Solo desde ese momento surge para el asegurado la posibilidad real de reclamar ante la aseguradora, por lo que resulta improcedente computar dicho término desde una fecha anterior.

## The insurer's clock does not run the same as the victim's

The Supreme Court of Justice grants the tutela filed by the insurer and sets aside the judgment that had rejected the limitation defense raised against the third-party notice for indemnity

*Decision of the Supreme Court of Justice, Civil, Agrarian and Rural Cassation Chamber. Case No. 11001-02-03-000-2026-02020-00. 22 May 2026. Presiding Judge: Juan Carlos Sosa Londoño*

The CSJ decided the tutela action brought by the insurer against the Civil Chamber of the Superior Court of the Judicial District of Medellín, within declaratory proceedings for medical civil liability in which a medical corporation, covered by an extra-contractual and professional civil liability insurance contract for clinics and hospitals, filed a third-party notice for indemnity against the insurer. The insurer objected, arguing that the action was time-barred under Articles 1081 and 1131 of the Commercial Code, considering that the two-year term ran from 28 November 2013, the date of the victim's request for pre-litigation conciliation, whereas the third-party notice was only filed on 25 July 2022.

The Superior Court of Medellín, on deciding the appeal, had rejected the limitation defense, considering that an extrajudicial claim only interrupts the term if the insured, within the following two years, also files the claim seeking damages and issues the third-party notice against its insurer. Otherwise, the term only begins to run from the judicial claim brought by the victim against the insured. On that basis, it held that the 2013 extrajudicial claim did not give the insured a genuine opportunity to issue the third-party notice against the insurer, such that the limitation term had to be counted from the filing of the claim on 27 April 2022, making the third-party notice filed on 25 July of that year timely.

The Supreme Court found that the Superior Court had incurred a substantive defect by giving Articles 1081 and 1131 of the Commercial Code a scope different from that established by the legislature and by its own case law. It specified that these provisions establish two differentiated sub-rules: (i) for the victim vis-à-vis the insurer, the limitations period runs from the occurrence of the external event attributable to the insured; whereas (ii) for the insured, the limitations period vis-à-vis the insurer runs from the moment the victim files a judicial or extrajudicial claim against it. Only from that moment does the insured have a real possibility of making a claim against the insurer, such that it is improper to compute that period from an earlier date.

Adicionalmente, la Corte precisó que el artículo 1131 del Código de Comercio no exige una declaratoria previa de responsabilidad del asegurado como condición para que corra el término de prescripción de su acción frente a la aseguradora, bastando con que la víctima le haya formulado la reclamación judicial o extrajudicial. Asimismo, señaló que el artículo 1131 del Código de Comercio debe interpretarse en armonía con el artículo 1081 del Código de Comercio, de forma que este último no desplaza el criterio especial de cómputo previsto para el seguro de responsabilidad civil, sino que lo complementa en los demás aspectos del fenómeno prescriptivo. Por lo anterior, la Corte concedió la tutela del derecho al debido proceso invocado por la aseguradora, dejó sin efectos la sentencia de segunda instancia y ordenó al Tribunal proferir un nuevo fallo que corrija los yerros advertidos.

Additionally, the Court specified that Article 1131 of the Commercial Code does not require a prior declaration of liability of the insured as a condition for the limitations period of its action against the insurer to run, it being sufficient that the victim has filed the judicial or extrajudicial claim against it. Likewise, it noted that Article 1131 of the Commercial Code must be interpreted in harmony with Article 1081 of the Commercial Code, such that the latter does not displace the special standard for computing the period established for civil liability insurance, but rather complements it with respect to the other aspects of the limitations phenomenon. On this basis, the Supreme Court granted the relief sought by the insurer for breach of due process, set aside the second-instance judgment, and ordered the Superior Court to issue a new ruling correcting the errors identified.

## ▸ El exceso también se actualiza

**La Corte Suprema de Justicia confirma la sentencia que negó la tutela contra la providencia complementaria que ordenó a una aseguradora pagar, debidamente indexado, el valor asegurado del amparo de exceso por vehículo, además del límite básico de la póliza de responsabilidad civil extracontractual**

*Sentencia de la Corte Suprema de Justicia, Sala de Casación Laboral. Rad. 11001-02-03-000-2025-05837-01. 03 de junio de 2026. Magistrado Ponente: Omar Ángel Mejía Amador*

La CSJ resolvió la impugnación interpuesta por la aseguradora contra la sentencia que negó la tutela promovida contra la Sala Civil del Tribunal Superior de Medellín, dentro de un proceso de responsabilidad civil extracontractual originado por el fallecimiento de una persona, en el que el Juzgado 15 Civil del Circuito de Medellín declaró la responsabilidad con una concurrencia de culpas del 50%. Al resolver la apelación, el Tribunal modificó las condenas y ordenó a la aseguradora a pagar el límite del valor asegurado de 120 SMLMV. Posteriormente, mediante providencia complementaria, adicionó la decisión ordenando también el pago del valor asegurado del amparo de exceso por vehículo, debidamente indexado, por la suma superior de COP $160.000.000.

## ▸ Excess coverage is also subject to indexation

The Supreme Court of Justice confirms the judgment denying the tutela against the supplementary ruling ordering an insurer to pay, duly indexed, the insured amount under the per-vehicle excess coverage, in addition to the basic limit of the extra-contractual civil liability policy

*Decision of the Supreme Court of Justice, Labor Cassation Chamber. Case No. 11001-02-03-000-2025-05837-01. 3 June 2026. Presiding Judge: Omar Ángel Mejía Amador*

The CSJ decided the challenge brought by the insurer against the judgment denying the tutela sought against the Civil Chamber of the Superior Court of Medellín, within extra-contractual civil liability proceedings arising from a person's death, in which the 15th Civil Circuit Court of Medellín found liability with a 50% concurrence of fault. On deciding the appeal, the Superior Court modified the awards and ordered the insurer to pay the insured limit of 120 SMLMV (statutory monthly minimum wages). It subsequently issued a supplementary ruling adding an order for payment of the insured amount under the per-vehicle excess coverage, duly indexed, in the higher sum of COP$160,000,000.



Por su parte, la aseguradora alegó que la indexación desconocía que la póliza no contemplaba ninguna condición sobre ajuste monetario, que la prima se tasó en 2016 bajo el principio de equivalencia técnica considerando exclusivamente el valor nominal de COP $100 millones de pesos para el amparo de exceso por vehículo, y que dicha condena le imponía una carga no pactada que alteraba el equilibrio contractual, por lo que solicitó dejar sin efecto la sentencia complementaria para que el Tribunal profiriera una nueva decisión negando la indexación.

Frente a lo anterior, la Corte avizoró que el Tribunal, al resolver la adición, encontró procedente la complementación por la falta de pronunciamiento sobre el valor en exceso que cubría la póliza, verificando que en el expediente obraba el documento de la cobertura de COP $100.000.000 en exceso por vehículo, cuya existencia y alcance fueron reconocidos expresamente por la representante legal de la aseguradora en su interrogatorio de parte, quien explicó que dicho monto se activa una vez se agota el valor asegurado pactado en el amparo básico. El Tribunal determinó que, como la condena por concepto de resarcimiento a las víctimas ascendía a un monto superior a COP $900.000.000, superando ampliamente el amparo básico, se activaba el respaldo adicional de la cobertura en exceso, por lo que procedió a actualizar dicho valor conforme al IPC inicial y final, fijándolo en alrededor de COP $160.000.000, sin afectar los demás puntos resueltos en la sentencia.

La Corte concluyó que la decisión sobre la indexación, compartida o no en sus argumentos, no configuraba una violación constitucional, al ser producto de una interpretación jurídica y una valoración probatoria ajustadas a las normas aplicables, sin que fuera procedente reabrir por vía de tutela una discusión jurídica ya resuelta razonablemente por el juez natural. En consecuencia, la Corte confirmó el fallo que negó el amparo solicitado por la aseguradora.

The insurer argued that the indexation disregarded the fact that the policy contained no provision on monetary adjustment, that the premium had been priced in 2016 under the principle of technical equivalence considering exclusively the nominal value of COP$100,000,000 for the per-vehicle excess coverage, and that such an award imposed on it an unagreed burden that upset the contractual balance, requesting that the supplementary judgment be set aside so that the Superior Court could issue a new decision denying the indexation.

In response, the Supreme Court noted that the Superior Court, in deciding the addition, found the supplementation appropriate due to the lack of a ruling on the excess amount covered by the policy, verifying that the case file contained the document evidencing the COP$100,000,000 per-vehicle excess coverage, the existence and scope of which were expressly acknowledged by the insurer's legal representative in her examination, who explained that such amount is triggered once the insured amount agreed under the basic coverage is exhausted. The Superior Court determined that, since the award for damages to the victims exceeded COP$900,000,000, well above the basic coverage, the additional backing of the excess coverage was triggered, and it therefore updated that value according to the initial and final CPI, setting it at approximately COP$160,000,000, without affecting the other matters resolved in the judgment.

The Supreme Court concluded that the decision on indexation, whether or not one agreed with its reasoning, did not amount to a constitutional violation, being the product of a legal interpretation and an evidentiary assessment consistent with the applicable rules, such that it was not appropriate to reopen, by way of tutela, a legal dispute already reasonably resolved by the competent judge. Accordingly, the Supreme Court confirmed the ruling denying the relief sought by the insurer.

## ▸ El límite de la póliza se lee completo, no a medias

**La Corte Suprema de Justicia confirma la sentencia que concedió la tutela interpuesta por la aseguradora y dejó sin efectos la providencia que le impuso el pago del monto global de la póliza**

*Sentencia de la Corte Suprema de Justicia, Sala de Casación Laboral. Rad. 11001-02-03-000-2026-01685-01. 17 de junio de 2026. Magistrado Ponente: Juan Carlos Espeleta Sánchez*

La CSJ resolvió la impugnación formulada por los demandantes de un proceso declarativo de responsabilidad civil extracontractual contra la sentencia que concedió la tutela promovida por la aseguradora contra la Sala Civil - Familia - Laboral

## ▸ The policy limit is read in full, not in part

The Supreme Court of Justice confirms the judgment granting the tutela filed by the insurer and setting aside the ruling that ordered it to pay the aggregate amount of the policy

*Judgment of the Supreme Court of Justice, Labor Cassation Chamber. Case No. 11001-02-03-000-2026-01685-01. 17 June 2026. Presiding Judge: Juan Carlos Espeleta Sánchez*

The CSJ decided the challenge brought by the claimants in extra-contractual civil liability declaratory proceedings against the judgment granting the tutela that the insurer had sought from the Civil-Family-Labor Chamber of the Superior Court of

del Tribunal Superior de Yopal. El proceso se originó por el fallecimiento de una pasajera en un accidente de tránsito, en el que el Juzgado Primero Promiscuo del Circuito de Monterrey condenó a la aseguradora a responder por la totalidad de los montos resarcitorios, y el Tribunal, al resolver la apelación, confirmó dicha condena.

La aseguradora alegó que las autoridades judiciales desconocieron el tenor literal de la póliza, extendiendo la cobertura a 300 SMMLV, cuando la carátula especificaba un valor asegurado de 60 SMMLV por puesto o persona, monto que constituía el límite máximo de su responsabilidad frente a la fallecida por tratarse de una pasajera. Por su parte, el Tribunal había considerado que, si bien la póliza contemplaba 60 SMMLV por puesto o persona, en el proceso nada se había dicho sobre la afectación de la póliza por parte de terceros con interés u otros pasajeros del vehículo, por lo que concluyó que el límite aplicable era el valor total asegurado de 300 SMMLV, sin que la descripción del riesgo por puesto pudiera entenderse como un límite al monto total.

Frente a lo anterior, la Corte encontró que el Tribunal incurrió en un defecto fáctico, al no efectuar un análisis integral del material probatorio, pues la carátula y el clausulado de la póliza establecían expresamente que la suma asegurada individual delimitaba la máxima responsabilidad de la aseguradora por cada pasajero (60 SMMLV), mientras que el límite máximo de responsabilidad total equivalía a dicha suma multiplicada por el número de pasajeros según la tarjeta de operación del vehículo, sin que el Tribunal hubiera analizado debidamente estas cláusulas para determinar el monto máximo de cobertura aplicable al caso. Adicionalmente, la Corte determinó que se configuró un defecto sustantivo por desconocimiento de los artículos 1079 y 1089 del Código de Comercio, según los cuales el asegurador no está obligado a responder sino hasta la concurrencia de la suma asegurada, y de los artículos 1621 y 1622 del Código Civil sobre interpretación de los contratos, normas que el Tribunal debió aplicar para determinar si correspondía la cobertura de 60 SMMLV por persona o la cobertura plena de 300 SMMLV, conforme a lo efectivamente pactado en la póliza.

En consecuencia, la Corte concluyó que el Tribunal Superior de Yopal incurrió en los defectos fácticos y sustantivos alegados, por lo que confirmó la sentencia de primera instancia que concedió el amparo del debido proceso a la aseguradora, dejó sin efectos la providencia de segunda instancia y ordenó proferir una nueva decisión.

Yopal. The proceedings arose from the death of a passenger in a traffic accident, in which the First Promiscuous Circuit Court of Monterrey ordered the insurer to answer for the full amount of the damages, and the Superior Court, on deciding the appeal, confirmed that order.

The insurer argued that the judicial authorities had disregarded the literal terms of the policy by extending coverage to 300 SMLMV, when the policy's cover page specified an insured amount of 60 SMLMV per seat or person, an amount constituting the maximum limit of its liability toward the deceased as a passenger. The Superior Court had considered that, although the policy provided for 60 SMLMV per seat or person, nothing in the proceedings addressed the effect of the policy on third parties with an interest or other passengers of the vehicle, and it therefore concluded that the applicable limit was the total insured amount of 300 SMLMV, such that the per-seat description of the risk could not be understood as a limit on the total amount.

In response, the Supreme Court found that the Superior Court had incurred a factual defect by failing to carry out a comprehensive assessment of the evidence, since the policy's cover page and terms expressly established that the individual insured sum defined the insurer's maximum liability per passenger (60 SMLMV), while the maximum total liability limit was equivalent to that sum multiplied by the number of passengers according to the vehicle's operating card, without the Superior Court having properly analyzed these clauses to determine the maximum coverage amount applicable to the case. In addition, the Supreme Court determined that a substantive defect arose from disregard of Articles 1079 and 1089 of the Commercial Code, under which the insurer is not obliged to respond beyond the insured sum, and of Articles 1621 and 1622 of the Civil Code on contract interpretation, rules that the Superior Court should have applied to determine whether the applicable coverage was 60 SMLMV per person or full coverage of 300 SMLMV, in accordance with what was actually agreed in the policy.

Accordingly, the Supreme Court concluded that the Superior Court of Yopal had incurred the alleged factual and substantive defects, and it therefore confirmed the first-instance judgment granting due process relief to the insurer, set aside the second-instance ruling, and ordered that a new decision be issued.



## El riesgo se puede compartir, pero no se diluye

**El Tribunal Superior de Buga modifica la sentencia que declaró la responsabilidad civil extracontractual de una empresa de energía, al encontrar probada la concurrencia de causas con la conducta imprudente de las víctimas**

*Sentencia del Tribunal Superior de Buga, Sala Segunda de Decisión Civil Familia. Rad. 76-147-31-03-002-2020-00064-02. 23 de junio de 2026. Magistrado Ponente: Juan Manuel Pinzón Aguilar*

El Tribunal resolvió los recursos de apelación interpuestos por la compañía de energía (la tomadora del seguro y demandada), y la aseguradora contra la sentencia que declaró la responsabilidad civil extracontractual de la primera por el fallecimiento de dos personas al movilizar una carpa metálica bajo redes eléctricas de media tensión, e impuso a la aseguradora, en ejercicio de la acción directa del artículo 1133 del Código de Comercio, la obligación de indemnizar con base en la póliza de responsabilidad civil extracontractual. A su vez, el Tribunal confirmó que la altura de las redes eléctricas, de aproximadamente 4.43 metros, frente al mínimo de 5.60 metros exigido por el Reglamento Técnico de Instalaciones Eléctricas (en adelante "**RETIE**"), constituía la causa material y jurídica del nexo causal entre la actividad peligrosa y el daño, al tratarse de un riesgo previsible que la empresa de energía debió corregir, máxime cuando el propietario del predio había solicitado previamente la revisión de las redes.

Sin embargo, a diferencia del fallo de primera instancia, el Tribunal encontró que la conducta de las víctimas también constituyó una causa jurídicamente relevante, al haber traspasado el límite de aproximación segura del RETIE (1.50 metros) con un elemento de alta conductividad, produciendo un contacto indirecto con las redes energizadas. Por ende, al aplicar la teoría de causalidad adecuada, concluyó que ambas causas concurrieron de forma equivalente en el resultado, por lo que declaró probada la excepción de concurrencia de causas y redujo en un 50% la responsabilidad de la empresa de energía y la indemnización de perjuicios.

## Risk may be shared, but it is not diluted

The Superior Court of Buga modifies the judgment declaring the extra-contractual civil liability of an energy company, having found proven a concurrence of causes with the victims' negligent conduct

*Judgment of the Superior Court of Buga, Second Civil-Family Decision Chamber. Case No. 76-147-31-03-002-2020-00064-02. 23 June 2026. Presiding Judge: Juan Manuel Pinzón Aguilar*

The Court decided the appeals filed by the energy company (the policyholder and defendant) and by the insurer against the judgment that declared the former extra-contractually liable for the death of two persons while moving a metal tent under medium-voltage power lines, and imposed on the insurer, in the exercise of the direct action under Article 1133 of the Commercial Code, the obligation to indemnify on the basis of the extra-contractual civil liability policy. The Court further confirmed that the height of the power lines, approximately 4.43 meters, against the minimum of 5.60 meters required by the Technical Regulation for Electrical Installations ("**RETIE**"), constituted the material and legal basis for the causal link between the hazardous activity and the harm, this being a foreseeable risk that the energy company should have corrected, particularly given that the property owner had previously requested that the lines be inspected.

However, unlike the first instance ruling, the Court found that the victims' conduct also constituted a legally relevant cause, having crossed the RETIE's safe-approach limit (1.50 meters) with a highly conductive element, producing indirect contact with the energized lines. Accordingly, applying the theory of adequate causation, it concluded that both causes contributed equally to the outcome, and it therefore held the defense of concurrence of causes proven and reduced the energy company's liability and the damages award by 50%.

Respecto del alcance de la póliza, el Tribunal precisó que, aunque la acción directa habilita a las víctimas a reclamar contra la aseguradora, ello no comporta solidaridad entre asegurado y asegurador, por encontrarse fundado en la autonomía privada de las partes, por lo que aclaró que la obligación de la aseguradora de indemnizar no era solidaria, sino que estaba sujeta a los estrictos términos, límites y deducibles pactados en la póliza. Sobre estos últimos, el Tribunal negó la aplicación del deducible agregado anual de USD 300.000 por falta de prueba de su estado de acumulación, carga que correspondía a la aseguradora. En cambio, reconoció el deducible operativo del 10% de cada condena, al operar automáticamente por cada siniestro sin requerir prueba de agotamiento previo, ordenando que su conversión a pesos se realizara a la tasa representativa del mercado vigente al momento del pago, y no a la fecha de la sentencia.

Por lo anterior, el Tribunal revocó parcialmente la sentencia para declarar probada la concurrencia de causas, modificó la responsabilidad de la compañía de energía al 50%, redujo a la mitad el daño moral reconocido a hermanos y abuelos, negó el daño a la vida en relación por falta de pruebas y aclaró que la obligación de la aseguradora no es solidaria.

## Seguros de automóvil

### ▸ Si no se paga a tiempo, es mejor no hacerlo

**La Corte Suprema de Justicia confirma la sentencia que negó la tutela contra la providencia que revocó la condena a una aseguradora, al declarar terminado de pleno derecho el contrato de seguro de automóvil por mora del tomador en el pago de la prima**

*Sentencia de la Corte Suprema de Justicia, Sala de Casación Laboral. Rad. 11001-02-03-000-2026-02031-01. 03 de junio de 2026. Magistrada Ponente: Clara Inés López Dávila*

La CSJ resolvió la impugnación interpuesta por el tomador de una póliza individual de seguro de automóvil contra la sentencia que negó el amparo constitucional solicitado a la Sala Civil Familia Laboral del Tribunal Superior de Sincelejo. El demandante había promovido proceso contra la aseguradora para hacer efectiva la póliza suscrita, con vigencia entre el 27 de marzo de 2012 y el 27 de marzo de 2013, con ocasión del accidente que causó la pérdida total del vehículo asegurado, obteniendo en primera instancia una condena por COP $98.000.000 más intereses moratorios, la cual fue apelada por la aseguradora alegando que el contrato había dejado de existir por mora en el pago de las cuotas de la prima.

As to the scope of the policy, the Court clarified that, although the direct action entitles victims to claim against the insurer, this does not entail joint and several liability between insured and insurer, being grounded in the parties' private autonomy, and accordingly clarified that the insurer's obligation to indemnify was not joint and several but was subject to the strict terms, limits and deductibles agreed in the policy. As to the latter, the Court denied application of the annual aggregate deductible of US$300,000 for lack of proof of its state of accumulation, a burden that fell on the insurer. It did, however, recognize the operative 10% per-award deductible, as this applies automatically to each loss event without requiring proof of prior exhaustion, ordering that its conversion into pesos be made at the market exchange rate in force at the time of payment, and not as of the date of the judgment.

On this basis, the Court partially reversed the judgment to declare the concurrence of causes proven, modified the energy company's liability to 50%, halved the moral damages awarded to siblings and grandparents, denied the claim for loss of enjoyment of life for lack of evidence, and clarified that the insurer's obligation is not joint and several.

## Automobile Insurance

### ▸ If payment is not made on time, it is better not to make it at all

The Supreme Court of Justice confirms the judgment denying the tutela against the ruling that reversed an award against an insurer, declaring the automobile insurance contract terminated by operation of law due to the policyholder's default in paying the premium

*Judgment of the Supreme Court of Justice, Labor Cassation Chamber. Case No. 11001-02-03-000-2026-02031-01. 3 June 2026. Presiding Judge: Clara Inés López Dávila*

The CSJ decided the challenge brought by the policyholder of an individual automobile insurance policy against the judgment denying the tutela sought from the Civil-Family-Labor Chamber of the Superior Court of Sincelejo. The claimant had brought proceedings against the insurer to enforce the policy taken out, which was in force between 27 March 2012 and 27 March 2013, following the accident that caused the total loss of the insured vehicle, obtaining at first instance an award of COP$98,000,000 plus default interest, which was appealed by the insurer on the ground that the contract had ceased to exist due to default in the payment of premium installments.

Frente a esto, el Tribunal revocó la condena de primera instancia y declaró probada la excepción de inexistencia de la póliza por mora en el pago de la prima, negando las pretensiones de la demanda. El accionante alegó en la tutela que el Tribunal incurrió en un defecto sustantivo por interpretación errónea del artículo 1068 del Código de Comercio, y en indebida valoración probatoria al omitir que la aseguradora recibió los pagos en mora sin resolver el contrato. Por su parte, la Corte constató que el Tribunal, con fundamento en los artículos 1045 y 1068 del Código de Comercio y en jurisprudencia de la propia Sala, concluyó que la mora del tomador en el pago de las cuotas de la prima produce la terminación automática del contrato de seguro, sin que pueda mediar acuerdo o conducta posterior de las partes que desvirtúe dicho efecto, por tratarse de una norma de carácter imperativo y no supletivo.

De esta forma, al analizar el caso concreto, el Tribunal estableció que la prima se pactó en diez cuotas mensuales, y que, según el cuadro de pagos allegado al expediente, la primera cuota, cuyo plazo vencía el 26 de abril de 2012, solo fue cancelada el 2 de mayo de 2012, y así sucesivamente todas las cuotas se pagaron de forma extemporánea hasta la décima, pagada el 26 de marzo de 2013, coincidiendo con la fecha del accidente de tránsito. Concluyó que la aseguradora cumplió su deber legal de advertir en la carátula de la póliza las consecuencias de la mora, por lo que, desde el 27 de abril de 2012, el contrato terminó de pleno derecho.

A su vez, el Tribunal precisó que, aunque la aseguradora hubiera recibido los pagos extemporáneos sin formular objeción, no tuvo la virtud de restablecer ni mantener la vigencia de la póliza, ni de alterar la terminación ya producida por ministerio del artículo 1068 del Código de Comercio, por lo que, para la fecha del siniestro, no existía vínculo contractual vigente entre las partes. Por lo tanto, la Corte determinó que la decisión del Tribunal no resultaba arbitraria ni caprichosa, al haber planteado adecuadamente el marco normativo aplicable y analizado las pruebas conforme a la sana crítica, y que la simple disparidad de criterios interpretativos no es suficiente para invalidar una decisión judicial amparada por la doble presunción de acierto y legalidad. En consecuencia, confirmó la sentencia que negó el amparo solicitado.

In response, the Superior Court reversed the first-instance award and held proven the defense of non-existence of the policy due to default in payment of the premium, denying the claims. In the tutela, the claimant alleged that the Superior Court had incurred a substantive defect through an erroneous interpretation of Article 1068 of the Commercial Code and had improperly assessed the evidence by disregarding that the insurer had accepted late payments without terminating the contract. The Supreme Court found that the Superior Court, relying on Articles 1045 and 1068 of the Commercial Code and on its own Chamber's case law, concluded that a policyholder's default in paying premium installments results in the automatic termination of the insurance contract, with no subsequent agreement or conduct of the parties capable of negating that effect, since this is a mandatory rule and not a default one.

Analyzing the specific case, the Superior Court established that the premium had been agreed in 10 monthly installments, and that, according to the payment schedule in the case file, the first installment, due on 26 April 2012, was only paid on 2 May 2012, and likewise all subsequent installments were paid late up to the tenth, paid on 26 March 2013, coinciding with the date of the traffic accident. It concluded that the insurer had fulfilled its statutory duty to warn, on the cover page of the policy, of the consequences of default, such that, as of 27 April 2012, the contract had terminated by operation of law.

The Superior Court further clarified that, even though the insurer had accepted the late payments without objection, this did not have the effect of reinstating or maintaining the policy's validity, nor of altering the termination already produced by operation of Article 1068 of the Commercial Code, such that, as of the date of the loss event, there was no contractual relationship in force between the parties. The Supreme Court therefore determined that the Superior Court's decision was neither arbitrary nor capricious, having appropriately set out the applicable legal framework and assessed the evidence in accordance with sound judicial discretion, and that a mere disparity of interpretive views is not sufficient to invalidate a judicial decision protected by the double presumption of correctness and legality. Accordingly, it confirmed the judgment denying the relief sought.

## Seguros de vida

### ▸ Quién miente, se delata

**El Tribunal Superior de Ibagué revoca la sentencia de primera instancia y declara la nulidad relativa de dos contratos de seguro de vida por reticencia del tomador en la declaración de su estado de salud**

*Sentencia del Tribunal Superior de Ibagué, Sala de Decisión Civil - Familia. Rad. 73-001-31-03-004-2023-00169-01. 25 de junio de 2026. Magistrado Sustanciador: Diego Omar Pérez Salas*

El Tribunal resolvió los recursos de apelación interpuestos por ambas partes contra la sentencia que negó las pretensiones de la aseguradora, quien había demandado la nulidad relativa de las pólizas de vida suscritas por reticencia del tomador, quien no había declarado sinceramente su estado de salud ni el desarrollo de presuntas actividades ilícitas. El juzgado de primera instancia había desestimado la nulidad relativa, negado el pago de una de las pólizas por exclusión pactada, pero condenó a la aseguradora a pagar COP $300 millones de pesos de la otra póliza más intereses moratorios, tras considerar que los antecedentes de salud no fueron determinantes ni indagados por la compañía.

El Tribunal constató que el tomador había sido víctima en 2012 de un atentado con arma de fuego que le dejó graves secuelas de salud, y que en 2003 presentó una crisis de ansiedad que requirió valoración psiquiátrica. Pese a ello, al suscribir la declaración de asegurabilidad, el tomador afirmó categóricamente que su estado de salud era normal, negando todo tipo de enfermedades y secuelas de accidentes, en respuesta a un cuestionario explícito formulado por la aseguradora sobre esos mismos aspectos. Por lo que, con fundamento en las subreglas fijadas por la CSJ en su jurisprudencia sobre la interpretación del artículo 1058 del Código de Comercio, el Tribunal precisó que, de mediar cuestionario, la mendacidad del declarante prueba tanto la reticencia como la trascendencia de la información omitida para el aseguramiento. Es así como, concluyó que la omisión de antecedentes de tal magnitud clínica poseía la virtualidad causal suficiente para distorsionar el consentimiento de la aseguradora, la cual, de haberlos conocido, se habría abstenido de contratar o lo habría hecho en condiciones más onerosas, configurándose así el supuesto de reticencia del artículo 1058 del Código de Comercio.

Frente a la excepción de buena fe, fundada en que la aseguradora debía conocer o presumir dichos antecedentes, el Tribunal la desestimó al no existir en el expediente prueba de que la compañía contara con elementos objetivos que le permitieran sospechar la inexactitud de la declaración, por lo que no operaba la regla del conocimiento presuntivo del asegurador. En

## Life Insurance

### ▸ Whoever lies gives themselves away

The Superior Court of Ibagué reverses the first-instance judgment and declares the relative nullity of two life insurance contracts due to the policyholder's non-disclosure regarding his state of health

*Judgment of the Superior Court of Ibagué, Civil-Family Decision Chamber. Case No. 73-001-31-03-004-2023-00169-01. 25 June 2026. Presiding Judge: Diego Omar Pérez Salas*

The Court decided the appeals filed by both parties against the judgment denying the claims of the insurer, which had sought the relative nullity of the life policies taken out due to the policyholder's non-disclosure, as he had not truthfully declared his state of health or the conduct of alleged unlawful activities. The first-instance court had rejected the relative nullity claim, denied payment under one of the policies due to an agreed exclusion, but ordered the insurer to pay COP$300 million under the other policy plus default interest, having considered that the health history was neither material nor investigated by the company.

The Court found that the policyholder had been the victim, in 2012, of a firearm attack that left him with serious health after-effects, and that in 2003 he had suffered an anxiety crisis requiring psychiatric assessment. Notwithstanding this, when signing the insurability declaration, the policyholder categorically stated that his state of health was normal, denying any illnesses or after-effects of accidents, in response to an explicit questionnaire put to him by the insurer on precisely those matters. Accordingly, drawing on the sub-rules established by the Supreme CSJ in its case law on the interpretation of Article 1058 of the Commercial Code, the Court clarified that, where a questionnaire is used, the declarant's untruthfulness proves both the non-disclosure and the materiality of the omitted information for underwriting purposes. It thus concluded that the omission of health history of such clinical significance had sufficient causal force to distort the insurer's consent, which, had it known of such history, would have declined to contract or would have done so on more onerous terms, thereby giving rise to the non-disclosure contemplated in Article 1058 of the Commercial Code.

As to the good-faith defense, based on the argument that the insurer should have known or presumed such history, the Court rejected it, there being no evidence in the case file that the company had objective grounds to suspect the inaccuracy of the declaration, such that the rule of presumed knowledge on the part of the insurer did not apply. Accordingly, it rever-

consecuencia, revocó la sentencia apelada, declaró la nulidad relativa de ambas pólizas, reconoció el derecho de la aseguradora a retener la totalidad de la prima como sanción conforme al artículo 1059 del Código de Comercio y negó las pretensiones de la demanda de reconvención.

## Quien conoce el siniestro, debe contarlo a tiempo

**El Tribunal Superior de Medellín confirma la sentencia anticipada que declaró probada la excepción de prescripción ordinaria de la acción derivada de un seguro de vida de grupo, negando las pretensiones de los beneficiarios**

*Sentencia del Tribunal Superior de Medellín, Sala Primera de Decisión Civil. Rad.05001-31-03-017-2024-00282-02. 14 de julio de 2026. Magistrado Ponente: José Omar Bohórquez Vidueñas*

El Tribunal resolvió el recurso de apelación interpuesto por los beneficiarios de una póliza de seguro de vida de grupo, suscrita entre el banco, como tomador, y la aseguradora, en la cual, el asegurado designó como beneficiarios a título gratuito a los demandantes. Estos últimos solicitaron declarar la existencia del contrato de seguro, el derecho a la indemnización derivada del fallecimiento del asegurado y, subsidiariamente, que se aplicara el término de prescripción extraordinaria de cinco años previsto en el artículo 1081 del Código de Comercio, dado que, a su juicio, la aseguradora incumplió su deber de información al no entregarles el clausulado completo de la póliza. La demandada, si bien reconoció la existencia de la póliza, la reclamación y su objeción, propuso las excepciones de nulidad relativa del contrato por reticencia, exclusión por falta de cobertura y prescripción, sosteniendo que el siniestro (fallecimiento del asegurado) ocurrió el 25 de mayo de 2019 y la demanda solo se presentó en agosto de 2024, esto es, más de dos años después.

En primera instancia se profirió sentencia anticipada declarando probada la excepción de prescripción ordinaria, al establecer que, contabilizados los cuatro meses de suspensión de términos por la pandemia del COVID-19 (16 de marzo a 1 de julio de

sed the appealed judgment, declared the relative nullity of both policies, recognized the insurer's right to retain the entire premium as a penalty under Article 1059 of the Commercial Code, and denied the counterclaim.

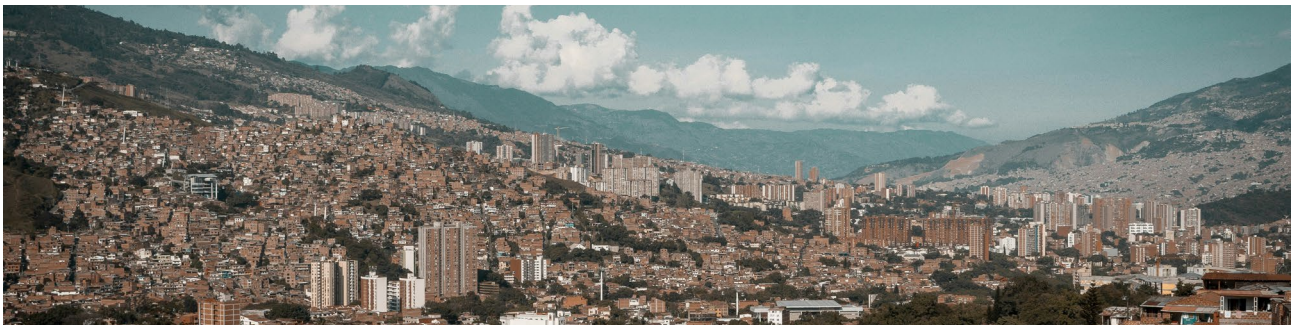
## Whoever becomes aware of a loss event must report it in time

The Superior Court of Medellín confirms the summary judgment declaring proven the ordinary limitation defense to the action arising from a group life insurance policy, denying the beneficiaries' claims

*Judgment of the Superior Court of Medellín, First Civil Decision Chamber. Case No. 05001-31-03-017-2024-00282-02. 14 July 2026. Presiding Judge: José Omar Bohórquez Vidueñas*

The Court decided the appeal filed by the beneficiaries of a group life insurance policy, taken out between the Bank, as policyholder, and the Insurer, under which the insured designated the claimants as gratuitous beneficiaries. The claimants sought a declaration of the existence of the insurance contract and of the right to indemnity arising from the insured's death, and, in the alternative, that the extraordinary five-year limitation period under Article 1081 of the Commercial Code be applied, on the ground that the insurer had, in their view, breached its duty to provide information by failing to deliver to them the full policy terms. The defendant, while acknowledging the existence of the policy, the claim and its objection thereto, raised the defenses of relative nullity of the contract for non-disclosure, exclusion for lack of coverage, and limitation, arguing that the loss event (the insured's death) occurred on 25 May 2019 and that the claim was only filed in August 2024, that is, more than two years later.

At first instance, a summary judgment was issued declaring the ordinary limitation defense proven, on the basis that, counting the four months of suspension of terms due to the COVID-19 pandemic (16 March to 1 July 2020), the two-year



2020), el término de dos años se consolidó el 25 de septiembre de 2021, sin que resultara aplicable la prescripción extraordinaria de 5 años conforme al artículo 1081 del Código de Comercio, norma que las partes no pueden modificar. En la apelación, los demandantes alegaron que el *a quo* descartó erróneamente la prescripción extraordinaria sin analizar las condiciones reales de colocación del seguro, el incumplimiento del deber de información y la ambigüedad de la cláusula de prescripción incorporada en el certificado individual, la cual, según afirmaron, les generó la convicción de contar con un plazo de 5 años para reclamar. Sostuvieron además que la sentencia anticipada impidió el debate probatorio necesario para demostrar dicho incumplimiento, invocando los principios *contra proferentem* y pro consumidor.

Sobre la procedencia de la sentencia anticipada, el Tribunal precisó que el artículo 278 del Código General del Proceso faculta al juez para proferirla en cualquier estado del proceso cuando encuentre probada la prescripción extintiva (numeral 3), sin que fuera exigible un recaudo probatorio adicional, por lo que confirmó que se satisfacían los presupuestos para dictarla. En cuanto al régimen de prescripción, reiteró la línea jurisprudencial de la CSJ según la cual el artículo 1081 del Código de Comercio consagra dos tipos de prescripción, la ordinaria (2 años, contados desde el conocimiento real o presunto del hecho base de la acción) y la extraordinaria (5 años, contados desde que nace el derecho, aplicable con independencia de dicho conocimiento).

Por ende, al haberse acreditado que los demandantes formularon la reclamación del siniestro y recibieron la objeción de la aseguradora el 5 de diciembre de 2019, tuvieron conocimiento del hecho base de la acción desde esa fecha, por lo que resultaba aplicable la prescripción ordinaria. Contabilizada la suspensión de términos por la pandemia y el trámite de conciliación prejudicial, determinó que el fenómeno extintivo se consolidó el 20 de marzo de 2022, mientras que la demanda solo se presentó el 1 de agosto de 2024. Respecto de la cláusula del certificado individual que hacía referencia a un plazo de 5 años para reclamar, el Tribunal precisó que dicha estipulación se refería a los reclamos ante la aseguradora y no a la prescripción de la acción, la cual opera por ministerio de la ley conforme al inciso final del artículo 1081 del Código de Comercio, que impide su modificación por las partes. En consecuencia, confirmó la sentencia de primera instancia y condenó en costas a la parte demandante.

term was consolidated on 25 September 2021, such that the extraordinary five-year limitation period under Article 1081 of the Commercial Code, a rule the parties may not modify, was not applicable. On appeal, the claimants argued that the court of first instance had erroneously dismissed the extraordinary limitation period without analyzing the actual conditions under which the insurance was placed, the breach of the duty to inform, and the ambiguity of the limitation clause included in the individual certificate, which, they claimed, led them to believe they had a five-year term within which to claim. They further argued that the summary judgment prevented the evidentiary debate necessary to prove such breach, invoking the contra proferentem and pro-consumer principles.

As to the propriety of the summary judgment, the Court clarified that Article 278 of the General Code of Procedure empowers the judge to issue it at any stage of the proceedings where extinctive limitation is found proven (numeral 3), with no further evidentiary showing required, and it accordingly confirmed that the requirements for issuing it were satisfied. As to the limitation regime, it reiterated the CSJ's settled case law that Article 1081 of the Commercial Code establishes two types of limitation period: the ordinary period (two years, counted from actual or presumed knowledge of the fact underlying the action) and the extraordinary period (five years, counted from the date the right arises, applicable regardless of such knowledge).

Accordingly, since it was established that the claimants filed the claim for the loss event and received the insurer's objection on 5 December 2019, they had knowledge of the fact underlying the action from that date, such that the ordinary limitation period applied. Counting the suspension of terms due to the pandemic and the pre-litigation conciliation proceedings, the Court determined that the extinctive event was consolidated on 20 March 2022, whereas the claim was only filed on 1 August 2024. As to the clause in the individual certificate referring to a five-year term for claims, the Court clarified that such stipulation referred to claims made to the insurer and not to the limitation period for the action, which operates by force of law under the final paragraph of Article 1081 of the Commercial Code, which precludes modification by the parties. Accordingly, it confirmed the first-instance judgment and ordered the claimants to pay costs.

## Decir la verdad a medias también es mentir

**El Tribunal Superior de Ibagué confirma la sentencia que negó las pretensiones derivadas de tres contratos de seguro de vida grupo deudores, al declarar la nulidad relativa por reticencia y mala fe de la tomadora en la declaración de su estado de salud**

*Sentencia del Tribunal Superior de Ibagué, Sala Civil Familia de Decisión. Rad. 73001-31-03-004-2024-00198-01. 14 de agosto de 2026. Magistrada Ponente: María Andrea Arango Echeverri*

El Tribunal Superior de Ibagué confirmó la sentencia que negó las pretensiones en el marco de tres pólizas de vida grupales de deudores ligadas a créditos de vehículo y consumo. La demandante, diagnosticada de una enfermedad grave en 2022 y con una pérdida de capacidad laboral del 57,84%, solicitó hacer efectivas las pólizas, pero las aseguradoras objetaron la reclamación alegando reticencia en la declaración del estado de salud al momento de contratar.

El juzgado de primera instancia había declarado probadas las excepciones de nulidad relativa del contrato de seguro por reticencia, al determinar que el porcentaje de pérdida de capacidad laboral resultó de la suma de múltiples patologías, varias de las cuales no fueron informadas a las aseguradoras al contratar.

Por su parte, el Tribunal, con fundamento en el artículo 1058 del Código de Comercio y las subreglas fijadas por la CSJ en su jurisprudencia, reiteró que la reticencia se configura cuando la información omitida es trascendente para la formación del consentimiento del asegurador, y que la carga de probar la reticencia y su trascendencia recae en la aseguradora. Es así como, tras un análisis detallado de la historia clínica de la demandante, el Tribunal constató que las patologías diagnosticadas antes de la suscripción de las pólizas (entre 2016 y 2021) representaban aproximadamente el 30% del porcentaje final de pérdida de capacidad laboral, y que el diagnóstico de la enfermedad grave no fue, por sí solo, suficiente para alcanzar el umbral contractual del 50% exigido para activar el seguro.

Ahora bien, sobre la mala fe de la tomadora, el Tribunal concluyó que esta se configuró al haber omitido, desde 2016, múltiples diagnósticos de los que tenía pleno conocimiento y por los cuales venía siendo tratada, precisando que la solicitud que la propia demandante presentó ante la encargada de la calificación incluía un listado extenso de padecimientos que nunca puso en conocimiento de las aseguradoras. Respecto del deber de diligencia de las aseguradoras, el Tribunal, citando la jurisprudencia de la CSJ sobre el conocimiento presuntivo del asegurador, determinó que no se acreditó que las compañías contaran con elementos que les permitieran advertir discrepancias entre

## Telling half the truth is also lying

The Superior Court of Ibagué affirms the judgment that denied the claims arising from three group credit life insurance policies, declaring relative nullity on the grounds of non-disclosure and bad faith by the policyholder in the declaration of her state of health

*Judgment of the Superior Court of Ibagué, Civil-Family Decision Chamber. Case No. 73001-31-03-004-2024-00198-01. 14 August 2026. Presiding Judge: María Andrea Arango Echeverri*

The Superior Court of Ibagué affirmed the judgment denying the claims brought under three group debtor life insurance policies linked to vehicle and consumer loans. The claimant, diagnosed with a serious illness in 2022 and with a loss of working capacity of 57.84%, sought to enforce the policies, but the insurers objected to the claim, alleging that she had failed to disclose her state of health at the time of contracting.

The court of first instance had held the defenses of relative nullity of the insurance contract for non-disclosure to be proven, upon determining that the percentage of loss of working capacity resulted from the sum of multiple pathologies, several of which had not been disclosed to the insurers at the time of contracting.

For its part, the Court, based on Article 1058 of the Commercial Code and the sub-rules established by the SCJ in its case law, reiterated that non-disclosure is established when the omitted information is material to the formation of the insurer's consent, and that the burden of proving the non-disclosure and its materiality rests on the insurer. Thus, after a detailed review of the claimant's clinical history, the Court found that the pathologies diagnosed prior to the execution of the policies (between 2016 and 2021) accounted for approximately 30% of the final percentage of loss of working capacity, and that the diagnosis of the serious illness was not, by itself, sufficient to reach the 50% contractual threshold required to trigger the insurance.

Now, with respect to the policyholder's bad faith, the Court concluded that it was established by her having omitted, since 2016, multiple diagnoses of which she had full knowledge and for which she had been receiving treatment, noting that the application the claimant herself submitted to the entity responsible for the disability rating included an extensive list of conditions that she never disclosed to the insurers. Regarding the insurers' duty of diligence, the Court, citing SCJ case law on the insurer's presumptive knowledge, determined that it was not established that the companies had elements enabling them to detect discrepancies between the poli-

la declaración de la tomadora y su verdadero estado de salud, dada la reserva propia de la información clínica, por lo que no operaba dicha excepción.

Finalmente, respecto de los perjuicios extrapatrimoniales reclamados por el esposo e hijos de la demandante, el Tribunal concluyó que, al confirmarse la nulidad relativa del contrato por reticencia, dicha pretensión carecía de sustento, precisando además que tratándose de un incumplimiento contractual no cabían reclamaciones de naturaleza extracontractual. En consecuencia, confirmó la sentencia de primera instancia y condenó en costas a la parte demandante.

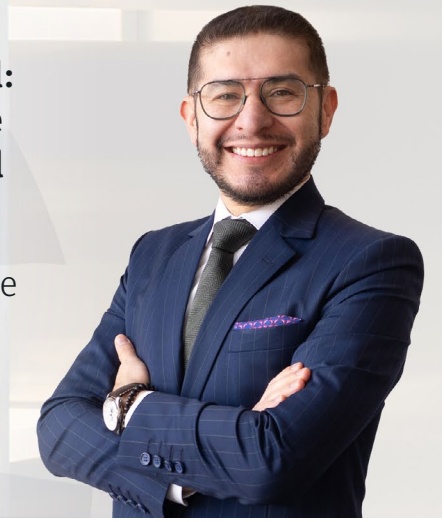
cyholder's declaration and her true state of health, given the confidentiality inherent in clinical information, and that this defense therefore did not apply.

Finally, with respect to the non-pecuniary damages claimed by the claimant's husband and children, the Court concluded that, upon confirming the relative nullity of the contract for non-disclosure, that claim lacked support, further noting that, this being a case of contractual breach, claims of an extracontractual nature were not appropriate. Accordingly, it affirmed the first-instance judgment and ordered the claimant to pay costs.

# Tribuna Pérez-Llorca
Pérez-Llorca Tribune

## Llamado en garantía y vinculado al pacto arbitral: alcance y límites del artículo 37 de la Ley 1563 de 2012 y comparativo con el arbitraje internacional

## Called in Warranty, Bound to Arbitrate: scope and limits of Article 37 of Law 1563 of 2012 and comparative remarks on international arbitration



**David Araque Quijano**
**Socio de Litigios y Arbitraje**
Partner, Litigation & Arbitration

Pocas normas del Estatuto de Arbitraje colombiano han producido efectos tan silenciosos y, a la vez, tan discutidos como el parágrafo 1.º del artículo 37 de la Ley 1563 de 2012. Su texto es de una brevedad engañosa: "cuando se llame en garantía a una persona que ha garantizado el cumplimiento de las obligaciones derivadas de un contrato que contiene pacto arbitral, aquella quedará vinculada a los efectos del mismo". En una sola línea, el legislador resolvió que el garante —con frecuencia, una compañía de seguros que expidió una póliza de cumplimiento puede quedar integrado a un tribunal arbitral cuya competencia no habilitó directamente. Ello, para responder por una relación de garantía cuyo contrato no contiene, por sí mismo, pacto arbitral alguno.

Conviene fijar, de entrada, el perímetro de este análisis. La Ley 1563 de 2012 regula en secciones separadas el arbitraje nacional (Sección Primera) y el arbitraje internacional (Sección Tercera), cada uno con principios, reglas y lógicas propias. El artículo 37 —y con él el parágrafo 1.º— pertenece al régimen del arbitraje nacional y solo a él resulta aplicable Congreso de la República de Colombia[1]. (2012). Ni ese artículo ni la Sentencia C-170 de 2014, que lo examinó, gobiernan el arbitraje internacional. Este último está sometido a su propio catálogo normativo (artículos 62 y siguientes de la misma ley) y a criterios distintos para determinar quién queda obligado por el pacto arbitral. Cuanto se afirma en esta tribuna sobre la vinculación del garante llamado en garantía se predica,

Few provisions of the Colombian Arbitration Statute have produced effects as unobtrusive — and as debated — as paragraph 1 of Article 37 of Law 1563 of 2012. Its wording is deceptively brief: "[w]here a party calls in warranty a person who has guaranteed the performance of the obligations arising from a contract containing an arbitration agreement, that person shall be bound by the effects thereof". In a single sentence, the legislature decided that a guarantor — often an insurer that issued a performance bond — may be joined to an arbitral tribunal whose jurisdiction it never directly conferred. This holds true even though the guarantee contract itself contains no arbitration agreement.

It is worth fixing the perimeter of this analysis at the outset. Law 1563 of 2012 regulates domestic arbitration (Part One) and international arbitration (Part Three) in separate sections, each with its own principles, rules and logic. Article 37 — and with it paragraph 1 — is part of the domestic arbitration regime and governs only that regime.[1] Neither that article nor Judgment C-170 of 2014, which examined it, governs international arbitration. The latter is subject to its own body of rules (Articles 62 et seq. of the same law) and to different criteria for determining who is bound by the arbitration agreement. Everything asserted in this piece about the binding of the guarantor called in warranty is therefore predicated on Colombian domestic arbitration; in international arbitration the

1 Congreso de la República de Colombia. (2012). Ley 1563 de 2012, por medio de la cual se expide el Estatuto de Arbitraje Nacional e Internacional. Diario Oficial No. 48.489. Artículo 62, sobre arbitraje internacional.

1 Congress of the Republic of Colombia. (2012). Law 1563 of 2012, enacting the National and International Arbitration Statute. Official Gazette No. 48,489. Article 62, on international arbitration.

por tanto, del arbitraje nacional colombiano; en el arbitraje internacional la integración de un tercero no signatario no depende del mecanismo del parágrafo 1.º, sino de las reglas generales del consentimiento, según se explica más adelante. Advertir esta frontera evita el error, frecuente, de trasladar sin más una regla del arbitraje doméstico a un escenario que se rige por otras normas.

Hecha esa precisión, la norma admite dos lecturas naturales dentro del arbitraje nacional, y ambas responden a intereses legítimos. Para el asegurado o el contratante que llama en garantía a su aseguradora, el parágrafo es una herramienta de eficiencia procesal: evita fragmentar la controversia, permite resolver en un solo foro el incumplimiento y su cobertura, y previene decisiones contradictorias sobre un mismo siniestro. Para el asegurador llamado, la misma norma plantea el problema de quedar sujeto a un foro con reglas y costos que no tarificó en la prima. Esta tribuna no defiende a ninguna de las dos partes: procura delimitar, con apoyo en la jurisprudencia constitucional colombiana y en la mejor doctrina comparada, hasta dónde llega realmente el arrastre y dónde empieza el terreno que la norma no toca.

La Corte Constitucional avaló la disposición en la Sentencia C-170 de 2014[2], con una tesis doble: (i) el garante no es "parte" en el sentido del inciso final del artículo 116 de la Constitución, de modo que la exigencia de habilitación expresa no le es predicable; y (ii) quien garantiza un contrato que contiene cláusula compromisoria "acepta tácitamente" que su obligación de garante pueda exigirse ante árbitros, pues conoce —o debe conocer— el contrato garantizado. La clave del razonamiento es que el parágrafo 1.º no prescinde del consentimiento del asegurador: lo sustituye. Donde el arbitraje nacional exige, por regla, una habilitación expresa, la norma admite una manifestación implícita de la voluntad — haber garantizado el cumplimiento de un contrato con pacto arbitral— y le atribuye el mismo efecto vinculante. La norma fue declarada exequible sin condicionamientos. Zanjada la constitucionalidad, subsiste lo verdaderamente litigioso: el alcance de esa vinculación en arbitraje nacional.

## 1. El supuesto de hecho: garantizar obligaciones no es asegurar cualquier riesgo

El parágrafo no se refiere a las aseguradoras en cuanto tales, sino a quien "ha garantizado el cumplimiento de las obligaciones derivadas de un contrato que contiene pacto arbitral". La distinción importa a ambas partes. El seguro de cumplimiento —y la fianza— tienen por objeto directo el cumpli-

2 Corte Constitucional de Colombia. (2014). Sentencia C-170 de 2014, M.P. Alberto Rojas Ríos, 19 de marzo de 2014.

joinder of a non-signatory does not depend on the mechanism of paragraph 1, but on the general rules of consent, as explained below. Marking this boundary avoids the frequent error of transplanting a rule of domestic arbitration into a setting governed by other norms.

Having made that clarification, within domestic arbitration the rule can be viewed from two natural perspectives, and both serve legitimate interests. For the insured or the contracting party that calls its insurer in warranty, the paragraph is a tool of procedural efficiency: it avoids fragmenting the dispute, allows breach and coverage to be resolved in a single forum, and prevents contradictory decisions on the same loss. For the insurer called in warranty, the same rule raises the problem of being subjected to a forum with rules and costs it did not price into the premium. This piece defends neither side: it seeks to define, on the basis of Colombian constitutional case law and the best comparative scholarship, how far the drag-along actually reaches and where the ground the rule does not touch begins.

The Constitutional Court upheld the provision in Judgment C-170 of 2014[2] on a twofold basis: (i) the guarantor is not a "party" within the meaning of the final subsection of Article 116 of the Constitution, so the requirement of express empowerment does not apply to it; and (ii) a person who guarantees a contract containing an arbitration clause "tacitly accepts" that its obligation as guarantor may be enforced before arbitrators, because it knows — or ought to know — the guaranteed contract. The core of the reasoning is that paragraph 1 does not dispense with the insurer's consent: it substitutes it. Where domestic arbitration requires, as a rule, an express empowerment, the provision accepts an implied expression of will — having guaranteed the performance of a contract containing an arbitration agreement — and attaches to it the same binding effect. The provision was upheld without conditions. With constitutionality settled, what remains genuinely litigious is the scope of that binding effect.

## 1. The premise: guaranteeing obligations is not underwriting every risk

The paragraph does not refer to insurers as such, but to a person who "has guaranteed the performance of the obligations arising from a contract containing an arbitration agreement". The distinction matters to both sides. Performance bonds — and suretyship — have as their direct object the

2 Constitutional Court of Colombia. (2014). Judgment C-170 of 2014, Reporting Justice Alberto Rojas Ríos, 19 March 2014.

miento de las obligaciones nacidas de un negocio determinado, que el asegurador examina en la suscripción y que suele incorporarse a la póliza por referencia. Allí la presunción de conocimiento de la cláusula compromisoria es plausible, y la aplicación del arrastre resulta coherente: el asegurado que llama en garantía tiene un fundamento sólido para integrar a su aseguradora al arbitraje.

La cuestión es más delicada en el seguro de responsabilidad civil, el de directores y administradores, el de responsabilidad profesional o los seguros de daños. En estos ramos el asegurador no garantiza "las obligaciones derivadas de un contrato": cubre la responsabilidad patrimonial del asegurado frente a terceros, con independencia de la fuente contractual o extracontractual del daño. El asegurador de un contratista puede no haber visto el contrato de obra que su asegurado suscribió después de emitida una póliza anual. Extender a esos ramos la ficción de aceptación tácita tensiona la ratio de la sentencia C-170, que se construye sobre el garante que "conoció el contrato que se obligó a garantizar". De ahí una consecuencia equilibrada: el arrastre opera con naturalidad respecto de garantías de cumplimiento, pero su aplicación a pólizas que no garantizan obligaciones contractuales concretas exige un análisis más cuidadoso, útil tanto para el asegurado que quiere fundar bien su llamamiento como para el asegurador que discute su procedencia.

La doctrina comparada ilumina el punto. Loquin sostiene que "el carácter accesorio de la fianza no basta para extender al fiador los efectos de la cláusula compromisoria contenida en el contrato garantizado"[3], y Bigot añade que la conclusión se acentúa frente al asegurador, cuyo compromiso "resulta de las cláusulas de la póliza, que es un contrato distinto del contrato principal"[4]. Trasladado al derecho colombiano, el objeto de la obligación del asegurador no necesariamente coincide con el objeto de la obligación garantizada. El contraste regional confirma que la cuestión no es pacífica: en Brasil, el Tribunal Superior de Justicia ha admitido vincular al asegurador por vía de subrogación cuando el seguro es accesorio del contrato principal[5], aunque existen decisiones en contrario y se advierte que el arbitraje sin consentimiento tensiona una norma imperativa del derecho brasileño[6]. Reconocer estos matices no debilita el llamamiento cuando procede; simplemente obliga a fundarlo en el supuesto correcto.

performance of obligations arising from a specific transaction, which the insurer examines during underwriting, and which is usually incorporated into the policy by reference. There, the presumption that the insurer knew the arbitration clause is plausible, and the drag-along applies coherently: the insured calling in warranty has a solid basis to join its insurer to the arbitration.

The question is more delicate for general liability, D&O, professional indemnity or property policies. In those lines the insurer does not guarantee "the obligations arising from a contract": it covers the insured's liability towards third parties, irrespective of whether the damage is contractual or tortious in origin. A contractor's liability insurer may not have seen the construction contract its insured executed after an annual policy was issued. Extending the fiction of tacit acceptance to those lines strains the ratio of C-170, which is built on a guarantor that "knew the contract it undertook to guarantee". Hence a balanced consequence: the drag-along operates naturally as regards performance guarantees, but its application to policies that do not guarantee specific contractual obligations calls for closer analysis — useful both to the insured seeking to ground its joinder and to the insurer contesting it.

Comparative scholarship illuminates the point. Loquin holds that "the status of the bond as accessory is not sufficient to extend the effects of the arbitration clause contained in the secured contract to the surety",[3] and Bigot adds that the conclusion is sharper as regards the insurer, whose commitment "results from the clauses of the policy, which is separate from the main contract".[4] Transposed to Colombian law, the object of the insurer's obligation (Articles 1036 and 1082 of the Commercial Code) does not coincide with the object of the guaranteed obligation. The regional contrast confirms that the question is not settled: in Brazil, the Superior Tribunal de Justiça has accepted binding an insurer by way of subrogation where the insurance contract is accessory to the main contract,[5] though there are decisions to the contrary and commentators warn that arbitration without consent sits uneasily with a mandatory rule of Brazilian law.[6] Acknowledging these nuances does not weaken the joinder where it is warranted; it simply requires it to be grounded on the correct premise.

3 Loquin, É. (1994). Arbitrage et cautionnement. Revue de l'arbitrage, 1994, 235.
4 Bigot, J. (2000). Arbitration and insurance from the perspective of French law. En ICC International Court of Arbitration Bulletin, Special Supplement 2000: Arbitration, Finance and Insurance (pp. 33–40). International Chamber of Commerce.
5 Serec, F. E., & Nitschke, G. C. M. (2025). Brazil. En Delos Guide to Arbitration Places (GAP) (2.ª ed., § 2.5). Delos Dispute Resolution.
6 International Chamber of Commerce. (2024). ICC Dispute Resolution Bulletin, 2024(1). ICC.

3 Loquin, É. (1994). Arbitrage et cautionnement. Revue de l'arbitrage, 1994, 235.
4 Bigot, J. (2000). Arbitration and insurance from the perspective of French law. In ICC International Court of Arbitration Bulletin, Special Supplement 2000: Arbitration, Finance and Insurance (pp. 33–40). International Chamber of Commerce.
5 Serec, F. E., & Nitschke, G. C. M. (2025). Brazil. In Delos Guide to Arbitration Places (GAP) (2nd ed., § 2.5). Delos Dispute Resolution.
6 International Chamber of Commerce. (2024). ICC Dispute Resolution Bulletin, 2024(1). ICC.

## 2. El consentimiento como regla general y la vinculación legal como su expresión anticipada

En el arbitraje comparado —y, en particular, en el arbitraje comercial internacional— la vinculación de quien no firmó el pacto no se decreta: se demuestra. Redfern y Hunter recuerdan que el consentimiento es "la piedra angular" del arbitraje y que el no signatario solo queda obligado por vías reconocidas del derecho privado —cesión, mandato, sucesión, estipulación a favor de otro, doctrina del grupo de sociedades, levantamiento del velo, estoppel—, todas ancladas en la intención común o en un consentimiento presunto derivado de la conducta[7]. Los reglamentos de las principales instituciones internacionales confirman la exigencia: el artículo 22.1 del Reglamento LCIA, el 24(b) del SIAC y el 7 del Reglamento CCI requieren que el tercero sea parte del pacto o que consienta por escrito; ninguno autoriza integrar a quien "ni ha firmado ni ha consentido de otro modo la cláusula arbitral"[8]. Esa misma preocupación por el consentimiento atraviesa la literatura sobre arbitrajes multiparte y responsabilidad compartida[9].

Aquí la distinción de regímenes deja de ser un tecnicismo. Todo ese aparato —doctrina y reglamentos— pertenece al arbitraje internacional, donde no existe una regla legal equivalente al parágrafo 1.º del estatuto arbitral colombiano: si el garante llamado no ha consentido, su vinculación deberá construirse a través de alguna de las teorías consensuales, con resultado incierto. En un arbitraje internacional con sede en Colombia o regido por la Sección Tercera de la Ley 1563, por tanto, la aseguradora llamada no queda atada por el solo efecto del parágrafo 1.º —que no le aplica—, y la discusión se desplaza al terreno del consentimiento y, llegado el caso, al del reconocimiento y ejecución del laudo, donde las fricciones entre regímenes son notorias[10]. El arbitraje nacional colombiano optó por una solución distinta y expresa, y es precisamente esa opción legislativa la que conviene leer con precisión.

En efecto, el parágrafo 1.º del artículo 37 no es, en rigor, una excepción a la regla del consentimiento, sino una particular modalidad de expresarlo dentro del arbitraje nacional. La vinculación de la aseguradora no descansa en una habilitación expresa, sino en un consentimiento implícito que la ley reconoce como suficiente: haber garantizado el cumplimiento de un

7 Blackaby, N., Partasides, C., Redfern, A., & Hunter, M. (2023). Redfern and Hunter on International Arbitration (7.ª ed., cap. 2, §§ 2.46–2.57). Oxford University Press.
8 Gómez Carrión, M. (2015). Joinder of third parties: New institutional developments. Arbitration International, 31(3), 479–505.
9 Baetens, F. (2013). Procedural issues relating to shared responsibility in arbitral proceedings. Journal of International Dispute Settlement, 4(2), 319–341.
10 Ponzano, F. (2022). The CJEU judgment in London Steam-Ship Owners' Mutual Insurance Association Limited v. Kingdom of Spain: A further blow to arbitration? ICC Dispute Resolution Bulletin, 2022(3).

## 2. Consent as the general rule, statutory binding as its anticipated expression

In comparative arbitration — and, in particular, in international commercial arbitration — the binding of a non-signatory is not decreed: it is demonstrated. Redfern and Hunter recall that consent is the "foundation stone" of arbitration and that a non-signatory is bound only through recognised private-law mechanisms — assignment, agency, succession, third-party beneficiary, the group of companies doctrine, veil-piercing, estoppel — all anchored in common intention or in consent presumed from conduct.[7] The rules of the leading international institutions confirm the requirement: Article 22.1 of the LCIA Rules, Article 24(b) of the SIAC Rules and Article 7 of the ICC Rules require that the third party be a signatory to the agreement or consent in writing; none authorises joining a person who "has neither signed nor otherwise consented to an arbitration clause".[8] The same concern for consent runs through the literature on multi-party arbitration and shared responsibility.[9]

Here the distinction between regimes ceases to be a technicality. That entire apparatus — scholarship and rules — belongs to international arbitration, where there is no statutory rule equivalent to paragraph 1: if the guarantor joined has not consented, its binding must be built through one of the consent theories, with uncertain results. In an international arbitration seated in Colombia or governed by Part Three of Law 1563, therefore, the insurer joined is not bound by the mere effect of paragraph 1 — which does not apply to it — and the debate shifts to consent and, where relevant, to the recognition and enforcement of the award, an area where frictions between regimes are well documented.[10] Colombian domestic arbitration chose a different, express solution, and it is precisely that legislative choice that should be read with precision.

Indeed, paragraph 1 of Article 37 is not, strictly speaking, an exception to the rule of consent, but a particular way of expressing it within domestic arbitration. The binding of the insurer rests not on an express empowerment but on an implied consent that the law recognises as sufficient: having guaranteed the performance of a contract containing an arbi-

7 Blackaby, N., Partasides, C., Redfern, A., & Hunter, M. (2023). Redfern and Hunter on International Arbitration (7th ed., ch. 2, §§ 2.46–2.57). Oxford University Press.
8 Gómez Carrión, M. (2015). Joinder of third parties: New institutional developments. Arbitration International, 31(3), 479–505.
9 Baetens, F. (2013). Procedural issues relating to shared responsibility in arbitral proceedings. Journal of International Dispute Settlement, 4(2), 319–341.
10 Ponzano, F. (2022). The CJEU judgment in London Steam-Ship Owners' Mutual Insurance Association Limited v. Kingdom of Spain: A further blow to arbitration? ICC Dispute Resolution Bulletin, 2022(3).

contrato que contiene pacto arbitral. Al garantizar ese contrato, el asegurador conoce —o debe conocer— la cláusula compromisoria que lo integra y acepta, con ello, que su obligación de garante pueda ventilarse ante árbitros. La ley no suprime la voluntad del garante; la localiza en un acto anterior e inequívoco. Esta es, a mi juicio, la mejor lectura del parágrafo y la que mejor honra la ratio de la sentencia C-170 de la Corte Constitucional. De ella se sigue una consecuencia práctica que sirve a las dos partes: quien invoca la vinculación—normalmente, el asegurado o el contratante— hace bien en demostrar que el llamado garantizó precisamente ese contrato, de modo que el consentimiento implícito se configure; y el asegurador que discute su aplicación lo hará, no negando el mecanismo, sino mostrando que no garantizó el cumplimiento de obligaciones de ese contrato —por ejemplo, porque solo aseguró otro tipo de riesgo—, caso en el cual el supuesto de la norma, y con él el consentimiento implícito, no llega a formarse.

### 3. Vinculación no es competencia: la distinción entre oponibilidad y cosa juzgada

El aporte más fértil del derecho comparado —y, a mi juicio, la clave para armonizar los intereses en juego— es una distinción que el debate colombiano suele pasar por alto. El parágrafo dispone que el garante "quedará vinculada a los efectos" del pacto arbitral. Una lectura maximalista entiende que el tribunal decidiría entonces todo el contrato de seguro —vigencia, reticencia, exclusiones, prescripción, coaseguro, reaseguro— como si la póliza contuviera cláusula compromisoria. El texto no exige tanto.

Comentando la jurisprudencia francesa que declaraba el laudo ejecutable frente al fiador, Loquin advierte que "el razonamiento confunde la oponibilidad con la cosa juzgada. La cosa juzgada garantiza la inalterabilidad de lo decidido entre las partes; la oponibilidad extiende la irradiación de la decisión, imponiendo a los terceros la situación jurídica que de ella resulta. Un laudo que condena al deudor constituye un hecho que el fiador debe respetar". Aplicada al parágrafo 1.º, la distinción ofrece un punto de encuentro: el garante queda vinculado a los efectos del laudo —no podrá desconocer lo allí declarado sobre el incumplimiento del contrato garantizado y su cuantía—, sin que ello signifique, necesariamente, que el tribunal adquiera jurisdicción para resolver el contrato de seguro que nadie sometió a arbitraje.

Esta lectura sirve a ambos lados. Para el asegurado, asegura que el resultado del arbitraje —la existencia y el monto del incumplimiento— se impone a la aseguradora sin necesidad de volver a litigarlo, que es la eficiencia que persigue el llamamiento. Para el asegurador, preserva su derecho a discutir en su foro natural las defensas propias de la relación aseguraticia —reticencia o inexactitud del artículo 1058 del Código de

tration agreement. In guaranteeing that contract, the insurer knows — or ought to know — the arbitration clause contained in that contract and thereby accepts that its obligation as guarantor may be adjudicated before arbitrators. The law does not suppress the guarantor's will; it locates it in a prior, unequivocal act. This is, in my view, the best reading of the paragraph and the one that best honours the ratio of C-170. From it follows a practical consequence that serves both sides: whoever invokes the drag-along — usually the insured or the contracting party — does well to show that the joined party guaranteed precisely that contract, so that the implied consent is made out; and the insurer contesting its application will do so not by denying the mechanism, but by showing that it did not guarantee the performance of that contract's obligations — for instance, because it only underwrote a liability risk — in which case the premise of the rule, and with it the implied consent, never forms.

### 3. Being bound is not being subject to jurisdiction: opposability versus res judicata

The most fruitful contribution of comparative law — and, in my view, the key to harmonising the interests at stake — is a distinction the Colombian debate tends to overlook. The paragraph provides that the guarantor "shall be bound by the effects" of the arbitration agreement. A maximalist reading takes this to mean that the tribunal would then decide the entire insurance contract — inception, misrepresentation, exclusions, limitation, co-insurance, reinsurance — as though the policy contained an arbitration clause. The text does not require so much.

Commenting on the French case law holding awards enforceable against sureties, Loquin warns that "the reasoning confuses enforceability and res judicata. Res judicata guarantees the inalterability of the judgment between the parties; enforceability extends the spread of the decision, imposing on third parties the legal situation resulting from it. An award ordering an obligor to pay constitutes a fact, which the surety must respect". Applied to paragraph 1, the distinction offers common ground: the guarantor is bound by the effects of the award — it cannot deny what was found there as to the breach of the guaranteed contract and its amount — without this necessarily meaning that the tribunal acquires jurisdiction to resolve an insurance contract that no one submitted to arbitration.

This reading serves both sides. For the insured, it ensures that the outcome of the arbitration — the existence and amount of the breach — is imposed on the insurer without having to be relitigated, which is the efficiency the joinder pursues. For the insurer, it preserves its right to argue, in their natural forum, the defences proper to the insurance relationship — misrepresentation or non-disclosure under Article 1058, voidabili-

Comercio, nulidad relativa, ausencia de cobertura temporal, prescripción del artículo 1081, agotamiento del valor asegurado—, que no fueron objeto del pacto ajeno. El tribunal arbitral fija el hecho y el monto; la cobertura se decide conforme a la póliza. El derecho canadiense alcanza un resultado equivalente por otra vía: cuando el garante que no suscribió el pacto es demandado ante los jueces, el tribunal estatal suspende la acción contra él hasta que el arbitraje determine el incumplimiento y la cuantía, coordinando ambos procesos sin forzar el consentimiento de nadie[11].

La coordinación tiene, desde luego, un riesgo que conviene reconocer con franqueza. Bigot lo advierte en su forma más aguda: el asegurador que designa árbitro conduce la defensa del asegurado y luego niega la oponibilidad del laudo para no pagar genera un bloqueo inadmisible. La solución no es expandir la competencia arbitral sobre el contrato de seguro, sino robustecer la oponibilidad del laudo como hecho —con particular fuerza cuando el asegurador intervino en su formación— y reservar a la sede del seguro únicamente lo que es propio de la cobertura. Ese equilibrio protege por igual la eficiencia que busca el asegurado y el consentimiento que invoca el asegurador.

### 4. Dos zonas grises que interesan a ambas partes

La brevedad del parágrafo deja al menos dos cuestiones abiertas que ni el asegurado ni el asegurador deberían ignorar. La primera es la posibilidad de una reserva expresa. Si la constitucionalidad de la vinculación del asegurador reposa en una aceptación implícita, una manifestación en contrario debería, al menos, ser discutible: nada impide que la póliza estipule que el asegurador no adhiere a los pactos arbitrales del contrato garantizado. La cuestión se planteó en el propio trámite de la sentencia C-170 —donde se admitió que una reserva del garante revelaría ausencia de voluntad de arbitrar— y la Corte no la descartó. Su eficacia, sin embargo, no es segura: el parágrafo 1.º es norma procesal de orden público, y el parágrafo 2.º prohíbe que "las partes o los reglamentos de los centros de arbitraje" impidan la intervención de terceros. La reserva es, pues, materia litigable —relevante para el asegurador que la invoca y para el asegurado que la controvierte—, cuyo efecto práctico es obligar al tribunal a motivar su competencia, creando materia para la causal del artículo 41.2 de la Ley 1563.

La segunda es una laguna genuina. El inciso 3.º del artículo 37 regula al llamado en garantía "que ha suscrito el pacto arbitral o ha adherido a él" y que no consigna oportunamente los honorarios: el proceso continúa sin su intervención. Pero

11 Casey, J. B. (2017). Arbitration Law of Canada: Practice and Procedure (3.ª ed., cap. 7). JurisNet.

ty, absence of temporal cover, limitation under Article 1081, exhaustion of the sum insured — which were not the object of an agreement to which it is a stranger. The arbitral tribunal establishes the fact and the amount; coverage is decided under the policy. Canadian law reaches an equivalent result by another route: where a guarantor that did not sign the agreement is sued in court, the court stays the action against it until the arbitration determines breach and quantum, coordinating both proceedings without forcing anyone's consent.[11]

The coordination carries, of course, a risk worth acknowledging frankly. Bigot puts it in its sharpest form: an insurer that appoints the arbitrator and conducts the insured's defence, only to then deny the award's opposability so as not to pay, creates an intolerable deadlock. The solution is not to expand arbitral jurisdiction over the insurance contract, but to make the award's opposability robust — with particular force where the insurer took part in its formation — reserving to the forum of the insurance contract only what properly belongs to coverage. That balance protects equally the efficiency the insured seeks and the consent the insurer invokes.

### 4. Two grey areas that concern both sides

The brevity of the paragraph leaves at least two open questions that neither insured nor insurer should ignore. The first is the possibility of an express reservation. If the constitutionality of the drag-along rests on implied acceptance, a statement to the contrary should at least be arguable: nothing prevents a policy from stipulating that the insurer does not adhere to the arbitration agreements of the guaranteed contract. The point was raised in the C-170 proceedings themselves — where it was acknowledged that a reservation by the guarantor would evidence the absence of any intention to arbitrate — and the Court did not rule it out. Its effectiveness, however, is uncertain: paragraph 1 is a mandatory procedural rule of public order, and paragraph 2 prohibits "the parties or the rules of arbitral institutions" from barring the intervention of third parties. The reservation is therefore an arguable matter — relevant to the insurer that invokes it and to the insured that contests it — whose practical effect is to compel the tribunal to give reasons for its jurisdiction, creating material for the ground in Article 41.2 of Law 1563.

The second is a genuine gap. Subsection 3 of Article 37 governs a party called in warranty "which has executed the arbitration agreement or adhered to it" and fails to make a timely deposit of the fees: the proceedings continue without its participation.

11 Casey, J. B. (2017). Arbitration Law of Canada: Practice and Procedure (3rd ed., ch. 7). JurisNet.

el garante del parágrafo 1.º es, por definición, quien no suscribió ni adhirió. El estatuto no dice qué ocurre si no consigna la cantidad adicional fijada a su cargo. Aplicar por analogía el inciso 3.º produce una paradoja delicada: el garante quedaría vinculado a los efectos del laudo sin haber podido ejercer defensa, lo que compromete el debido proceso; remitir al artículo 27 respeta la voluntariedad, pero frustra la integración que buscó el llamante. Ninguna salida es evidente, y por eso conviene que ambas partes anticipen el punto antes de que se decida en su contra.

### 5. La dirección del proceso: una herramienta subutilizada

Existe un mecanismo que la práctica colombiana desaprovecha y que puede servir a los intereses de asegurado y asegurador a la vez. La cláusula que faculta al asegurador para asumir la dirección de la defensa —usual en responsabilidad civil y en cumplimiento— se califica en el derecho francés como un mandato: el asegurador conduce el proceso "en nombre del asegurado y como su mandatario", sin convertirse en parte; puede designar árbitro por cuenta de su asegurado y definir la estrategia, y el laudo vincula al asegurado y a su contraparte. Bien empleado, este esquema permite al asegurador ejercer control real sobre el resultado —lo que atiende su interés legítimo— sin necesidad de expandir la competencia arbitral, y al asegurado contar con una defensa financiada y técnicamente calificada. Su contrapartida debe declararse con claridad: quien dirige el proceso responde ante su asegurado por la conducción negligente de la defensa, y el eventual conflicto entre cobertura y defensa exige reservas de derechos rigurosas.

### 6. Costos, prescripción y suscripción

El artículo 37 faculta al tribunal para fijar "la cantidad adicional a su cargo por concepto de honorarios y gastos". En arbitrajes de cuantía elevada esa suma puede resultar significativa frente al valor asegurado, y su tratamiento no siempre está resuelto en el clausulado. El artículo 1128 del Código de Comercio pone los costos del proceso a cargo del asegurador "aún en exceso de la suma asegurada", con las salvedades allí incluidas. Buena parte de la incertidumbre que hoy se atribuye al parágrafo 1.º es, en rigor, una cuestión de suscripción y de redacción: un tratamiento expreso de los costos de arbitraje, una cláusula de conocimiento del contrato garantizado y una tarificación que contemple el foro arbitral aportan previsibilidad a ambas partes y reducen el litigio sobre la propia cobertura.

Conviene, además, no perder de vista la prescripción. El llamamiento debe formularse en el traslado (artículos 64 y 66 del Código General del Proceso), pero la acción del asegurado prescribe a los dos años desde que conoció o debió conocer el hecho base (artículo 1081 del Código de Comercio).

But the guarantor under paragraph 1 is, by definition, one that neither executed nor adhered. The statute does not say what happens if it fails to deposit the additional amount assessed against it. Applying subsection 3 by analogy produces a delicate paradox: the guarantor would be bound by the effects of the award without having been able to defend itself, compromising due process; referring the matter to Article 27 respects voluntariness but defeats the joinder the calling party sought. Neither way out is self-evident, which is why both sides do well to anticipate the point before it is decided against them.

### 5. Control of the defence: an underused tool

There is a mechanism Colombian practice neglects that can serve the interests of insured and insurer alike. The clause entitling the insurer to take charge of the defence — standard in liability and surety policies — is characterised in French law as a mandate: the insurer conducts the proceedings "in the insured's name and as its agent", without becoming a party; it may appoint an arbitrator on its insured's behalf and set the strategy, and the award binds the insured and its counterparty. Properly used, this scheme lets the insurer exercise real control over the outcome — serving its legitimate interest — without expanding arbitral jurisdiction, and gives the insured a funded, technically qualified defence. Its trade-off must be stated clearly: an insurer that controls the defence answers to its insured for negligent conduct of it, and any conflict between coverage and defence demands rigorous reservations of rights.

### 6. Costs, limitation and underwriting

Article 37 empowers the tribunal to fix "the additional amount payable by it in respect of fees and expenses". In high-value arbitrations that amount may be significant relative to the sum insured, and its treatment is not always resolved in the wording. Article 1128 of the Commercial Code places the costs of the proceedings on the insurer even in excess of the sum insured, subject to the exceptions set out therein. Much of the uncertainty now blamed on paragraph 1 is, strictly speaking, a matter of underwriting and drafting: an express treatment of arbitration costs, a clause requiring review of the guaranteed contract, and pricing that contemplates the arbitral forum bring predictability to both sides and reduce litigation over coverage itself.

Limitation should also be kept in view. The call in warranty must be filed together with the response to the claim (Articles 64 and 66 of the General Code of Procedure), but the insured's action is time-barred two years after it knew or ought to have known of the facts giving rise to it (Article 1081 of the

En arbitrajes de larga maduración, el asegurado puede llegar al llamamiento con el término ya consumido; de ahí que la diligencia en el ejercicio oportuno de la acción sea tan relevante para quien pretende la cobertura como la defensa de prescripción lo es para quien la resiste.

Una última precisión, útil para encuadrar el debate con rigor. Podría pensarse que el tomador debió declarar la existencia del pacto arbitral y que su omisión configura reticencia bajo el artículo 1058. Bigot ofrece un matiz atendible: el arbitraje no es, en sí mismo, un riesgo ni una circunstancia que agrave el estado del riesgo, pues no está fuera del derecho común; solo mediante estipulación expresa en la póliza puede imponerse el deber de informarlo. La observación disciplina por igual a quien invoca la reticencia y a quien la niega, y reconduce la discusión a lo que las partes efectivamente pactaron.

El parágrafo 1.º del artículo 37 es una norma constitucional del arbitraje nacional y, en muchos casos, un instrumento útil de integración procesal. Delimitar con rigor su supuesto de hecho, precisar que no rige el arbitraje internacional, leerlo como regla de oponibilidad antes que, de competencia ilimitada, y trasladar buena parte del debate a la mesa de suscripción no favorece a una parte sobre la otra: aporta la previsibilidad que conviene tanto a las aseguradoras como a las empresas que acuden a ellas para hacer efectiva su garantía.

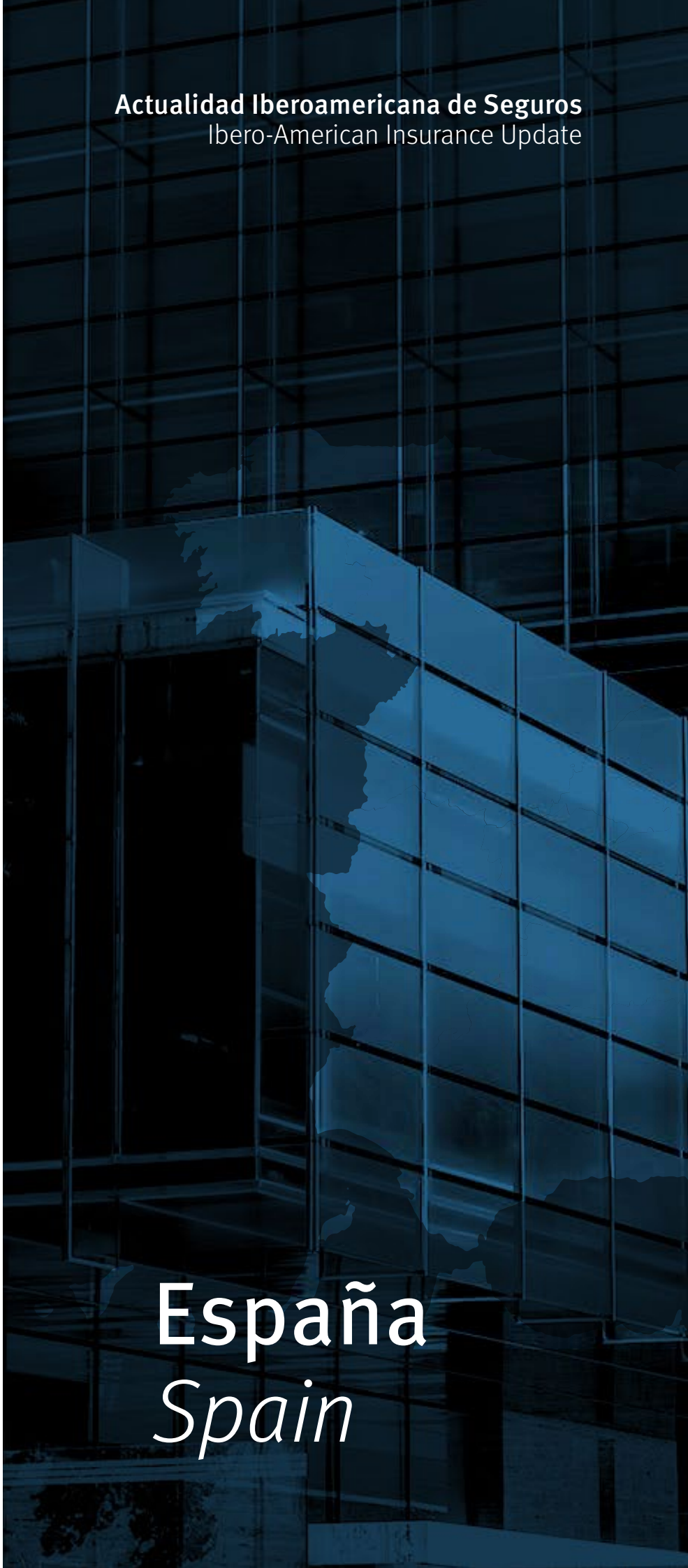
Commercial Code). In slow-maturing arbitrations, the insured may reach the joinder stage with the period already spent; diligence in the timely exercise of the action is therefore as relevant to the party seeking coverage as the limitation defence is to the party resisting it.

One final clarification is useful for framing the debate rigorously. It might be thought that the policyholder ought to have disclosed the existence of the arbitration agreement and that its silence amounts to non-disclosure under Article 1058. Bigot offers a persuasive qualification: arbitration is not, in itself, a risk or a circumstance aggravating the state of the risk, because it does not fall outside the ordinary law; only an express stipulation in the policy can impose a duty to disclose it. The observation disciplines equally the party invoking misrepresentation and the party denying it and returns the discussion to what the parties actually agreed.

Paragraph 1 of Article 37 is a constitutional rule of domestic arbitration and, in many cases, a useful instrument of procedural joinder. Defining its factual premise rigorously, making clear that it does not govern international arbitration, reading it as a rule of opposability rather than of unlimited jurisdiction, and moving much of the debate to the underwriting desk favours neither side: it provides the predictability that benefits insurers and the companies that turn to them to make their guarantee effective alike.

ESPAÑA / SPAIN

**Actualidad Iberoamericana de Seguros**
Ibero-American Insurance Update



# España
# *Spain*

# Principales novedades normativas y de supervisión
Key regulatory and supervisory developments

## Regulación

### EIOPA completa el mandato de la revisión de Solvencia II con la publicación de las directrices finales y los proyectos de normas técnicas

EIOPA ha publicado ocho instrumentos, entre directrices y proyectos de normas técnicas, con los que culmina la entrega de todos los que le encomendó la revisión de la Directiva Solvencia II. El paquete incluye unas nuevas directrices sobre vulnerabilidades de liquidez, un proyecto de normas técnicas de regulación ("**RTS**") sobre el cálculo simplificado del margen de riesgo y la revisión de otras cuatro directrices y dos normas técnicas de ejecución.

Los cambios responden a los mandatos recibidos en el marco de la revisión y aseguran que los instrumentos existentes se mantengan actualizados y coherentes con el marco modificado por la Directiva 2025/2 y el Reglamento Delegado (UE) 2026/269 de la Comisión, de 29 de octubre de 2025, por el que se modifica el Reglamento Delegado Solvencia II en lo que respecta a las provisiones técnicas, las medidas de garantía a largo plazo, los fondos propios, el riesgo de acciones, el riesgo de diferencial de las posiciones de titulización, otro capital obligatorio según la fórmula estándar, la presentación y divulgación de información, la proporcionalidad y la solvencia de grupo.

EIOPA ha aprovechado además para simplificar las directrices e introducir aclaraciones puntuales cuando era necesario.

#### Nuevas directrices sobre facultades supervisoras ante vulnerabilidades de liquidez

La Revisión de Solvencia II encargó a EIOPA desarrollar directrices sobre las facultades supervisoras para corregir deficiencias en la gestión de la liquidez de las entidades. Las nuevas directrices precisan la forma, la activación y el alcance de las facultades que los supervisores pueden ejercer para reforzar la posición de liquidez de las entidades. Asimismo, concretan las circunstancias excepcionales en que los supervisores pueden suspender temporalmente los derechos de rescate de los tomadores.

#### Cálculo simplificado del margen de riesgo

La revisión introduce en el cálculo del margen de riesgo un elemento exponencial dependiente del tiempo, el denominado "factor lambda". Su finalidad es reflejar mejor la depen-

## Regulation

### EIOPA completes its Solvency II Review mandate with the publication of final guidelines and draft regulatory technical standards

EIOPA has published eight instruments, comprising guidelines and draft regulatory technical standards, thereby completing the delivery of all those entrusted to it as part of the review of the Solvency II Directive. The package includes new Guidelines on liquidity vulnerabilities, draft Regulatory Technical Standards ("**RTS**") on the simplified calculation of the risk margin, and the revision of four other sets of Guidelines and two sets of Implementing Technical Standards.

The changes are in response to the mandates received as part of the review and ensure that existing instruments remain up to date and consistent with the framework amended by Directive 2025/2 and Commission Delegated Regulation (EU) 2026/269 of 29 October 2025 amending Delegated Regulation (EU) 2015/35 as regards technical provisions, long-term guarantee measures, own funds, equity risk, spread risk on securitisation positions, other standard formula capital requirements, reporting and disclosure, proportionality and group solvency.

EIOPA has also taken this opportunity to simplify the guidelines and introduce specific clarifications where necessary.

#### New Guidelines on supervisory powers to remedy liquidity vulnerabilities

The Solvency II Review mandated EIOPA to develop Guidelines on supervisory powers to address deficiencies in undertakings' liquidity management. The new Guidelines specify the form, activation and scope of the powers that supervisors may exercise to strengthen the liquidity position of undertakings. They also set out the exceptional circumstances in which supervisors may temporarily suspend policyholders' redemption rights.

#### Simplified calculation of the risk margin

The review introduces an exponential and time-dependent element into the calculation of the risk margin, known as the "lambda factor". Its purpose is to better reflect the time

dencia temporal de los riesgos y reducir tanto el importe del margen de riesgo de los pasivos a largo plazo como su sensibilidad a los cambios de tipos de interés. Para aplicar este cambio, eran necesarias unas RTS para alinear las referencias del Reglamento Solvencia II. Además, como el factor lambda afecta directamente a las directrices sobre valoración de provisiones técnicas, estas se han actualizado para reflejar su uso en el cálculo del margen de riesgo.

### Ajuste por casamiento

La revisión permitirá a las entidades que aplican el ajuste por casamiento asumir plena diversificación entre su cartera sujeta al ajuste y el resto de la entidad al calcular el capital de solvencia obligatorio, siempre que dicha cartera no constituya un fondo de disponibilidad limitada. El proyecto de normas técnicas de ejecución sobre la aprobación supervisora del ajuste por casamiento se adapta a este cambio. Las Directrices sobre fondos de disponibilidad limitada también se han actualizado para aclarar que no todas las carteras sujetas al ajuste por casamiento tendrán esa consideración.

### Otras revisiones

Las modificaciones del marco de la Directiva Solvencia II han exigido también revisar las normas técnicas de ejecución sobre las plantillas de divulgación de información por las autoridades supervisoras y dos conjuntos de Directrices: las de solvencia de grupo y las de presentación de información y divulgación pública. Todos ellos se han actualizado para alinearlos con el marco modificado y se han simplificado cuando ha sido posible.

### Próximos pasos

Los proyectos de normas técnicas se han remitido a la Comisión Europea, que decidirá sobre su adopción. Junto con las directrices, apoyan la implementación del marco revisado de la Directiva Solvencia II y, como el resto de los cambios introducidos por la revisión, serán aplicables desde el 30 de enero de 2027.

dependency of risks and reduce both the amount of the risk margin for long-term liabilities and its sensitivity to interest rate changes. To implement this change, a new RTS was required to align the references in the Solvency II Regulation. Furthermore, as the lambda factor directly affects the existing Guidelines on the valuation of technical provisions, these have been updated to reflect the use of the lambda factor in the calculation of the risk margin.

### Matching adjustment

The revision will allow undertakings applying the matching adjustment to assume full diversification between their portfolio subject to the adjustment and the rest of the undertaking when calculating the Solvency Capital Requirement, provided that such a portfolio does not constitute a ring-fenced fund. The draft Implementing Technical Standards ("**ITS**") on the supervisory approval of the matching adjustment have been adapted to reflect this change. The Guidelines on ring-fenced funds have also been updated to clarify that not all portfolios subject to the matching adjustment will be treated as such.

### Other revisions

Amendments to the Solvency II Directive framework have also necessitated revisions to the ITS on disclosure templates for supervisory authorities and to two sets of Guidelines: those on group solvency and those on reporting and disclosure. All of these have been updated to bring them into line with the amended framework and have been simplified where possible.

### Next steps

The draft technical standards have been submitted to the European Commission, which will decide on their adoption. Together with the Guidelines, they support the implementation of the amended Solvency II framework and, like the other changes introduced by the revision, will apply from 30 January 2027.



## EIOPA publica siete instrumentos regulatorios para la implementación de la Directiva IRRD

EIOPA publicó, el 8 de julio de 2026, un paquete de siete instrumentos regulatorios (cuatro directrices y tres proyectos de RTS) que desarrollan la Directiva IRRD, que será de aplicación en 2027 e introduce un marco específico de planificación preventiva y gestión de crisis para entidades aseguradoras y reaseguradoras europeas. Con esta publicación, EIOPA ha completado ya quince de los diecinueve instrumentos previstos en su mandato de desarrollo de la IRRD; las cuatro medidas restantes se agruparán en dos proyectos de RTS, que se someterán a consulta pública.

- **Directrices sobre escenarios**: definen los escenarios macroeconómicos y financieros de estrés -tanto sistémicos como idiosincrásicos, y sus combinaciones (por ejemplo, caídas masivas de pólizas y pérdidas de suscripción)- para evaluar la credibilidad y viabilidad de los planes preventivos de recuperación desde las perspectivas de solvencia, liquidez y rentabilidad.

- **Directrices sobre indicadores**: identifican los indicadores cualitativos y cuantitativos que deben incorporarse a los planes preventivos de recuperación, en las áreas de capital, liquidez, calidad de los activos, rentabilidad, condiciones de mercado y macroeconómicas y eventos operativos.

- **Directrices sobre suministro de información**: regulan el uso de las excepciones al secreto profesional respecto de la información confidencial, en particular cuando la divulgación se realiza de forma resumida o agregada, sin permitir la identificación de entidades individuales.

- **Directrices sobre obligaciones simplificadas**: concretan los criterios de elegibilidad -naturaleza del negocio, estructura accionarial, forma jurídica, perfil de riesgo, tamaño, interconexión, y alcance y complejidad de las actividades- que las autoridades supervisoras y de resolución deben ponderar para reconocer obligaciones simplificadas.

- **Proyecto de RTS sobre independencia de los valoradores**: determina las condiciones en que un candidato a valorador puede considerarse independiente de la autoridad de resolución y de la entidad objeto de resolución, para poder llevar a cabo la valoración de sus activos y pasivos.

- **Proyecto de RTS sobre reconocimiento contractual de las facultades de suspensión**: establece cláusulas estandarizadas para los contratos financieros que permitan a la autoridad de resolución ejercer sus facultades de suspensión o restricción de derechos y obligaciones sobre contratos regidos por Derecho de terceros Estados, en aras de la exigibilidad transfronteriza de las medidas de resolución.

## EIOPA publishes seven regulatory instruments for the implementation of the IRRD Directive

On 8 July 2026, EIOPA published a package of seven regulatory instruments (four guidelines and three draft regulatory technical standards ("**RTS**")) in relation to the implementation of the IRRD, which will enter into force in 2027 and introduces a specific framework for pre-emptive planning and crisis management for European insurance and reinsurance undertakings. With this publication, EIOPA has now finalised 15 of the 19 instruments provided for in its mandate to support the application of the IRRD. The remaining four instruments will be merged into two draft RTS, which will be subject to public consultation.

- **Guidelines on scenarios**: These Guidelines outline a range of macroeconomic and financial stress scenarios – both systemic and insurer-specific, and combinations thereof (for example, mass policy lapses and underwriting losses) – to assess the credibility and feasibility of pre-emptive recovery plans from the perspectives of solvency, liquidity and profitability.

- **Guidelines on indicators**: These Guidelines identify the qualitative and quantitative indicators that must be incorporated into pre-emptive recovery plans, including indicators related to capital and liquidity positions, asset quality, profitability, market and macroeconomic conditions, and operational events.

- **Guidelines on the provision of information**: These Guidelines establish the rules regarding the use of exemptions to professional secrecy for confidential information, in particular where disclosures are made in summary or in collective form without allowing the identification of individual entities.

- **Guidelines on simplified obligations**: These Guidelines set out the eligibility criteria – the nature of the business, shareholding structure, legal form, risk profile, size, interconnectedness, and the scope and complexity of activities – which supervisory and resolution authorities must consider when assessing whether an undertaking or group is eligible for simplified obligations.

- **Draft RTS on the independence of valuers**: These RTS specify the conditions under which a candidate valuer is deemed to be independent from both the resolution authority and the entity under resolution, in order to carry out the valuation of its assets and liabilities.

- **Draft RTS on contractual recognition of resolution stay powers**: These RTS establish standardised terms for financial contracts that would allow the resolution authority to exercise its authority to suspend or restrict rights and obligations in relation to contracts governed by third-country laws, with a view to ensuring the cross-border enforceability of the resolution authority's actions.

- **Proyecto de RTS sobre valoración de pasivos derivados de instrumentos derivados**: fija las metodologías y principios de valoración, en sede de resolución, de los pasivos surgidos de contratos de derivados.

El paquete se ha elaborado a partir de las consultas públicas, y cada instrumento se acompaña de su respectiva evaluación de impacto y de la memoria de respuesta a las observaciones recibidas. EIOPA subraya su esfuerzo por minimizar la carga regulatoria y simplificar la aplicación de este paquete regulatorio, preservando la solidez técnica del marco.

## EIOPA somete a consulta pública dos proyectos de RTS sobre la valoración de las (re)aseguradoras a efectos de resolución, con los que completa el desarrollo técnico de la Directiva IRRD

EIOPA abrió dos consultas públicas sobre sendos proyectos de RTS en materia de valoración de entidades aseguradoras y reaseguradoras -individuales y en base consolidada- a efectos de resolución. La Directiva IRRD, cuya entrada en vigor está prevista para enero de 2027, introduce un marco específico de planificación preventiva y gestión de crisis para el sector asegurador europeo, orientado a preservar la estabilidad del mercado y a permitir la liquidación ordenada de las entidades y grupos inviables.

- **Proyecto de RTS sobre las valoraciones 1 y 2**: fija las metodologías para valorar los activos y pasivos de la entidad en resolución e incorpora la metodología para calcular el colchón por pérdidas adicionales que debe integrarse en las valoraciones provisionales.

- **Proyecto de RTS sobre la valoración 3**: establece las metodologías para llevar a cabo, tan pronto como sea posible tras la adopción de las medidas de resolución, la valoración dirigida a determinar si los accionistas, tomadores, beneficiarios, terceros perjudicados y demás acreedores habrían recibido un mejor trato en un procedimiento concursal ordinario -*test no creditor worse off*-.

Con estas dos consultas EIOPA cierra el ciclo de trabajos preparatorios de los diecinueve instrumentos previstos para el despliegue de la Directiva IRRD: preceden a esta convocatoria tres consultas públicas anteriores y la publicación de quince instrumentos ya finalizados.

- **Draft RTS on the valuation of liabilities from derivatives**: These RTS specify methodologies and principles for the valuation, in the context of resolution, of liabilities arising from derivatives.

This package of instruments has been prepared through public consultations, and each instrument is accompanied by its respective impact assessment and a report addressing the comments received. EIOPA emphasises its efforts to minimise the burden on authorities and simplify the regulation, while making sure that the instruments remain robust.

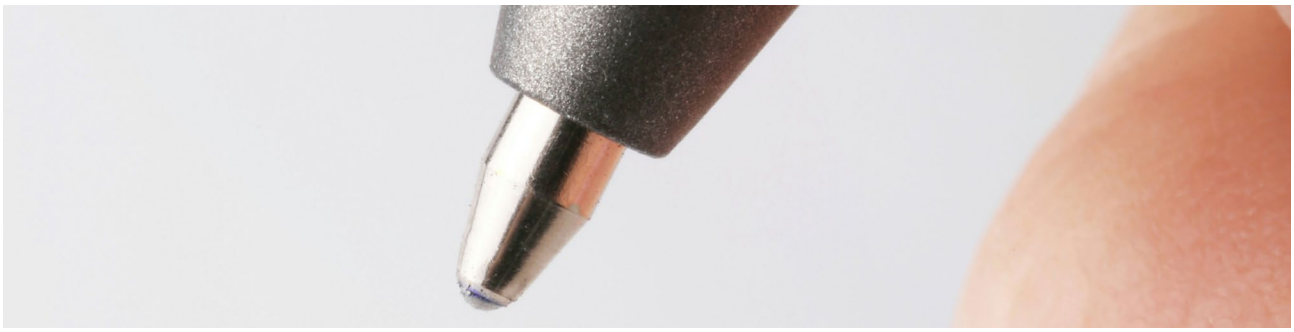
## EIOPA has launched public consultations on two draft regulatory technical standards (RTS) on the valuation of (re)insurers in the context of resolution, thereby completing the technical implementation of the IRRD

EIOPA has launched two public consultations on two separate draft RTS concerning the valuation of insurance and reinsurance undertakings – both on an individual and consolidated basis – for resolution purposes. The IRRD, which is due to enter into force in January 2027, introduces a specific framework for pre-emptive planning and effective crisis management for the European insurance sector, and seeks to preserve market stability and enable the orderly wind-down of failing undertakings and groups.

- **Draft RTS on valuations 1 and 2**: The draft RTS set out the methodologies for assessing the value of the assets and liabilities of undertakings in the context of resolution and the methodology for calculating the buffer for additional losses to be included in provisional valuations.

- **Draft RTS on valuation 3**: This sets out the methodologies for carrying out a valuation as soon as possible after the resolution measures have been taken to assess whether shareholders, policyholders, beneficiaries, claimants and other creditors would have received better treatment had the undertaking under resolution entered normal insolvency proceedings – the “no creditor worse off” test.

With these two consultations, EIOPA concludes the preparatory work on the 19 policy instruments that support the implementation of the IRRD. This call for comments follows three previous public consultations and the publication of 15 policy instruments that EIOPA has already finalised.



## Consulta sobre la mejora de las divulgaciones corporativas de las entidades aseguradoras en el marco de la taxonomía de la UE para actividades medioambientalmente sostenibles

EIOPA publicó el 1 de julio de 2026 una consulta pública (abierta hasta el 12 de agosto de 2026) motivada por la solicitud de asesoramiento técnico que la Comisión Europea remitió en marzo de 2026 a las ESAs para simplificar y mejorar el Reglamento Delegado (UE) 2021/2178 de la Comisión, de 6 de julio de 2021, por el que se completa el Reglamento (UE) 2020/852 del Parlamento Europeo y del Consejo mediante la especificación del contenido y la presentación de la información que deben divulgar las empresas sujetas a los artículos 19 bis o 29 bis de la Directiva 2013/34/UE respecto a las actividades económicas sostenibles desde el punto de vista medioambiental, y la especificación de la metodología para cumplir con la obligación de divulgación de información (el "**Reglamento Delegado de Divulgaciones**"), dictado en el marco del Reglamento (UE) 2020/852 del Parlamento Europeo y del Consejo de 18 de junio de 2020 relativo al establecimiento de un marco para facilitar las inversiones sostenibles (el "**Reglamento de Taxonomía**").

La consulta plantea modificaciones al Reglamento Delegado de Divulgaciones, con el objetivo de aumentar la transparencia, simplificar la información que debe divulgarse y alinear mejor estos requisitos con otros marcos de finanzas sostenibles y con los aplicables a otras entidades financieras.

Entre las principales novedades, EIOPA propone revisar el indicador clave de rendimiento (*key performance indicator* o KPI, por sus siglas en inglés) de suscripción de las aseguradoras y reaseguradoras, renombrándolo "*Adaptation Underwriting KPI*" y limitando su denominador a las líneas de negocio elegibles a efectos de la taxonomía, así como estandarizar el cálculo del ratio de elegibilidad exigiendo un desglose de las primas que cubran exclusivamente riesgos relacionados con el clima. Asimismo, plantea introducir un nuevo "*Green Insured Activities KPI*" para medir el ratio de actividades aseguradas alineadas con la taxonomía, que cubriría tanto las pólizas suscritas con empresas sujetas al Reglamento de Taxonomía como las pólizas minoristas de riesgos contra la propiedad y transporte.

## Consultation on improving corporate disclosures by insurance undertakings within the framework of the EU Taxonomy for environmentally sustainable activities

On 1 July 2026, EIOPA published a public consultation (open until 12 August 2026) prompted by the request for technical advice that the European Commission sent to the European Supervisory Authorities (ESAs) in March 2026 with a view to simplifying and improving Commission Delegated Regulation (EU) 2021/2178 of 6 July 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation (the "**Delegated Regulation on Disclosures**"), adopted under Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment (the "**Taxonomy Regulation**").

The consultation proposes amendments to the Delegated Regulation on Disclosures, with the aim of increasing transparency, simplifying the information to be disclosed and better aligning these requirements with other sustainable finance frameworks and with those applicable to other financial institutions.

Among the main changes, EIOPA proposes revising the current underwriting KPI for insurers and reinsurers by renaming it the "Adaptation Underwriting KPI" and limiting its denominator to taxonomy-eligible business lines, as well as standardising the calculation of the eligibility ratio by requiring a breakdown of premiums that exclusively cover climate-related risks. It also proposes introducing a new "Green Insured Activities KPI" to measure the ratio of insured activities aligned with the Taxonomy, which would cover both policies underwritten with undertakings subject to the Taxonomy Regulation and retail policies for property and transport risks.

Por último, sugiere simplificar las plantillas de reporte eliminando el desglose de las actividades de gas y nuclear, dar mayor relevancia a la información de taxonomía en los informes anuales.

## Supervisión

### Informe de seguimiento de la EIOPA a su revisión sobre la supervisión de gobernanza y vigilancia de productos

EIOPA ha publicado su informe de seguimiento a su revisión realizada en 2023 sobre la supervisión de gobernanza y vigilancia de productos (*product oversight and governance*") ("**POG**"), en el que se evalúa el grado de implementación por las autoridades nacionales competentes de las acciones recomendadas en aquella revisión, articuladas en torno a dos ejes principales:

- En primer lugar, EIOPA constata una evolución positiva y generalizada en la madurez de la supervisión de POG entre las autoridades nacionales, si bien con diferencias relevantes entre jurisdicciones. De las 110 acciones recomendadas dirigidas a 30 autoridades, el 62% se consideran cumplidas, el 26% parcialmente cumplidas y el 12% incumplidas, con mejores resultados en el área de enfoque basado en el riesgo ("*risk-based approach*"), que presenta un grado de cumplimiento del 76%, y avances más desiguales en la organización y recursos de la supervisión y en las metodologías y herramientas supervisoras.

- En segundo lugar, EIOPA identifica que los incumplimientos se concentran en un número limitado de autoridades, vinculados a marcos supervisores aún en desarrollo, guías internas de carácter demasiado general o pendientes de aprobación formal, o una implementación práctica de las herramientas de supervisión todavía no suficientemente acreditada, por lo que insta a mantener el esfuerzo de convergencia supervisora en estas áreas.

En el caso concreto de España, la DGSFP no logra el cumplimiento pleno de ninguna de las cinco acciones recomendadas que le fueron dirigidas: las relativas a la organización y recursos de la supervisión de POG, a la fijación de expectativas supervisoras y a las actividades supervisoras se consideran parcialmente cumplidas, mientras que las referidas al enfoque basado en el riesgo y a las metodologías y herramientas supervisoras se consideran incumplidas, si bien EIOPA reconoce los avances en curso en el marco del programa de asistencia técnica ("TSI") de la Dirección General de Reformas Estructurales de la Comisión Europea y espera su cumplimiento una vez finalizados sus resultados.

Finally, it suggests simplifying the reporting templates by removing the breakdown of gas and nuclear activities and giving greater prominence to Taxonomy information in annual reports.

## Supervision

### EIOPA follow-up report to its peer review on product oversight and governance

EIOPA has published its follow-up report to its 2023 Peer Review on Product Oversight and Governance ("**POG**"), in which it assesses the progress made by National Competent Authorities (NCAs) in implementing the actions recommended in that review, which focus on two main areas:

- Firstly, EIOPA notes a positive and widespread trend in the maturity of POG supervision among NCAs, albeit with significant differences between jurisdictions. Of the 110 recommended actions addressed to 30 authorities, 62% are considered to have been fully implemented, 26% are considered partially implemented and 12% have not been implemented, with the best results in the area of the risk-based approach, which has a compliance rate of 76%, and more mixed progress in the organisation and resources of supervision and in supervisory methodologies and tools.

- Secondly, EIOPA notes that non-compliance is concentrated among a limited number of authorities, linked to supervisory frameworks still under development, internal guidelines that are too general in nature or that still await formal approval, or the practical implementation of supervisory tools that has not yet been sufficiently demonstrated. Therefore, it urges continued efforts towards supervisory convergence in these areas.

In the specific case of Spain, the DGSFP has not achieved full compliance with any of the five recommended actions that were addressed to it: those relating to the organisation and resources of POG supervision, the setting of supervisory expectations and supervisory activities are considered partially compliant, while those relating to the risk-based approach and to supervisory methodologies and tools are considered non-compliant, although EIOPA acknowledges the progress currently being made under the Technical Support Instrument (TSI) programme of the European Commission's Directorate-General for Structural Reform Support and expects compliance once the programme's results are finalised.

## Metodología revisada de EIOPA sobre los parámetros de referencia (*benchmarks*) de relación calidad-precio (*value for money*) para productos *unit-linked* e híbridos de seguro

EIOPA ha publicado la revisión de su metodología para el cálculo de parámetros de referencia ("*benchmarks*") que permiten evaluar la relación calidad-precio de los productos de seguro vinculados a fondos de inversión ("*unit-linked*") y de los productos híbridos.

Los parámetros de referencia son valores calculados por grupos homogéneos de productos, definidos a partir de características como la categoría del producto, la periodicidad de la prima, el periodo de mantenimiento recomendado, el nivel de cobertura biométrica, la clase de activo y el indicador de riesgo resumido.

Para cada grupo homogéneo de productos se calculan cinco indicadores de relación calidad-precio: costes de entrada, costes totales, reducción del rendimiento ("**RIY**"), valor de rescate y tasa interna de rentabilidad ("**IRR**").

Su finalidad es servir de herramienta de supervisión basada en el riesgo, ya que permiten a las autoridades nacionales competentes identificar productos que, en comparación con otros similares, presenten un riesgo más elevado de no ofrecer una adecuada relación calidad-precio, para someterlos a una mayor vigilancia dentro del proceso de supervisión de gobernanza y control de productos exigido la Directiva IDD.

EIOPA aclara expresamente que los parámetros de referencia no constituyen una regulación de precios, es decir, superarlos no exime a la aseguradora de acreditar que sus costes son proporcionados.

La metodología también contempla una "zona de cautela" alrededor de cada parámetro, calculada en función de la dispersión de los datos, así como una serie de características no incluidas en los grupos homogéneos de productos que pueden justificar una desviación respecto de los parámetros de referencia.

Inicialmente, EIOPA compartirá los parámetros únicamente con las autoridades nacionales competentes y solo cuando la metodología esté suficientemente probada y estabilizada se valorará su traslado a las entidades aseguradoras.

## EIOPA's revised value-for-money benchmark methodology for unit-linked and hybrid insurance products

EIOPA has published a revision of its methodology for calculating benchmarks used to assess the value for money of unit-linked and hybrid insurance products.

The benchmarks are values calculated for product clusters, defined on the basis of characteristics such as product category, premium frequency, recommended holding period, level of biometric coverage, asset class and summary risk indicator.

For each product cluster, five value-for-money indicators are calculated: entry costs, total costs indicator, reduction in yield ("**RIY**"), surrender value, and internal rate of return ("**IRR**").

Their purpose is to serve as a risk-based supervisory tool, as they enable the National Competent Authorities (NCAs) to identify products which, compared with similar ones, present higher value for money risks, so that they may be subject to closer scrutiny as part of the Product Oversight and Governance (POG) process required by the IDD.

EIOPA expressly clarifies that the benchmark parameters do not constitute price regulation; in other words, exceeding them does not exempt an insurer from demonstrating that its costs are proportionate.

The methodology also provides for a "caution area" around each benchmark, calculated on the basis of data dispersion, as well as a number of characteristics not included in the product clusters which may justify a deviation from the benchmarks.

Initially, EIOPA will share the benchmarks solely with the NCAs; only once the methodology has been sufficiently tested and stabilised will its roll-out to insurance undertakings be considered.

## *Insurance Risk Dashboard*, de julio de 2026, de EIOPA, por el que se actualiza el nivel de riesgo del sector asegurador europeo

Basado en datos indicados en Solvencia II, el informe resume los principales riesgos y vulnerabilidades del sector asegu-

## EIOPA's July 2026 Insurance Risk Dashboard, which updates the risk level of the European insurance sector

Based on Solvency II data, the Risk Dashboard summarises the main risks and vulnerabilities of the EU insurance sec-

rador de la UE a través de un conjunto de indicadores agrupados en nueve categorías. Los riesgos macroeconómicos se mantienen estables en nivel medio con perspectiva al alza, ante el debilitamiento de las previsiones de crecimiento, el repunte de la inflación esperada y la tensión geopolítica de principios de julio.

Los riesgos de crédito, liquidez y financiación, rentabilidad y solvencia, interconexiones y desequilibrios, riesgos de seguro (suscripción), percepción del mercado y riesgos relacionados con criterios ESG permanecen todos en nivel medio y con condiciones en general estables, si bien se señalan focos de atención como el posible deterioro del ratio combinado no vida, el aumento de la cesión de primas a reaseguradoras, y la incertidumbre derivada de coberturas relacionadas con conflictos bélicos y comercio internacional.

El riesgo de digitalización y ciberseguridad es el único que se eleva a nivel alto, reflejando la valoración de los supervisores nacionales sobre el aumento de la relevancia de estos riesgos, el incremento observado en el número de ciberataques globales durante el primer trimestre de 2026, y la advertencia de los supervisores sobre riesgos cibernéticos sistémicos derivados de los modelos de IA de frontera, instando a las entidades financieras a adaptar sus capacidades de ciberseguridad conforme a los requisitos del Reglamento DORA.

tor through a set of indicators which are grouped into nine categories. Macroeconomic risks remain stable at a medium level with a worsening outlook, given the weakening growth forecasts, higher inflation expectations and the geopolitical tensions in early July.

Credit, liquidity and funding risks; profitability and solvency risks; interlinkages and imbalances risks; insurance (underwriting) risks; market perceptions; and ESG-related risks all remain at a medium level and under generally stable conditions, although areas of concern are highlighted, such as the possible deterioration in the non-life combined ratio, the increase in the cession of premiums to reinsurers, and the uncertainty arising from cover relating to armed conflicts and international trade.

Digitalisation & cyber risks is the only category to rise to a high level, reflecting supervisory assessments of the increasing significance of these risks, the observed rise in the number of global cyberattacks during the first quarter of 2026, and the warning from supervisors regarding systemic cyber risks arising from frontier AI models, which urges financial institutions to adapt their cybersecurity capabilities in line with the requirements of the DORA Regulation.

## Ficha informativa de EIOPA sobre la exposición de las (re) aseguradoras del EEE a activos privados

EIOPA recopila y publica estadísticas exhaustivas sobre las entidades aseguradoras del EEE. La ficha informativa publicada complementa dichas estadísticas ofreciendo un mayor detalle sobre la exposición de las (re)aseguradoras a la deuda privada y al capital riesgo ("*private equity*").

Ante el creciente interés por las asignaciones a activos privados, la ficha ofrece una panorámica de las inversiones de las (re)aseguradoras del EEE en esta clase de activos.

## EIOPA factsheet on the exposure of EEA (re)insurers to private assets

EIOPA compiles and publishes comprehensive statistics on EEA insurance undertakings. The published factsheet supplements these statistics by providing greater detail on (re)insurers' exposure to private credit and private equity.

In light of the growing interest in allocations to private assets, the factsheet provides an overview of EEA (re)insurers' investments in this asset class.



La ficha muestra que la exposición a activos privados de las (re)aseguradoras del EEE ascendió a 1,185 billones de euros, en torno al 11% del total de activos, a cierre de 2025. La deuda privada representó aproximadamente el 5,0% del total de activos, mientras que el capital riesgo ("*private equity*") supuso el 6,3%. La visualización de estas exposiciones ofrece un desglose de dichas inversiones por tipo de activo y país de emisión.

Un segundo gráfico ofrece información sobre las inversiones en deuda privada y capital riesgo ("*private equity*") por ramo de actividad. Mientras que las aseguradoras de vida tienden a orientarse hacia la deuda privada, otros tipos de negocio, como el reaseguro, muestran mayores inversiones en capital riesgo ("*private equity*").

The factsheet shows that the exposure of EEA (re)insurers to private assets amounted to 1.185 trillion euros, representing around 11% of total assets, at the end of 2025. Private credit accounted for approximately 5.0% of total assets, while private equity accounted for 6.3%. A visualisation of these exposures provides a breakdown of these investments by asset type and country of issue.

A second chart provides information on investments in private credit and private equity by type of activity. While life insurers tend to favour private credit, other types of business, such as reinsurance, show higher levels of investment in private equity.

## Cuestionario de la DGSFP sobre el nuevo marco de proporcionalidad y otros aspectos de la revisión de la Directiva Solvencia II

La DGSFP publicó un cuestionario dirigido a las entidades aseguradoras y reaseguradoras para recabar información sobre la aplicación del nuevo marco de proporcionalidad, así como sobre otros elementos introducidos en la revisión de la Directiva Solvencia II. La información recopilada contribuiría a los trabajos de seguimiento y evaluación de este nuevo régimen por parte de la DGSFP.

El cuestionario incluía las siguientes preguntas: (i) si la entidad cumplía los criterios del artículo 29 bis de la Directiva Solvencia II para ser clasificada como entidad pequeña y no compleja; (ii) en caso afirmativo, qué medidas de proporcionalidad de entre las previstas en la Directiva Solvencia II y el Reglamento Solvencia II consideraba oportuno solicitar; (iii) en caso de no poder ser clasificada como entidad pequeña y no compleja, si consideraba que podía acceder a alguna medida de proporcionalidad previa autorización supervisora; (iv) si solicitaría autorización previa para aplicar el mecanismo de introducción progresiva de la extrapolación de la estructura temporal de tipos de interés sin riesgo del artículo 77 bis de la Directiva Solvencia II; y (v) si solicitaría autorización previa para aplicar el ajuste por volatilidad de dicha estructura temporal, previsto en el artículo 77 quinquies de la Directiva Solvencia II. La fecha límite para su cumplimentación fue el 31 de julio de 2026.

## DGSFP questionnaire on the new proportionality framework and other aspects of the revision of the Solvency II Directive

The DGSFP has published a questionnaire for insurance and reinsurance undertakings to gather information on the implementation of the new proportionality framework, as well as on other elements introduced in the revision of the Solvency II Directive. The information gathered would contribute to the DGSFP's work on monitoring and evaluating this new regime.

The questionnaire included the following questions: (i) whether the undertaking met the criteria set out in Article 29a of the Solvency II Directive to be classified as a small and non-complex undertaking; (ii) if so, which proportionality measures, from among those provided for in the Solvency II Directive and the Solvency II Regulation, it considered appropriate to request; (iii) if it could not be classified as a small and non-complex undertaking, whether it considered that it could access any proportionality measure subject to supervisory authorisation; (iv) whether it would seek prior authorisation to apply the mechanism for the phased introduction of the extrapolation of the risk-free interest rate term structure set out in Article 77a of the Solvency II Directive; and (v) whether it would seek prior authorisation to apply the volatility adjustment to that term structure, as provided for in Article 77d of the Solvency II Directive. The deadline for completion was 31 July 2026.

# Principales novedades jurisprudenciales
Main developments in case law

## Aspectos generales

### ▸ No excuses

**No concurre causa justificada de exoneración de los intereses del artículo 20 de la LCS al no existir incertidumbre real sobre la cobertura del siniestro como hecho de la circulación**

*Sentencia del Tribunal Supremo núm. 1313/2026, de 23 de julio (Rec. 2336/2022). Roj: STS 3384/2026 – ECLI:ES:TS:2026:3384*

La sentencia de la Audiencia Provincial de Huelva había estimado en parte el recurso de apelación del demandante, condenando solidariamente al conductor de un camión de limpieza de alcantarillado y a su aseguradora al pago de 57.327,46€. Ello debido a las lesiones sufridas por un motociclista que resbaló sobre un líquido vertido en la calzada por el camión, mientras este se encontraba estacionado realizando labores de limpieza. La Audiencia excluyó la aplicación de los intereses moratorios del artículo 20 de la LCS al entender que había sido necesario acudir al proceso para determinar si el accidente constituía un hecho de la circulación cubierto por el seguro obligatorio.

La sentencia del Tribunal Supremo estimó el recurso de casación interpuesto por el demandante y casó parcialmente la sentencia de la Audiencia, condenando a la aseguradora al abono de los intereses de demora del artículo 20 de la LCS desde la fecha del siniestro. La Sala consideró que no concurría causa justificada de exoneración de la mora, ya que no existía duda real sobre la realidad del siniestro ni sobre su cobertura. La propia aseguradora, conocedora del régimen del seguro obligatorio, había abonado previamente los daños materiales del vehículo, lo que evidenciaba que no albergaba dudas genuinas sobre la calificación del hecho como cubierto por la póliza, y el litigio no giraba sobre el importe de la indemnización, sino sobre una cuestión que la propia aseguradora ya había resuelto tácitamente con su conducta.

El Supremo reiteró su doctrina de que la mera judicialización de una reclamación no basta para justificar el retraso de la aseguradora, y que solo la existencia de una incertidumbre racional sobre el nacimiento de la obligación de indemnizar puede amparar la exoneración de los intereses sancionadores del artículo 20 de la LCS.

## General aspects

### ▸ No excuses

There can be no valid grounds for an exemption from interest under Article 20 of the LCS where there is no genuine uncertainty regarding the coverage of the claim as a traffic accident

*Supreme Court Judgment No. 1313/2026, of 23 July (Case No. 2336/2022). ROJ: STS 3384/2026. ECLI:ES:TS:2026:3384*

In this case, the Huelva Court of Appeal partially upheld the claimant's appeal, finding the driver of a sewer cleaning lorry and his insurer jointly and severally liable and ordering them to pay €57,327.46. This case arose from the injuries sustained by a motorcyclist who skidded on liquid spilled onto the motorway by the lorry while it was parked carrying out cleaning work. The Court of Appeal rejected the application of default interest under Article 20 of the LCS, on the grounds that it had been necessary to bring the proceedings to determine whether the accident constituted a traffic incident covered by compulsory insurance.

The Supreme Court's judgment upheld the appeal on points of law filed by the plaintiff and partially overturned the Court of Appeal's judgment, ordering the insurer to pay default interest under Article 20 of the LCS from the date of the accident. The Court found that there were no justifiable grounds to exempt the insurer from liability for late payment, as there was no genuine doubt as to the occurrence of the accident or its cover under the policy. The insurer itself, being aware of the compulsory insurance regime, had previously paid for the material damage to the vehicle, which demonstrated that it harboured no genuine doubts as to whether the incident was covered by the policy; furthermore, the dispute did not centre on the amount of compensation, but on a matter which the insurer itself had already tacitly resolved through its conduct.

The Supreme Court reaffirmed its established case law that the mere fact that a claim has been brought before the courts is not sufficient to justify an insurer's delay, and that only the existence of reasonable uncertainty regarding the inception of the obligation to pay compensation can justify the exemption from the penalty interest provided for in Article 20 of the LCS.

## El que apuesta a la excusa, paga intereses

**La aseguradora debe pagar intereses de demora desde la sentencia que elimina la causa que justificaba su negativa a pagar, y no desde la sentencia que fijó la indemnización**

*Sentencia del Tribunal Supremo (Sala de lo Civil, Sección 1ª) núm. 1277/2026, de 22 de julio (Rec. 258/2022). ROJ: STS 3438/2026*

Una clienta reclamó a su abogado y a la aseguradora de este por dejar prescribir una acción de responsabilidad patrimonial contra la Administración. La demanda fue inicialmente desestimada al considerarse válido un documento de renuncia firmado por la clienta, hasta que el Tribunal Supremo declaró su nulidad por abusiva. Devueltas las actuaciones, la Audiencia condenó a indemnizar a la clienta, pero fijó el devengo de los intereses del artículo 20 de la LCS desde la fecha de esa propia sentencia de apelación, lo que la clienta recurrió en casación.

El Tribunal Supremo estima el recurso de casación en este punto, recordando que los intereses del artículo 20 de la LCS tienen carácter sancionador y su exoneración exige una interpretación restrictiva, solo procedente cuando exista una incertidumbre racional sobre la realidad del siniestro, la cobertura o el nacimiento mismo de la obligación de indemnizar, sin que la discrepancia sobre el importe lo justifique.

Aplicando esta doctrina, el Alto Tribunal concluye que la causa justificada de la aseguradora para no pagar no desapareció con la sentencia de apelación que fijó la indemnización, sino que desapareció con la sentencia del propio Tribunal Supremo que declaró nula la renuncia. Por ello, estima parcialmente el recurso de casación y fija el devengo de los intereses del artículo 20 de la LCS desde la notificación de esa sentencia previa.

## He who relies on an excuse pays interest

An insurer must pay late payment interest from the date of a judgment that removed the grounds that justified its refusal to pay, and not from the date of the judgment that ordered compensation

*Supreme Court Judgment (Civil Chamber, First Section) No. 1277/2026, of 22 July (Case No. 258/2022). ROJ: STS 3438/2026*

A client brought a claim against her lawyer and the lawyer's insurer for allowing a claim for financial liability against the State to become time-barred. The claim was initially dismissed on the grounds that a waiver signed by the client was valid, until the Supreme Court declared it null and void as an unfair term. Upon remittal of the proceedings, the Court of Appeal ordered the client to be compensated, but set the accrual of interest under Article 20 of the LCS from the date of that appellate judgment. The client appealed to the Supreme Court on this issue.

The Supreme Court upheld the appeal on this point, noting that the interest under Article 20 of the LCS is punitive in nature and that exemption from it requires a restrictive interpretation; such exemption is only appropriate where there is reasonable uncertainty regarding the occurrence of the insured event, the scope of cover or the very existence of the obligation to pay compensation, and is not justified by a mere discrepancy over the amount.

Applying this doctrine, the Supreme Court concluded that the insurer's legitimate grounds for non-payment did not cease to exist with the appeal judgment that set the amount of compensation, but rather ceased to exist with the Supreme Court's own judgment declaring the waiver null and void. Consequently, the Supreme Court partially upheld the appeal and ruled that interest under Article 20 of the LCS was payable from the date of notification of that previous judgment.



## Fue a por lana y salió trasquilado

**La cláusula que excluye la cobertura por ofertas públicas o privadas de valores tiene un alcance genérico que abarca toda ampliación de capital, sin quedar limitada a la expresamente citada en la póliza**

*Sentencia del Tribunal Supremo (Sala de lo Civil, Sección 1.ª) núm. 1125/2026, de 8 de julio (Rec. 2987/2024). ECLI:ES:TS:2026:2988*

Un antiguo consejero del Consejo de Administración de una entidad bancaria, investigado en las diligencias penales derivadas de la ampliación de capital de 2016, reclamó a la aseguradora del seguro de responsabilidad civil de administradores y directivos el anticipo de los gastos de defensa jurídica incurridos en dicho procedimiento penal.

La aseguradora se opuso alegando que la póliza excluía expresamente de cobertura las reclamaciones relacionadas con cualquier oferta pública o privada de colocación de valores mobiliarios de la sociedad, exclusión general que, a su juicio, alcanzaba también a la ampliación de capital de 2016, y no solo a la de 2012, mencionada de forma específica en un apartado distinto de la misma cláusula.

El Tribunal Supremo, remitiéndose a sus sentencias 920/2026 y 921/2026, ambas de 16 de junio, dictadas en procedimientos con pretensiones idénticas o muy similares, casa la sentencia recurrida. El Tribunal señala que la cláusula de exclusión contiene dos previsiones distintas: una general, referida a cualquier oferta pública o privada de colocación de valores mobiliarios de la sociedad tomadora, y otra específica, relativa a la oferta de suscripción derivada del aumento de capital aprobado en noviembre de 2012.

Para la Sala, la claridad de la redacción exime de acudir a otras reglas interpretativas, conforme al artículo 1.281 del CC. La mención específica al aumento de capital de 2012 en un apartado separado no puede entenderse como una eliminación de la exclusión general de la letra a), que se extiende a cualquier ampliación de capital, incluida la de 2016. En consecuencia, el Tribunal Supremo desestima el recurso de apelación del asegurado y confirma la sentencia de primera instancia, que había desestimado la demanda.

## He went looking for wool and ended up shorn

A clause that excludes cover for public or private offers of securities has a general scope that covers any capital increase, and is not limited to what is expressly stated in the policy

*Supreme Court Judgment (Civil Chamber, First Section) No. 1125/2026, of 8 July (Case No. 2987/2024). ECLI:ES:TS:2026:2988*

A former member of the board of directors of a banking institution, who was under investigation in criminal proceedings arising from a capital increase in 2016, sought an advance from the insurer that provided directors' and officers' liability cover to cover the legal defence costs incurred in those criminal proceedings.

The insurer objected, arguing that the policy expressly excluded from cover claims relating to any public or private offering of the company's securities, a general exclusion which, in its view, also covered the 2016 capital increase, in addition to the 2012 capital increase, which was specifically mentioned in a separate paragraph of the same clause.

The Supreme Court, referring to its Judgments 920/2026 and 921/2026, both dated 16 June, issued in proceedings involving identical or very similar claims, overturned the judgment under appeal. The Court noted that the exclusion clause contained two distinct provisions: a general one, that referred to any public or private offer for the placement of securities by the policyholder company, and a specific one, that related to the subscription offer arising from the capital increase approved in November 2012.

In the Court's view, the clarity of the wording obviated the need to resort to other rules of interpretation, in accordance with Article 1281 of the Civil Code. The specific reference to the 2012 capital increase in a separate paragraph could not be construed as removing the general exclusion in paragraph (a), which applied to any capital increase, including that of 2016. Consequently, the Supreme Court dismissed the policyholder's appeal and upheld the judgment of the court of first instance, which had dismissed the claim.

### ▸ El árbitro también jugaba en el equipo

**Es nula la cláusula que limita cuantitativamente la responsabilidad del despacho de abogados a los honorarios que él mismo fija unilateralmente**

*Sentencia del Tribunal Supremo (Sala de lo Civil, Sección 1ª) núm. 949/2026, de 18 de junio (Rec. 7890/2021). ROJ: STS 2767/2026*

Un despacho de abogados incumplió el encargo de representar a una fundación en una subasta judicial al no agotar el límite máximo de puja autorizado, pese a disponer de tiempo y margen económico para ello. La última puja no pudo mejorarse porque el letrado, al introducir erróneamente el código de seguridad, quedó bloqueado en el sistema de subasta electrónica, lo que determinó la pérdida de la adjudicación del inmueble. Frente a la reclamación de daños, el despacho invocó una cláusula que limitaba su responsabilidad, cuantitativa y temporalmente, a los honorarios percibidos y a un año desde la finalización del trabajo.

El Tribunal Supremo confirma la validez de la limitación temporal, pero declara nula la limitación cuantitativa. La nulidad se basa en que el límite de responsabilidad depende de los honorarios que el propio despacho fija y cuantifica en función del tiempo de trabajo dedicado, de manera que su determinación queda en manos de una sola de las partes, lo que infringe el artículo 1.256 del CC. Tampoco distingue según el grado de culpa, de modo que operaría incluso en caso de dolo, vulnerando el artículo 1.102 del CC, y desnaturaliza la función del contrato de servicios profesionales, al reducir en este caso la indemnización de 523.688,83€ a solo 4.185€, un 0,80% del daño causado. En consecuencia, el Tribunal Supremo desestima el recurso de casación interpuesto por el despacho y sus aseguradoras.

### ▸ The referee also played for the team

A clause that quantitatively limits a law firm's liability to the fees it sets unilaterally is void

*Supreme Court Judgment (Civil Chamber, First Section) No. 949/2026, of 18 June (Case No. 7890/2021). ROJ: STS 2767/2026*

A law firm failed to properly perform its engagement to represent a foundation at a judicial auction by not reaching the maximum authorised bid limit, despite having the time and financial scope to do so. The final bid could not be increased because the lawyer, having entered the security code incorrectly, was locked out of the electronic auction system, which resulted in the loss of the award of the property. In response to a claim for damages, the firm invoked a clause limiting its liability, both quantitatively and temporally, to the fees received and to a period of one year from the completion of the work.

The Supreme Court upheld the validity of the time limit but declared the financial limit null and void. The nullity was based on the fact that the limit on liability depended on the fees set by the firm itself and quantified on the basis of the time spent on the work; consequently, its determination rested with only one of the parties, which breached Article 1256 of the Civil Code. Furthermore, the limit on liability did not distinguish according to the degree of fault, meaning that it would have applied even in cases of wilful misconduct, thereby breaching Article 1102 of the Civil Code, and it distorted the purpose of the professional services contract by reducing the compensation in this case from €523,688.83 to just €4,185 – 0.80% of the damage caused. Consequently, the Supreme Court dismissed the appeal on points of law filed by the law firm and its insurers.

## Seguros de daños

## Damage insurance

### ▸ Llamaradas

**La socia al 25%, casada con el administrador único, no es "extraña" a efectos del artículo 48 de la LCS**

*Sentencia del Tribunal Supremo (Sala de lo Civil, Sección 1.ª) núm. 1155/2026, de 15 de julio (Rec. 6537/2020). ROJ: STS 3443/2026*

Una sociedad mercantil, titular de un seguro multirriesgo sobre el local en el que desarrollaba su actividad, sufrió un incendio intencionado provocado por una de sus socias, titular del 25% de las participaciones, que había sido apartada de la gestión de la empresa y mantenía una relación conflictiva con

### ▸ Flames

A 25% shareholder who is married to a sole director is not considered a "third party" under Article 48 of the LCS

*Supreme Court Judgment (Civil Chamber, First Section) No. 1155/2026, of 15 July (Case No. 6537/2020). ROJ: STS 3443/2026*

A commercial company, which held a comprehensive insurance policy covering the premises where it carried out its business, suffered an arson attack caused by one of its shareholders, who held a 25% shareholding, had been removed from the management of the company, and was in conflict

el administrador único, su entonces esposo. La autora del incendio fue condenada penalmente por un delito de incendio. La sociedad reclamó a su aseguradora la indemnización por daños alegando que la autora del siniestro debía considerarse "extraña" a la sociedad a los efectos del artículo 48 de la LCS y la ausencia de aplicación del artículo 3 de la LCS, acerca de las cláusulas limitativas de derecho.

El Tribunal Supremo razona que el concepto de "extraño" del artículo 48 de la LCS se refiere a terceros ajenos al asegurado y a su entorno, motivados por animadversión u hostilidad hacia él. Al tratarse de una sociedad de responsabilidad limitada con solo cuatro socios, estrechamente vinculados entre sí (dos matrimonios) y en la que la autora del incendio, además de socia al 25%, era cónyuge del administrador único, no puede considerarse que careciera de un vínculo fáctico o jurídico relevante con la sociedad, por más que hubiera sido apartada de su gestión.

Sobre la naturaleza de la cláusula que excluye a los socios del concepto de tercero, la Sala concluye que ésta define quién puede ser considerado tercero o extraño a la sociedad tomadora. Por tanto, forma parte del contenido natural del contrato de seguro y no supone una restricción sorpresiva de las expectativas razonables del asegurado, por lo que debe calificarse como delimitadora del riesgo sin que se requieran los requisitos formales exigidos conforme al artículo 3 de la LCS.

with the sole director, who was her then husband. The perpetrator of the fire was convicted of the criminal offence of arson. The company claimed compensation for damage from its insurer, arguing that the perpetrator of the incident should be considered an "outsider" to the company for the purposes of Article 48 of the LCS and that Article 3 of the LCS, concerning clauses that limited rights, should not apply.

The Supreme Court held that the concept of an "outsider" under Article 48 of the LCS refers to third parties unrelated to the insured and their circle, motivated by animosity or hostility towards them. As this was a limited liability company with only four shareholders, who were closely linked to one another (two married couples), and in which the person responsible for the fire, in addition to being a 25% shareholder, was the spouse of the sole director, she could not be regarded as lacking a relevant factual or legal link to the company, even though she had been removed from its management.

Regarding the nature of the clause that excluded shareholders from the definition of a "third party", the Court concluded that this clause defined who may be considered a third party or an outsider to the policyholder company. Therefore, it formed part of the natural contents of the insurance contract and did not constitute an unexpected restriction on the insured party's reasonable expectations; consequently, it had to be classified as a risk-defining clause, meaning that the formal requirements laid down in Article 3 of the LCS did not apply.

## ▸ Titanic

### Estándar de prueba pericial en el proceso civil y alcance del principio de universalidad del riesgo del artículo 417 de la LNM cuando la póliza incorpora riesgos nominados a través de las *Institute Fishing Vessel Clauses*

*Sentencia del Tribunal Supremo (Sala de lo Civil, Pleno) núm. 1130/2026, de 13 de julio (Rec. 9733/2021) (Roj: STS 3135/2026)*

La primera instancia desestimó la demanda del armador, que reclamaba a las aseguradoras del casco más de 8,5 millones de euros por el hundimiento de un buque atunero en aguas del golfo de Guinea. Entendió que la póliza -restringida a las *Institute Fishing Vessel Clauses* tras la pérdida del certificado de clase del buque, que llevó a las partes a suprimir las *additional perils*- cubría solo riesgos nominados y que los dictámenes periciales atribuían la vía de agua a causas internas del buque, no cubiertas.

La Audiencia Provincial estimó la apelación condenando a las aseguradoras y aplicando el principio de universalidad del

## ▸ Titanic

### The standard of expert evidence in civil proceedings and the scope of the principle of universality of risk under Article 417 of the Maritime Navigation Law where the policy incorporates named risks through the Institute Fishing Vessel Clauses

*Supreme Court Judgment (Civil Chamber, Plenary Session) No. 1130/2026, of 13 July (Case No. 9733/2021). ROJ: STS 3135/2026*

In this case, the court of first instance dismissed a claim by a shipowner, who sought more than €8.5 million from the hull insurers following the sinking of a tuna fishing vessel in the Gulf of Guinea. The court held that the policy — restricted to the Institute Fishing Vessel Clauses following the loss of the vessel's class certificate, which led the parties to remove the additional perils clause — covered only named perils, and that the expert reports attributed the leak to internal causes within the vessel, which were not covered.

The Court of Appeal upheld the appeal, ruling against the insurers and applying the principle of universality of risk under




riesgo del artículo 417 de la Ley 14/2014, de 24 de julio, de Navegación Marítima.(“**LMN**”). Invirtió la carga de la prueba y descartó los dictámenes de las aseguradoras por conjeturales, teniendo por no acreditado el defecto interno ante la imposibilidad de inspeccionar el pecio.

El Tribunal Supremo estima el recurso extraordinario por infracción procesal y anula la sentencia de apelación por valoración ilógica y arbitraria de la prueba pericial, contraria a la sana crítica (artículo 348 de la LEC). La Audiencia confundió las “*conjeturas*” con las “*probabilidades*” -pese a que estas últimas, cuando alcanzan el umbral de la probabilidad prevalente, sí satisfacen el estándar civil-, exigió a los dictámenes de las aseguradoras una certeza ajena al proceso civil y descartó sus conclusiones sin examinar la metodología empleada (cálculos físico-matemáticos, análisis por elementos finitos y modelización hidrodinámica del hundimiento), a pesar de que el asegurado no aportó dictamen pericial alternativo.

En cuanto al fondo, la Sala precisa que el principio de universalidad del riesgo es una regla sustantiva de delimitación - “los riesgos no excluidos están incluidos”- que opera solo en defecto de pacto expreso, dado el carácter dispositivo del artículo 407.1 de la LNM. Cuando la póliza enumera exhaustivamente los riesgos cubiertos y excluidos, como las *Institute Fishing Vessel Clauses*, rige el principio de especialidad y la universalidad carece de virtualidad, salvo frente a riesgos desconocidos no contemplados.

La sentencia consolida que la valoración pericial atiende, entre otras cosas, a la cualificación del perito, la metodología y/o la coherencia interna del dictamen, sin que la imposibilidad de examinar físicamente el objeto desactive esos criterios. Asimismo, la Sala dispone que la universalidad del riesgo en el seguro marítimo cede ante la enumeración expresa de riesgos nominados.

Article 417 of the Maritime Navigation Law (“**LNM**”). It reversed the burden of proof and dismissed the insurers’ expert reports as speculative, deeming the internal defect unproven given the impossibility of inspecting the wreck.

The Supreme Court upheld the extraordinary appeal on the grounds of a procedural irregularity and overturned the appeal judgment on the basis of an illogical and arbitrary assessment of the expert evidence, contrary to sound reasoning (Article 348 of the LEC). The Court of Appeal confused “conjecture” with “probabilities” — even though the latter, when they reach the threshold of prevailing probability, do indeed satisfy the civil standard. It also demanded a level of certainty from the insurers’ reports that is alien to civil proceedings and dismissed their conclusions without examining the methodology employed (including physical and mathematical calculations, finite element analysis and hydrodynamic modelling of the sinking), despite the fact that the insured party did not provide an alternative expert report.

Regarding the substantive issue, the Court stated that the principle of universality of risk is a substantive rule that defines the scope of the insured risk — namely, that “risks not excluded are included” — which applies only in the absence of an express agreement, given the default nature of Article 407.1 of the LNM. Where a policy exhaustively lists the covered and excluded risks, such as the Institute Fishing Vessel Clauses, the principle of specificity applies and the principle of universality has no effect, except in relation to unknown risks not covered.

The judgment confirms that the assessment of an expert report takes into account, among other things, the expert’s qualifications, the methodology and/or the internal consistency of the report, and that the impossibility of physically examining the object does not render these criteria inapplicable. Furthermore, the Court ruled that the universality of risk in marine insurance gives way to the express enumeration of named risks.

## El Consejero "ex"cluido

**La exclusión general de una póliza de D&O por ofertas de valores es aplicable aunque no excluya específicamente la operación que originó la reclamación**

*Sentencia del Tribunal Supremo (Sala de lo Civil, Sección 1ª) núm. 1123/2026, de 8 de julio (Rec. 5433/2022). ECLI:ES:TS:2026:2984*

Un exconsejero de una entidad financiera, investigado en un procedimiento penal por hechos relacionados con una ampliación de capital de 2016, reclamó a su aseguradora de responsabilidad civil de administradores y directivos el anticipo de los gastos de defensa jurídica con cargo a la póliza.

La póliza excluía de cobertura, por un lado, cualquier operación de mercado de capitales que afecte a los valores de la Sociedad, incluyendo no solo operaciones consumadas sino también meros intentos o propuestas (exclusión general) y, por otro, de forma específica, las reclamaciones derivadas de una ampliación de capital del 2012 (exclusión específica).

El Tribunal Supremo, reiterando su doctrina de las sentencias núm. 920/2026 y 921/2026, de 16 de junio, confirma que la exclusión general de la póliza excluye expresamente de cobertura cualquier responsabilidad derivada de una oferta de valores, incluida la ampliación de capital de 2016. Asimismo, indica que la exclusión específica a la ampliación de capital de 2012 no restringe ni sustituye el alcance de la exclusión general, por lo que la reclamación no está cubierta bajo la póliza de D&O y no procede el anticipo de gastos de defensa.

## The "ex"cluded director

A general exclusion in a D&O policy that covers securities offerings applies even if it does not specifically exclude the transaction that gave rise to the claim

*Supreme Court Judgment (Civil Chamber, First Section) No. 1123/2026, of 8 July (Case No. 5433/2022). ECLI:ES:TS:2026:2984*

A former director of a financial institution, under investigation in criminal proceedings for matters relating to a 2016 capital increase, claimed an advance against the policy to cover legal defence costs from his directors' and officers' liability insurer.

The policy excluded from cover, firstly, any capital markets transaction that affected the company's securities, including not only completed transactions but also mere attempts or proposals (a general exclusion) and, secondly, specifically, claims arising from a 2012 capital increase (a specific exclusion).

The Supreme Court, reiterating its legal position set out in Judgments Nos. 920/2026 and 921/2026 of 16 June, confirmed that the general exclusion in the policy expressly excluded from cover any liability arising from an offer of securities, including the 2016 capital increase. It also stated that the specific exclusion relating to the 2012 capital increase neither restricted nor superseded the scope of the general exclusion; consequently, the claim was not covered under the D&O policy and the advance payment of defence costs was not applicable.

## No por mucho disolver, se reclama más temprano

**La acción de reembolso de la aseguradora que paga una condena solidaria por defectos constructivos genera un crédito nuevo desde el momento del pago**

*Sentencia del Tribunal Supremo (Sala de lo Civil) núm. 972/2026, de 22 de junio (Rec. 571/2022). JUR 2026\185606*

Una comunidad de propietarios demandó a los agentes de la edificación por defectos constructivos, siendo condenados solidariamente, entre otros, el arquitecto superior y la sociedad promotora-constructora. Tras el cumplimiento de la condena, la aseguradora de responsabilidad civil del arquitecto superior pagó también la parte correspondiente a la promotora y reclamó a esta y a sus administradores mancomunados el reembolso de dicho importe, al amparo del artículo 1145.II del Código Civil, junto con la responsabilidad de los adminis-

## The earlier a claim is made, the better

An insurer's recourse claim arising from payment of a joint and several liability judgment for construction defects gives rise to a new claim from the moment of payment

*Supreme Court Judgment (Civil Chamber) No. 972/2026, of 22 June (Case No. 571/2022). JUR 2026\185606*

An owners' association brought a claim for construction defects against the parties involved in the construction project. This claim resulted in a finding of joint and several liability against, among others, the chief architect and the property developer-contractor. Following the enforcement of the judgment, the chief architect's civil liability insurer also paid the portion of the claim that corresponded to the developer and sought reimbursement of that amount from the developer and its joint directors, under Article 1145.II of the Civil Code.

tradores por deudas sociales del artículo 367 de la LSC, al no haber promovido la disolución de la sociedad pese a la falta de depósito de cuentas durante años.

Tanto el Juzgado de lo Mercantil como la Audiencia Provincial estimaron la demanda de la aseguradora, al considerar que la obligación social reclamada era posterior al acaecimiento de la causa de disolución, situando el nacimiento de la deuda en el momento del pago efectuado por la aseguradora. Una de las administradoras recurrió en casación, alegando que la deuda social había nacido antes, con la entrega del certificado final de obra, con la aparición de los defectos constructivos, o, a más tardar, con la sentencia de primera instancia que condenó a los agentes de la edificación, todo ello anterior a la causa de disolución.

El Tribunal Supremo desestima el recurso de casación. Recuerda que, conforme a su jurisprudencia reiterada, el derecho de regreso que el artículo 1145.II del Código Civil reconoce a la aseguradora que paga la indemnización (*solvens*) no es una subrogación en el crédito original, sino una acción de reembolso que da lugar a un crédito nuevo y distinto, que nace precisamente con el pago realizado. Por tanto, la obligación social que la aseguradora reclama a la promotora y a sus administradores no se remonta a la fecha en que se originaron los defectos constructivos ni a la primera condena, sino al momento del pago efectuado por la aseguradora.

## ▸ Que cada palo aguante su vela

**Se desestima el recurso de apelación de la aseguradora del arrendatario: no existe concurrencia de seguros del artículo 32 de la LCS ni procede la acción subrogatoria del artículo 43 de la LCS**

*Sentencia de la Audiencia Provincial de Navarra (Sección 3ª) núm. 875/2026, de 17 de junio (Rec. 1786/2024). ROJ: SAP NA 1117/2026*

La demanda trae causa en un siniestro acontecido por una filtración de agua en un local de hostelería, ocasionado por un atasco en una tubería privativa del local, lo que provocó daños tanto en el propio local (continente) como en su contenido y una paralización de la actividad. El local estaba asegurado por la aseguradora demandante, aseguradora del arrendatario, mientras que la aseguradora demandada era aseguradora tanto de la comunidad de propietarios del edificio como del propietario arrendador del local.

La aseguradora demandante indemnizó a su asegurado por los daños sufridos, y reclamó después a la aseguradora de-

It also sought to establish the liability of the directors for company debts under Article 367 of the LSC, on the grounds that they had failed to initiate the dissolution of the company despite the company's failure to file its annual accounts for several years.

Both the Commercial Court and the Court of Appeal upheld the insurer's claim, holding that the corporate liability in question arose after the occurrence of the grounds for dissolution, and that the debt came into being at the time of the payment made by the insurer. One of the directors filed an appeal on points of law, arguing that the company debt had arisen earlier: upon the handover of the final building certificate, upon the discovery of construction defects, or, at the very latest, upon the first-instance judgment that held the building contractors liable — all of which occurred prior to the grounds for dissolution.

The Supreme Court dismissed the appeal. It noted that, in accordance with its established case law, the right of recourse recognised by Article 1145.II of the Civil Code for an insurer that pays an indemnity (solvens) is not a subrogation into the original claim, but rather a claim for reimbursement that gives rise to a new and distinct claim, which arose precisely upon the payment being made. Consequently, the corporate liability that the insurer sought to impose on the property developer and its directors did not date back to the date on which the construction defects arose or to the first judgment, but rather to the time of the payment made by the insurer.

## ▸ Let each party bear their own burden

An appeal filed by a tenant's insurer was dismissed: there was no concurrent insurance under Article 32 of the LCS, nor was a subrogation claim under Article 43 of the LCS applicable

*Judgment of the Navarra Court of Appeal (Third Section) No. 875/2026, of 17 June (Case No. 1786/2024). ROJ: SAP NA 1117/2026*

This case arose from an incident involving a water leak in a catering establishment, caused by a blockage in a pipe serving the premises, which resulted in damage both to the premises itself (the building structure) and the contents, as well as a suspension of business operations. The property was insured by the claimant insurer, which insured the tenant, while the defendant insurer insured both the owners' association of the building and the landlord of the premises.

The claimant insurer compensated its policyholder for the damage suffered and subsequently brought a claim against the

mandada, con fundamento en la concurrencia de seguros del artículo 32 de la LCS y en la acción subrogatoria del artículo 43 de la LCS.

La Audiencia Provincial desestima el recurso de apelación de la aseguradora demandante y confirma la sentencia de primera instancia, que había negado la concurrencia de seguros por no darse los requisitos del artículo 32 de la LCS y había desestimado la acción subrogatoria por falta de prueba de la responsabilidad de la comunidad de propietarios o del propietario. Sobre la concurrencia de seguros, la Audiencia recuerda que el artículo 32 de la LCS exige que un mismo tomador contrate varias pólizas con distintas aseguradoras para cubrir un mismo riesgo sobre un mismo interés durante idéntico periodo. En el caso enjuiciado, los tomadores de las tres pólizas eran distintos –el arrendatario, la comunidad de propietarios y el propietario del local–, lo que excluye la aplicación de la concurrencia de seguros en su sentido estricto. Además, la Sala destaca que el interés asegurado también difiere, ya que el del arrendatario se centra en la continuidad del negocio y el del propietario en la indemnidad de su propiedad.

Respecto de la acción subrogatoria del artículo 43 de la LCS, la Audiencia dispone que su ejercicio exige que exista un crédito del asegurado frente a un tercero responsable del siniestro. En este caso, al haberse acreditado pericialmente que el origen del atasco se debía a la acumulación de residuos derivados de la propia actividad ejercida en el local por el arrendatario, no puede imputarse responsabilidad ni a la comunidad de propietarios ni al propietario del local.

defendant insurer, relying on the principle of concurrent insurance under Article 32 of the LCS and the right of subrogation under Article 43 of the LCS.

The Court of Appeal dismissed the appeal filed by the claimant insurer and upheld the judgment at first instance, which had ruled that concurrent insurance did not apply as the requirements of Article 32 of the LCS had not been met, and had dismissed the subrogation claim due to a lack of evidence of liability on the part of the owners' association or the landlord. Regarding the concurrence of insurance, the Court of Appeal noted that Article 32 of the LCS requires that a single policyholder take out several policies with different insurers to cover the same risk in respect of the same interest during the same period. In the case in question, the policyholders of the three policies were different – the tenant, the owners' association and the owner of the premises – which ruled out the application of concurrent insurance in the strict sense. Furthermore, the Court stressed that the insured interest also differed, as the tenant's interest centred on the continuity of the business while the owner's interest centred on the compensation for damage to their property.

Regarding the right of subrogation under Article 43 of the LCS, the Court held that its exercise requires the existence of a claim by an insured party against a third party liable for the loss. In this case, as it was established by expert evidence that the cause of the blockage was the accumulation of waste produced by the tenant's own business activities carried out on the premises, liability could not be attributed to either the owners' association or the owner of the premises.



## Seguros de personas

### ▸ Tocado y hundido

**Se declara la nulidad, por abusiva, de la cláusula del préstamo hipotecario que imponía al prestatario la contratación de un seguro de vida**

*Sentencia del Tribunal Supremo (Sala de lo Civil) núm. 913/2026, de 11 de junio (Rec. 6043/2021). JUR 2026\177960*

La sentencia de primera instancia estimó la demanda del prestatario, al considerar abusiva la cláusula del préstamo hipotecario que le imponía contratar un seguro de amortización por fallecimiento con una aseguradora del mismo grupo del banco, mediante una prima única de 24.467,62€ detraída del capital prestado. La Audiencia Provincial de Valencia revocó el fallo, al entender que la estipulación no era una condición general de la contratación.

El Tribunal Supremo estima el recurso de casación del prestatario. Considera que la cláusula sí constituye una condición general de la contratación, pues la oferta vinculante, la solicitud de adhesión al seguro y la escritura de préstamo forman una unidad negocial que evidencia la imposición al consumidor de un seguro vinculado con una entidad del propio grupo bancario, sin ofrecerle alternativa de aseguradora ni de forma de pago.

Declara la cláusula abusiva y no transparente, conforme al artículo 82.1 del TRLGDCU y los artículos 11.4 y 12.4 de la Directiva 2014/17/UE. No se ofreció al consumidor la posibilidad de elegir asegurador, no se incluyó la prima en la TAE y, no constar ninguna ventaja financiera a cambio de una prima única de larga duración que superaba el 16% del capital prestado, en beneficio exclusivo del banco y su grupo.

En cuanto a los efectos, precisa que la entidad debe devolver la prima única con sus intereses pactados, deducida la parte proporcional consumida, calculada desde la firmeza de la sentencia y no desde la interposición de la demanda.

## Personal insurance

### ▸ Defeated and sunk

A mortgage loan clause that requires a borrower to take out life insurance is declared null and void as an unfair term

*Supreme Court Judgment (Civil Chamber) No. 913/2026, of 11 June (Case No. 6043/2021). JUR 2026\177960*

In this case, the court of first instance upheld the borrower's claim, holding that a clause in the mortgage loan agreement that required the borrower to take out life insurance that covered the repayment of the loan in the event of death with an insurer from the same group as the bank, through a single premium of €24,467.62 deducted from the loan principal, was unfair. The Valencia Court of Appeal overturned the ruling, finding that the provision was not a general term of the contract.

The Supreme Court upheld the borrower's appeal. The Court held that the clause was indeed a general term of the contract, as the binding offer, the application for insurance cover and the loan deed formed a single contractual package which demonstrated that the consumer had been required to take out insurance linked to an entity within the bank's own group, without being offered an alternative insurer or method of payment.

The Supreme Court declared the clause to be unfair and non-transparent, under Article 82.1 of the TRLGDCU and Articles 11.4 and 12.4 of Directive 2014/17/EU. The consumer was not offered a choice of insurer, the premium was not included in the APR, and there was no financial benefit in return for a single, long-term premium that exceeded 16% of the loan principal, to the exclusive benefit of the bank and its group.

Regarding the consequences, the Court ordered the bank to refund the single premium together with the agreed interest, less the proportion corresponding to the period of insurance already elapsed, calculated from the date the judgment became final and not from the date the claim was filed.

## Otros aspectos

### ▸ Devolver el dinero no es tarjeta roja

**La devolución de honorarios de una rehabilitación no es, por sí sola, un acto propio revelador de responsabilidad**

*Sentencia del Tribunal Supremo (Sala de lo Civil, Sección 1ª) núm. 1177/2026, de 16 de julio (Rec. 9814/2021). ROJ: STS 3365/2026*

Un futbolista profesional reclamó al centro de fisioterapia que rehabilitaba su rodilla derecha una indemnización de 149.664,35€, más intereses del artículo 20 de la LCS, por una lesión en la rodilla izquierda que atribuía a mala praxis, invocando como principal prueba de responsabilidad que el centro le había devuelto los honorarios de la rehabilitación.

El juzgado desestimó la demanda al no acreditarse la mala praxis ni el nexo causal, sin apreciar en ese reembolso un reconocimiento de responsabilidad. La Audiencia Provincial confirmó la sentencia, señalando que aquel gesto podía obedecer a otras causas, como evitar que el cliente dañara el prestigio del centro o como muestra de solidaridad ante su mala situación económica y psicológica.

El demandante interpuso recurso de casación y recurso extraordinario por infracción procesal, que el Tribunal Supremo desestima. El principal interés jurídico de la sentencia reside en la doctrina de los actos propios: la Sala recuerda que su aplicación exige un acto libre, concluyente e inequívoco, dirigido a crear, modificar o extinguir una situación jurídica, quedando excluidos los supuestos de error, ignorancia o mera tolerancia. En el caso, la devolución de honorarios no es un signo unívoco de reconocimiento de culpa, pues admite explicaciones alternativas razonables.

### ▸ Sayonara, demanda

**La presentación de una demanda no basta para interrumpir la prescripción si nunca llegó a conocimiento del demandado. Aunque se evidencie la voluntad de reclamar, no se produce el efecto interruptivo**

*Sentencia del Tribunal Supremo (Sala de lo Civil) núm. 1120/2026, de 8 de julio (Rec. 9151/2021). JUR 2026\203078*

Los demandantes presentaron una demanda por reclamación de daños de un accidente de tráfico ante un juzgado territorialmente incompetente, dentro del plazo de prescripción, pero no

## Other issues

### ▸ Refunding the money is not a red card

The refund of rehabilitation fees is not, in itself, an act that indicates liability

*Supreme Court Judgment (Civil Chamber, First Section) No. 1177/2026, of 16 July (Case No. 9814/2021). ROJ: STS 3365/2026*

A professional footballer brought a claim against a physiotherapy centre where he was undergoing rehabilitation for his right knee, seeking compensation of €149,664.35 plus interest under Article 20 of the LCS, for an injury to his left knee which he attributed to medical negligence. As the principal evidence of liability, he relied on the fact that the centre had refunded him the fees paid for the rehabilitation treatment.

The court dismissed the claim on the grounds that neither medical negligence nor a causal link had been proven, and it did not regard the refund as an admission of liability. The Court of Appeal upheld the judgment, noting that such a gesture could have been motivated by other factors, such as preventing the client from damaging the centre's reputation or as a gesture of solidarity in light of his financial and psychological difficulties.

The claimant filed an appeal on points of law (recurso de casación) and an extraordinary appeal on the grounds of a procedural irregularity (recurso extraordinario por infracción procesal), both of which were dismissed by the Supreme Court. The main legal significance of the judgment lies in the doctrine of one's own acts (actos propios): the Court noted that its application requires a voluntary, conclusive and unequivocal act, intended to create, modify or terminate a legal situation, excluding cases of error, ignorance or mere tolerance. In this case, the refund of fees was not an unequivocal sign of an admission of fault, as it allowed reasonable alternative explanations.

### ▸ Sayonara, claim

The filing of a claim is not sufficient to interrupt the limitation period if it was never brought to the defendant's attention. Even if the intention to claim is evident, the interruption does not take effect

*Supreme Court Judgment (Civil Chamber) No. 1120/2026, of 8 July (Case No. 9151/2021). JUR 2026\203078*

In this case, the claimants filed a claim for damage resulting from a road traffic accident before a court that did not have territorial jurisdiction, within the limitation period. However,

subsanaron a tiempo el defecto formal advertido, por lo que fue inadmitida y nunca llegó a notificarse a los demandados. Más de un año después, ya fuera de plazo, interpusieron una nueva demanda ante el juzgado competente. El Juzgado de Primera Instancia estimó íntegramente la demanda, al considerar que la acción no había prescrito. Sin embargo, la Audiencia Provincial de Barcelona estimó los recursos de apelación de los demandados y declaró prescrita la acción.

El Tribunal Supremo desestima el recurso de casación y confirma la prescripción. Reitera su doctrina mixta sobre el artículo 1973 del Código Civil, esta es, el ejercicio de la acción ante los tribunales interrumpe la prescripción solo si la demanda ha sido comunicada al demandado, de modo que este haya tenido conocimiento de la reclamación.

La sola presentación de la demanda, aunque evidencie la voluntad del titular de no abandonar su derecho, no basta cuando la demanda es inadmitida por falta de subsanación y nunca llega a notificarse a la parte demandada. En consecuencia, al no haberse notificado la demanda presentada ante el juzgado incompetente, y haberse interpuesto la segunda demanda ya prescrita la acción, la Sala confirma la prescripción.

the claimants failed to rectify the procedural defect identified by the court in time; consequently, the claim was dismissed and was never served on the defendants. More than a year later, after the time limit had expired, the claimants filed a new claim with the competent court. The Court of First Instance upheld the claim in its entirety, finding that the action was not time-barred. However, the Barcelona Court of Appeal upheld the defendants' appeals and declared the claim time-barred.

The Supreme Court dismissed the appeal on points of law and upheld the finding that the claim was time-barred. It reaffirmed its interpretation of Article 1973 of the Civil Code, namely that bringing an action before the courts interrupts the limitation period only if the claim has been served on the defendant, such that the defendant has been made aware of the claim.

The mere filing of a claim, although it demonstrates the claimant's intention not to relinquish their right, is not sufficient in circumstances where the claim is rejected for failure to remedy procedural defects and is never served on the defendant. Consequently, as the claim filed with the court lacking jurisdiction was not served, and the second claim was brought after the limitation period had already expired, the Court upheld the expiry of the limitation period.

## ¿Activo y pasivo?

**El banco sucesor no responde frente al cliente por un producto de inversión contratado con la entidad originaria, al quedar esa responsabilidad excluida de la transmisión de negocio**

*Sentencia del Tribunal Supremo (Sala de lo Civil, Sección 1ª) núm. 1007/2026, de 23 de junio (Rec. 9027/2022). ECLI:ES:TS:2026:2748*

El demandante había contratado con la entidad originaria productos de inversión estructurados. Tras la crisis de esta entidad, el regulador bancario creó el banco sucesor y le

## Assets and liabilities?

A successor bank is not liable to customers for investment products taken out with the original institution, as such liability is excluded from the transfer of business

*Supreme Court Judgment (Civil Chamber, First Section) No. 1007/2026, of 23 June (Case No. 9027/2022). ECLI:ES:TS:2026:2748*

In this case, the claimant had entered into contracts for structured investment products with the original institution. Following a crisis at that institution, the banking regulator



transmitió parte del negocio, excluyendo expresamente las responsabilidades derivadas de la comercialización de productos financieros, que quedaron en la entidad originaria. El demandante reclamó al banco sucesor la nulidad de sus contratos y la devolución de 400.000€. El Juzgado de Primera Instancia desestimó la demanda por falta de legitimación pasiva del banco sucesor, pero la Audiencia Provincial revocó esa decisión y condenó al banco sucesor a pagar.

El Tribunal Supremo, tras plantear cuestión prejudicial ante el TJUE (sentencia de 5 de septiembre de 2024, C-500/22), concluye que la exclusión de esta responsabilidad era una posibilidad prevista desde el principio, respondía al objetivo legítimo de garantizar la estabilidad del sistema bancario y no vulneraba la confianza legítima del cliente. En consecuencia, estima el recurso de casación del banco sucesor, casa la sentencia de apelación y desestima la demanda, sin condena en costas.

established the successor bank and transferred part of the business to it, expressly excluding liabilities arising from the marketing of financial products, which remained with the original institution. The claimant brought a claim against the successor bank seeking the annulment of his contracts and the refund of €400,000. The Court of First Instance dismissed the claim on the grounds that the successor bank lacked standing to be sued, but the Court of Appeal overturned that decision and ordered the successor bank to pay.

The Supreme Court, after referring a question for a preliminary ruling to the CJEU (Judgment of 5 September 2024, C-500/22), concluded that the exclusion of this liability was a possibility provided for from the outset, served the legitimate aim of ensuring the stability of the banking system, and did not infringe the customer's legitimate expectations. Consequently, it upheld the successor bank's appeal on points of law, overturned the appeal judgment and dismissed the claim, with no order for costs.

## ▸ No hay manzana podrida

### El reconocimiento de cobertura de parte de unos hechos investigados en un procedimiento penal no obliga a cubrir la otra parte

*Sentencia del Tribunal Supremo (Sala de lo Civil, Sección 1ª) núm. 921/2026, de 16 de junio (Rec. 4045/2022). ECLI:ES:TS:2026:2643*

El demandante fue consejero de una entidad financiera y estaba siendo investigado en un procedimiento penal, dividido por el juzgado instructor en dos partes separadas: una dedicada a los hechos relacionados con la ampliación de capital de 2016, y otra dedicada a hechos posteriores. La aseguradora aceptó cubrir los gastos de defensa de la parte referida a los hechos posteriores, pero rechazó los de la parte referida a la ampliación de capital, por estar esta última excluida de la póliza. El Juzgado de Primera Instancia y la Audiencia Provincial de Madrid dieron la razón al demandante, entendiendo que, al tratarse de un único procedimiento penal, el reconocimiento de cobertura para una parte se extendía también a la otra.

El Tribunal Supremo estima el recurso de casación de la aseguradora. Aclara que el hecho de que ambas partes formen parte de un mismo procedimiento penal no significa que deban recibir el mismo trato asegurador. Se sostiene la necesidad de analizar separadamente los hechos investigados en cada una, e indicando que los relacionados con la ampliación de capital de 2016 siguen excluidos de la póliza, aunque los demás hechos investigados en el mismo procedimiento sí estén cubiertos.

## ▸ There is no such thing as a bad apple

### The acknowledgment of coverage with respect to certain events investigated in criminal proceedings does not give rise to an obligation to cover the other events

*Supreme Court Judgment (Civil Chamber, First Section) No. 921/2026, of 16 June (Case No. 4045/2022). ECLI:ES:TS:2026:2643.*

The claimant was a director of a financial institution and was under investigation in criminal proceedings, which had been divided by the investigating court into two separate parts: one relating to the events surrounding the 2016 capital increase, and the other relating to subsequent events. The insurer agreed to cover the defence costs for the part relating to the subsequent events, but refused to cover those for the part relating to the capital increase, as the latter was excluded from the policy. The Court of First Instance and the Madrid Court of Appeal ruled in favour of the claimant, holding that, as this constituted a single set of criminal proceedings, the recognition of cover for one part also extended to the other.

The Supreme Court upheld the insurer's appeal. It clarified that the fact that both parts form part of the same set of criminal proceedings did not mean that they had to be treated identically under the insurance policy. The Court stressed the need to analyse the facts under investigation in each case separately, stating that those facts that related to the 2016 capital increase remained excluded from the policy, even though the other facts under investigation in the same proceedings were covered.

## Carta en la mesa, presa

**Se analiza si la aseguradora que emite una oferta motivada sin rechazar la responsabilidad ni reducirla por concurrencia de culpas queda vinculada en el proceso posterior**

*Sentencia del Tribunal Supremo (Sala de lo Civil) núm. 718/2026, de 11 de mayo (Rec. 8174/2021) (JUR 2026\126685)*

En primera instancia se desestimó la demanda del ciclista lesionado, que reclamaba a la aseguradora 29.734,87€ como diferencia con lo abonado en cumplimiento de la oferta motivada. Se apreció culpa exclusiva de la víctima -por circular con la bicicleta por la acera- y se consideró que la oferta no vinculaba a la aseguradora ni le impedía oponer esa causa en el proceso.

La Audiencia Provincial desestimó el recurso de apelación interpuesto por el ciclista. Aunque admitió que la oferta motivada suponía asunción de responsabilidad en virtud de la doctrina de los actos propios, entendió que no era íntegra y que el carácter objetivo de la responsabilidad por riesgo permitía discutir su proporción, quedando cubierta la contribución de la conductora con lo ya abonado.

El Tribunal Supremo estima el recurso de casación por infracción del artículo 7 del TRLRCSVM. Fija como regla general que la aseguradora que emite una oferta motivada sin rechazar la responsabilidad ni aplicar reducción por la contribución causal del perjudicado queda vinculada por su cuantía y términos. Por tanto, no puede oponer después culpa exclusiva de la víctima ni concurrencia de culpas. El pleito se circunscribe a la cuantificación de la indemnización conforme a las lesiones, secuelas y demás daños acreditados.

La Sala funda su resolución en el artículo 7 del TRLRCSVM, en las Directivas 2000/26/CE y 2005/14/CE, y en reformado deber de coherencia que exige buena fe y transparencia frente al perjudicado. En consecuencia, la aseguradora no puede alegar en el juicio motivos de oposición que, pudiendo haberse investigado durante los tres meses previos, decidió no plantear en la fase extrajudicial.

La sentencia consolida doctrina en tres planos: (i) la oferta motivada emitida sin rechazo de responsabilidad ni minoración por concurrencia de culpas vincula a la aseguradora en el proceso ulterior, ceñido a la valoración indemnizatoria; (ii) esta vinculación es una manifestación reforzada de los actos propios, adaptada al procedimiento del artículo 7 del TRLRCSVM;

## Strike while the iron is hot

Does an insurer that makes a reasoned offer without denying liability or reducing the amount on the grounds of contributory negligence become bound by that offer in subsequent proceedings?

*Supreme Court Judgment (Civil Chamber) No. 718/2026, of 11 May (Case No. 8174/2021). JUR 2026\12668*

At first instance, a claim by an injured cyclist, who sought €29,734.87 from the insurer as the difference between that sum and the amount paid in accordance with the reasoned offer, was dismissed. The court found the victim to be solely at fault, as he had been cycling on the pavement, and held that the offer did not bind the insurer or prevent it from raising that defence in the proceedings.

The Court of Appeal dismissed the appeal filed by the cyclist. Although the Court acknowledged that the reasoned offer constituted an admission of liability under the doctrine of one's own acts (actos propios), it held that it was not comprehensive and that the objective nature of liability for risk allowed the parties to dispute the respective proportions of liability, with the driver's contribution being covered by the sum already paid.

The Supreme Court upheld the appeal on points of law on the grounds of a breach of Article 7 of the TRLRCSVM. It established, as a general rule, that an insurer which issues a reasoned offer without denying liability or applying a reduction for the injured party's contributory negligence is bound by its amount and terms. Consequently, it cannot subsequently invoke the victim's exclusive fault or contributory negligence. The proceedings were limited to the quantification of compensation in accordance with the injuries, sequelae and other proven damage.

The Court based its decision on Article 7 of the TRLRCSVM, on Directives 2000/26/EC and 2005/14/EC, and on the revised duty of consistency, which requires insurers to act with good faith and transparency towards the injured party. Consequently, the insurer could not raise grounds to oppose the claim during the proceedings that it had chosen not to raise during the pre-litigation phase, despite having had the opportunity to investigate them during the preceding three months.

The judgment consolidates the Supreme Court's case law on three levels: (i) a reasoned offer made without denying liability or reducing the claim on the grounds of contributory negligence is binding on the insurer in subsequent proceedings, limited to the assessment of compensation; (ii) this binding effect constitutes a reinforced declaration of the insurer's own

y (iii) admite excepciones tasadas -dolo, negligencia u ocultación de información por el perjudicado, o conocimiento sobrevenido no imputable a la aseguradora de hechos que revelen bases erróneas-, cuya prueba incumbe a la aseguradora.

acts, adapted to the procedure set out in Article 7 of the TRLRCSVM; and (iii) it allows for limited exceptions — fraud, negligence or concealment of information by the injured party, or subsequent knowledge not attributable to the insurer of facts revealing erroneous grounds — the burden of proof for which rests with the insurer.

# Tribuna Pérez-Llorca
Pérez-Llorca Tribune

## La aseguradora del perjudicado y los responsables del daño no deberían responder solidariamente

An injured party's insurer and those responsible for the damage should not be held jointly and severally liable

**Irene Moreno Garrido**
Abogada de Seguros y Reaseguros
Associate, Insurance and Reinsurance



En un reciente procedimiento civil, una sociedad mercantil demandó conjuntamente a dos empresas de seguridad -encargadas de la instalación y el mantenimiento de un sistema de alarma- y a su propia compañía aseguradora, solicitando que las tres fueran condenadas solidariamente al pago de más de un millón de euros en concepto de daños derivados de un robo sufrido en sus instalaciones. En realidad, la parte demandante ejercitaba dos acciones claramente diferenciadas entre sí. Por un lado, imputaba a las empresas de seguridad responsabilidad por los daños derivados del robo, al entender que éstas habían incumplido sus obligaciones contractuales de vigilancia y mantenimiento del sistema de alarma. Por otro lado, dirigía frente a su propia aseguradora una reclamación exigiendo el pago de la indemnización pactada en la póliza de daños suscrita entre ambas.

La acumulación de acciones persigue incorporar en único procedimiento aquello que, por compartir un mismo sustrato fáctico y jurídico, puede resolverse conjuntamente, evitando así procedimientos paralelos e innecesarios. Sin embargo, el artículo 71.3 de la Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil ("**LEC**") excluye la acumulación de aquellas acciones que resulten incompatibles, entendiendo por tales las que se excluyan mutuamente o sean contrarias entre sí, de suerte que la elección de una impida o haga ineficaz el ejercicio de la otra. A su vez, el artículo 72 de la LEC -que regula la acumulación subjetiva de acciones- exige, para acumular acciones dirigidas contra varios demandados, que exista entre ellas un nexo por razón del título o causa de pedir, entendiéndose que dicho nexo concurre cuando las acciones se fundan en los mismos hechos.

Si bien la demanda giraba en torno a un mismo hecho desencadenante -el robo perpetrado-, existían elementos relevantes que invitaban a considerar que las dos acciones ejercitadas no derivaban del mismo título o causa de pedir, lo que

In a recent civil case, a claimant company brought a joint claim against two security firms, which were responsible for the installation and maintenance of an alarm system, and its own insurance company. The company sought a joint and several ruling that required the three parties to pay more than one million euros in damages arising from a theft at the claimant's premises. In reality, the claimant was bringing two clearly distinct claims: firstly, the claimant argued that the security companies were liable for the damage caused by the theft, on the grounds that they had breached their contractual obligations to monitor and maintain the alarm system; and, secondly, the claimant brought a claim against its own insurer, seeking payment of the compensation agreed in the property damage insurance policy taken out between the two parties.

The joinder of claims sought to combine those matters in a single set of proceedings which, as they shared the same factual and legal basis, could be resolved together, thereby avoiding parallel and unnecessary proceedings. However, Article 71.3 of Law 1/2000 of 7 January on Civil Procedure ("**LEC**") excludes the joinder of actions which are incompatible, meaning actions which are mutually exclusive or contradictory, whereby the choice of one prevents or renders the exercise of the other ineffective. In turn, Article 72 of the LEC – which governs the subjective joinder of claims – requires, for the joinder of claims brought against several defendants, that there be a link between the claims by virtue of the legal basis or cause of action, with the understanding that such a link exists when the claims are based on the same facts.

Although the claim centred on the same triggering event – the theft – there were significant factors that suggested that the two actions brought did not arise from the same legal basis or cause of action, which prevented their subjective join-

impedía su acumulación subjetiva conforme al artículo 72 de la LEC. La reclamación frente a las empresas de seguridad se sustentaba en los hechos por los cuales la demandante consideraba que existía responsabilidad derivada de la prestación deficiente de un servicio. La acción frente a la aseguradora, en cambio, dependía exclusivamente de si concurrían o no las condiciones contractuales de cobertura del siniestro pactadas en la póliza. Ambas cuestiones eran jurídicamente independientes entre sí, de forma que la existencia o no de responsabilidad de las empresas de seguridad no condicionaba en modo alguno si existía cobertura bajo la póliza suscrita entre la demandante y su aseguradora, del mismo modo que, la existencia de dicha cobertura tampoco incidía en la eventual responsabilidad de las empresas de seguridad.

der under Article 72 of the LEC. The claim against the security companies was based on the facts that led the claimant to consider that liability arose from the deficient provision of a service. In contrast, the claim against the insurer depended exclusively on whether or not the contractual conditions for cover for the loss, as agreed in the policy, were present. Both issues were legally independent of one another, such that the existence or otherwise of liability on the part of the security companies did not in any way determine whether cover existed under the policy taken out between the claimant and its insurer; similarly, the existence of such cover did not affect the potential liability of the security companies.

Se trataba, por tanto, de dos relaciones jurídicas autónomas e independientes, con fuentes de obligación y marcos normativos distintos que, aunque tenían su origen remoto en la ocurrencia del robo, no compartían ni los hechos que debían probarse ni las alegaciones jurídicas en que se fundaban.

Therefore, there were two separate and independent legal relationships, with distinct sources of obligation and regulatory frameworks which, although ultimately originating from the occurrence of the theft, shared neither the facts to be proven nor the legal arguments on which they were based.

Ahora bien, más allá de la falta de identidad en el título o causa de pedir, lo cierto es que la acumulación pretendida por la demandante impedía también el correcto funcionamiento del mecanismo de subrogación previsto en el artículo 43 de la Ley 50/1980, de 8 de octubre, de Contrato de Seguro ("**LCS**"). Este precepto dispone que, una vez pagada la indemnización, la aseguradora puede ejercitar los derechos y acciones que correspondían al asegurado frente a los responsables del siniestro, hasta el límite de lo indemnizado. Se trata de un mecanismo que presupone necesariamente una secuencia temporal, ya que primero debe producirse el pago de la indemnización por parte de la aseguradora, y sólo entonces, nace para aquella la facultad de repetir frente a quienes efectivamente causaron el daño.

However, apart from the lack of identity in the legal basis or cause of action, the fact remained that the joinder sought by the claimant also impeded the proper functioning of the subrogation mechanism provided for in Article 43 of Law 50/1980 of 8 October on Insurance Contracts ("**LCS**"). This provision provides that, once compensation has been paid, the insurer may exercise the rights and bring the actions that would have been available to the insured against those responsible for the loss, up to the limit of the compensation paid. This is a mechanism that necessarily presupposes a chronological sequence, since the insurer must first pay the compensation, and only then does it acquire the right of recourse against those who actually caused the damage.

Si la aseguradora indemnizara los daños conforme a los límites y condiciones de la póliza, -sin perjuicio de franquicias, límites, etc.- sería ella y no la demandante, quien debería subrogarse en la posición de esta última y reclamar frente a los responsables del siniestro -en este caso, las empresas de seguridad-. La subrogación del artículo 43 de la LCS presupone así que la aseguradora ocupa, tras el pago, exactamente el lugar que hasta entonces correspondía a su asegurada, con los mismos derechos y frente a los mismos responsables.

If the insurer were to pay compensation for the damage in accordance with the limits and conditions of the policy – subject to excesses and limits, among other factors – the insurer, and not the claimant, would be the party entitled to step into the claimant's shoes and bring a claim against those responsible for the incident – in this case, the security companies. Thus, subrogation under Article 43 of the LCS presupposes that, following payment, the insurer assumes the position that previously belonged to its insured party, with the same rights and against the same responsible parties.

Una condena solidaria simultánea contra la aseguradora de daños propios y las empresas de seguridad frustraría precisamente esta lógica, y lo haría en un doble sentido. En primer lugar, situaría a las empresas de seguridad simultáneamente frente a dos posibles acreedores de una misma deuda, sin que hubieran podido defenderse de las alegaciones de uno de ellos. En segundo lugar, y de forma más grave, la aseguradora quedaría atrapada

A simultaneous joint and several judgment against the insurer for its own damage and against the security companies would undermine this very logic in two respects. Firstly, it would place the security companies in a position where they face two potential creditors of the same debt, without having been able to defend themselves against the claims of one of them. Secondly, and more seriously, the insurer would be

en una supuesta solidaridad impropia, en la que el resto de las condenadas podrían a su vez ejercitar contra ella la acción de reembolso del artículo 1.145 del Código Civil -si hubieran pagado la totalidad de la deuda solidaria-, obligando a la aseguradora a reclamarles después, por subrogación, exactamente aquello que acababa de reembolsarles. El resultado sería un círculo procesal absurdo, en el que la aseguradora y las responsables del siniestro podrían terminar reclamándose recíprocamente las mismas cantidades sin que la condena solidaria hubiera resuelto realmente quién debe soportar, en última instancia, el coste del siniestro.

Por otro lado, si fueran las empresas de seguridad quienes indemnizaran directamente la totalidad de los daños a la demandante, al ser consideradas responsables del siniestro, la demandante ya no podría reclamar la misma cobertura a su aseguradora, puesto que ello supondría un enriquecimiento injusto -vetado por el artículo 26 de la LCS-. En ese caso el perjudicado percibiría dos veces la reparación de un mismo perjuicio, pese a que el daño real y su cuantía son únicos. Esta consecuencia, evidencia desde un ángulo opuesto al del párrafo anterior, la misma incompatibilidad de las acciones, ya que la satisfacción del daño por una de las vías excluye, automáticamente, la posibilidad de obtenerla también por la otra.

De ahí la problemática que plantea la petición de condena solidaria formulada por la demandante respecto de las empresas de seguridad y la aseguradora de daños, ya que se trata de acciones que operan en planos jurídicos distintos y sucesivos, no concurrentes entre sí y, por tanto, incompatibles cuando se pretende obtenerlas de forma simultánea. Que ambas acciones culminen en una condena solidaria simultánea equivale a pedir que se ejecuten a la vez dos fases de un mismo proceso que, por su propia naturaleza, están concebidas para sucederse una a la otra o, en todo caso, actuar de forma subsidiaria.

De esta manera, si la demandante hubiera planteado las acciones con carácter subsidiario, habría sido posible acumular acciones en principio incompatibles entre sí, al amparo del artículo 71.4 de la LEC. Y ello porque, al plantearse las acciones de manera subsidiaria, queda eliminada la contradicción que podía comportar su ejercicio simultáneo. Por tanto, la problemática en este caso no era propiamente que se ejercitaran las dos acciones, sino que éstas se plantearan para solicitar una condena solidaria.

Esta cuestión ya ha sido abordada por la jurisprudencia menor, concretamente la SAP de Santa Cruz de Tenerife (Sección 3ª) núm. 50/2024, de 9 de febrero. En ese caso, la demandante ejercitó de forma acumulada la acción de responsabilidad extracontractual frente al responsable de los daños y su aseguradora de responsabilidad civil, y la acción contrac-

trapped in a situation of improper joint and several liability, in which the other parties that were ordered to pay could in turn bring a claim for reimbursement against it under Article 1145 of the Civil Code – had they paid the entire joint and several debt – forcing the insurer to subsequently claim back from them, by way of subrogation, for exactly what it had just reimbursed them. The result would be an absurd legal loop, in which the insurer and those liable for the incident could end up claiming the same amounts from one another, without the joint and several judgment having actually resolved who should ultimately bear the cost of the incident.

On the other hand, if it were the security companies that directly compensated the claimant for the full amount of the damage, as they were found liable for the incident, the claimant would no longer be able to claim the same cover from its insurer, as this would constitute unjust enrichment, which is prohibited by Article 26 of the LCS. In that case, the injured party would be compensated twice for the same loss, even though the actual loss and its amount are one and the same. This consequence demonstrates, from a perspective that contrasts with that of the previous paragraph, the very incompatibility of the actions, since compensation for the loss through one of the channels automatically precludes the possibility of obtaining it through the other.

Hence the problem arises from the claimant's request for a joint and several order against the security companies and the insurer of the property, as these are claims that operate on distinct and successive legal planes; they do not run concurrently and are therefore incompatible when sought simultaneously. For both claims to result in a simultaneous joint and several judgment is tantamount to requesting that two stages of the same proceedings be carried out at the same time, when by their very nature they are designed to follow one another or, at any rate, to operate on a subsidiary basis.

Thus, had the claimant brought the claims on a subsidiary basis, it would have been possible to consolidate claims that are, in principle, mutually incompatible, under Article 71.4 of the LEC. This is because, when the claims are brought on a subsidiary basis, the conflict that might arise from their simultaneous pursuit is eliminated. Consequently, the issue in this case was not, strictly speaking, that both claims were brought, but rather that they were brought to seek a joint and several order.

This matter has already been addressed by case law issued by lower courts, specifically the judgment of the Santa Cruz de Tenerife Court of Appeal (3rd Section) No. 50/2024, of 9 February. In that case, the claimant brought, as a joint action, a claim for non-contractual liability against the party responsible for the damage and its civil liability insurer, and a con-

tual frente a su propia aseguradora, solicitando la condena solidaria de todas ellas. La sentencia declara que existe incompatibilidad de la acumulación de las acciones cuando se solicita la indemnización de forma solidaria, puesto que ello genera un perjuicio a la aseguradora del perjudicado al impedirle su derecho de repetición frente al causante del daño, si bien abre la posibilidad a que dichas acciones se acumulen de forma subsidiaria.

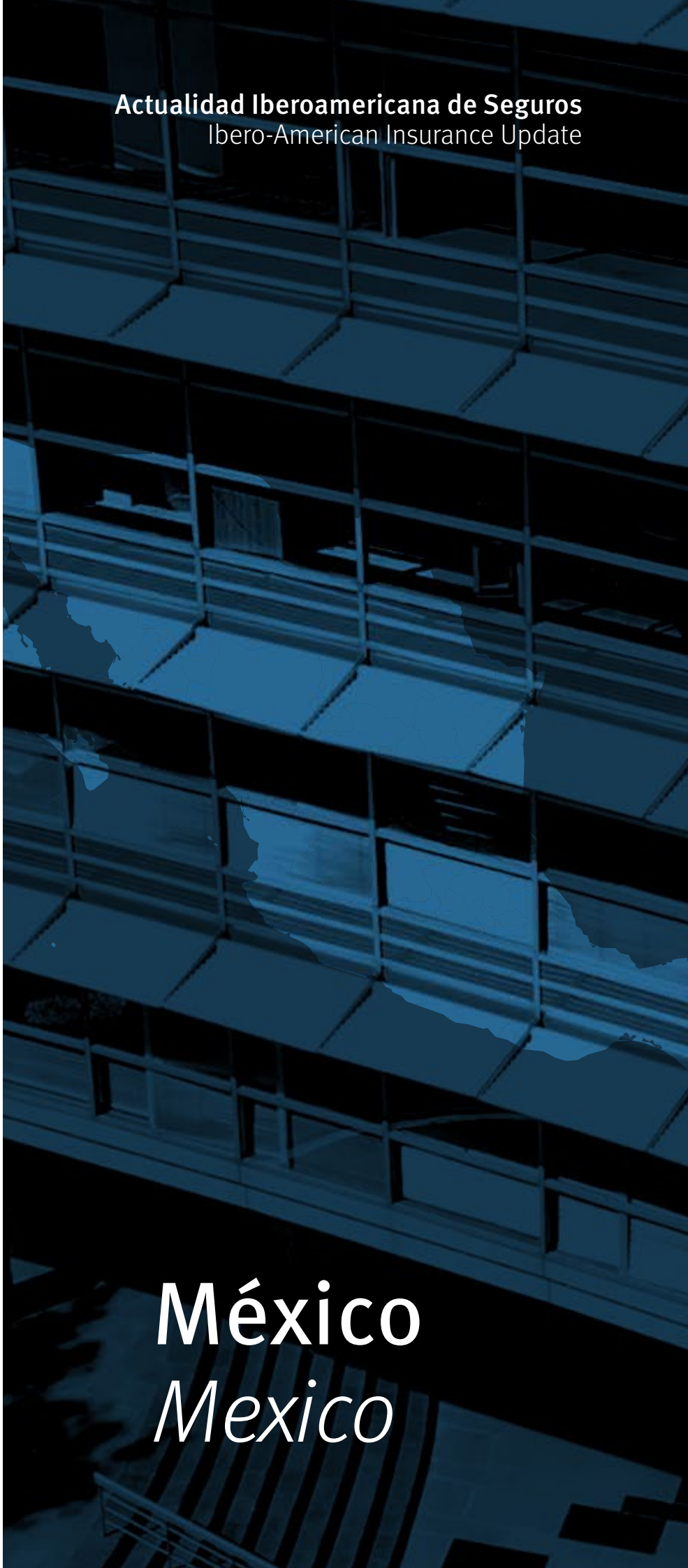
Este supuesto encaja exactamente con el que concurre en el caso analizado ya que, al solicitarse por la demandante la condena solidaria conjunta de su aseguradora y de las empresas de seguridad, se pretendía obtener un pronunciamiento que, de dictarse en esos términos, privaría a la aseguradora de su derecho de subrogación frente a los verdaderos responsables del siniestro. El problema de fondo, por tanto, no es que las dos acciones no puedan ejercitarse en un mismo procedimiento -de hecho, sí pueden si se plantean como principal y subsidiaria-, sino que no pueden ejercitarse de forma simultánea pidiendo una condena solidaria.

tractual claim against the claimant's own insurer, seeking a joint and several order against all of them. The Court held that the joinder of claims was incompatible where compensation was sought on a joint and several basis, as this resulted in prejudice to the injured party's insurer by preventing it from exercising its right of recourse against the party responsible for the damage; however, it recognised the possibility of such claims being joined on a subsidiary basis.

This scenario corresponds exactly to the one in the case under analysis since, by seeking a joint and several order against its insurer and the security firms, the claimant intended to obtain a ruling which, if issued in those terms, would deprive the insurer of its right of subrogation against those truly responsible for the incident. Therefore, the underlying problem is not that the two claims cannot be brought in the same proceedings – in fact, they can be if they are brought as a principal and a subsidiary claim – but rather that they cannot be brought simultaneously whilst seeking a joint and several order.

MEXICO

**Actualidad Iberoamericana de Seguros**
Ibero-American Insurance Update



# México
# *Mexico*

# Principales novedades normativas y de supervisión
## Key regulatory and supervisory developments

### Publicación del Acuerdo 93/2026 en relación con el SHCP

El 1 de julio de 2026 se publicó en el DOF el Acuerdo 93/2026, por el que la SHCP simplifica trámites del sector asegurador, afianzados y de fondos de aseguramiento.

**Sustitución del escrito libre por formatos de solicitud estandarizados**

Respecto de diez trámites, el Acuerdo elimina la obligación de presentar la solicitud mediante escrito libre y la sustituye por formatos de solicitud estandarizados, anexos al Acuerdo e identificados cada uno con su propia clave.

Los trámites afectados, y el cambio que cada uno incorpora, son los siguientes:

- la aprobación de modificaciones a los estatutos sociales de la sociedad controladora, de las subcontroladoras y de las prestadoras de servicios e inmobiliarias, así como al convenio único de responsabilidades;
- la autorización para ser considerado inversionista institucional conforme a la Ley para Regular las Agrupaciones Financieras;
- el dictamen de modificaciones a la escritura constitutiva y a los estatutos sociales de fondos de aseguramiento agropecuario y rural no afiliados;
- la autorización a instituciones de seguros y de fianzas y a sociedades mutualistas de seguros para efectuar operaciones análogas y conexas;
- la consulta de interpretación administrativa de las disposiciones de carácter general referidas en el artículo 492 de la LISF y en el artículo 108 bis de la Ley de los Sistemas de Ahorro para el Retiro;
- la autorización para emitir acciones serie "L";
- la autorización para que una sociedad controladora invierta en al menos el cincuenta y uno por ciento del capital social de una subcontroladora;

### Publication of Agreement 93/2026 regarding the SHCP

On July 1, 2026, Agreement 93/2026, which amends various procedures before the SHCP that concern insurance and surety institutions, mutual insurance companies, and agricultural and rural insurance funds, was published in the Official Federal Gazette (*Diario Oficial de la Federación*) ("**DOF**").

**Replacement of free-form written requests with standardized forms**

With respect to 10 procedures, the Agreement eliminates the requirement to submit a free-form written request, replacing it with standardized forms.

The procedures in question, and the change introduced by each, are as follows:

- approvals of amendments to the bylaws of the holding company, sub-holding companies, service providers, and real estate companies, as well as to the joint liability agreement;
- authorizations to be considered an institutional investor under the Law to Regulate Financial Groups (*Ley para Regular las Agrupaciones Financieras*);
- opinions on amendments to the incorporation deed and bylaws of non-affiliated agricultural and rural insurance funds;
- authorizations for insurance and surety institutions, and mutual insurance companies, to carry out similar and related transactions;
- requests for administrative interpretation of the general provisions referred to in Article 492 of the Law of Insurance and Surety Institutions (*Ley de Instituciones de Seguros y de Fianzas*) ("**LISF**") and Article 108 Bis of the Retirement Savings Systems Law (*Ley de los Sistemas de Ahorro para el Retiro*) ("**LSAR**");
- authorizations to issue Series "L" shares;
- authorizations for a holding company to acquire at least 51% of the share capital of a sub-holding company;

- la autorización para la escisión de una sociedad controladora o subcontroladora;
- la autorización a una sociedad controladora para realizar otras inversiones; y
- el registro para operar como organismo integrador, que además conserva como requisito adicional la indicación del ámbito geográfico en que operará.

**Formatos de solicitud asociados a los trámites simplificados**

Las instituciones de seguros, de fianzas y los fondos de aseguramiento cuentan con formatos predefinidos para gestionar ante la SHCP las autorizaciones, dictámenes y consultas antes tramitadas por escrito libre, lo que reduce la discrecionalidad en las solicitudes y previsiblemente acortará los tiempos de resolución.

- authorizations for the spin-off of a holding or sub-holding company;
- authorizations for a holding company to make other investments; and
- registrations to operate as an integrating body, which also retains, as an additional requirement, the specification of the geographic scope in which it will operate.

**Application forms associated with the simplified procedures**

Insurance and surety institutions and insurance funds now have predefined forms to submit authorizations, opinions, and consultations to the SHCP — procedures that were previously handled through free-form written applications. This reduces discretion in applications and is expected to shorten resolution times.



## Entrada en vigor de la Circular Modificatoria 4/2025 para el refuerzo de la administración integral de riesgos y del riesgo operativo

La Circular Modificatoria 4/25 de la Única de Seguros y Fianzas, publicada en el DOF el 24 de octubre de 2025 y en vigor desde el 1 de julio de 2026, refuerza el sistema de administración integral de riesgos de las instituciones y sociedades mutualistas de seguros, con especial énfasis en la gestión del riesgo operativo.

La Circular responde al artículo 69 de la LISF, que exige un sistema eficaz de administración integral de riesgos, incluido el riesgo operativo, legal, tecnológico, estratégico y reputacional, considerados en el cálculo del Requerimiento de Capital de Solvencia ("**RCS**").

**Apetito y tolerancia al riesgo**

La Circular incorpora a la Disposición 1.1.1. de la CUSF las definiciones de "apetito de riesgo" (el nivel y tipo de riesgos que una

## Entry into force of Amending Circular 4/2025, which strengthens comprehensive risk management and operational risk

Amending Circular 4/2025 to the CUSF, which was published in the DOF on October 24, 2025, and has been in force since July 1, 2026, strengthens the comprehensive risk management system of insurance institutions and mutual insurance companies, with a particular emphasis on operational risk management.

The Circular addresses the requirements of Article 69 of the LISF, which requires an effective comprehensive risk management system, including operational, legal, technological, strategic, and reputational risk, all of which are taken into account in calculating the Solvency Capital Requirement ("**SCR**").

**Risk appetite and tolerance**

The Circular incorporates into Provision 1.1.1 of the CUSF the definitions of "risk appetite" (the level and type of risks an

institución está dispuesta a asumir para alcanzar sus objetivos) y "tolerancia al riesgo" (el nivel aceptable de variación en torno a dicho apetito), ambas de obligada inclusión explícita en el sistema de administración de riesgos de cada institución.

**Refuerzo del área de administración de riesgos**

Se atribuye al área de administración de riesgos la coordinación y verificación del cálculo y entrega a la CNSF del RCS, así como la pertinencia de las reservas y la fiabilidad de la información utilizada. Asimismo, se exige llevar un control de cambios del manual de riesgos para favorecer la supervisión interna y de la CNSF.

**Catálogo de eventos y base de datos de riesgo operativo**

La Circular crea un catálogo mínimo de eventos asociados al riesgo operativo y obliga a las instituciones y sociedades mutualistas a reportar a la CNSF a través de su web, una base de datos con el registro de dichos eventos de pérdida por riesgo operativo.

## Entrada en vigor de la Circular Modificatoria 4/26 que modifica la reserva de fianzas en vigor

El 22 de julio de 2026 se publicó en el DOF la Circular Modificatoria 4/26 de la Única de Seguros y Fianzas, que actualiza el Anexo 5.15.3 de la CUSF, entrando en vigor al día siguiente.

El Anexo establece los parámetros de mercado que deben utilizar las instituciones que carezcan de información oportuna, homogénea, confiable y suficiente para constituir, incrementar y valuar la reserva de fianzas en vigor. Estos parámetros resultan aplicables mientras la institución genera su propia información, conforme al método previsto en la disposición 5.15.3 de la CUSF.

La actualización comprende los índices de reclamaciones pagadas (fianzas de fidelidad a primer riesgo, otras de fidelidad, judiciales que amparen a conductores de vehículos automotores, otras judiciales, administrativas y de crédito) y los índices anuales de gastos de administración (fianzas de fidelidad, judiciales, administrativas y de crédito) del mercado afianzador. Las instituciones comprendidas en este supuesto deberán incorporar los nuevos valores a la valuación de sus reservas.

## Propuesta de Ley General para la Regulación y Uso Ético de la Inteligencia Artificial

La iniciativa, registrada el 17 de junio de 2026, fue turnada a la Cámara de Diputados y permanece pendiente de dictamen en comisiones, sin publicación en el DOF.

institution is willing to assume to achieve its objectives) and "risk tolerance" (the acceptable level of variation around that appetite), both of which must be expressly included in each institution's risk management system.

**Strengthening of the risk management area**

The risk management area is assigned responsibility for coordinating and verifying the calculation of the SCR and its submission to the CNSF, as well as the adequacy of reserves and the reliability of the information used. Institutions are also required to maintain a change log of the risk manual to facilitate internal and CNSF oversight.

**Catalog of events and operational risk database**

The Circular creates a minimum catalog of events associated with operational risk and requires insurance institutions and mutual insurance companies to report, through the CNSF website, a database that records such operational risk loss events.

## Entry into force of Amending Circular 4/2026, which modifies the reserve for surety bonds in force

On July 22, 2026, Amending Circular 4/2026 to the CUSF, which updates Annex 5.15.3 of the CUSF, was published in the DOF and entered into force the following day.

The Annex establishes the market parameters to be used by institutions that lack timely, uniform, reliable, and sufficient information to establish, increase, and value the reserve for surety bonds in force. These parameters apply while the institution generates its own information, under the method set out in Provision 5.15.3 of the CUSF.

The update covers the claims-paid indices (first-loss fidelity bonds, other fidelity bonds, judicial bonds covering motor vehicle drivers, other judicial bonds, administrative bonds, and credit bonds) and the annual administrative expense indices (fidelity, judicial, administrative, and credit bonds) of the surety market. Institutions that fall within this scope must incorporate the new values into the valuation of their reserves.

## Proposed General Law for the Regulation and Ethical Use of Artificial Intelligence

The bill, which was registered on June 17, 2026, was referred to the Chamber of Deputies and awaits committee review, without having been published in the DOF.

La propuesta plantea un marco horizontal para el desarrollo, puesta a disposición, implementación, operación y supervisión de sistemas de inteligencia artificial ("**IA**") en México, con enfoque de derechos humanos y obligaciones ajustadas al riesgo. Su interés para el sector asegurador deriva de que los sistemas empleados en sectores regulados, incluido el financiero, quedarían sujetos tanto a este marco general como a su normativa sectorial. Sus principales medidas son las siguientes:

**Supervisión y clasificación de riesgos**

Se crearía la Agencia Nacional de Supervisión de la Inteligencia Artificial, con autonomía técnica y facultades para emitir lineamientos, verificar y sancionar. Los sistemas se clasificarían en riesgo mínimo, limitado, alto o prohibido; se considerarían de alto riesgo, entre otros, los empleados en salud, educación, empleo, seguridad pública, justicia, servicios esenciales (crédito, seguros, vivienda) e identificación biométrica, y quedarían prohibidos los sistemas de manipulación de conductas, vigilancia masiva indiscriminada, puntuación social y cualquier uso dirigido a vulnerar derechos humanos.

**Obligaciones de proveedores y usuarios**

Se exigirían diligencia para prevenir daños previsibles, medidas de seguridad y documentación sobre finalidad, limitaciones, datos, riesgos y controles.

**Sistemas de alto riesgo y derechos de las personas**

Se prevé un registro nacional de sistemas de alto riesgo y una evaluación de impacto previa a su operación. Las personas tendrían derecho a ser informadas cuando interactúen con un sistema de IA, a solicitar una explicación razonable de las decisiones significativas basadas en IA y, en ámbitos de alto riesgo, a pedir revisión humana efectiva.

Ante riesgo inminente o daño en curso, la Agencia Nacional de Supervisión de la Inteligencia Artificial podría ordenar la

The bill proposes a horizontal framework for the development, making available, implementation, operation, and supervision of artificial intelligence ("**AI**") systems in Mexico, with a human-rights approach and risk-based obligations. Its relevance for the insurance sector stems from the fact that systems used in regulated sectors, including the financial sector, would be subject both to this general framework and to their sector-specific regulation. The bill's key measures are as follows:

**Supervision and risk classification**

The bill provides for the creation of a National Agency for the Supervision of Artificial Intelligence, with technical autonomy and powers to issue guidelines, verify compliance, and impose sanctions. Systems would be classified as posing minimal, limited, high, or prohibited risks; systems used in health, education, employment, public safety, justice, essential services (credit, insurance, housing), and biometric identification, among others, would be considered high-risk, and systems for behavioural manipulation, indiscriminate mass surveillance, social scoring, and any use aimed at undermining human rights would be prohibited.

**Obligations of providers and users**

Providers and users would be required to exercise diligence to prevent foreseeable harm, implement security measures, and maintain documentation regarding the purpose, limitations, data, risks, and controls of their systems.

**High-risk systems and individual rights**

A national registry of high-risk systems and a pre-deployment impact assessment are contemplated. Individuals would have the right to be informed when interacting with an AI system, to request a reasonable explanation of significant AI-based decisions, and, in high-risk contexts, to request effective human review.

In the event of imminent risk or ongoing harm, the National Agency for the Supervision of Artificial Intelligence could or-



suspensión temporal, la limitación de funcionalidades, la corrección obligatoria o el retiro del sistema; aplicándose en sectores regulados, como el financiero, el estándar más protector para las personas entre la nueva ley y la normativa sectorial. De aprobarse, la propuesta podría ampliar las exigencias de gobernanza de IA para las aseguradoras, incidiendo en el uso de la IA para suscripción, *pricing*, detección de fraude, gestión automatizada de siniestros y atención al cliente.

## Propuesta de Ley General para el Desarrollo de la Inteligencia Artificial y el Impulso del Futuro Digital

El 8 de septiembre de 2026, el Grupo Parlamentario del Partido Acción Nacional suscribió en el Senado una iniciativa para expedir la Ley General para el Desarrollo de la Inteligencia Artificial y el Impulso del Futuro Digital y reformar la Ley Orgánica de la Administración Pública Federal, que crearía la Secretaría de Inteligencia Artificial y Futuro Digital y otros organismos de planeación y fomento de la IA.

En materia de protección, la iniciativa plantea un modelo de gestión proporcional de riesgos, exigible cuando los sistemas de IA puedan afectar derechos, patrimonio, salud, empleo, justicia o servicios financieros, entre ellos los seguros, y reconoce a las personas el derecho a saber cuándo interactúan con un sistema de IA, a solicitar una explicación general sobre decisiones con efectos relevantes y, en su caso, a obtener revisión humana.

El mismo Grupo Parlamentario suscribió ese día una iniciativa conexa de reforma constitucional (fracción XXIX-F Bis al artículo 73) que facultaría al Congreso a legislar en materia de IA y futuro digital, obligando a expedir la Ley General para el Desarrollo de la Inteligencia Artificial y el Impulso del Futuro Digital dentro de los ciento ochenta días naturales siguientes a su entrada en vigor.

## Reforma a la Ley de Inversión Extranjera

El 30 de agosto de 2026 se remitió al Senado una iniciativa de reforma a la Ley de Inversión Extranjera que introduciría, por primera vez, un régimen formal de revisión de inversiones extranjeras por razones de seguridad nacional. Actualmente, el artículo 30 de la ley permite a la Comisión Nacional de Inversiones Extranjeras ("**CNIE**") impedir adquisiciones por motivos de seguridad nacional, pero sin parámetros ni procedimiento claros. La iniciativa deroga ese artículo y lo sustituye por un nuevo Título Sexto Bis dedicado íntegramente a la materia.

La autorización previa de la CNIE sería obligatoria cuando concurran tres condiciones:

der the temporary suspension, limitation of functionalities, mandatory correction, or withdrawal of the system; in regulated sectors, such as the financial sector, the more protective standard between the new law and sector-specific regulation would apply. If enacted, the bill could expand AI governance requirements for insurers, affecting the use of AI in underwriting, pricing, fraud detection, automated claims handling, and customer service.

## Proposed General Law for the Development of Artificial Intelligence and the Promotion of the Digital Future

On September 8, 2026, the Parliamentary Group of the National Action Party (*Partido Acción Nacional*) ("**PAN**") submitted a bill to the Senate to enact the General Law for the Development of Artificial Intelligence and the Promotion of the Digital Future and to amend the Organic Law of the Federal Public Administration, which would create the Ministry of Artificial Intelligence and Digital Future, and other AI planning and promotion bodies.

In relation to risk management, the bill proposes a proportional risk-management model, which applies when AI systems may affect rights, assets, health, employment, justice, or financial services, including insurance, and recognizes individuals' right to know when they are interacting with an AI system, to request a general explanation of decisions with significant effects, and, where applicable, to obtain a human review.

On the same day, the same Parliamentary Group submitted a related constitutional reform bill (which adds section XXIX-F Bis to Article 73) that would authorize Congress to legislate on AI and the digital future, and which requires the General Law for the Development of Artificial Intelligence and the Promotion of the Digital Future to be enacted within 180 calendar days following its entry into force.

## Reform of the Foreign Investment Law

On August 30, 2026, a bill to reform the Foreign Investment Law was submitted to the Senate, which would introduce, for the first time, a formal national security review regime for foreign investments. Currently, Article 30 of the Law allows the National Foreign Investment Commission (*Comisión Nacional de Inversiones Extranjeras*) ("**CNIE**") to block acquisitions on national security grounds, but without clear parameters or procedures. The bill repeals that article and replaces it with a new Title Six Bis devoted entirely to the matter.

Prior authorization from the CNIE would be mandatory when three criteria are met:

- la participación extranjera directa o indirecta superior al 49% del capital social de una sociedad mexicana;
- los activos de esa sociedad por encima de un umbral que la propia CNIE determinará; y
- la actividad en alguno de los sectores considerados sensibles -infraestructuras estratégicas, tecnologías críticas y de doble uso, insumos fundamentales y seguridad alimentaria, información sensible-, u otras actividades análogas que la Comisión decida incluir.

Por debajo del umbral de activos, la solicitud sería voluntaria.

La empresa mexicana y el inversionista extranjero deben presentar la solicitud de forma conjunta, y la CNIE puede autorizar la operación, condicionarla a medidas de mitigación o denegarla. El plazo de resolución, previsto originalmente en 60 días hábiles, se redujo a 45 días hábiles al aprobarse el dictamen el 30 de septiembre de 2026, y se eliminó la mención expresa de que el silencio equivale a una negativa ficta.

La reforma también amplía la integración de la CNIE para incorporar de forma expresa a autoridades de seguridad nacional y fiscalización. Se suman como miembros con voto las secretarías de Defensa Nacional, Marina, y Seguridad y Protección Ciudadana, así como la Agencia de Transformación Digital y Telecomunicaciones. Como invitados permanentes, con voz pero sin voto y exclusivamente en sesiones de seguridad nacional, se incorporan la Fiscalía General de la República, el Centro Nacional de Inteligencia, el Servicio de Administración Tributaria y la Unidad de Inteligencia Financiera.

En materia sancionatoria, la reforma prevé multas en múltiplos de la Unidad de Medida y Actualización (UMA):

- de 1,000 a 5,000 UMA por realizar actividades o adquisiciones que requieran resolución favorable de la CNIE sin haberla obtenido;
- de 5,000 a 200,000 UMA por transmitir la participación accionaria pese a la denegación de la CNIE o sin resolución favorable previa; y
- de 5,000 a 200,000 UMA por incumplir las medidas de mitigación impuestas.

Además, se prevé la posibilidad de ordenar la desinversión de los activos, con un plazo de 90 días hábiles prorrogable por otros 90.

- a direct or indirect foreign shareholding that exceeds 49% of the share capital of a Mexican company;
- that company's assets exceed a threshold to be determined by the CNIE itself; and
- the company's activity falls within one of the sectors considered sensitive — strategic infrastructure, critical and dual-use technologies, fundamental inputs and food security, sensitive information — or other analogous activities the Commission decides to include.

Below the asset threshold, filing the application would be voluntary.

Mexican companies and their foreign investors must file the application jointly, and the CNIE may authorize the transaction, make it conditional upon mitigation measures, or refuse it. The resolution period, originally set at 60 business days, was reduced to 45 business days when the bill was approved on September 30, 2026, and the express provision that silence amounts to a deemed refusal was removed.

The reform also expands the CNIE's composition to expressly incorporate national security and enforcement authorities. The Ministries of National Defense, the Navy, and Security and Civilian Protection, as well as the Agency for Digital Transformation and Telecommunications, are added as voting members. The Attorney General's Office, the National Intelligence Center, the Tax Administration Service, and the Financial Intelligence Unit are incorporated as permanent guests, with a right to speak but no vote, exclusively in national security sessions.

In relation to sanctions, the reform provides for fines expressed as multiples of the Unit of Measurement and Update (*Unidad de Medida y Actualización*) (the "**UMA**"):

- 1,000 to 5,000 UMA for carrying out activities or acquisitions that require a favorable CNIE resolution, without having obtained such a resolution;
- 5,000 to 200,000 UMA for transferring the equity interest despite the CNIE's refusal or without a prior favorable resolution; and
- 5,000 to 200,000 UMA for failing to comply with the mitigation measures imposed.

In addition, the CNIE may order the divestment of the assets acquired, within 90 business days, extendable for a further 90 business days.

Las empresas con operaciones en sectores sensibles en México deben anticipar este régimen desde el inicio de cualquier transacción, revisando estructuras de propiedad indirectas y previendo condiciones suspensivas en la documentación contractual.

Companies with operations in sensitive sectors in Mexico must take this regime into account from the outset of any transaction, reviewing indirect ownership structures and including conditions precedent in the transaction documentation.

## Iniciativa de Ley de Economía Digital para Pagos Digitales y Electrónicos

El 8 de septiembre de 2026 se presentó ante el Congreso una propuesta para crear la Ley de Economía Digital para Pagos Digitales y Electrónicos, cuyo propósito es impulsar un uso más amplio de los pagos electrónicos y acercar a más personas a los servicios financieros. La ley alcanzaría a un universo amplio de actores -entre ellos, bancos, sociedades financieras de objeto múltiple y popular, cooperativas, empresas de tecnología financiera, otras entidades que otorgan crédito, comercios, personas usuarias y autoridades-, a quienes se exigiría acercar sus servicios a más usuarios y permitir la solicitud de crédito a través de canales digitales. Buena parte de su aplicación quedará supeditada a reglas secundarias que todavía deberán emitir la SHCP, el Banco de México y la Comisión Nacional Bancaria y de Valores.

En materia de identidad digital, la iniciativa otorgaría a la CURP Digital el estatus de medio confiable para abrir o contratar productos financieros en línea, y permitiría que cada persona autorice a las instituciones a consultar la información contenida en su expediente digital ciudadano, documento al que se reconocería la misma fuerza legal que a su versión en papel.

Respecto al uso obligatorio de medios digitales, las tres autoridades federales, estatales y municipales quedarían obligadas a aceptar pagos electrónicos en sus trámites, mientras que el sector privado conservaría, en principio, libertad para decidir cómo cobrar. La excepción relevante es que Hacienda tendría la facultad de designar ciertas actividades o sectores en los que dejaría de aceptarse el pago en efectivo, aunque todavía no se anticipan cuáles serían.

## Bill for the Digital Economy Law for Digital and Electronic Payments

On September 8, 2026, a bill to create the Digital Economy Law for Digital and Electronic Payments was submitted to Congress. The bill seeks to promote the broader use of electronic payments and bring more people into the financial system. The law would cover a broad range of actors, including banks, multiple-purpose and popular financial companies, cooperatives, financial technology companies, other credit-granting entities, merchants, users, and authorities, which would be required to bring their services closer to more users and allow credit applications through digital channels. Much of its implementation will depend on secondary rules still to be issued by the SHCP, the Bank of Mexico, and the National Banking and Securities Commission (*Comisión Nacional Bancaria y de Valores*) (“**CNBV**”).

In relation to digital identity, the bill would grant the Digital CURP the status of a trusted means for opening or contracting financial products online, and would allow individuals to authorize institutions to consult the information contained in their Citizen Digital File, a document that would be granted the same legal force as its paper equivalent.

Regarding mandatory use of digital means of payment, federal, state, and municipal authorities would be required to accept electronic payments for their procedures, while the private sector would, in principle, retain the freedom to decide how to collect payment. The significant exception is that the SHCP would have the power to designate certain activities or sectors in which cash would cease to be accepted, although it is not yet clear which these would be. The corresponding



La transición correspondiente la coordinaría después cada autoridad sectorial competente, y se mantendría la posibilidad de pagar en efectivo cuando una falla técnica temporal impida procesar el pago digital, sin que ello pueda convertirse en una práctica habitual.

Si la iniciativa avanza sin cambios sustanciales, cada tipo de empresa enfrentaría tareas distintas: bancos y *fintechs* deberán adaptar sus procesos de alta de clientes; los operadores de terminales de cobro necesitarán verificar su capacidad para procesar pagos mediante código QR; los comercios deberán vigilar si su giro queda entre los designados como obligados a aceptar medios digitales; y los proveedores tecnológicos enfrentarán ajustes para garantizar la interoperabilidad de sus sistemas.

transition would then be coordinated by each competent sector authority, and the possibility of paying in cash would be preserved when a temporary technical failure prevents a digital payment from being processed, without this becoming a routine practice.

If the bill moves forward without substantial changes, each type of business would face different tasks: banks and fintechs will need to adapt their customer onboarding processes; payment terminal operators will need to verify their ability to process QR code payments; merchants will need to monitor whether their line of business falls among those designated as required to accept digital means of payment; and technology providers will face adjustments to ensure the interoperability of their systems.

## Panorama analítico del sector de seguros y fianzas Q2 2026 emitido por la CNSF

El sector de seguros y fianzas concluyó el segundo trimestre de 2026 con un crecimiento moderado pero sostenido, tras un semestre que arrancó débil y repuntó con fuerza: la economía mexicana avanzó un 1.2% en el primer semestre, tras una contracción de 0.3% en el primer trimestre y un repunte del 1.9% anual entre abril y junio.

La prima total del sector alcanzó MX$570 mil millones (+1.3% interanual), con los seguros al alza y las fianzas a la baja. Vida fue el motor principal: MX$229.5 mil millones (40.3% de la cartera), impulsado por productos con componente de ahorro. Accidentes y enfermedades creció un 5.3%, apoyado en gastos médicos; daños cayó un 3.0%, aunque autos siguió al alza (+3.4%).

Por su parte, el costo de los siniestros se incrementó a MX$264 mil millones, un 4.1% más, presionado sobre todo por autos, donde los siniestros encarecieron 8.8% por una mayor severidad promedio, y por gastos médicos, que subió un 12.7% debido a más reclamaciones y a la inflación médica.

Esa mayor siniestralidad y la compresión de márgenes afectaron la rentabilidad: las utilidades del sector cayeron un 4.7%, a MX$43.3 mil millones, interrumpiendo la racha de crecimiento desde 2022, con accidentes y enfermedades como el segmento más golpeado (-36.8%). Aun así, la solidez financiera del sector se mantuvo: el índice de cobertura del capital de solvencia se ubicó en 3.4 veces el mínimo exigido, con una liquidez que duplica el umbral regulatorio.

## Analytical overview of the insurance and surety bond sector Q2 2026 issued by the CNSF

The insurance and surety bond sector closed the second quarter of 2026 with moderate but sustained growth, after a first half of the year that started poorly and rebounded strongly. The Mexican economy grew 1.2% in the first half of the year, following a 0.3% contraction in the first quarter and a 1.9% year-on-year rebound between April and June.

Total premiums for the sector reached MX$570 billion (+1.3% year-on-year), with insurance up and surety bonds down. Life insurance was the main driver, with MX$229.5 billion (40.3% of the portfolio) led by savings-linked products. Accident and health insurance grew 5.3%, supported by medical expenses; property and casualty insurance fell 3.0%, although motor insurance continued to rise (+3.4%).

Meanwhile, the cost of claims rose to MX$264 billion, up 4.1%, driven mainly by motor insurance, where claims costs rose 8.8% due to higher average severity, and by medical expenses, which rose 12.7% due to more claims and medical inflation.

Higher volumes of claims and margin compression affected profitability: the sector's profits fell 4.7%, to MX$43.3 billion, interrupting the growth streak since 2022, with accident and health insurance being the hardest-hit segment (-36.8%). Even so, the sector's financial strength held up: the solvency capital coverage ratio stood at 3.4 times the required minimum, with liquidity double the regulatory threshold.

## Desempeño oportuno del sector asegurador y afianzador al cierre del Q2 2026 emitido por la CNSF

El segundo trimestre de 2026 deja una paradoja en el sector asegurador y afianzador: la prima sigue creciendo, pero la rentabilidad técnica se desploma. La prima retenida devengada avanzó un 2.4%, insuficiente para compensar el alza del 4.1% en el costo neto de siniestralidad y del 2.7% en el costo neto de adquisición, lo que hundió la utilidad técnica en un 98.6%. Los productos financieros (+1.2%) y la participación en inversiones permanentes (+4.2%) no bastaron para revertir ese deterioro operativo, de modo que la utilidad del ejercicio cayó un 4.7%, hasta MX$43.3 mil millones.

El balance, sin embargo, ofrece una lectura más tranquilizadora: el sector cerró con un activo de MX$3,208 mil millones, un pasivo de MX$2,843 mil millones y un capital de MX$365 mil millones.

## Timely performance of the insurance and surety bond sector as of the close of Q2 2026 issued by the CNSF

The second quarter of 2026 reveals a paradox in the insurance and surety bond sector: premiums continue to grow, but technical profitability deteriorated sharply. Earned retained premiums rose 2.4%, which was insufficient to offset the 4.1% increase in the cost of net claims and the 2.7% increase in the cost of net acquisitions, which drove technical profits down 98.6%. Financial income (+1.2%) and the share of income from permanent investments (+4.2%) were not enough to reverse that operating deterioration, meaning that net income for the period fell 4.7%, to MX$43.3 billion.

The balance sheet, however, offers a more reassuring picture: the sector ended the second quarter of 2026 with assets of MX$3.208 billion, liabilities of MX$2.843 billion, and capital of MX$365 billion.

# Principales novedades jurisprudenciales
## Main developments in case law

### ▸ *Plot twist*

**No hace falta reclamar daños punitivos para que se declaren de oficio cuando el daño moral sufrido acredite una conducta reprochable, que socialmente quiere desincentivarse**

*Tesis aisladas I.160.C.4 C (12a.) y I.160.C.5 C (12a.) del Décimo Sexto Tribunal Colegiado en materia civil del Primer Circuito derivadas del amparo directo 800/2022, con fecha de publicación 3 de julio de 2026 en el Semanario Judicial de la Federación (Reg. digitales 2032376 y 2032390)*

Dos mujeres obtienen una indemnización por daño moral y daños punitivos, como consecuencia del trato discriminatorio recibido por su aseguradora de gastos médicos mayores; en particular:

- exclusiones de cobertura por complicaciones del embarazo, aborto, padecimientos congénitos del bebé, y cualquier intervención médica o quirúrgica por tratamientos de infertilidad y/o esterilidad resultan discriminatorias frente a matrimonios del mismo sexo, para quienes dichos tratamientos son el único medio para tener hijos; y

- el desatender solicitudes de información -remitiendo una copia tardía y errónea de las condiciones generales, hasta 11 meses después de la contratación y a diferencia del trato habitual dado a otros clientes- o eliminar conceptos como "parto normal" o "cesárea" de la cobertura, o identificar al matrimonio como "pareja del mismo sexo" en lugar de "cónyuge".

La cuantificación del daño moral se basa en (i) la reparación del daño, (ii) la obligación de juzgar con perspectiva de género, (iii) los derechos de los consumidores de servicios finan-

### ▸ Plot twist

Punitive damages need not be expressly claimed to be awarded ex officio when the moral damage suffered provides evidence of reprehensible conduct that society seeks to discourage

*Isolated theses I.160.C.4 C (12a.) and I.160.C.5 C (12a.) of the Sixteenth Collegiate Circuit Court for Civil Matters of the First Circuit, arising from direct amparo 800/2022, published on 3 July 2026 in the Federal Judicial Gazette (Semanario Judicial de la Federación) (Digital Reg. 2032376 and 2032390)*

In this case, two women received compensation for moral damage and punitive damages as a result of discriminatory treatment by their major medical expenses insurer. In particular, this discriminatory treatment comprised:

- exclusions from cover for pregnancy complications, miscarriage, the baby's congenital conditions, and any medical or surgical intervention for infertility and/or sterility treatments, which discriminate against same-sex marriages, for whom such treatments are the only means of having children; and

- disregarding requests for information — sending a late and erroneous copy of the general conditions, up to 11 months after the policy was taken out and unlike the customary treatment given to other customers — and removing concepts such as "natural delivery" or "caesarean section" from coverage, and identifying the couple as a "same-sex couple" instead of "spouse".

The quantification of the moral damage was based on (i) redress for the harm, (ii) the obligation to adjudicate from the perspective of gender, (iii) the rights of consumers of financial



cieros, y (iv) la gravedad de la conducta discriminatoria de la aseguradora.

El Tribunal Colegiado concluye que la responsabilidad de las aseguradoras trasciende lo pactado contractualmente, cuando incumplen obligaciones derivadas de la normativa del sector (por ejemplo, informar y facilitar la póliza), o cuando no actúan con la diligencia que su actividad exige. El registro de las condiciones generales ante la CNSF no las exime de vigilar que ese clausulado respete los principios de igualdad y no discriminación, ni de garantizar que sus políticas y/o prácticas comerciales eviten el uso de estereotipos y estigmas contra colectivos como el LGBTIQ+.

## ▸ Con la aseguradora de volón pin pon (2)

### El acreedor hipotecario beneficiario de un seguro de vida debe agotar primero la vía del seguro frente a la sucesión

*Tesis aislada I.160.C.15 C (12a.) del Décimo Sexto Tribunal Colegiado en materia civil del Primer Circuito derivada del amparo directo 513/2025, con fecha de publicación 21 de agosto de 2026 en el Semanario Judicial de la Federación (Reg. digital 2032537)*

El Tribunal Colegiado reitera el criterio ya fijado en junio de 2025 por el Tercer Tribunal Colegiado en materias administrativa y civil del Vigésimo Segundo Circuito (cuyo contenido fue objeto de análisis en el número Q3 2025 de esta publicación): el banco acreedor beneficiario debe agotar primero la acción derivada del seguro, por ser la vía pactada para cubrir el saldo insoluto, y accionar directo contra la sucesión contraviene la buena fe contractual.

Como novedad, se precisa que la acción contra la sucesión solo subsiste, y únicamente por el saldo no cubierto, cuando la aseguradora niegue el pago con causa justificada o la suma asegurada sea insuficiente, y aclara que un rechazo de la aseguradora dirigido a un tercero ajeno al banco no lo exime de agotar la reclamación, pues esa defensa corresponde oponerla la propia aseguradora en el juicio que el banco le entable.

services, and (iv) the severity of the insurer's discriminatory conduct.

The Collegiate Court concluded that the liability of insurers goes beyond what is contractually agreed when they fail to comply with obligations that arise from sector regulations (for example, informing and providing the policy), or when they do not act with the diligence their activity requires. Registration of the general conditions with the CNSF does not exempt insurers from ensuring that such clauses respect the principles of equality and non-discrimination, or from ensuring that their policies and/or commercial practices avoid the use of stereotypes and stigmas against groups such as the LGBTIQ+ community.

## ▸ Ping-pong with the insurance company (2)

### A mortgagee that is the beneficiary of a life insurance policy must first exhaust the insurance claim before proceeding against the estate

*Isolated thesis I.160.C.15 C (12a.) of the Sixteenth Collegiate Circuit Court for Civil Matters of the First Circuit, arising from direct amparo 513/2025, published on 21 August 2026 in the Federal Judicial Gazette (Digital Reg. 2032537)*

The Collegiate Court reiterated the criterion that was established in June 2025 by the Third Collegiate Circuit Court for Administrative and Civil Matters of the Twenty-Second Circuit (which was analyzed in the Q3 2025 issue of this publication): a beneficiary creditor bank must first exhaust the remedy provided by an insurance policy, as this is the agreed procedure for covering the outstanding balance, and bringing a direct claim against an estate contravenes contractual good faith.

In a noteworthy development, the Court clarified that an action against an estate only survives, and solely in respect of the uncovered balance, when an insurer refuses payment with justified cause or the insured sum is insufficient. The Court further clarified that a refusal by an insurer to a third party unrelated to the bank does not exempt the bank from exhausting its claim, since that defense must be raised by the insurer itself in any proceedings the bank brings against it.

## La clásica burocracia

### La dignidad de las personas debe prevalecer frente a barreras administrativas injustificadas

*Tesis aislada VI.30.A.58 A (12a.) del Tercer Tribunal Colegiado en materia administrativa del Sexto Circuito derivada del amparo en revisión 357/2025, con fecha de publicación 21 de agosto de 2026 en el Semanario Judicial de la Federación (Reg. digital 2032529)*

Se concede el amparo a una mujer de la tercera edad, a quien se le había reconocido mediante laudo firme, el derecho a recibir una pensión de viudez por el fallecimiento de su concubino. El IMSS condicionó su inclusión en el sistema de pagos mensuales y su acceso a servicios médicos al cumplimiento de trámites administrativos adicionales, entre ellos la exigencia de acreditar una testimonial de concubinato.

El Tribunal Colegiado corrobora la validez y los efectos del laudo: un derecho ya reconocido judicialmente no puede quedar condicionado a requisitos administrativos que nieguen el acceso a tratamientos médicos y prestaciones económicas. No cabe imponer más trabas que las ya cumplidas para acreditar el derecho a la pensión por viudez. Las autoridades deben ponderar los valores jurídicos y bienes fundamentales en juego, en particular el carácter alimentario de la pensión y de los servicios médicos, estrechamente vinculados a la dignidad de las personas, especialmente de las personas de mayor edad.

## Classic red tape

### Individuals' dignity must prevail over unjustified administrative barriers

*Isolated thesis VI.30.A.58 A (12a.) of the Third Collegiate Circuit Court for Administrative Matters of the Sixth Circuit, arising from amparo on review 357/2025, published on 21 August 2026 in the Federal Judicial Gazette (Digital Reg. 2032529)*

In this case, amparo relief was granted to an elderly woman who had been recognized, in a final ruling, as entitled to receive a widow's pension following the death of her common-law partner. The Mexican Social Security Institute (*Instituto Mexicano del Seguro Social*) ("**IMSS**") made her inclusion in the monthly payment system and her access to medical services conditional on compliance with additional administrative procedures, including a requirement to prove the common-law relationship through witness testimony.

The Collegiate Court confirmed the validity and effects of the ruling: a right already recognized by a court cannot be made conditional on administrative requirements that refuse access to medical treatment and financial benefits. No further hurdles may be imposed beyond those already met to establish entitlement to the widow's pension. Authorities must weigh the legal values and fundamental interests at stake, in particular the subsistence nature of the pension and medical services, which are closely tied to human dignity, especially for the elderly.

## No le quite ceros

### Una póliza de fianza otorgada para cubrir una garantía judicial no puede reducirse mediante endosos cuando la autoridad jurisdiccional ordena aumentar el importe garantizado

*Tesis aislada I.16o.C.11 C (12a.) del Décimo Sexto Tribunal Colegiado en materia civil del Primer Circuito derivada de las quejas 51/2026 y 52/2026, con fecha de publicación 21 de agosto de 2026 en el Semanario Judicial de la Federación (Reg. digital 2032527)*

En el marco de un procedimiento de amparo directo, donde la suspensión del acto reclamado impide al tercero interesado la ejecución de una condena en cantidad líquida, se generan daños y perjuicios por la pérdida de valor del dinero y el rendimiento que habría obtenido; conceptos que el quejoso debe cubrir con una garantía, como puede ser una póliza de fianza. Y dicha garantía debe seguir la suerte del proceso y no la voluntad de las partes.

## Don't remove the zeros

### A surety bond issued to cover a court-ordered guarantee cannot be reduced by endorsement when the court orders the guaranteed amount to be increased

*Isolated thesis I.16o.C.11 C (12a.) of the Sixteenth Collegiate Circuit Court for Civil Matters of the First Circuit, arising from complaints 51/2026 and 52/2026, published on 21 August 2026 in the Federal Judicial Gazette (Digital Reg. 2032527)*

In the context of direct amparo proceedings, where the suspension of a challenged act prevents an affected third party from enforcing a judgment for a liquidated sum, losses and damage arise from the loss of the money's value and the return it would have generated; amounts that the claimant must cover with a guarantee, such as a surety bond. That guarantee must follow the course of the proceedings, not the will of the parties.



En este caso, la afianzadora emitió dos endosos de reducción sobre la misma póliza, pero cuando el amparo se retrasa más de lo previsto, el juez ordena una garantía adicional para que la suspensión siga surtiendo efectos. La afianzadora documenta ese aumento como otra reducción e invoca ese error para sostener que su responsabilidad se limita al monto más bajo registrado.

El Tribunal Colegiado rechaza ese argumento y determina que lo que fija el alcance de la obligación de la afianzadora es el contenido de la resolución judicial que ordenó el cambio, y no el nombre que la propia institución le dio al documento. Conforme al artículo 166 de la LISF, la póliza constituye una sola unidad jurídica cuyo monto se ajusta según las modificaciones que exija la obligación garantizada. Permitir que un simple error de redacción o las instrucciones privadas del cliente redujeran la garantía dejaría el alcance de una medida judicial en manos de quien solicitó la póliza, en lugar de en manos del juez que la ordenó. Tampoco exime a la afianzadora no haber sido notificada directamente del aumento de la garantía, porque su obligación de pago no depende de un aviso dirigido a ella, sino del contrato de fianza que suscribió para garantizar la medida judicial; de lo contrario, se abriría la puerta a inducir en error a la autoridad, lo cual es incompatible con la buena fe. Por ello, el Tribunal concluye que la afianzadora debe responder por el monto total vigente según las determinaciones judiciales que fijaron y modificaron la garantía.

In this case, a surety company issued two reduction endorsements in respect of the same policy, but when the amparo proceedings were delayed beyond the expected timeframe, the judge ordered an additional guarantee so that the suspension would continue to have effect. The surety company recorded that increase as a further reduction and invoked that error to argue that its liability was limited to the lowest amount on record.

The Collegiate Court rejected that argument and held that the scope of the surety company's obligation was determined by the contents of the court order that mandated the change, not by the name the institution itself gave to the document. Under Article 166 of the LISF, the policy constituted a single legal unit, the amount of which was adjusted according to the modifications required by the guaranteed obligation. Allowing a mere drafting error or the client's private instructions to reduce the guarantee would leave the scope of a court-ordered measure in the hands of whoever requested the policy, rather than in the hands of the judge who ordered it. Nor was the surety company exempted by not having been directly notified of the increase in the guarantee, because its payment obligation did not depend on a notice addressed to it, but rather on the surety agreement it entered into to secure the court-ordered measure; otherwise, it would open the door to misleading the authority, which is contrary to good faith. Therefore, the Court concluded that the surety company was liable for the full amount in force under the court decisions that established and amended the guarantee.

## ▸ Donde pasó, pasó

**La responsabilidad civil extracontractual se rige por la ley del lugar de los hechos, con independencia de la entidad federativa a la que corresponda la competencia del tribunal**

*Tesis aislada I.8o.C.1 C (12a.) del Octavo Tribunal Colegiado en materia civil del Primer Circuito derivada de los amparos directos 145/2025 y 253/2026, con fecha de publicación 11 de septiembre de 2026 en el Semanario Judicial de la Federación (Reg. digital 2032632)*

Una aseguradora es demandada en la Ciudad de México mediante la acción directa derivada de un contrato de seguro

## ▸ What happened there, stays there

Non-contractual civil liability is governed by the law of the place where the events occurred, regardless of which federal entity has jurisdiction over the court

*Isolated thesis I.8o.C.1 C (12a.) of the Eighth Collegiate Circuit Court for Civil Matters of the First Circuit, arising from direct amparos 145/2025 and 253/2026, published on 11 September 2026 in the Federal Judicial Gazette (Digital Reg. 2032632)*

In this case, an insurer was sued in Mexico City through a direct action arising from a civil liability insurance contract, in

de responsabilidad civil, para resarcir el fallecimiento de una persona a causa de un accidente en una línea de distribución de energía eléctrica propiedad de la empresa asegurada. Aunque el siniestro ocurre en Zacualtipán de Ángeles, Estado de Hidalgo, el litigio se tramita en la Ciudad de México porque ahí tiene su domicilio la demandada. De esa sola circunstancia surge la cuestión de si las indemnizaciones deben cuantificarse conforme al Código Civil de la Ciudad de México, por ser la legislación del foro, o conforme a la ley del lugar donde se produjo el daño.

El Tribunal Colegiado aclara que, conforme al principio de territorialidad que determina los efectos que despliegan las leyes, deben mantenerse separados el plano de la competencia y el del derecho aplicable. La competencia se rige por la ley procesal del foro, mientras que el derecho sustantivo aplicable al fondo del asunto se rige por la ley del lugar donde ocurrió el hecho. De ahí que un hecho ilícito y sus consecuencias deban regirse por la ley del lugar del siniestro, y no por la del lugar donde se tramita el litigio. Ello no contradice el principio por el cual las leyes de cada estado solo surten efectos dentro de su propio territorio, pues no impide que un tribunal de otra entidad la aplique cuando el caso lo exija, como lo admite el Código Civil para la Ciudad de México. Sostener lo contrario llevaría a un resultado absurdo: el simple hecho de litigar en una entidad distinta de aquella donde ocurrió el daño podría convertir en lícito lo que en el lugar de los hechos es ilícito, o alterar sus consecuencias según convenga a cada parte.

order to compensate for the death of a person caused by an accident on an electricity distribution line owned by the insured company. Although the loss occurred in Zacualtipán de Ángeles, in the State of Hidalgo, the proceedings were conducted in Mexico City, where the defendant was domiciled. This fact raised the question of whether the compensation should be quantified under the Civil Code for Mexico City, as the law of the forum, or under the law of the place where the harm occurred.

The Collegiate Court clarified that, under the principle of territoriality that determines the effects produced by laws, the question of jurisdiction and the question of applicable law must be kept separate. Jurisdiction is governed by the procedural law of the forum, while the substantive law applicable to the subject matter of a case is governed by the law of the place where the event occurred. Hence, a wrongful act and its consequences must be governed by the law of the place where the loss occurred, not by the law of the place where the proceedings are conducted. This does not contravene the principle that the laws of each state only have effect within its own territory, since that principle does not prevent a court from another jurisdiction from applying that law when the case requires it, as is accepted under the Civil Code for Mexico City. To argue to the contrary would lead to an absurd result: the mere fact of litigating in a jurisdiction other than the one where the harm occurred could render lawful what is unlawful in the place of the events, or alter its consequences to suit each party.

## ▸ La carpeta es suya

**Antes de tener por no probado un siniestro en un seguro de vida, la aseguradora debe aportar y acreditar frente a la beneficiaria vulnerable la documentación faltante**

*Tesis aisladas (II Región)10.1 C (12a.) y (II Región)10.3 K (12a.) del Primer Tribunal Colegiado de Circuito del Centro Auxiliar de la Segunda Región, con residencia en San Andrés Cholula, Puebla derivadas del amparo directo 553/2025, con fecha de publicación 11 de septiembre de 2026 en el Semanario Judicial de la Federación (Reg. digitales 2032624 y 2032633)*

Cuando al contestar una demanda de reclamación de un seguro de vida se requiere a la actora beneficiaria -en este caso, madre soltera y ama de casa- los documentos que faltan por aportar para tramitar el siniestro, el hecho de no exhibirlos no puede volverse en su contra. Se puede considerar a la actora vulnerable y, por tanto, susceptible de recibir la protección del artículo 79, fracción VII, de la Ley de Amparo, que ordena suplir los conceptos de violación deficientes cuando quien

## ▸ The file is yours

Before deeming a life insurance claim unproven, the insurer must produce and establish, vis-à-vis the vulnerable beneficiary, the missing documentation

*Isolated theses (Region II)10.1 C (12a.) and (Region II)10.3 K (12a.) of the First Circuit Collegiate Court of the Auxiliary Center for the Second Region, seated in San Andrés Cholula, Puebla, arising from direct amparo 553/2025, published on 11 September 2026 in the Federal Judicial Gazette (Digital Reg. 2032624 and 2032633)*

When, in responding to a claim for payment under a life insurance policy, the claimant beneficiary — in this case, a single mother and homemaker — is required to provide the documents still missing to process the claim, the claimant's failure to produce them cannot be held against them. The claimant may be regarded as vulnerable and, therefore, eligible for the protection under Article 79, section VII, of the Amparo Law, which requires deficient grounds of challenge to be supple-

reclama, por su pobreza o marginación, se encuentra en clara desventaja social para defenderse. Esta protección se justifica porque la aseguradora está en mejor posición para recabar esa documentación, dada la asimetría entre ambas partes. Así, el Tribunal puede corregir de oficio los argumentos de la beneficiaria, aunque estén mal planteados, frente a una aseguradora con estructura profesional y dominio técnico del producto.

También corresponde al órgano jurisdiccional del juicio de origen, y no a la actora, verificar si esa documentación era realmente necesaria. Desde que se provee sobre la contestación de la demanda, momento en que advierte la insuficiencia documental, debe ejercer de oficio su facultad para mejor proveer, dirigida únicamente a requerir las documentales que no obren ya en autos y que materialmente estén al alcance de la beneficiaria. Solo así puede dilucidar si esos documentos son efectivamente relevantes respecto de la actualización del siniestro, la calidad de beneficiaria y las condiciones sustanciales del seguro, de modo que la sentencia no descanse en vacíos de información subsanables. Aunque no esté prevista en el Código de Comercio, se desprende de una lectura conforme de los artículos 14 y 17 constitucionales, y se intensifica cuando una parte está en vulnerabilidad material, técnica o estructural frente a la otra.

mented when the claimant, due to poverty or marginalization, is at a clear social disadvantage in defending their rights. This protection is warranted because an insurer is in a better position to gather that documentation, given the asymmetry between the parties. Therefore, the court may correct a beneficiary's arguments ex officio, even if poorly framed, when facing an insurer with a professional structure and technical command of the product.

Similarly, the court of first instance, not the claimant, must verify whether that documentation was actually necessary. From the point at which it rules on the response to the claim — the moment it becomes aware of the documentary shortfall — it must exercise, ex officio, its power to order evidence for the better resolution of the proceedings, directed solely at requesting documents not already in the file and that are materially within the beneficiary's reach. Only in this way can it determine whether those documents are genuinely relevant to establishing the occurrence of the loss, the beneficiary's status, and the substantive terms of the policy, so that the judgment does not rest on remediable information gaps. Although not provided for in the Commercial Code, this duty follows from a reading of Articles 14 and 17 of the Constitution and is heightened where one party is in a position of material, technical or structural vulnerability relative to the other.

# Tribuna Pérez-Llorca

Pérez-Llorca Tribune

## Cuando el algoritmo decide la prima: protección de datos e inteligencia artificial en el seguro mexicano

## When the algorithm decides the premium: data protection and artificial intelligence in Mexican insurance

**Patricio Martínez Osorio**

**Socio, Protección de datos**
Partner, Data Protection



Un modelo que decide en segundos si acepta una póliza, cuánto cobra por ella o si paga un siniestro ya no es una novedad en el mercado mexicano: es la forma en que buena parte del sector opera hoy.

La Ley Federal de Protección de Datos Personales en Posesión de los Particulares ("**LFPDPPP**") contiene una regla especialmente relevante para las aseguradoras que usan inteligencia artificial u otros medios de procesamiento automatizado sin intervención humana. Su artículo 26, fracción II, permite que una persona se oponga al perfilamiento exclusivamente automatizado cuando este produzca efectos jurídicos no deseados o afecte significativamente sus intereses, derechos o libertades.

En la práctica, esta regla puede alcanzar decisiones sobre aceptación, sobreprimas, deducibles o cobertura. Cumplirla exige ofrecer al asegurado un *opt-out* real de la automatización; no basta con incluir una cláusula al respecto en el aviso de privacidad. Ese mecanismo debe apoyarse en controles de transparencia, consentimiento, seguridad, conservación, derechos ARCO, trazabilidad y gobierno actuarial. Bien entendida, esta regla no es un freno a la adopción de IA, sino la hoja de ruta para escalarla con seguridad jurídica: la respuesta más sólida es una arquitectura de IA con gobierno humano, capaz de explicar y auditar sus resultados y, cuando corresponda, sustituir la decisión automatizada por una ruta humana efectiva.

### El derecho a decir no: oposición al perfilamiento automatizado

La LFPDPPP vigente fue expedida en 2025 y reformada en noviembre de ese mismo año. La autoridad federal competente en materia de datos personales en posesión de particulares

A model that decides in seconds whether to accept a policy, how much to charge for it, or whether to pay a claim is no longer a novelty in the Mexican market: it is how a large part of the sector operates today.

The Federal Law on the Protection of Personal Data Held by Private Parties (*La Ley Federal de Protección de Datos Personales en Posesión de los Particulares*) (the "**LFPDPPP**") contains a rule that is especially relevant for insurers that use artificial intelligence or other automated processing methods without human intervention. Article 26, section II of the LFPDPPP allows an individual to object to exclusively automated profiling when it produces unwanted legal effects or significantly affects their interests, rights, or freedoms.

In practice, this rule can affect decisions on acceptance, premium loadings, deductibles, or coverage. Compliance with it requires offering the policyholder a genuine opt-out from automation; including a clause to that effect in the privacy notice is not enough. That mechanism must be supported by controls on transparency, consent, security, retention, ARCO rights, traceability, and actuarial governance. Properly understood, this rule is not a constraint on AI adoption, but rather the roadmap for scaling it with legal certainty: the soundest response is an AI architecture with human governance, capable of explaining and auditing its results and, where appropriate, replacing the automated decision with an effective human pathway.

### The right to say no: objecting to automated profiling

The LFPDPPP currently in force was enacted in 2025 and amended in November of the same year. The federal authority with jurisdiction over personal data held by private parties

es ahora la Secretaría Anticorrupción y Buen Gobierno, que sustituyó al extinto Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales ("**INAI**"). Las guías del INAI conservan valor técnico e histórico, aunque ya no son pronunciamientos de una autoridad en funciones.

El artículo 26, fracción II, permite oponerse al tratamiento cuando los datos se someten a un proceso automatizado que produce efectos jurídicos no deseados o afecta significativamente intereses, derechos o libertades. La regla aplica cuando ese tratamiento busca, sin intervención humana, evaluar o predecir aspectos personales como la situación económica, la salud, la fiabilidad o el comportamiento. La excepción a la obligación del *opt-out* es el tratamiento necesario para cumplir una obligación legal del responsable.

Para una aseguradora, la implicación de estas disposiciones es directa, y bien mirada, manejable. Un software que rechaza una solicitud impone una sobreprima, modifica deducibles o limita cobertura con base en un score personal determinado sin intervención humana significativa, puede quedar comprendido en la fracción II y obligar a la aseguradora a realizar la misma evaluación por una vía no automatizada. El análisis cambia -a favor de la aseguradora- si el modelo se limita a recomendar y un suscriptor revisa realmente el resultado, con autoridad, información y tiempo suficientes para apartarse de él: en ese supuesto, probablemente queda fuera del concepto "sin intervención humana". Esta última conclusión es una interpretación basada en el requisito literal de ausencia de intervención humana, no una exención expresa de la LFPDPPP.

El artículo 26 no exige literalmente que se habilite un botón de "*opt-out*", ni reconoce un derecho general a obtener una explicación algorítmica o una revisión humana. Reconoce un derecho de oposición y cese del procesamiento automático. La forma más defendible de hacerlo efectivo -y también la más sencilla y económica de implementar- es ofrecer un mecanismo visible, sencillo y gratuito para abandonar la decisión exclusivamente automatizada y remitir el expediente a una ruta alternativa, normalmente humana. La solicitud se tramita como un derecho ARCO: el responsable debe responder en un plazo máximo de veinte días y, si resulta procedente, ejecutar la determinación dentro de los quince días siguientes. Ambos plazos pueden ampliarse una sola vez, con justificación.

**El cumplimiento no termina con el *opt-out***

El *opt-out* es solo una pieza del sistema. La aseguradora debe igualmente:

is now the Secretariat for Anti-Corruption and Good Governance, which replaced the former National Institute for Transparency, Access to Information and Personal Data Protection (*Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales*) ("**INAI**"). INAI's guidelines retain technical and historical value, although they are no longer pronouncements of a sitting authority.

Article 26, section II, allows an individual to object to processing when their data is subjected to an automated process that produces unwanted legal effects or significantly affects interests, rights, or freedoms. The rule applies when such processing seeks, without human intervention, to evaluate or predict personal factors such as economic situation, health, reliability, or behavior. The exception to the opt-out obligation applies where processing is necessary to comply with a legal obligation of the data controller.

For an insurer, the implication of these provisions is direct, and on closer inspection, manageable. Software that rejects an application, imposes a premium-loading requirement, changes deductibles, or limits coverage based on a personal score determined without meaningful human intervention may fall within section II and require the insurer to carry out the same assessment through a non-automated channel. The analysis changes — in the insurer's favor — if the model merely makes a recommendation and an underwriter genuinely reviews the result, with the authority, information, and time needed to override it: in that case, it likely falls outside the definition of "without human intervention". This last conclusion is an interpretation based on the literal requirement of the absence of human intervention, not an express exemption under the LFPDPPP.

Article 26 does not explicitly require enabling an opt-out button, nor does it recognize a general right to obtain an algorithmic explanation or a human review. It recognizes a right to object to and halt automated processing. The most defensible way to make it effective — and also the simplest and most economical to implement — is to offer a visible, simple, and free mechanism to opt out of the exclusively automated decision and refer the file to an alternative, normally human, pathway. The request is handled as an Access, Rectification, Cancellation (or Erasure), and Opposition (ARCO) right: the data controller must respond within a maximum of twenty days and, if appropriate, implement the determination within the following fifteen days. Both periods may be extended once, with justification.

**Compliance does not end with the opt-out**

The opt-out is only one component of the system. An insurer must also:

- cumplir los principios de licitud, finalidad, lealtad, consentimiento, calidad, proporcionalidad, información y responsabilidad, y hacer que su aviso de privacidad identifique con claridad qué datos trata, para qué finalidades y cómo ejercer los derechos ARCO;

- recabar consentimiento expreso para tratar datos financieros, salvo que aplique una excepción legal, y consentimiento por escrito, además del expreso, para tratar datos sensibles como los de salud;

- mantener la calidad, la minimización y la conservación de los datos: estos deben ser exactos y actualizados, usarse solo para lo informado al titular y suprimirse en cuanto dejen de ser necesarios; y

- aplicar medidas de seguridad proporcionales al riesgo y a la sensibilidad de los datos, y comunicar de inmediato al titular cualquier vulneración relevante.

En sistemas de IA, lo anterior se traduce en controles sobre *datasets*, variables derivadas, scores, versiones de modelos, proveedores y accesos.

La LFPDPPP no exige una "evaluación de impacto" formal equivalente a la DPIA europea, pero sí impone una infraestructura de *accountability*, véase, inventarios de datos y sistemas, análisis de riesgos y auditorías periódicas. Documentar esa evaluación para los sistemas de *profiling* de "mayor impacto" es hoy la evidencia de cumplimiento más sólida disponible, y coincide con las recomendaciones que la Red Iberoamericana de Protección de Datos aprobó en 2019 en la Ciudad de México.

**Suscripción, primas y gobernanza**

La IA aplicada al *pricing* no puede analizarse al margen de la regulación aseguradora. Que no exista una norma diseñada para algoritmos no significa que operen en un vacío: la Ley de Instituciones de Seguros y de Fianzas (**LISF**) y la LFPDPPP, cubren de facto sus dos principales riesgos centrales -el gobierno del modelo y el tratamiento de datos personales que lo alimentan-.

La LISF exige un sistema eficaz de administración integral de riesgos, auditoría y función actuarial. Aplicada a un modelo de IA, esa función actuarial es el punto de control natural: evalúa la confiabilidad y calidad de los datos de entrenamiento y se pronuncia, con criterio técnico, sobre la política de suscripción que el algoritmo termina aplicando.

Los artículos 200 y 201 de la LISF exigen que las primas netas de riesgo se calculen sobre bases técnicas, sustentadas en

- comply with the principles of lawfulness, purpose limitation, loyalty, consent, quality, proportionality, information, and accountability, and ensure its privacy notice clearly identifies what data it processes, for what purposes, and how to exercise ARCO rights;

- obtain express consent to process financial data, unless a legal exception applies, and obtain written consent, in addition to express consent, to process sensitive data such as health data;

- ensure data quality, minimization and retention: data must be accurate and up to date, used only for the purposes disclosed to the data subject, and deleted once no longer necessary; and

- apply security measures proportionate to the risk and sensitivity of the data, and promptly notify the data subject of any relevant breach.

In AI systems, the foregoing translates into controls over datasets, derived variables, scores, model versions, vendors, and access.

The LFPDPPP does not require a formal "impact assessment" equivalent to the European Data Protection Impact Assessment (DPIA), but it does impose an accountability framework, namely, data and systems inventories, risk analyses, and periodic audits. Documenting that assessment for "higher impact" profiling systems is today the most solid compliance evidence available, and aligns with the recommendations adopted by the Ibero-American Data Protection Network in Mexico City in 2019.

**Underwriting, premiums, and governance**

The application of AI to pricing cannot be analyzed separately from insurance regulation. The fact that there is no rule designed specifically for algorithms does not mean they operate in a vacuum: the Law of Insurance and Surety Institutions (*Ley de Instituciones de Seguros y de Fianzas*) (the "**LISF**") and the LFPDPPP effectively cover its two main core risks: model governance and the processing of the personal data that feeds into it.

The LISF requires an effective comprehensive risk management system, auditing, and actuarial functions. When applied to an AI model, that actuarial function is the natural point of control: it assesses the reliability and quality of the training data and issues a technical opinion on the underwriting policy that the algorithm ultimately applies.

Articles 200 and 201 of the LISF require net risk premiums to be calculated on technical bases, supported by a technical

una nota técnica que justifique su suficiencia e identifique las bases estadísticas utilizadas.

De lo anterior se sigue que un modelo de *machine learning* no puede operar como una "caja negra paralela" que modifique la tarifa o la suscripción sin un vínculo trazable con la nota técnica, las políticas aprobadas y la validación actuarial. En la práctica, esto se resuelve con una *checklist* de dos momentos.

- Antes de lanzar el modelo: documentar su finalidad, variables, fuentes de datos y población de entrenamiento, y definir por escrito en qué casos debe escalarse a un suscriptor humano.

- Una vez en operación: revisar cada trimestre si el modelo trata de forma distinta a grupos comparables de asegurados, cuántas veces un suscriptor corrigió su resultado y qué cambios de prima se le pueden atribuir directamente.

Ninguno de estos pasos exige reinventar procesos: es la misma disciplina que la función actuarial ya aplica a la tarifa tradicional, extendida a una nueva herramienta.

**Riesgos, precedentes y arquitectura de control**

El riesgo de sanciones es relevante. La LFPDPPP sanciona, entre otras conductas, continuar el uso ilegítimo de datos tras solicitarse su cese, afectar derechos ARCO o tratar datos sin el consentimiento exigible, con multas de 200 a 320,000 UMA que se duplican cuando hay datos sensibles de por medio. No es plausible en el *profiling* asegurador, porque los datos de salud que alimentan la suscripción y la tarificación son datos sensibles conforme al artículo 3, fracción VI, de la LFPDPPP. Conocer esta exposición con precisión permite dimensionar correctamente la inversión en controles frente al riesgo real que evita.

Los procedimientos contra la Federación Mexicana de Fútbol (FMF) son el referente más concreto en México sobre datos biométricos sensibles, aplicable a cualquier responsable de datos. El INAI determinó que la FMF recabó datos biométricos del rostro para su sistema "Asistencia al Estadio" sin el consentimiento expreso y por escrito que exige el artículo 9 de la LFPDPPP para datos sensibles. En 2024, un segundo procedimiento por el sistema "FAN ID" de la Liga MX confirmó el mismo criterio.

El criterio es directamente relevante para las aseguradoras, porque los datos que alimentan la suscripción, la tarificación y la gestión de siniestros son, en gran medida, datos sensibles, en particular, los de salud. Para tratarlos, la LFPDPPP exige un consentimiento cualificado: expreso, por escrito y

note that justifies their sufficiency and identifies the statistical bases used.

It follows that a machine learning model cannot operate as a "parallel black box" that changes the rate or underwriting outcome without a traceable link to the technical note, the approved policies, and actuarial validation. In practice, this is addressed with a two-stage checklist.

- Before launching the model: document its purpose, variables, data sources, and training population, and define in writing the cases that must be escalated to a human underwriter.

- Once in operation: carry out a quarterly review as to whether the model treats comparable groups of policyholders differently, how many times an underwriter corrected its output, and what premium changes can be directly attributed to it.

Neither of these steps requires the reinvention of processes: it is the same discipline that the actuarial function already applies to traditional pricing, extended to a new tool.

**Risks, precedents, and control architecture**

The risk of sanctions is significant. The LFPDPPP penalizes, among other conduct, the continuing unlawful use of data after its cessation has been requested, the infringement of ARCO rights, or the processing of data without the required consent, with fines ranging from 200 to 320,000 UMA (Unit of Measurement and Update) (*Unidad de Medida y Actualización*), which is doubled when sensitive data is involved. This is not a tenable position in insurance profiling, because the health data that feeds underwriting and pricing is sensitive data under Article 3, section VI, of the LFPDPPP. A precise understanding of this exposure allows for the correct assessment of the investment in controls against the actual risk it prevents.

The proceedings against the Mexican Football Federation (FMF) represent Mexico's most significant precedent on sensitive biometric data, which applies to any data controller. The INAI determined that the FMF collected facial biometric data for its Stadium Attendance (*Asistencia al Estadio*) system without the express and written consent required by Article 9 of the LFPDPPP in relation to sensitive data. In 2024, a second set of proceedings concerning Liga MX's "FAN ID" system confirmed the same criterion.

This criterion is directly relevant to insurers, because the data that feeds underwriting, pricing, and claims handling is, to a large extent, sensitive data, in particular, health data. To process it, the LFPDPPP requires qualified consent, which must be express, written, and verifiable, meaning that a simple "I

verificable, de modo que un simple *checkbox* de "acepto" en el aviso de privacidad no basta. Cumplirlo, sin embargo, no requiere un rediseño costoso: un flujo de consentimiento diferenciado para datos sensibles, verificable y conservado como evidencia auditable, es una inversión menor frente al riesgo que evita.

Nueva York ofrece un referente sectorial útil. En 2019, el *Department of Financial Services* ("**DFS**") revisó el uso de datos externos y modelos predictivos en la suscripción de seguros de vida, y concluyó que: (i) la aseguradora no puede delegar en el proveedor la verificación y responsabilidad de que esos datos pueden no enmascararan discriminación prohibida; (ii) una decisión adversa exige informar al asegurado las razones específicas y la fuente de los datos; y (iii) un criterio estadísticamente válido aún necesita justificación cuando carece de vínculo causal demostrable o afecta desproporcionadamente a clases protegidas. Lejos de ser un estándar punitivo, es un estándar de trazabilidad que cualquier aseguradora con sus modelos bien documentados cumple sin dificultad.

Del lado europeo, el asunto SCHUFA Holding (TJUE, 2023) ofrece otra advertencia por analogía: un score puede constituir una decisión automatizada cuando quien decide se apoya de manera determinante en él. La conclusión para una aseguradora mexicana es sencilla: la aprobación de un ser humano no reduce el riesgo si nadie cuestiona realmente el score; en cambio, cuando esa revisión es sustantiva, el estándar se cumple con naturalidad.

Por lo tanto, la arquitectura recomendable es la de IA con gobierno humano:

- El cliente debe saber cuándo el *profiling* influye materialmente en su prima o elegibilidad, contar con una salida accesible, recibir razones comprensibles mediante *reason codes* -etiquetas que explican de forma simplificada los factores detrás de una decisión automatizada- y poder corregir datos erróneos.

- Internamente, cada decisión debe dejar evidencia de la versión del modelo, el score, la intervención humana y el resultado del *opt-out*, de modo que auditoría y cumplimiento puedan reconstruirla meses después.

Esta combinación convierte privacidad, función actuarial y gobierno del modelo en un mismo sistema de control -y en una ventaja competitiva-, en lugar de tres ámbitos aislados.

accept" checkbox in the privacy notice is insufficient. However, compliance with this requirement does not require a costly redesign: a differentiated consent flow for sensitive data, which is verifiable and retained as auditable evidence, is a modest investment when compared to the risk it averts.

New York offers a useful sectoral reference. In 2019, the Department of Financial Services ("**DFS**") reviewed the use of external data and predictive models in life insurance underwriting, and concluded that: (i) an insurer cannot delegate to the vendor the verification and responsibility for ensuring that such data does not mask prohibited discrimination; (ii) an adverse decision requires informing the policyholder of the specific reasons and the source of the data; and (iii) a statistically valid criterion still requires justification when it lacks a demonstrable causal link or disproportionately affects protected classes. Far from being a punitive standard, it is a traceability standard that any insurer with well-documented models can meet without difficulty.

In Europe, the CJEU's judgment in the 2023 SCHUFA Holding case offers another warning by analogy: a score can constitute an automated decision when the decision-maker relies on it in a decisive manner. The conclusion for Mexican insurers is simple: a human's approval does not reduce the risk if no one genuinely questions the score; conversely, when that review is substantive, the standard is naturally met.

Therefore, the recommended architecture is AI with human governance:

- The customer must know when profiling materially influences their premium or eligibility, have access to an accessible opt-out, receive understandable reasons through reason codes — labels that explain in simplified form the factors behind an automated decision — and be able to correct erroneous data.

- Internally, each decision must leave evidence of the version of the model, the score, the human intervention, and the outcome of the opt-out, so that audit and compliance functions can subsequently reconstruct it, even months later.

This combination turns privacy, the actuarial function, and the governance of models into a single control system — and a competitive advantage — rather than three separate domains.

### Flujo del *opt-out*

El flujo siguiente va deliberadamente más allá del mínimo literal de la LFPDPPP. La revisión humana se plantea como un control operativo para hacer efectivo el cese de la decisión exclusivamente automatizada.

### Opt-out flow

The following flow deliberately exceeds the minimum requirements of the LFPDPPP. Human review is presented as an operational control to make the cessation of exclusively automated decisions effective.



La pregunta para una aseguradora mexicana que utiliza inteligencia artificial ya no es si estas reglas le resultan aplicables, sino de qué manera va a cumplirlas para que jueguen a su favor. La respuesta pasa por una arquitectura de IA con gobierno humano: (i) consentimiento diferenciado y verificable, (ii) transparencia sobre los factores que inciden en la prima, (iii) trazabilidad de cada decisión, (iv) validación actuarial del modelo y (v) un *opt-out* efectivo.

Privacidad, función actuarial y gobierno del modelo no son tres problemas distintos: son un solo sistema de control que, diseñado, construido y auditado como tal, permite a la aseguradora escalar la inteligencia artificial con la confianza del supervisor, del asegurado y, en última instancia, del mercado.

The question for Mexican insurers that use artificial intelligence is no longer whether these rules apply to them, but how they will comply with these rules so that they work in their favor. The answer lies in an AI architecture with human governance: (i) differentiated and verifiable consent, (ii) transparency about the factors that affect premiums, (iii) traceability of each decision, (iv) actuarial validation of models, and (v) an effective opt-out.

Privacy, the actuarial function, and governance of models are not three separate problems: they are a single control system that, when designed, built and audited as such, allows insurers to leverage artificial intelligence with the confidence of the regulator, policyholders and, ultimately, the market.

PERU

**Actualidad Iberoamericana de Seguros**
Ibero-American Insurance Update



# Perú
# *Peru*

# Principales novedades normativas y de supervisión
## Key regulatory and supervisory developments

## Regulación

### Resolución SBS Nº2260-2026 de la Superintendencia de Banca, Seguros y Administradoras Privadas de Fondos de Pensiones que aprueba el Reglamento de Seguros Paramétricos, de 11 de septiembre

Mediante la Resolución SBS Nº02260-2026, la **SBS** aprobó el Reglamento de Seguros Paramétricos. Los seguros paramétricos brindan cobertura basada en la activación de parámetros predefinidos en el contrato, sin necesidad de una evaluación directa de pérdidas. El reglamento se circunscribe a riesgos climáticos y de la naturaleza, buscando impulsar la diversificación de productos y fortalecer la resiliencia financiera de los sectores más vulnerables

Respecto del régimen legal, no resultan aplicables a los seguros paramétricos las condiciones de sobreseguro o infraseguro, ni las relacionadas con el aviso de siniestro previstas en la Ley del Contrato de Seguro. Tampoco le son aplicables deducibles, franquicias, coaseguros ni copagos que reduzcan el pago de la suma asegurada.

El público objetivo inicial son organismos gubernamentales, empresas corporativas y grandes empresas, además de organizaciones privadas que cuenten con capacidad técnica suficiente para comprender y gestionar estas coberturas.

El reglamento establece los lineamientos para los parámetros y umbrales de activación, así como las condiciones de las Agencias Proveedoras de Datos, responsables de la medición y publicación del parámetro. También regula la participación de, entre otros, Agentes de Cálculo.

Se establecen plazos cortos: dos (2) días calendario para el aviso de activación de cobertura desde que se superó el umbral, y diez (10) días calendario para el pago la suma asegurada. Las aseguradoras deben implementar mecanismos de pagos masivos para beneficiarios que involucren el mismo parámetro y umbral.

### Proyecto de Ley que delega en el Poder Ejecutivo la facultad de legislar en diversas materias, incluyendo desarrollo agrario y seguros, de 28 de agosto

El proyecto de ley delega en el Poder Ejecutivo la facultad de legislar por ciento veinte (120) días calendario en diversas

## Regulation

### SBS Resolution No. 2260-2026 of the *Superintendencia de Banca, Seguros y Administradoras Privadas de Fondos de Pensiones* approving the Parametric Insurance Regulations, dated 11 September

By SBS Resolution No. 2260-2026, the **SBS** approved the Parametric Insurance Regulations. Parametric insurance provides coverage triggered by the occurrence of predefined parameters set out in the contract, without the need for a direct loss assessment. The Regulations are limited to climate and natural-catastrophe risks, and are intended to foster product diversification and strengthen the financial resilience of the most vulnerable sectors.

With respect to the applicable legal regime, the over-insurance or under-insurance provisions, and the provisions relating to notice of claim under the Insurance Contract Law, do not apply to parametric insurance. Nor do deductibles, franchises, co-insurance or co-payments that reduce payment of the sum insured.

The initial target market comprises government bodies, corporate enterprises and large companies, as well as private organizations with sufficient technical capacity to understand and manage this coverage.

The Regulations establish guidelines for the parameters and triggering thresholds, as well as the conditions applicable to the Data Provider Agencies, which are responsible for measuring and publishing the parameter. They also regulate the participation of, among others, Calculation Agents.

Short deadlines are established: two calendar days for notice that coverage has been triggered from the date the threshold is exceeded, and 10 calendar days for payment of the sum insured. Insurance companies must implement mass-payment mechanisms for beneficiaries affected by the same parameter and threshold.

### Bill delegating to the Executive Branch the power to legislate on various matters, including agricultural development and insurance, dated 28 August

The bill delegates to the Executive Branch the power to legislate for 120 calendar days on various matters. With respect to

materias. En materia agraria, se busca facilitar el acceso a créditos, garantías, seguros y otros instrumentos de financiamiento y gestión de riesgos

Actualmente, el FOGASA subvenciona el Seguro Agrícola Catastrófico y el Seguro Agropecuario. Sin embargo, la cobertura del seguro agrario sigue siendo limitada y la activación de compensaciones de los seguros tradicionales requiere constatar la pérdida total del cultivo, lo que genera demoras cuando el evento climático afecta a un gran número de productores.

Frente a ello, se propone incorporar mecanismos paramétricos de activación de las compensaciones del FOGASA, mediante la modificación de la Ley N°29148, de modo que ante eventos de gran escala la compensación se active a partir de información objetiva y verificable. El proyecto también busca facilitar la oferta de nuevos productos financieros y de seguros para promover la inclusión financiera.

Por otro lado, se pretende establecer la habilitación legal para que las empresas del sistema de seguros accedan a la información de identidad administrada por RENIEC, dentro del marco de protección de datos, para sus procesos de contratación y verificación.

agrarian matters, the bill seeks to facilitate access to credit, guarantees, insurance and other financing and risk-management instruments

FOGASA currently subsidises Catastrophic Agricultural Insurance and Agricultural Insurance. However, agricultural insurance coverage remains limited, and the triggering of indemnity payments under traditional insurance policies requires verification of total crop loss, which causes delays where a climate event affects a large number of producers.

In response, it is proposed that parametric mechanisms for triggering FOGASA payments be introduced by amending Law No. 29148, so that, in large-scale events, payment is triggered based on objective and verifiable information. The Bill also seeks to facilitate the offering of new financial and insurance products to promote financial inclusion.

Furthermore, it is proposed that a legal basis be established to enable insurance system undertakings to access identity information administered by RENIEC, within the data protection framework, for their contracting and verification processes.

## Resolución SBS N°2133-2026 de la Superintendencia de Banca, Seguros y Administradoras Privadas de Fondos de Pensiones que modifica el Reglamento de Autorización de Empresas y Representantes de los Sistemas Financieros y de Seguros, de 26 de agosto

La Resolución SBS N°2133-2026 modifica el Reglamento de Autorización de Empresas y Representantes de los Sistema Financiero y de Seguros, aprobado por Resolución SBS N° 211-2021, con el propósito de optimizar los procedimientos de autorización de nuevas empresas, introducir esquemas diferenciados de evaluación según el perfil de riesgo y modelo de negocio, reducir plazos, simplificar procedimientos administrativos e incorporar una etapa de precalificación, manteniendo estándares prudenciales adecuados.

Uno de los cambios principales es la incorporación de tres (3) modalidades de autorización: (i) Autorización Estándar, para solicitudes que no califican para las otras modalidades; (ii) Autorización para Empresas No Captadoras, aplicable a empresas que no captan depósitos del público y cuyo modelo operativo presenta menor complejidad; y, (iii) Autorización Especial, aplicable, entre otros, a solicitudes de Empresas de Seguros que serán subsidiarias directas o indirectas de Grupos Aseguradores Internacionalmente Activos (IAIGs) y que cuenten con clasificación de riesgo internacional no vulnerable.

## SBS Resolution No. 2133-2026 of the *Superintendencia de Banca, Seguros y Administradoras Privadas de Fondos de Pensiones* amending the Regulations for the Authorisation of Financial and Insurance System Companies and Representatives, dated 26 August

SBS Resolution No. 2133-2026 amends the Regulations for the Authorisation of Financial and Insurance System Companies and Representatives, approved by SBS Resolution No. 211-2021, for the purpose of optimising authorisation procedures for new companies, introducing differentiated assessment frameworks according to risk profile and business model, shortening time limits, simplifying administrative procedures and introducing a pre-qualification stage, while maintaining appropriate prudential standards.

One of the principal amendments is the introduction of three authorisation procedures: (i) Standard Authorisation, for applications that do not qualify for the other procedures; (ii) Authorisation for Non-Deposit-Taking Companies, applicable to companies that do not take deposits from the public and whose operating model is less complex; and (iii) Special Authorisation, applicable, among others, to applications from Insurance Companies that will be direct or indirect subsidiaries of Internationally Active Insurance Groups (IAIGs) and that have a non-vulnerable international credit rating.

Adicionalmente, se incorpora la obligación de operar conforme al modelo de negocio declarado y de comunicar a la SBS cualquier cambio sustancial en el modelo de negocio, fuente de ingresos o estructura operativa dentro de los diez (10) días hábiles siguientes.

In addition, undertakings are required to operate in accordance with their declared business model and to notify the SBS of any material change to their business model, source of revenue or operating structure within the following 10 business days.

### Resolución SBS N°1786-2026 de la Superintendencia de Banca, Seguros y Administradoras Privadas de Fondos de Pensiones que modifica el Reglamento para la Clasificación de Empresas del Sistema Financiero y de Empresas de Seguros, del 14 de julio

La SBS mediante Resolución SBS N°1786-2026, modifica el Reglamento para la Clasificación de Empresas del Sistema Financiero y de Empresas de Seguros, aprobado por Resolución SBS N°18400-2010. La modificación se debe a la necesidad de cambiar la forma de publicación de la clasificación, eliminando la obligación de su publicación impresa e incorporando la obligación que esta se realice de forma digital.

Es en ese sentido que se modifica el artículo 20, estableciendo que: (i) las empresas de seguros deben publicar la clasificación definitiva en su página web oficial, dentro de los cinco (05) días útiles posteriores a su emisión; (ii) que esta información debe estar a disposición del público por un periodo no menor de cuatro (04) años desde su publicación; y, (iii) que la publicación debe realizarse sin referir a un hipervínculo o enlace a otra página web externa a la de la empresa supervisada. Por otro lado, se elimina el inciso e) del artículo 21 que establecía que la empresa clasificadora de riesgo debe asumir la responsabilidad absoluta por la clasificación realizada.

### SBS Resolution No. 1786-2026 of the *Superintendencia de Banca, Seguros y Administradoras Privadas de Fondos de Pensiones* amending the Regulations for the Rating of Financial System Companies and Insurance Companies, dated 14 July

By SBS Resolution No. 1786-2026, the SBS amended the Regulations for the Rating of Financial System Companies and Insurance Companies, approved by SBS Resolution No. 18400-2010. The amendment modifies how the rating is published, eliminating the requirement for print publication and introducing a requirement for digital publication.

Accordingly, Article 20 has been amended to provide that: (i) insurance companies must publish the final rating on their official website within five business days after its issuance; (ii) such information must remain available to the public for at least four years after its publication; and (iii) the publication must not refer to a hyperlink or link to a website other than that of the supervised company. In addition, Article 21(e), which provided that the credit rating agency must assume absolute responsibility for the rating issued, has been deleted.



### Circular NºG-233-2026 de la Superintendencia de Banca, Seguros y Administradoras Privadas de Fondos de Pensiones que actualiza los capitales mínimos de las empresas supervisadas por la Ley General del Sistema Financiero y del Sistema de Seguro, del 9 de julio

La SBS dispuso, mediante Circular NºG-233-2026, la actualización trimestral, correspondiente al período de julio a setiembre, de los capitales sociales mínimos exigidos a las empresas comprendidas en los artículos 16 y 17 de la Ley General.

En ese sentido, la SBS actualizó el capital mínimo de las empresas de seguros y reaseguros conforme al siguiente detalle: (i) las Empresas de Seguros que operan en un solo ramo, ya sea de riesgos generales o de vida, deben mantener un capital social mínimo de S/ 5'994,500.00; (ii) las Empresas de Seguros que operan en ambos ramos, es decir riesgos generales y vida a la vez, deben mantener un capital social mínimo de S/ 8'240,300.00; (iii) las Empresas de Seguros y Reaseguros deben mantener un capital social mínimo de S/ 20'978,500.00; y, (iv) las Empresas de Reaseguros deben mantener un capital social mínimo S/ 12,738,300.00.

### Circular No. G-233-2026 of the *Superintendencia de Banca, Seguros y Administradoras Privadas de Fondos de Pensiones* updating the minimum share capital of companies supervised under the General Law of the Financial System and the Insurance System, dated 9 July

By Circular No. G-233-2026, the SBS ordered the quarterly update, for the period from July to September, of the minimum share capital requirements for companies referred to in Articles 16 and 17 of the General Law.

Accordingly, the SBS updated the minimum capital of insurance and reinsurance companies as follows: (i) Insurance Companies operating in a single line of business, whether general risks or life, must maintain minimum share capital of S/5,994,500; (ii) Insurance Companies operating in both lines of business, namely general risks and life, must maintain minimum share capital of S/8,240,300; (iii) Insurance and Reinsurance Companies must maintain minimum share capital of S/20,978,500; and (iv) Reinsurance Companies must maintain minimum share capital of S/12,738,300.

### Resolución SBS Nº1771-2026 que autoriza la difusión en consulta pública del proyecto de Reglamento de Gestión Actuarial para Empresas de Seguros, de 6 de julio

La SBS ha anticipado un proyecto para aprobar un nuevo Reglamento de Gestión Actuarial para Empresas de Seguros, que derogaría el vigente reglamento aprobado por Resolución SBS Nº3863-2016. La nueva normativa busca fortalecer los requerimientos técnicos para cálculos actuariales, delimitar las áreas técnicas operativas, reorganizar la función actuarial como segunda línea de defensa, e incorporar la figura del Actuario Designado con mayores exigencias de independencia e idoneidad técnica. Las principales disposiciones del proyecto de reglamento son las siguientes:

- Se fortalecen los requerimientos técnicos para los cálculos actuariales, especialmente para la constitución de reservas técnicas, mediante: (i) la regulación detallada de supuestos y parámetros; (ii) la implementación obligatoria de estudios de *backtesting* con criterios mínimos de evaluación temporal; y, (iii) la exigencia de documentación de metodologías y resultados. La SBS podrá solicitar modificaciones a la metodología o parámetros en un plazo determinado; de no proceder con las modificaciones, el regulador podrá asignar la metodología, parámetros o supuestos, sin perjuicio de las sanciones que correspondan.

- Se reordenan y focalizan los manuales de políticas y procedimientos de gestión actuarial, priorizando aquellos

### SBS Resolution No. 1771-2026 authorizing publication for public consultation of the draft Actuarial Management Regulations for Insurance Companies, dated 6 July

The SBS has prepublished a draft that would approve new Actuarial Management Regulations for Insurance Companies and repeal the current regulations approved by SBS Resolution No. 3863-2016. The new regulations seek to strengthen the technical requirements for actuarial calculations, define the technical operating areas, reorganize the actuarial function as a second line of defence, and introduce the Designated Actuary role with more stringent independence and technical-qualification requirements. The principal provisions of the draft regulations are as follows:

- The technical requirements for actuarial calculations, particularly for the establishment of technical reserves, are strengthened through: (i) detailed regulation of assumptions and parameters; (ii) mandatory implementation of backtesting studies with minimum time-based assessment criteria; and (iii) a requirement to document methodologies and results. The SBS may require changes to the methodology or parameters within a specified period; if the changes are not made, the regulator may prescribe the methodology, parameters or assumptions, without prejudice to any applicable penalties.

- The actuarial management policy and procedure manuals are reorganized and focused, prioritizing those relating to

vinculados a: calidad de datos, gestión de riesgos técnicos, constitución de reservas técnicas, juicio experto, tarificación y suscripción de riesgos, y reaseguro y otras técnicas de transferencia del riesgo. Estos manuales deben ser implementados por las áreas técnicas operativas, la función actuarial y la función de gestión de riesgos técnicos, según corresponda.

- Impone el deber de contar con una adecuada gestión de la calidad de datos utilizados en todo cálculo actuarial y establece lineamientos mínimos que se deben observar para garantizar la calidad y la validación de datos.
- Se reorganiza y fortalece la función actuarial y la función de gestión de riesgos técnicos como segunda línea de defensa, con mayores exigencias de independencia.
- Se incorpora la figura del Actuario Designado y se fortalece su independencia.
- Se establecen mayores requisitos de idoneidad técnica para el actuario designado, el funcionario titular de la función actuarial y el responsable de gestión de riesgos técnicos, incluyendo experiencia mínima de cinco (5) años y capacitación continua con periodicidad mínima anual.
- Se regula expresamente el uso del juicio experto en los cálculos actuariales, definiéndolo como la aplicación del conocimiento y experiencia técnica para seleccionar supuestos o metodologías en contextos de incertidumbre o datos limitados.

## Supervisión

### Resoluciones SBS N°1029-2026, de 8 de abril, y N°1923-2026, de 22 de julio, que modifican el Reglamento de Infracciones y Sanciones

Mediante las Resoluciones SBS N°1029-2026 y N°1923-2026, la SBS modificó el Reglamento de Infracciones y Sanciones de la SBS, aprobado por Resolución SBS N°2755-2018, ampliando las infracciones específicas del Sistema de Seguros contenidas en el Anexo 3. Las principales modificaciones son las siguientes:

- Se extiende el alcance de la Infracción Grave N°81, relativa al deber de asesorar al contratante y/o asegurado, para incluir las etapas de oferta, suscripción, ejecución del contrato, solicitud de indemnización y cobro de siniestro.
- Se amplía la Infracción Grave N°97, referida al incumplimiento de las condiciones para la intermediación a dis-

data quality, technical risk management, establishment of technical reserves, expert judgment, pricing and risk underwriting, and reinsurance and other risk-transfer techniques. These manuals must be implemented by the technical operating areas, the actuarial function and the technical risk-management function, as applicable.

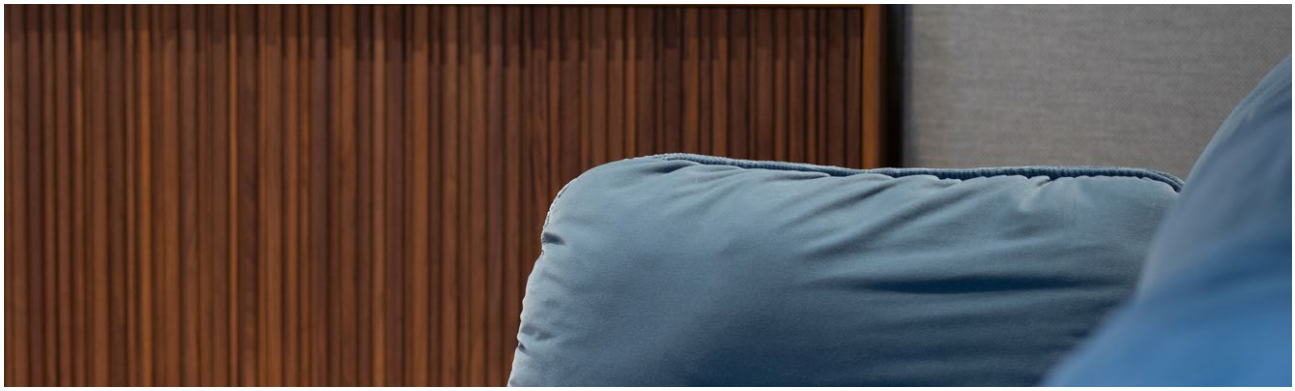
- It imposes a duty to maintain appropriate quality management for data used in all actuarial calculations and establishes minimum guidelines that must be observed to ensure data quality and validation.
- The actuarial function and the technical risk-management function are reorganized and strengthened as a second line of defence, with more stringent independence requirements.
- The Designated Actuary role is introduced, and its independence is strengthened.
- More stringent technical-qualification requirements are established for the Designated Actuary, the officer heading the actuarial function and the person responsible for technical risk management, including at least five years of experience and continuing training at least annually.
- The use of expert judgment in actuarial calculations is expressly regulated and defined as the application of technical knowledge and experience to select assumptions or methodologies in circumstances of uncertainty or limited data.

## Supervision

### SBS Resolution No. 1029-2026, dated 8 April, and SBS Resolution No. 1923-2026, dated 22 July, amending the Regulations on Infringements and Sanctions

By Resolutions SBS No. 1029-2026 and No. 1923-2026, the SBS amended the SBS Regulations on Infringements and Sanctions, approved by SBS Resolution No. 2755-2018, expanding the specific infringements applicable to the Insurance System set out in Annex 3. The principal amendments are as follows:

- The scope of Serious Infringement No. 81, relating to the duty to advise the policyholder and/or insured, is extended to include the offering, underwriting and contract performance stages, as well as claims for indemnification and recovery of claim proceeds.
- The scope of Serious Infringement No. 97, relating to non-compliance with the requirements for remote intermediation, is



tancia, incluyendo el deber de informar sobre el producto contratado y el derecho de arrepentimiento del asegurado.

- Se modifica la Infracción Grave N°19, sustituyendo la exigencia de contar con sustento para rechazar solicitudes de cobertura por la obligación de comunicar dicho sustento al solicitante.

- Se incorporan nuevas infracciones relacionadas con el pago de componentes de ahorro e inversión en seguros con componente de ahorro: Infracción Grave N°130 (afectación económica igual o superior a 20 UIT), Infracción Grave N°134 (incumplimiento sin afectación patrimonial), e Infracción Muy Grave N°6 (afectación igual o superior a 100 UIT).

- Se incorporan las Infracciones Muy Graves N°9 (incumplimiento de políticas de conflictos de interés en la gestión de inversiones de seguros con componente de ahorro) y N°10 (realización de operaciones con derivados financieros sin autorización de la SBS).

extended to include the duty to provide information on the product purchased and the insured's cooling-off right.

- Serious Infringement No. 19 is amended by replacing the requirement to have grounds for rejecting requests for coverage with the obligation to communicate those grounds to the applicant.

- New infringements are introduced in relation to the payment of savings and investment components under insurance with a savings component: Serious Infringement No. 130 (economic detriment equal to or exceeding 20 UIT), Serious Infringement No. 134 (non-compliance without financial detriment), and Very Serious Infringement No. 6 (detriment equal to or exceeding 100 UIT).

- Very Serious Infringements No. 9 (failure to comply with conflict-of-interest policies in the management of investments under insurance with a savings component) and No. 10 (entering into financial derivative transactions without SBS authorisation) are introduced.

# Principales novedades jurisprudenciales
## Main developments in case law

### Póliza sin visa

**La Sala Especializada en Protección al Consumidor de INDECOPI sanciona a banco por negarse a aceptar póliza de seguro de vida contratada con aseguradora internacional, al no existir en el contrato o en la ley una exigencia de que la asegurada que estuviera autorizada por la SBS**

*Sala Especializada en Protección al Consumidor, Resolución 2778-2026/SPC-INDECOPI, 9 de julio*

Los denunciantes contrataron una póliza de seguro de vida con una aseguradora internacional y solicitaron al banco que la endosara a su crédito hipotecario. El banco se negó, argumentando que solo aceptaba pólizas de compañías autorizadas por la SBS, sin indicar el sustento legal o contractual de dicha exigencia.

La Sala Especializada en Protección al Consumidor analizó el contrato de crédito hipotecario y verificó que este permitía a los denunciantes contratar el seguro de desgravamen con la aseguradora de su elección, sin exigir que estuviera autorizada por la SBS. Asimismo, determinó que la normativa de seguros no prohíbe el uso de pólizas internacionales como garantía de créditos hipotecarios.

En consecuencia, la Sala concluyó que el banco negó injustificadamente el endoso al imponer un requisito no previsto en el contrato ni exigido por ley, lo que obligó a los denunciantes a mantener un seguro de desgravamen paralelo. Por ello, revocó la resolución de primera instancia que había declarado infundada la denuncia y la declaró fundada, imponiendo al banco una sanción de 6,89 UIT.

### Policy without a visa

The Specialized Chamber for Consumer Protection of INDECOPI sanctions a bank for refusing to accept a life insurance policy taken out with an international insurer, as neither the contract nor the law required the insurer to be authorized by the SBS

*Specialized Chamber for Consumer Protection of INDECOPI, Resolution 2778-2026/SPC-INDECOPI, dated 9 July*

The complainants took out a life insurance policy with an international insurer and requested the bank to endorse it in favour of their mortgage loan. The bank refused, arguing that it only accepted policies from companies authorized by the SBS, without indicating the legal or contractual basis for such requirement.

The Specialized Chamber for Consumer Protection reviewed the mortgage loan agreement and verified that it allowed the complainants to take out the credit life insurance with the insurer of their choice, without requiring it to be authorized by the SBS. It also determined that the insurance regulations do not prohibit the use of international policies as security for mortgage loans.

Accordingly, the Chamber concluded that the bank unjustifiably denied the endorsement by imposing a requirement not provided for in the contract nor required by law, which compelled the complainants to maintain a parallel credit life insurance policy. For this reason, it reversed the first-instance decision that had dismissed the complaint, and upheld it, imposing a sanction of 6.89 UIT on the bank.

### Lo que el agua no se llevó

**La Sala Especializada en Protección al Consumidor de INDECOPI confirma que se declare infundada la denuncia por daños a vivienda causados por lluvias, al verificarse la correcta aplicación de los deducibles pactados en la póliza**

*Sala Especializada en Protección al Consumidor, Resolución 2891-2026/SPC-INDECOPI, 15 de julio*

La contratante denunció a la compañía de seguros por negarse a indemnizarla bajo su Seguro Hogar Hipotecario Individual. El reclamo se originó por el colapso del tanque elevado de su vivienda en Chiclayo, daño que atribuyó a las lluvias

### What the water did not wash away

The Specialized Chamber for Consumer Protection of INDECOPI upholds the dismissal of the complaint for property damage caused by rainfall, upon verifying the correct application of the deductibles agreed in the policy

*Specialized Chamber for Consumer Protection of INDECOPI, Resolution 2891-2026/SPC-INDECOPI, dated July 15*

The policyholder filed a complaint against the insurance company for refusing to indemnify her under her Individual Mortgage Home Insurance. The claim originated from the collapse of the elevated water tank at her property in Chiclayo, which she

intensas de octubre y diciembre de 2023. El monto reclamado por reparaciones ascendió a S/ 323,024.88.

La Comisión de Protección al Consumidor declaró infundada la denuncia. El informe del ajustador de siniestros determinó que la pérdida real ascendía únicamente a S/ 2,939.42. Además, se estableció que los daños se derivaron de dos episodios de lluvia distintos -el 9 de octubre y el 25 de diciembre de 2023-, lo que implicaba aplicar el deducible del 10% (mínimo S/ 1,500) a cada evento por separado. Sumados ambos deducibles, estos superaban la pérdida ajustada, dejando sin monto indemnizable.

En apelación, la Sala verificó que el procedimiento de liquidación se realizó dentro de los plazos legales y que la póliza efectivamente contemplada ese deducible para daños por lluvia e inundación. Por su parte, la denunciante no acreditó deficiencias técnicas en el informe del ajustador ni ejerció su facultad de solicitar un nuevo ajuste. Por ello, la Sala concluyó que no hubo un rechazo de cobertura, sino la correcta aplicación de los deducibles pactados, y confirmó la resolución que declaró infundada la denuncia.

attributed to the heavy rains of October and December 2023. The amount claimed for repairs amounted to S/323,024.88.

The Consumer Protection Commission dismissed the complaint. The loss adjuster's report determined that the actual loss amounted to only S/2,939.42. Furthermore, it was established that the damage resulted from two separate rainfall episodes – on 9 October and 25 December 2023 – which required the application of the 10% deductible (minimum S/1,500) to each event separately.

When both deductibles were combined, they exceeded the adjusted loss, leaving no indemnifiable amount. On appeal, the Chamber verified that the settlement procedure was carried out within the statutory time limits and that the policy did in fact provide for that deductible for damage caused by rain and flooding. For her part, the complainant failed to demonstrate technical deficiencies in the loss adjuster's report and did not exercise her right to request a new adjustment. Accordingly, the Chamber concluded that there was no denial of coverage, but rather the correct application of the agreed deductibles, and upheld the decision dismissing the complaint.

## ¿En dónde está mi auto?

**La Sala Especializada en Protección al Consumidor de INDECOPI confirma que el plazo para comunicar un siniestro se computa desde que el asegurado toma conocimiento efectivo de este, y ratifica la multa de 22,97 UIT impuesta a la aseguradora por rechazar injustificadamente la cobertura**

*Sala Especializada en Protección al Consumidor, Resolución 2934-2026/SPC-INDECOPI, 16 de julio*

El contratante denunció a la aseguradora por rechazar injustificadamente la cobertura de su Seguro Vehicular Todo Riesgo

## Where is my car?

The Specialized Chamber for Consumer Protection of INDECOPI confirms that the time limit for reporting a loss event is calculated from the date on which the insured becomes effectively aware of it, and upholds the fine of 22.97 UIT imposed on the insurer for unjustifiably denying coverage

*Specialized Chamber for Consumer Protection of INDECOPI, Resolution 2934-2026/SPC-INDECOPI, dated 16 July*

The policyholder filed a complaint against the insurer for unjustifiably denying coverage under his All-Risk Motor Vehicle



tras el hurto de autopartes de su vehículo. La aseguradora alegó que el siniestro fue reportado de manera extemporánea. La Comisión de Protección al Consumidor declaró fundada la denuncia, impuso una multa de 22,97 UIT y ordenó el otorgamiento de la cobertura.

Los hechos mostraron que el vehículo quedó retenido en un taller mecánico cuyo propietario no lo devolvió, lo que motivó una denuncia policial por apropiación ilícita en marzo de 2024. La aseguradora rechazó esta reclamación por tratarse de un delito no cubierto. Posteriormente, en julio de 2024, el contratante se enteró de que el taller había sufrido un hurto de autopartes en marzo de ese año. Comunicó este hecho de inmediato a la aseguradora, que nuevamente rechazó la cobertura, esta vez alegando que el reporte del siniestro era extemporáneo.

La aseguradora argumentó que el aviso del siniestro debía darse de forma inmediata a su ocurrencia (marzo de 2024) y que el reporte, realizado seis meses después, fue extemporáneo. Sin embargo, la Sala consideró que el cómputo del plazo debe iniciar desde que el asegurado toma conocimiento efectivo del siniestro y no desde su ocurrencia material. Dado que el vehículo estaba bajo custodia exclusiva del taller, el asegurado no tuvo posibilidad de conocer el hurto hasta julio de 2024, y actuó con diligencia al reportarlo de inmediato. Por estas razones, la Sala confirmó la resolución que declaró fundada la denuncia y ratificó la sanción de 22,97 UIT.

Insurance following the theft of auto parts from his vehicle. The insurer alleged that the loss event was reported out of time. The Consumer Protection Commission upheld the complaint, imposed a fine of 22.97 UIT, and ordered the granting of coverage.

According to the facts of the case, the vehicle was held at an auto repair shop whose owner failed to return it, leading to a police report filed in March 2024 for unlawful appropriation. The insurer rejected this claim on the grounds that it involved a crime not covered by the policy. Subsequently, in July 2024, the policyholder learned that auto parts had been stolen from the repair shop in March of that year. He immediately reported this to the insurance company, which again denied coverage, this time alleging that the loss event report was untimely.

The insurance company argued that notice of the loss event had to be given immediately upon its occurrence (March 2024) and that the report, made six months later, was untimely. However, the Chamber held that the time limit must run from the date on which the insured becomes effectively aware of the loss event, and not from its material occurrence. Given that the vehicle was under exclusive custody of the workshop, the insured had no opportunity to become aware of the theft until July 2024, and he acted diligently by reporting it immediately. For these reasons, the Chamber upheld the decision that had found the complaint well-founded and confirmed the penalty of 22.97 UIT.

## ▸ La metamorfosis del seguro: cuando Todo Riesgo despertó, ya era Robo Total

**La Comisión de Protección al Consumidor de INDECOPI declara prescrita la denuncia por modificación unilateral de póliza vehicular e infundada la imputación por negativa de cobertura, al no acreditarse el rechazo con medios probatorios suficientes**

*Comisión de Protección al Consumidor de INDECOPI (Sala Nº 1 de la Sede Central), Resolución Final Nº2331-2026/CC1, de 24 de julio*

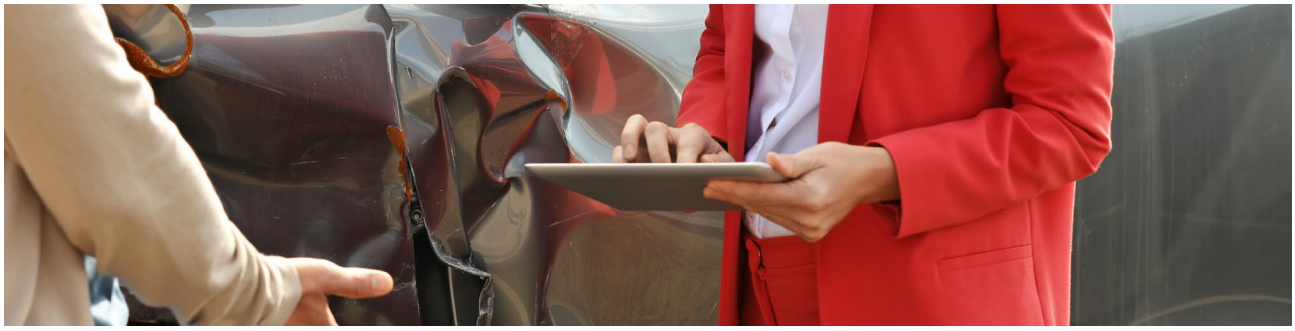
La contratante de un seguro vehicular denunció a la aseguradora señalando que el 29 de marzo de 2022 renovó su póliza de "Seguro de Autos de Todo Riesgo". Tras sufrir el vehículo una pérdida total en un accidente ocurrido el 15 de febrero de 2023, la aseguradora rechazó la indemnización alegando que el 16 de febrero de 2023 había remitido un correo informando sobre modificaciones en la póliza, mediante las cuales la cobertura habría sido cambiada a un "Seguro de Autos Robo Total".

## ▸ The metamorphosis of insurance: when All Risk awoke, it had become Total Theft

The Consumer Protection Commission of INDECOPI declares the complaint regarding unilateral amendment of a motor vehicle policy time-barred, and dismisses on the merits the allegation of denial of coverage for lack of sufficient supporting evidence

*INDECOPI Consumer Protection Commission (Chamber No. 1, Head Office), Final Resolution No. 2331-2026/CC1, dated 24 July*

The policyholder under a motor insurance policy filed a complaint against the insurer, stating that on 29 March 2022 she renewed her "All-Risk Motor Vehicle Insurance" policy. After the vehicle sustained a total loss in an accident on 15 February 2023. The insurer denied indemnification, arguing that it had sent an email the following day, 16 February 2023, notifying the policyholder of amendments to the policy which allegedly changed the coverage to "Total Theft Motor Vehicle Insurance".



La Secretaría Técnica de la Comisión admitió a trámite la denuncia el 13 de febrero de 2026. La aseguradora planteó la improcedencia por prescripción y sostuvo que la negativa de cobertura se ajustó a los términos de la póliza, que la cobertura contratada fue seleccionada por la propia denunciante a través de su canal de comercio electrónico, y que no se modificó unilateralmente la denominación ni las condiciones de la póliza.

El 6 de julio de 2026, la Secretaría Técnica emitió informe final recomendando declarar infundada la denuncia por negativa de cobertura e improcedente por prescripción respecto de la modificación unilateral de la póliza.

La Comisión concluyó que la contratante no aportó medios probatorios que acrediten la negativa de cobertura, por lo que declaró infundada la denuncia en este extremo. Asimismo, verificó que había transcurrido el plazo de prescripción de dos años respecto de la alegación de modificación unilateral de la póliza. No obstante, la Comisión precisó que, si bien la contratante no puede acceder al nivel de protección administrativa sobre la modificación unilateral, el ordenamiento ha previsto que pueda acudir a la vía judicial.

The Technical Secretariat of the Commission admitted the complaint for consideration on 13 February 2026. The insurer contended that the complaint was inadmissible under the statute of limitations and maintained that the denial of coverage was consistent with the terms of the policy, that the complainant herself had selected the coverage purchased through its e-commerce channel, and that neither the name nor the terms of the policy had been amended unilaterally.

On 6 July 2026, the Technical Secretariat issued a final report recommending that the complaint concerning denial of coverage be declared unfounded and that the complaint concerning the unilateral amendment to the policy be declared inadmissible under the statute of limitations.

The Commission concluded that the policyholder had not adduced evidence establishing the denial of coverage and therefore declared the complaint unfounded in this respect. It also verified that the two-year limitation period had expired in respect of the allegation concerning the unilateral amendment to the policy. Nevertheless, the Commission clarified that, although the policyholder could not avail herself of administrative protection in respect of the unilateral amendment, the legal framework permitted her to pursue judicial proceedings.

## ¿El polígrafo no es Dios... ni juez?

**La Comisión de Protección al Consumidor de INDECOPI revoca la resolución del Órgano Resolutivo de Procedimientos Sumarísimos y declara infundada la denuncia, al concluir que el resultado del examen poligráfico en el marco de la cobertura de un siniestro vehicular, junto con otros elementos del expediente, constituye fundamento suficiente para acreditar la actuación fraudulenta del denunciante**

*Comisión de Protección al Consumidor de INDECOPI (Sala Nº 1 de la Sede Central), Resolución Final Nº2332-2026/CC1, 24 de julio*

El contratante presentó denuncia el 1 de diciembre de 2025 contra una aseguradora por presuntas infracciones al CPDC,

## The polygraph is neither God... nor Judge?

The Consumer Protection Commission of INDECOPI sets aside the decision of the Summary Proceedings Adjudicating Body and dismisses the complaint on the merits, concluding that the result of the polygraph examination in the context of a motor vehicle claim, together with other elements of the case file, constitutes sufficient grounds to establish the complainant's fraudulent conduct

*INDECOPI Consumer Protection Commission (Chamber No. 1, Head Office), Final Resolution No. 2332-2026/CC1, dated July 24*

On 1 December 2025, the policyholder filed a complaint against an insurer for alleged infringements of the CPDC, see-

solicitando como medida correctiva la reparación total de su vehículo conforme a la cotización del centro de reparación.

El OPS impuso a la aseguradora una multa de 4,01 UIT por infracción a la condición de idoneidad, al considerar acreditado que negó la cobertura sustentándose únicamente en los resultados de la prueba de polígrafo, sin realizar mayor análisis técnico. Además, ordenó otorgar la cobertura y reembolsar el monto de la reparación.

La aseguradora apeló señalando que el OPS valoró inadecuadamente el uso de la prueba poligráfica, dado que el rechazo se debió a un análisis conjunto de las declaraciones contenidas en la denuncia policial, las reacciones fisiológicas y las dudas razonables derivadas de los demás elementos del caso.

La Comisión advirtió que la aseguradora identificó respuestas contradictorias conforme al informe poligráfico contemplado en las Condiciones Operativas de la póliza, lo que configura la pérdida del derecho indemnizatorio de acuerdo con el artículo 73 de la Ley del Contrato de Seguro, referido a la actuación fraudulenta. Respecto de la validez de los exámenes poligráficos, la Comisión citó la postura del Tribunal Constitucional (Expediente N°00273-2010-PA/TC), que indica que resultan admisibles si existe sospecha razonable, así como el criterio de la DEFASEG que destaca que, aunque no arrojan resultados absolutos, sí son científicamente confiables.

Sobre esta base, la Comisión concluyó que existían fundamentos suficientes para determinar la actuación fraudulenta del denunciante y que no era exigible a la aseguradora realizar un peritaje automotriz adicional, pues la denegatoria se sustentó válidamente en la configuración de fraude acreditada mediante el examen poligráfico, sin que el denunciante hubiera aportado prueba en contrario. En consecuencia, revocó la resolución del OPS y declaró infundada la denuncia por infracción al artículo 19 del CPDC.

king, by way of corrective relief, full repair of his vehicle in accordance with the repair centre's quotation.

The OPS imposed a fine of 4.01 UIT on the insurer for infringement of the suitability requirement, finding it established that the insurer had denied coverage solely on the basis of the polygraph test results, without conducting any further technical analysis. It also ordered the insurer to provide coverage and reimburse the repair amount.

The insurer appealed, contending that the OPS had improperly assessed the use of the polygraph test, given that the denial resulted from a combined analysis of the statements contained in the police report, the physiological responses and the reasonable doubts arising from the other evidence in the matter.

The Commission noted that the insurer had identified contradictory answers in accordance with the polygraph report provided for in the policy's Operating Conditions, thereby resulting in forfeiture of the right to indemnification pursuant to Article 73 of the Insurance Contract Law, which concerns fraudulent conduct. As regards the validity of polygraph examinations, the Commission cited the position of the Constitutional Court (Case No. 00273-2010-PA/TC), which states that they are admissible where reasonable suspicion exists, as well as the DEFASEG criterion emphasizing that, although they do not produce absolute results, they are scientifically reliable.

On this basis, the Commission concluded that there were sufficient grounds to find that the complainant had acted fraudulently and that the insurer was not required to conduct an additional motor vehicle appraisal, since the denial was validly based on fraud established by the polygraph examination and the complainant had adduced no evidence to the contrary. Accordingly, it reversed the OPS decision and declared the complaint alleging infringement of Article 19 of the CPDC unfounded.

# Tribuna Pérez-Llorca
Pérez-Llorca Tribune

## Plazos en la regulación de siniestros: el marco normativo peruano y una mirada al derecho comparado

Time limits in Claims handling: the Peruvian regulatory framework and a comparative law perspective

**Rafael Corzo de la Colina**
Socio, Seguros y Reaseguros
Partner, Insurance and Reinsurance

**Antonella Tirado Borrero**
Abogada, Seguros y Reaseguros
Associate, Insurance and Reinsurance



El tiempo que transcurre entre la comunicación del siniestro y la decisión sobre la existencia o no de cobertura constituye un aspecto central en la relación entre la aseguradora y el asegurado. Este período responde a una necesidad técnica legítima de la aseguradora: la evaluación rigurosa del reclamo requiere tiempo para analizar la documentación, verificar la cobertura y, en casos complejos, realizar investigaciones y evaluaciones adicionales. Precisamente por ello, los ordenamientos jurídicos establecen y regulan ciertos plazos y mecanismos que buscan equilibrar esta necesidad técnica con la expectativa del asegurado de obtener una respuesta oportuna y suficientemente fundamentada en relación a su pedido de cobertura.

En el Perú, el proceso de evaluación y liquidación de siniestros se rige principalmente por la Ley del Contrato de Seguro y por el Reglamento para la Gestión y Pago de Siniestros ("**RGS**"). El diseño normativo distingue dos supuestos: (i) los siniestros en que interviene un "ajustador"; y (ii) aquellos en los que no. Para este segundo supuesto, el artículo 11º del RGS establece que la empresa de seguros cuenta con un plazo de treinta 30 días[1] computado desde la recepción de la documentación completa para pronunciarse sobre el consentimiento o el rechazo del siniestro.

Adicionalmente, el RGS contempla un mecanismo de suspensión del plazo que resulta razonable y necesario para la

1 Los plazos de este Reglamento están fijados en días calendario o naturales.

The time that elapses between notice of a claim and the determination as to whether coverage exists is a central aspect of the relationship between the insurer and the insured. This period addresses a legitimate technical need of the insurer: a rigorous assessment of the claim requires time to analyze the documentation, verify coverage and, in complex cases, conduct additional investigations and assessments. For that reason, legal systems establish and regulate certain time limits and mechanisms intended to balance this technical need against the insured's expectation of receiving a timely and sufficiently reasoned response to the coverage request.

In Peru, the claim assessment and settlement process is governed principally by the Insurance Contract Law and the Regulations for Claims Management and Payment ("**RGS**"). The regulatory framework distinguishes between two scenarios: (i) claims involving a "loss adjuster"; and (ii) claims that do not. In the latter scenario, Article 11 of the RGS provides that the insurance company has 30 days[1] from receipt of the complete documentation to determine whether the claim is accepted or rejected.

In addition, the RGS provides for a mechanism for suspension of the time limit that is reasonable and necessary for

1 The time limits under these Regulations are stated in calendar days.

adecuada gestión del reclamo: durante los primeros 20 días, la empresa de seguros puede solicitar aclaraciones o documentación adicional, lo cual suspende el cómputo del plazo hasta que el asegurado atienda el requerimiento. Esta facultad permite a la empresa de seguros contar con todos los elementos necesarios para adoptar una decisión informada y técnicamente sustentada.

Por otro lado, el silencio de la aseguradora tiene una consecuencia expresamente prevista en el artículo 11° del RGS, pues si no se pronuncia dentro del plazo mencionado, el siniestro se entiende consentido. Esta regla opera como un mecanismo de cierre del procedimiento de evaluación de un siniestro. Complementariamente, el artículo 12° del RGS, en concordancia con el artículo 74° de la Ley del Contrato de Seguro, prevé un mecanismo de prórroga para casos que requieren de una mayor investigación: cuando la empresa de seguros necesite un plazo adicional para realizar nuevas investigaciones u obtener evidencias relacionadas con el siniestro, puede solicitar al asegurado la extensión del plazo; en caso de negativa, puede acudir a la SBS, **por única vez** y por un **plazo no mayor al originalmente previsto**, mediante solicitud debidamente fundamentada.

Como puede apreciarse, el sistema peruano cuenta con ciertos mecanismos de control para la definición de la existencia o no de cobertura ante la ocurrencia de un siniestro: la prórroga ante la SBS está limitada a una sola vez y por un plazo no mayor al original; y el silencio conlleva el consentimiento del siniestro. Sin embargo, un aspecto que consideramos podría ameritar un desarrollo normativo adicional se encuentra referido a la definición de ciertos parámetros que deberían tenerse en cuenta para efectos del régimen de suspensión del plazo. Si bien la norma exige que la solicitud de información adicional se formule dentro de los primeros 20 días, no fija **expresamente** un límite al número de oportunidades en que puede ejercerse esta facultad, ni establece un plazo máximo total para la conclusión del procedimiento de evaluación y liquidación de los siniestros.

Una lectura sistemática de la normativa -considerando que la prórroga ante la SBS solo puede solicitarse por única vez y por un plazo no mayor al original- sugiere que el mecanismo de suspensión debe interpretarse de manera coherente con estos límites. Con todo, la precisión de estos parámetros en una regulación podría aportar mayor claridad, tanto para las empresas de seguros como para los asegurados, especialmente en siniestros complejos donde la investigación requiere de múltiples etapas.

Desde una perspectiva práctica, la falta de parámetros expresos puede generar incertidumbre en ambas partes. Para las empresas de seguros, la ausencia de un límite máximo dificulta la planificación de reservas técnicas y la gestión de expedien-

proper management of the claim: during the first 20 days, the insurance company may request clarifications or additional documentation, which tolls the time limit until the insured complies with the request. This power allows the insurance company to obtain all elements necessary to make an informed and technically supported determination.

In addition, the insurer's silence has a consequence expressly provided for in Article 11 of the RGS: if the insurer does not issue its determination within the specified time limit, the claim is deemed accepted. This rule operates as a mechanism for closing the claim assessment procedure. In addition, Article 12 of the RGS, in accordance with Article 74 of the Insurance Contract Law, provides an extension mechanism for cases requiring further investigation: when the insurance company needs additional time to conduct further investigations or obtain evidence relating to the claim, it may request an extension of the time limit from the insured; if the insured refuses, the insurance company may apply to the SBS, **on one occasion only** and for **a period no longer than the time limit originally provide**d, by means of a duly reasoned application.

As may be seen, the Peruvian system includes certain control mechanisms for determining whether coverage exists following a loss event: an extension before the SBS is limited to one occasion and to a period no longer than the original time limit; and silence results in the claim being deemed accepted. However, one aspect that we believe may warrant further regulatory development concerns the definition of certain parameters that should be taken into account for the purposes of the regime governing suspension of the time limit. Although the regulations require a request for additional information to be made within the first 20 days, they do not **expressly** limit the number of occasions on which this power may be exercised or establish an overall maximum time limit for completing the claim assessment and settlement process.

A systematic reading of the regulations - given that an extension may be requested from the SBS only once and for no longer than the original period - suggests interpreting suspension consistently with those limits. Nevertheless, specifying these parameters could provide greater clarity for insurance companies and insureds, particularly in complex, multistage claim investigations.

From a practical perspective, the absence of express parameters may create uncertainty for both parties. For insurance companies, the lack of a maximum limit makes it difficult to plan technical reserves and manage long-running claim files,

tes de siniestros de larga duración, particularmente en ramos como responsabilidad civil, donde la investigación de hechos puede requerir múltiples informes periciales, análisis de causalidad y evaluación de daños. Para los asegurados, especialmente en siniestros de cuantía significativa, la incertidumbre sobre la duración del proceso puede afectar su toma de decisiones (ante la ocurrencia de un siniestro) y su capacidad de planificación financiera. Un marco regulatorio, en cambio, que establezca plazos máximos definidos y la existencia de este tipo de parámetros, permitiría a ambas partes dimensionar con mayor precisión sus expectativas y obligaciones.

En el derecho comparado, la reciente *Lei Nº15.040* de Brasil (2024)[2] ofrece un punto de referencia interesante. Dicha ley establece un límite máximo referido al número de suspensiones del plazo por solicitud de documentos adicionales para la evaluación de la cobertura. Así, regula dicha norma un máximo de dos (2) suspensiones de plazo, como regla general, y una (1) sola vez para seguros vehiculares y de menor cuantía, así como un plazo máximo absoluto de ciento veinte (120) días para casos complejos (artículo 86º).

A la luz de esta experiencia comparada, estimamos que podría evaluarse la conveniencia de regular, de manera razonable y objetiva, dos (2) aspectos en la normativa peruana: (i) un límite máximo aplicable al número de suspensiones derivadas de solicitudes de información adicional; y (ii) un plazo máximo absoluto para la conclusión del procedimiento de evaluación y liquidación de siniestros.

En definitiva, estimamos que contar con una definición cierta en estos plazos beneficiaría a todas las partes: al asegurado, que contará con expectativas razonables sobre la duración del proceso de evaluación y liquidación; y a las empresas de seguros, que dispondrán de un **marco normativo claro** que regule su actuación y les permita gestionar sus procesos internos con mayor certeza. El equilibrio entre la protección del asegurado y la necesaria flexibilidad para la evaluación técnica de siniestros es, precisamente, el objetivo que, creemos, debería orientar cualquier desarrollo normativo y regulatorio sobre esta materia y que genere un marco más predecible para ambas partes en estos casos.

particularly in lines of business such as third-party liability, where factual investigations may require multiple expert reports, causation analyses and damage assessments. For insureds, particularly in claims involving significant amounts, uncertainty as to the duration of the process may affect their decision-making (following a loss event) and their financial-planning capacity. By contrast, a regulatory framework establishing defined maximum time limits and parameters of this kind would allow both parties to assess their expectations and obligations more precisely.

From a comparative law perspective, Brazil's recent *Lei* No. 15,040 (2024)[2] offers an instructive point of reference. That law establishes a maximum number of suspensions of the time limit arising from requests for additional documents to assess coverage. As a general rule, it therefore permits no more than two suspensions of the time limit, and only one suspension for motor vehicle insurance and lower-value insurance, as well as an absolute maximum period of 120 days for complex cases (Article 86).

In light of this comparative experience, we believe consideration could be given to the advisability of regulating two aspects under Peruvian law in a reasonable and objective manner: (i) a maximum limit on the number of suspensions arising from requests for additional information; and (ii) an absolute maximum time limit for completing the claim assessment and settlement process.

Ultimately, we believe that certainty as to these time limits would benefit all parties: the insured would have reasonable expectations regarding assessment and settlement timing, while insurance companies would have **a clear regulatory framework** governing their conduct and internal processes. In our view, balancing insured protection with flexibility for technical claim assessment should guide all legislative and regulatory development in this area and create a more predictable framework for both parties.

2 El artículo 86º de la *Lei Nº15.040*, de 9 de diciembre de 2024 (Ley Brasileña de Contrato de Seguro) establece el plazo de treinta (30) días para pronunciarse sobre la cobertura, con suspensión máxima de 2 veces por solicitud de documentos (1 vez para seguros vehiculares y montos menores a 500 salarios mínimos), y un límite absoluto de ciento veinte (120) días para casos complejos.

2 Article 86 of *Lei* No. 15,040, dated 9 December 2024 (Brazilian Insurance Contract Law), establishes a thirty (30)-day period to issue a determination on coverage, with a maximum of two suspensions for requests for documents (one suspension for motor vehicle insurance and amounts below 500 minimum salaries), and an absolute limit of one hundred twenty (120) days for complex cases.

PORTUGAL

**Actualidad Iberoamericana de Seguros**
Ibero-American Insurance Update



# Portugal

# Principais atualizações regulatórias e de supervisão
Key regulatory and supervisory developments

## Regulatório

### Decreto-Lei n.º 171/2026, de 26 de agosto, que altera o Código dos Valores Mobiliários e introduz o dever de acessibilidade de informação no ponto de acesso único europeu ("ESAP") no setor segurador

No passado dia 26 de agosto de 2026, foi publicado o Decreto-Lei n.º 171/2026, que procede à transposição da Diretiva (UE) 2024/790, que altera a DMIF II, e à execução do Regulamento (UE) 2024/791 (RMIF), bem como à transposição e execução parcial do pacote legislativo "Listing Act", que integra a Diretiva (UE) 2024/2810, a Diretiva (UE) 2024/2811 e o Regulamento (UE) 2024/2809. O diploma transpõe ainda parcialmente a Diretiva (UE) 2023/2864, relativa à criação do ponto de acesso único europeu ("**ESAP**").

Embora incida primordialmente sobre o Código dos Valores Mobiliários, o decreto-lei tem um impacto direto no setor segurador, ao aditar ao regime jurídico de acesso e exercício da atividade seguradora e resseguradora ("**RJASR**"), ao regime jurídico da distribuição de seguros e de resseguros e ao regime jurídico dos fundos de pensões novas disposições relativas à acessibilidade da informação no ESAP. Entre as principais novidades introduzidas, destacam-se:

- O aditamento do artigo 85.º-A ao RJASR, que impõe às empresas de seguros e de resseguros o dever de transmitir simultaneamente à ASF as informações que divulguem nos termos do n.º 1 do artigo 83.º e do n.º 1 do artigo 294.º do RJASR, para efeitos da respetiva disponibilização no ESAP, acompanhadas de metadados como a denominação social, o identificador Legal Entity Identifier (LEI), a dimensão da empresa e o tipo de informação;

## Regulation

### Decree-Law No. 171/2026 of 26 August, amending the Portuguese Securities Code and introducing the duty to make information accessible on the European Single Access Point (ESAP) in the insurance sector

On 26 August 2026, Decree-Law No. 171/2026 was published, transposing Directive (EU) 2024/790, which amends MiFID II, and implementing Regulation (EU) 2024/791 (MiFIR), as well as partially transposing and implementing the "Listing Act" package, comprising Directive (EU) 2024/2810, Directive (EU) 2024/2811 and Regulation (EU) 2024/2809. The Decree-Law also partially transposes Directive (EU) 2023/2864 on the establishment of the European Single Access Point ("**ESAP**").

Although primarily focused on the Portuguese Securities Code, the Decree-Law has a direct impact on the insurance sector, adding new provisions on the accessibility of information on the ESAP to: the legal framework governing access to and pursuit of insurance and reinsurance activity ("**RJASR**"), the legal framework governing insurance and reinsurance distribution, and the legal framework governing pension funds. Among the main developments, the following stand out:

- The insertion of Article 85-A into the RJASR, requiring insurance and reinsurance undertakings to simultaneously transmit to the ASF the information they disclose under Articles 83 and 294 of the RJASR, for the purposes of making it accessible on the ESAP, accompanied by metadata such as the corporate name, the Legal Entity Identifier (LEI), the size of the undertaking and the type of information;



- A imposição à ASF do dever de assegurar a acessibilidade no ESAP das informações que a própria Autoridade divulgue nos termos dos artigos 317.º e 336.º do RJASR;

- O aditamento do artigo 119.º ao regime jurídico da distribuição de seguros e de resseguros, determinando que a ASF assegure a acessibilidade no ESAP das decisões condenatórias em processos por crimes especiais do setor segurador e por contraordenações da sua competência;

- O aditamento do artigo 231.º ao regime jurídico dos fundos de pensões, impondo às entidades gestoras de fundos de pensões o dever de transmissão simultânea à ASF, para efeitos de disponibilização no ESAP, das informações previstas nos artigos 57.º, 124.º e 152.º desse regime; e

- A obtenção obrigatória, por parte das empresas de seguros e de resseguros e das entidades gestoras de fundos de pensões, do identificador LEI, nos termos do Decreto-Lei n.º 202/2015, de 17 de setembro, para efeitos de identificação nos metadados transmitidos ao ESAP.

O decreto-lei entra em vigor no primeiro dia do mês seguinte ao da sua publicação, produzindo, contudo, efeitos diferidos quanto às normas relativas ao ESAP: o artigo 85.º-A do RJASR, o artigo 119.º do regime da distribuição de seguros e de resseguros e o artigo 231.º do regime dos fundos de pensões produzem efeitos a partir de 10 de janeiro de 2030.

Apesar do diferimento temporal, esta alteração legislativa assume relevância estratégica para as empresas de seguros e de resseguros, os distribuidores de seguros e as entidades gestoras de fundos de pensões, que deverão preparar antecipadamente os processos internos de recolha, formatação e transmissão de informação, incluindo a obtenção do identificador LEI, de forma a assegurar o cumprimento tempestivo dos novos deveres de acessibilidade da informação no ESAP.

Refira-se ainda que, no dia 15 de setembro de 2026, foi publicada a Declaração de Retificação n.º 35/2026/1, que corrigiu uma inexatidão no n.º 2 do artigo 17.º do Decreto-Lei n.º 171/2026, substituindo a remissão incorreta para o "artigo 375.º" do RJASR pela referência correta ao "artigo 85.º-A" do RJASR, assegurando assim a correta identificação da norma que estabelece o dever de acessibilidade da informação no ESAP por parte das empresas de seguros e de resseguros e eliminando uma ambiguidade que poderia gerar incerteza interpretativa quanto à aplicação deste novo dever de comunicação à ASF.

- The requirement for the ASF to ensure that information it discloses under Articles 317 and 336 of the RJASR is made accessible on the ESAP;

- The insertion of Article 119 into the legal framework governing insurance and reinsurance distribution, requiring the ASF to ensure that convictions handed down in proceedings for special crimes in the insurance and pension fund sector, and for administrative offences within its competence, are made accessible on the ESAP;

- The insertion of Article 231 into the legal framework governing pension funds, requiring pension fund management entities to simultaneously transmit to the ASF, for the purposes of making it accessible on the ESAP, the information provided for in Articles 57, 124 and 152 of that framework; and

- The mandatory acquisition, by insurance and reinsurance undertakings and pension fund management entities, of the LEI identifier under Decree-Law No. 202/2015 of 17 September, for inclusion in the metadata transmitted to the ESAP.

The Decree-Law enters into force on the first day of the month following its publication, although the provisions relating to the ESAP take effect on a deferred basis: Article 85-A of the RJASR, Article 119 of the legal framework on insurance and reinsurance distribution, and Article 231 of the pension funds framework take effect from 10 January 2030.

Despite the deferred timeline, this legislative amendment is of strategic relevance to insurance and reinsurance undertakings, insurance distributors and pension fund management entities, which should begin preparing in advance the internal processes for collecting, formatting and transmitting information, including obtaining the LEI identifier, in order to ensure timely compliance with the new duties regarding the accessibility of information on the ESAP.

It should further be noted that, on 15 September 2026, Rectification Statement No. 35/2026/1 was published, correcting an inaccuracy in paragraph 2 of Article 17 of Decree-Law No. 171/2026, replacing the erroneous cross-reference to "Article 375" of the RJASR with the correct reference to "Article 85-A" of the RJASR, thereby ensuring the proper identification of the provision establishing the duty of insurance and reinsurance undertakings to make information accessible on the ESAP and removing an ambiguity that could otherwise have created interpretative uncertainty as to the application of this new duty to report to the ASF.

## Regulamento de Execução (UE) 2026/2041 da Comissão, de 11 de setembro de 2026, sobre as informações técnicas para o cálculo das provisões técnicas e dos fundos próprios de base ao abrigo da Solvência II

No dia 14 de setembro de 2026, foi publicado no Jornal Oficial da União Europeia o Regulamento de Execução (UE) 2026/2041 da Comissão, que estabelece as informações técnicas a utilizar pelas empresas de seguros e de resseguros no cálculo das provisões técnicas e dos fundos próprios de base, para efeitos de relato com datas de referência compreendida entre 30 de junho e 29 de setembro de 2026.

Nos termos da Diretiva 2009/138/CE (Solvência II), a EIOPA fornece trimestralmente à Comissão Europeia as informações técnicas relativas às estruturas pertinentes das taxas de juro sem risco para os diferentes prazos, aos spreads fundamentais para o cálculo do ajustamento compensatório e aos ajustamentos para a volatilidade, com base nos dados de mercado do final do mês anterior. No caso deste regulamento, a EIOPA forneceu essas informações em 6 de julho de 2026, tendo sido publicadas em 3 de julho de 2026.

As empresas de seguros e de resseguros devem utilizar obrigatoriamente estas informações técnicas nos cálculos de Solvência II relativos ao terceiro trimestre de 2026, por razões prudenciais e de uniformidade metodológica, independentemente da data em que efetuem o relato às autoridades competentes.

O regulamento entrou em vigor no dia seguinte ao da sua publicação, sendo aplicável com efeitos retroativos a partir de 30 de junho de 2026. Este regulamento surge com periodicidade regular e assume relevância operacional direta para os departamentos atuariais e de reporte prudencial das empresas de seguros e de resseguros, que devem assegurar a correta incorporação destes parâmetros nos respetivos cálculos de Solvência II.

## Commission Implementing Regulation (EU) 2026/2041 of 11 September 2026 on the technical information for the calculation of technical provisions and basic own funds under Solvency II

On 14 September 2026, Commission Implementing Regulation (EU) 2026/2041 was published in the Official Journal of the European Union, laying down the technical information to be used by insurance and reinsurance undertakings in calculating technical provisions and basic own funds for reporting with a reference date between 30 June and 29 September 2026.

Under Directive 2009/138/EC (Solvency II), EIOPA provides the European Commission, on a quarterly basis, with the technical information on the relevant risk-free interest rate term structures, the fundamental spreads for the calculation of the matching adjustment, and the volatility adjustments, based on market data as at the end of the preceding month. In this instance, EIOPA provided that information on 6 July 2026, and it was published on 3 July 2026.

Insurance and reinsurance undertakings must use this technical information for their Solvency II calculations for the third quarter of 2026, for prudential and methodological consistency reasons, regardless of the date on which they report to the competent authorities.

The regulation entered into force on the day following its publication and applies retroactively from 30 June 2026. This regulation is published on a recurring basis and is of direct operational relevance to the actuarial and prudential reporting functions of insurance and reinsurance undertakings, which must ensure the correct incorporation of these parameters into their Solvency II calculations.

## Norma Regulamentar da ASF n.º 4/2026-R, de 28 de julho, que prorroga a suspensão da produção de efeitos da Norma Regulamentar n.º 7/2025-R, de 26 de agosto

No passado dia 28 de julho de 2026, a ASF aprovou a Norma Regulamentar n.º 4/2026-R, que prorroga, até 1 de janeiro de 2028, a suspensão da produção de efeitos da Norma Regulamentar n.º 7/2025-R, de 26 de agosto de 2025, relativa a pressupostos e requisitos na divulgação de informações respeitantes a fundos de pensões fechados, adesões coletivas a fundos de pensões abertos e adesões individuais a fundos de pensões abertos.

A norma foi precedida da Consulta Pública n.º 4/2026, cujo projeto esteve em apreciação até 15 de julho de 2026, e visa

## ASF Regulatory Standard No. 4/2026-R of 28 July, extending the suspension of the entry into effect of Regulatory Standard No. 7/2025-R of 26 August

On 28 July 2026, the ASF approved Regulatory Standard No. 4/2026-R, extending until 1 January 2028 the suspension of the entry into effect of Regulatory Standard No. 7/2025-R of 26 August 2025, on the assumptions and requirements applicable to the disclosure of information relating to closed pension funds, collective memberships of open pension funds and individual memberships of open pension funds.

The standard was preceded by Public Consultation No. 4/2026, the draft of which was open for comments until 15 July 2026

assegurar a continuidade do regime transitório atualmente em vigor, evitando a produção de efeitos de exigências de divulgação de informação que se mantêm em reponderação.

and aims to ensure the continuity of the transitional regime currently in force, preventing the entry into effect of information disclosure requirements that remain under reassessment.

## Norma Regulamentar da ASF n.º 5/2026-R, de 18 de agosto, que estabelece os índices trimestrais de atualização de capitais para o ramo "Incêndio e elementos da natureza"

No dia 18 de agosto de 2026, foi aprovada a Norma Regulamentar n.º 5/2026-R, que estabelece os índices trimestrais de atualização de capitais para as apólices do ramo "Incêndio e elementos da natureza" com início ou vencimento no quarto trimestre de 2026.

Os índices para o quarto trimestre de 2026 são os seguintes: Índice de Edifícios (IE) de 590,57, o que representa uma variação de 0,90% face ao trimestre transato e de 5,53% face ao período homólogo; Índice de Recheio de Habitação (IRH) de 393,78, correspondente a uma variação de 4,42% e de 12,99%, respetivamente; e Índice de Recheio de Habitação e Edifícios (IRHE) de 511,86, com uma variação de 1,96% e de 7,72%, respetivamente (base 100: primeiro trimestre de 1987).

Estes índices destinam-se a fornecer aos tomadores de seguros um valor de referência que contribua para evitar a desatualização dos capitais seguros no âmbito de contratos que cobrem riscos relativos ao imóvel, sem prejuízo do dever dos tomadores de seguros de se certificarem, mesmo em seguros obrigatórios, dos valores efetivamente a segurar, tendo em conta eventuais variações regionais e alterações dos bens seguros.

Os índices baseiam-se em informação estatística que reflete a forma como determinadas componentes específicas do índice de preços se repercutem nos custos de reconstrução de edifícios e de reposição do recheio de habitação, conforme desenvolvido na nota técnica que acompanhou a Consulta Pública n.º 5/2026, através da qual o respetivo projeto de norma esteve em consulta pública.

## ASF Regulatory Standard No. 5/2026-R of 18 August, establishing the quarterly capital updating indices for the "Fire and natural elements" class

On 18 August 2026, Regulatory Standard No. 5/2026-R was approved, establishing the quarterly capital updating indices for policies in the "Fire and natural elements" class with inception or maturity in the fourth quarter of 2026.

The indices for the fourth quarter of 2026 are as follows: Buildings Index (IE) of 590.57, representing a variation of 0.90% compared to the preceding quarter and 5.53% compared to the same period of the previous year; Household Contents Index (IRH) of 393.78, corresponding to a variation of 4.42% and 12.99%, respectively; and Household Contents and Buildings Index (IRHE) of 511.86, with a variation of 1.96% and 7.72%, respectively (base 100: first quarter of 1987).

These indices are intended to provide policyholders with a reference value that helps prevent the sums insured from becoming outdated under contracts covering property-related risks, without prejudice to the duty of policyholders to satisfy themselves, even under compulsory insurance, as to the amounts actually to be insured, taking into account any regional variations and changes to the insured property.

These indices are based on statistical information reflecting how certain specific components of the price index affect the costs of rebuilding buildings and replacing household contents, as set out in the technical note accompanying Public Consultation No. 5/2026, through which the relevant draft standard was submitted for public consultation.



## EIOPA – Orientações e normas técnicas no âmbito da IRRD: cenários, indicadores, partilha de informação e obrigações simplificadas

Em 8 de julho de 2026, a EIOPA publicou um pacote de sete instrumentos no âmbito da Diretiva relativa à Recuperação e Resolução de Seguros ("**IRRD**"), composto por quatro conjuntos de Orientações e três projetos de normas técnicas de regulamentação (*Regulatory Technical Standards – RTS*), destinados a apoiar a implementação do novo quadro europeu de recuperação e resolução de empresas de seguros e de resseguros. Os Estados-Membros devem adotar as medidas de transposição até 29 de janeiro de 2027 e aplicá-las a partir de 30 de janeiro de 2027.

Entre as Orientações publicadas destacam-se:

- Orientações sobre o leque de cenários (EIOPA-BoS-26-257) e sobre os indicadores qualitativos e quantitativos (EIOPA-BoS-26-259) a considerar nos planos de recuperação preventiva, incluindo indicadores relativos à posição de capital e liquidez, qualidade dos ativos, rendibilidade, condições de mercado e macroeconómicas e eventos operacionais. Os cenários abrangem, designadamente, situações de *mass policy lapses*, perdas de subscrição e combinações de eventos, cuja repercussão deverá ser avaliada sobre a solvência, liquidez e rendibilidade das empresas ou grupos;

- Orientações sobre a prestação de informação (EIOPA-BoS-26-269), relativas à utilização das exceções ao dever de segredo profissional e à partilha de informação confidencial entre autoridades de supervisão e autoridades de resolução, incluindo situações em que a informação seja divulgada de forma agregada ou coletiva; e

- Orientações sobre os critérios para efeitos de obrigações simplificadas (EIOPA-BoS-26-261), que concretizam os critérios a considerar pelas autoridades para determinar a elegibilidade de uma empresa ou grupo para obrigações simplificadas, atendendo, entre outros fatores, à natureza da atividade, estrutura acionista, forma jurídica, perfil de risco, dimensão, estatuto jurídico, interconexões e âmbito e complexidade das atividades.

A EIOPA publicou ainda três projetos de RTS relativos à independência dos avaliadores, ao reconhecimento contratual dos poderes de suspensão das autoridades de resolução e à avaliação das responsabilidades decorrentes de derivados. Estes instrumentos completam o quadro técnico necessário para a preparação e execução de medidas de resolução.

Paralelamente, em 8 de julho, a EIOPA lançou consultas públicas sobre os projetos de RTS relativos à *Valuation 1 e Valuation*

## EIOPA – Guidelines under the IRRD: scenarios, indicators, information-sharing and simplified obligations

On 8 July 2026, EIOPA published a package of seven instruments under the Insurance Recovery and Resolution Directive ("**IRRD**"), comprising four sets of Guidelines and three draft Regulatory Technical Standards ("**RTS**"), aimed at supporting the implementation of the new European recovery and resolution framework for insurance and reinsurance undertakings. Member States must adopt the relevant implementation measures by 29 January 2027 and apply them from 30 January 2027 onwards.

The Guidelines published include:

- Guidelines on the range of scenarios (EIOPA-BoS-26-257) and on qualitative and quantitative indicators (EIOPA-BoS-26-259) to be considered in pre-emptive recovery plans, including indicators relating to capital and liquidity positions, asset quality, profitability, market and macroeconomic conditions and operational events. The scenarios cover, among other things, mass policy lapses, underwriting losses and combinations of events, whose impact should be assessed on the undertaking's or group's solvency, liquidity and profitability.

- Guidelines on the provision of information (EIOPA-BoS-26-269), concerning the use of exemptions from professional secrecy requirements and the sharing of confidential information between supervisory and resolution authorities, including where information is disclosed in summary or collective form.

- Guidelines on the criteria for simplified obligations (EIOPA-BoS-26-261), which specify the criteria to be considered by authorities when determining whether an undertaking or group is eligible for simplified obligations, taking into account, among other factors, the nature of the business, shareholding structure, legal form, risk profile, size, legal status, interconnectedness, and the scope and complexity of activities.

EIOPA also published three draft RTS concerning the independence of valuers, the contractual recognition of resolution stay powers and the valuation of liabilities arising from derivatives. These instruments complement the technical framework required for the preparation and implementation of resolution measures.

In parallel, on 8 July, EIOPA launched public consultations on draft RTS concerning Valuation 1 and Valuation 2, covering



2, respeitantes à avaliação dos ativos e passivos das empresas e grupos para efeitos de resolução e ao cálculo do *buffer* para perdas adicionais, e à *Valuation 3*, relativa, designadamente, à avaliação do tratamento que acionistas, tomadores, beneficiários e credores receberiam em caso de insolvência.

As empresas de seguros e de resseguros sujeitas aos requisitos de planeamento de recuperação preventiva deverão acompanhar de perto estas Orientações e normas técnicas, que serão relevantes para a elaboração e atualização dos respetivos planos de recuperação preventiva e para a sua avaliação pelas autoridades competentes. A IRRD prevê a possibilidade de aplicação de obrigações simplificadas, cuja elegibilidade deverá ser apreciada pelas autoridades competentes à luz de critérios como a natureza da atividade, dimensão, perfil de risco, estrutura, interconexões e complexidade.

the valuation of the assets and liabilities of undertakings and groups for resolution purposes and the calculation of the buffer for additional losses, and on Valuation 3, concerning, in particular, the treatment that shareholders, policyholders, beneficiaries and creditors would receive in an insolvency scenario.

Insurance and reinsurance undertakings subject to pre-emptive recovery planning requirements should closely monitor these Guidelines and technical standards, which will be relevant to the preparation and updating of their pre-emptive recovery plans and their assessment by the competent authorities. IRRD establishes the possibility of implementing simplified obligations based on criteria related to the type of business activity, size, risk profile, structure, interconnections and complexity, all duly assessed by the competent authorities.

## EIOPA – Revisão de Solvência II: relatórios finais sobre normas técnicas, orientações e poderes de supervisão em matéria de liquidez

Em 15 de julho de 2026, a EIOPA concluiu o seu mandato no âmbito da revisão do regime Solvência II, publicando oito conjuntos de Orientações e normas técnicas destinados a acompanhar as alterações introduzidas no regime e cuja aplicação terá início em 30 de janeiro de 2027.

Foram publicados, nomeadamente:

- Orientações revistas relativas a fundos separados (ring-fenced funds) (EIOPA-BoS-26/284), solvência de grupo (EIOPA-BoS-26/283) e relato e divulgação pública (EIOPA-BoS-26/280), atualizadas para refletir o novo enquadramento jurídico e simplificadas sempre que possível. No âmbito das Orientações relativas ao relato e divulgação pública, a revisão traduz-se numa redução significativa do número de Orientações individuais abrangidas.

- Orientações revistas sobre a avaliação das provisões técnicas, que incorporam o novo lambda factor no cálculo da margem de risco (risk margin). Este elemento, dependente do tempo, visa refletir melhor a natureza temporal dos

## EIOPA – Solvency II review: Final Reports on technical standards, guidelines and supervisory powers on liquidity

On 15 July 2026, EIOPA completed its mandate under the Solvency II review by publishing eight sets of Guidelines and technical standards designed to reflect the amendments introduced to the Solvency II framework, with application beginning on 30 January 2027.

The package includes, in particular:

- Revised Guidelines on ring-fenced funds (EIOPA-BoS-26/284), group solvency (EIOPA-BoS-26/283) and reporting and public disclosure (EIOPA-BoS-26/280), updated to reflect the amended legal framework and simplified where possible. The revised reporting and disclosure Guidelines also significantly reduce the number of individual Guidelines covered by that instrument.

- Revised Guidelines on the valuation of technical provisions, incorporating the new lambda factor into the calculation of the risk margin. This time-dependent element is intended to better reflect the time dependency

riscos e reduzir a margem de risco e a sua sensibilidade às alterações das taxas de juro, em particular no caso de responsabilidades de longo prazo.

- ITS revistas relativas ao ajustamento de congruência (matching adjustment) (EIOPA-BoS-26/287), incluindo alterações destinadas a assegurar a aplicação coerente das novas regras relativas à diversificação entre a carteira sujeita ao matching adjustment e o restante negócio da empresa.
- RTS relativos ao cálculo simplificado da margem de risco (EIOPA-BoS-26/289), necessários para adaptar a regulamentação delegada às alterações introduzidas pela revisão de Solvência II.
- Orientações sobre os poderes de supervisão para remediar vulnerabilidades de liquidez (EIOPA-BoS-26/282), que desenvolvem os novos poderes de supervisão nesta matéria, incluindo medidas destinadas a reforçar a posição de liquidez das empresas e as circunstâncias excecionais em que os supervisores poderão determinar a suspensão temporária dos direitos de resgate dos tomadores de seguros.
- ITS revistas relativas aos modelos de divulgação destinados às autoridades nacionais de supervisão, destinadas a alinhar os requisitos de divulgação com o novo enquadramento jurídico.

As empresas de seguros e de resseguros portuguesas deverão acompanhar estas alterações tendo em vista a sua aplicação a partir de 30 de janeiro de 2027, nomeadamente no que respeita à gestão do capital e da solvência, cálculo das provisões técnicas e da margem de risco, utilização do matching adjustment, reporte regulamentar e gestão do risco de liquidez.

of risks and reduce the risk margin and its sensitivity to interest-rate changes, particularly for long-term liabilities.

- Revised ITS on the matching adjustment (EIOPA-BoS-26/287), including amendments aimed at ensuring the consistent application of the new rules on diversification between the matching-adjustment portfolio and the remainder of the undertaking.
- RTS on the simplified calculation of the risk margin (EIOPA-BoS-26/289), required to align the Delegated Regulation with the amendments introduced by the Solvency II review.
- Guidelines on supervisory powers to remedy liquidity vulnerabilities (EIOPA-BoS-26/282), developing the new supervisory powers in this area, including measures aimed at strengthening undertakings' liquidity positions and the exceptional circumstances in which supervisors may temporarily suspend policyholders' redemption rights.
- Revised ITS on disclosure templates for national supervisory authorities, aimed at aligning disclosure requirements with the amended legal framework.

Portuguese insurance and reinsurance undertakings should assess these changes ahead of their application from 30 January 2027, particularly in relation to capital and solvency management, technical provisions and risk-margin calculations, the use of the matching adjustment, regulatory reporting and liquidity risk management.

## Supervisão

### Circular n.º 8/2026, de 14 de julho, da ASF, sobre prevenção do branqueamento de capitais e do financiamento do terrorismo

A ASF publicou a Circular n.º 8/2026, de 14 de julho, dirigida às entidades supervisionadas, na qual divulga os comunicados mais recentes do Grupo de Ação Financeira (GAFI) sobre jurisdições de risco elevado ou sujeitas a monitorização reforçada em matéria de branqueamento de capitais e de financiamento do terrorismo.

A Circular identifica, por um lado, as jurisdições sujeitas a um apelo à ação ("*high-risk jurisdictions subject to a call for action*") relativamente às quais o GAFI recomenda a aplicação de contramedidas, e, por outro, as jurisdições sujeitas a monitorização reforçada ("*jurisdictions under increased*

## Supervision

### ASF Circular No. 8/2026 of 14 July, on the prevention of money laundering and terrorist financing

The ASF published Circular No. 8/2026 of 14 July, addressed to supervised entities, disseminating the most recent statements issued by the Financial Action Task Force (FATF) on jurisdictions identified as high-risk or subject to increased monitoring in relation to money laundering and terrorist financing.

The Circular identifies, on the one hand, high-risk jurisdictions subject to a call for action, in relation to which the FATF recommends the application of countermeasures, and, on the other hand, jurisdictions under increased monitoring, which have committed to resolving, within defined timeframes, the

*monitoring*"), que se comprometeram a resolver, dentro de prazos definidos, as deficiências identificadas nos respetivos regimes de prevenção do branqueamento de capitais e do financiamento do terrorismo.

A ASF recorda às entidades sujeitas à sua supervisão o dever de ter em consideração estas listas na aplicação de medidas de diligência reforçada, nos termos da Lei n.º 83/2017, de 18 de agosto, que estabelece medidas de combate ao branqueamento de capitais e ao financiamento do terrorismo, sempre que estejam em causa relações de negócio ou transações ocasionais que envolvam as jurisdições identificadas.

deficiencies identified in their money laundering and terrorist financing prevention frameworks.

The ASF reminds entities under its supervision of their duty to take these lists into account when applying enhanced due diligence measures, under Law No. 83/2017 of 18 August, which establishes measures to combat money laundering and terrorist financing, whenever business relationships or occasional transactions involve the identified jurisdictions.

## Circular n.º 6/2026 da ASF, de 26 de junho –alterações ao formulário de reporte "*RiskOutlook2.1*"

A ASF aprovou a Circular n.º 6/2026, de 26 de junho, que altera o formulário de reporte "*RiskOutlook*", aplicável ao reporte de informação devido a partir de 1 de julho de 2026. As alterações prosseguem objetivos de simplificação e proporcionalidade e adaptam o reporte ao contexto de implementação do Regulamento DORA.

Entre as principais alterações incluem-se o aditamento de uma classe de risco específica para riscos cibernéticos e de digitalização, novas questões relativas à resiliência operacional digital e a eliminação de componentes ad hoc anteriormente dedicadas a riscos cibernéticos, finanças sustentáveis e alterações climáticas.

## ASF Circular No. 6/2026 of 26 June – amendments to the "RiskOutlook2.1" reporting form

The ASF approved Circular No. 6/2026 of 26 June, amending the "RiskOutlook" reporting form, applicable to information reporting due from 1 July 2026. The amendments pursue simplification and proportionality objectives and adapt the reporting framework to the implementation of the DORA Regulation.

The main changes include a specific risk class for cyber and digitalisation risks, additional questions on digital operational resilience and the removal of ad hoc components previously devoted to cyber risks, sustainable finance and climate change.

## Circular n.º 7/2026 da ASF, de 29 de junho – prestação de informação sobre responsabilidades dos fundos de pensões referente ao primeiro semestre de 2026

A ASF aprovou a Circular n.º 7/2026, de 29 de junho, através da qual informou que, por razões de simplificação regulatória, otimização de recursos e proporcionalidade, não procederia à recolha da informação sobre responsabilidades dos fundos de pensões referente ao primeiro semestre de 2026 prevista nas Normas Regulamentares n.os 4/2023-R e 5/2023-R.

## ASF Circular No. 7/2026 of 29 June – reporting of pension fund liabilities for the first half of 2026

The ASF approved Circular No. 7/2026 of 29 June, informing supervised entities that, for reasons of regulatory simplification, resource optimisation and proportionality, it would not collect the information on pension fund liabilities for the first half of 2026 that is required under Regulatory Standards Nos. 4/2023-R and 5/2023-R.

## Relatório da ASF sobre a de Evolução da Atividade Seguradora – 2.º Trimestre de 2026

A ASF publicou o Relatório de Evolução da Atividade Seguradora relativo ao segundo trimestre de 2026, que evidencia um crescimento acentuado do mercado segurador nacional. A produção global de seguro direto relativa à atividade em Portugal registou um aumento de 18,1% face ao período homólogo de 2025, ultrapassando os 9,4 mil milhões de euros, com o ramo Vida a crescer 27,5% e os ramos Não Vida a registarem um crescimento de 9,2%.

## ASF Quarterly report on the evolution of insurance activity – Second quarter of 2026

The ASF published its report on the evolution of insurance activity for the second quarter of 2026, showing marked growth in the Portuguese insurance market. Overall direct insurance production relating to activity in Portugal grew by 18.1% compared to the same period in 2025, exceeding €9.4 billion, with the Life class growing by 27.5% and the Non-Life classes recording growth of 9.2%.

No ramo Vida, o crescimento foi impulsionado sobretudo pelos seguros de vida Não Ligados, que aumentaram 31,9%, com destaque para os seguros de vida excluindo PPR, que cresceram 59,8%. Os seguros de vida Ligados registaram igualmente um aumento de 19,8%. Nos ramos Não Vida, a produção ultrapassou 4 461 milhões de euros, com crescimentos de 10,6% nos ramos Automóvel e Incêndio e Outros Danos, 9,9% no ramo Doença e 7,2% em Acidentes de Trabalho.

Os montantes pagos totais aumentaram 25,8% face a junho de 2025, com um crescimento de 16,8% no ramo Vida e de 35,2% nos ramos Não Vida, este último impulsionado pelo aumento verificado no ramo Incêndio e Outros Danos (195,1%), associado ao designado "comboio de tempestades" que afetou o território nacional no período em análise.

O valor total das carteiras de investimento das empresas de seguros ascendia, no final do segundo trimestre de 2026, a cerca de 59 mil milhões de euros, um acréscimo de 4,4% face ao final de 2025. Os rácios estimados de cobertura do Requisito de Capital de Solvência (SCR) e do Requisito de Capital Mínimo (MCR) do setor situaram-se, respetivamente, em 198% e 523%, refletindo uma diminuição de 14 e 37 pontos percentuais em relação ao trimestre precedente, o que, não obstante a redução, continua a evidenciar uma posição de solvência robusta do setor.

In the Life class, growth was driven mainly by Non-Unit-Linked life insurance, which increased by 31.9%, with life insurance excluding retirement savings plans (PPR) growing by 59.8%. Unit-Linked life insurance also increased by 19.8%. In the Non-Life classes, production exceeded €4.461 billion, with growth of 10.6% in the Motor and Fire and Other Damage classes, 9.9% in Health, and 7.2% in Workers' Compensation.

Total claims paid increased by 25.8% compared to June 2025, with growth of 16.8% in the Life class and 35.2% in the Non-Life classes, the latter driven by the increase recorded in the Fire and Other Damage class (195.1%), associated with the sequence of storms that affected the country during the period under review.

The total value of insurance undertakings' investment portfolios stood at approximately €59 billion at the end of the second quarter of 2026, an increase of 4.4% compared to end-2025. The sector's estimated Solvency Capital Requirement (SCR) and Minimum Capital Requirement (MCR) coverage ratios stood at 198% and 523%, respectively, reflecting a decrease of 14 and 37 percentage points compared to the previous quarter, which, notwithstanding the reduction, continues to demonstrate a robust solvency position for the sector.

## Relatório trimestral da ASF sobre a Evolução da Atividade dos Fundos de Pensões – 2.º trimestre de 2026

Em 21 de agosto de 2026, a ASF publicou o relatório trimestral relativo à evolução da atividade dos fundos de pensões. No final do segundo trimestre de 2026, os montantes geridos registavam um aumento de 3,2% face ao final de 2025, totalizando cerca de 20,5 mil milhões de euros.

## ASF Quarterly report on the evolution of pension fund activity – Second quarter of 2026

On 21 August 2026, the ASF published its quarterly report on the evolution of pension fund activity. At the end of the second quarter of 2026, assets under management had increased by 3.2% compared with year-end 2025, totalling approximately €20.5 billion.

## Síntese da atividade sancionatória da ASF – 2.º trimestre de 2026

Em 7 de setembro de 2026, a ASF publicou a síntese da sua atividade sancionatória relativa ao segundo trimestre de 2026. Nesse período, foram instaurados 19 novos processos de contraordenação e concluídos 21 processos.

## ASF enforcement activity summary – Second quarter of 2026

On 7 September 2026, the ASF published a summary of its enforcement activity for the second quarter of 2026. During that period, 19 new administrative offence proceedings were opened and 21 proceedings were concluded.



## Relatório da ASF do Setor Segurador e dos Fundos de Pensões 2025

Em 22 de setembro de 2026, a ASF publicou o Relatório do Setor Segurador e dos Fundos de Pensões relativo a 2025. O relatório analisa de forma detalhada a evolução dos setores nacionais de seguros e de fundos de pensões e identifica, entre os principais desafios estruturais, a redução das lacunas de proteção face a catástrofes naturais, a canalização da poupança para investimento produtivo e o reforço da resiliência operacional digital.

Segundo a ASF, em 2025 a produção das empresas de seguros sujeitas à sua supervisão prudencial aumentou 14,3%, para 15,2 mil milhões de euros; considerando a totalidade da atividade de seguro direto em Portugal, incluindo sucursais de empresas de outros Estados-Membros e atividade em livre prestação de serviços, a produção global cresceu 10,9%, para aproximadamente 19,5 mil milhões de euros.

## ASF Insurance and Pension Funds Sector Report 2025

On 22 September 2026, the ASF published its Insurance and Pension Funds Sector Report for 2025. The report provides a detailed analysis of developments in the Portuguese insurance and pension fund sectors and identifies, among the key structural challenges, closing protection gaps relating to natural catastrophes, channelling savings into productive investment and strengthening digital operational resilience.

According to the ASF, in 2025 the production of insurance undertakings subject to its prudential supervision increased by 14.3% to €15.2 billion; considering all direct insurance activity in Portugal, including branches of undertakings from other Member States and freedom-to-provide-services activity, overall production grew by 10.9% to approximately €19.5 billion.

## EIOPA – Parecer sobre Sistemas de Garantia de Seguros (IGS) e Relatório de Estabilidade Financeira

A EIOPA publicou duas peças de análise de relevo para o mercado segurador europeu:

- O Parecer sobre os requisitos mínimos comuns aplicáveis aos Sistemas de Garantia de Seguros (EIOPA-BoS-26/176, publicado em 1 de setembro de 2026), que apresenta propostas sobre o âmbito de proteção, níveis mínimos de financiamento e mecanismos de financiamento ex ante e ex post. Portugal não dispõe atualmente de um sistema geral de garantia de seguros com âmbito transversal comparável ao sistema de garantia de depósitos, sem prejuízo da existência de mecanismos específicos, pelo que este Parecer é relevante para o debate legislativo nacional no contexto da aplicação da IRRD; e

- O Relatório de Estabilidade Financeira de junho de 2026, que conclui que os setores de seguros e fundos de pensões se mantiveram resilientes, identifica como principais riscos a inflação, a repreciação de ativos soberanos e de crédito, os riscos cibernéticos e climáticos, e anuncia o adiamento do *stress test* da UE para 2028, para evitar a coincidência com o primeiro ano de aplicação da revisão de Solvência II e da IRRD.

## EIOPA – Advice on Insurance Guarantee Schemes (IGS) and Financial Stability Report

EIOPA published two key pieces of analysis for the European insurance market:

- The Advice on minimum common requirements applicable to Insurance Guarantee Schemes (EIOPA-BoS-26/176, published on 1 September 2026), setting out proposals on the scope of protection, minimum funding levels and ex ante/ex post funding mechanisms. Portugal does not currently have a general insurance guarantee scheme of cross-sectoral scope comparable to the deposit guarantee framework, without prejudice to the existence of specific mechanisms, making this Advice relevant to the domestic legislative debate in the context of the application of the IRRD; and

- The Financial Stability Report of June 2026, concluding that the insurance and pension sectors remained resilient, identifying key risks including inflation, sovereign and credit repricing, cyber and climate risks, and announcing the deferral of the EU-wide stress test to 2028 to avoid overlap with the first year of application of the Solvency II review and the IRRD.

# Principais novidades jurisprudencias
Main developments in case law

## Seguro automóvel (danos próprios e responsabilidade civil)

### ▸ Bom filho ao carro não torna

**O Supremo Tribunal de Justiça confirma que a cláusula de exclusão de cobertura por condução sob influência de álcool ou estupefacientes, prevista em seguro automóvel de danos próprios, não opera quando o veículo é utilizado sem autorização do proprietário**

*Supremo Tribunal de Justiça, Acórdão de 25 de junho de 2026, Processo n.º 2837/24.6T8GMR.G1.S1*

Em causa estava a interpretação da cláusula de exclusão prevista nas condições particulares de uma apólice de seguro automóvel de danos próprios, nos termos da qual ficam excluídos os danos quando o condutor do veículo seguro conduza sob a influência do álcool, com taxa superior ao legalmente permitido, ou de estupefacientes. O sinistro ocorreu quando o filho do segurado, sem o conhecimento nem o consentimento deste, retirou o veículo da garagem e o conduziu, vindo a despistar-se com uma taxa de alcoolemia de 1,24 g/l e resultado positivo para canabinoides.

O STJ negou a revista, confirmando que a cláusula de exclusão não opera quando o veículo era utilizado abusivamente por pessoa não autorizada pelo respetivo proprietário. Entendeu que a finalidade da cláusula é incentivar o proprietário ou detentor do veículo seguro a uma prudência mínima na sua utilização, não permitindo que o mesmo seja conduzido por alguém nas condições ali previstas. Quando o segurado perde o domínio efetivo sobre o veículo – como sucedeu no caso, em que o filho do proprietário pegou nas chaves sem autorização – a exclusão não se justifica, por o sinistro ter ocorrido fora da esfera de controlo do segurado. Tratando-se de negócio formal, o Tribunal aplicou o artigo 238.º do Código Civil, concluindo que esta interpretação tem correspondência no texto da apólice.

A decisão é relevante para as seguradoras que utilizam cláusulas de exclusão por condução sob influência de álcool ou estupefacientes em apólices de danos próprios, clarificando que tais cláusulas não são oponíveis ao segurado quando este não tenha autorizado a utilização do veículo e tenha perdido o poder de facto sobre o mesmo.

## Car insurance (own-damage and civil liability)

### ▸ A good son does not return to the car

The Supreme Court of Justice confirms that the exclusion clause for driving under the influence of alcohol or drugs in an own-damage motor insurance policy does not apply when the vehicle is used without the owner's authorisation

*Supreme Court of Justice, Judgment of 25 June 2026, Case No. 2837/24.6T8GMR.G1.S1*

At issue was the interpretation of an exclusion clause in the particular conditions of an own-damage motor insurance policy, under which cover is excluded where the driver of the insured vehicle drives under the influence of alcohol (at a level exceeding the legal limit) or drugs. The accident occurred when the policyholder's son, without the latter's knowledge or consent, took the vehicle from the garage and drove it, losing control with a blood alcohol level of 1.24 g/l and a positive result for cannabinoids.

The STJ dismissed the appeal, confirming that the exclusion clause does not apply where the vehicle was wrongfully used by a person not authorised by the owner. The Court held that the purpose of the clause is to encourage the owner or holder of the insured vehicle to exercise minimum prudence in its use, by not allowing it to be driven by someone in the circumstances specified therein. Where the policyholder has lost effective control over the vehicle – as occurred in this case, where the owner's son took the keys without permission – the exclusion is not justified, as the accident occurred outside the policyholder's sphere of control. As a formal contract, the Court applied Article 238 of the Civil Code, concluding that this interpretation is consistent with the wording of the policy.

The ruling is relevant for insurers using exclusion clauses for driving under the influence of alcohol or drugs in own-damage policies, clarifying that such clauses cannot be relied upon against the policyholder where the latter did not authorise the use of the vehicle and had lost de facto control over it.

## A mentira tem perna curta

**O Tribunal da Relação de Coimbra confirma que a ocultação, na declaração inicial de risco, de que o filho jovem e em regime probatório era o condutor habitual do veículo determina a anulabilidade do contrato de seguro facultativo de danos próprios, sem que a seguradora incorra em abuso de direito**

*Tribunal da Relação de Coimbra, Acórdão de 23 de junho de 2026, Processo n.º 1152/23.7T8CTB.C1*

Em causa estava a anulabilidade de um contrato de seguro facultativo de danos próprios por inexatidão dolosa na declaração inicial do risco (art. 25.º/1 da LCS), por a tomadora ter indicado ser a condutora habitual do veículo quando o condutor habitual era o seu filho, titular de carta de condução em regime probatório, cuja identificação teria implicado um prémio três vezes superior.

O TRC confirmou a anulabilidade, concluindo que a omissão deliberada da identidade do condutor habitual configura incumprimento doloso do dever de declaração do risco. Rejeitou o argumento de abuso de direito invocado pela autora, aplicando a figura do *tu quoque*: quem atua dolosamente para obter uma vantagem não pode opor abuso de direito à contraparte que exerce legitimamente a faculdade de anular o contrato (art. 334.º do CC).

A decisão é relevante por confirmar que a identidade do condutor habitual é circunstância significativa para a apreciação do risco pelo segurador e que a sua ocultação dolosa legitima a anulação do contrato, mesmo quando invocada após o sinistro.

## Ver para crer

**O Tribunal da Relação de Lisboa confirma a improcedência de ação de seguro automóvel de danos próprios, mantendo a decisão que considerou não provado que o sinistro participado tivesse ocorrido nos termos alegados pelo segurado**

*Tribunal da Relação de Lisboa, Acórdão de 16 de junho de 2026, Processo n.º 13863/24.5T8LSB.L1-7*

Em causa estava um pedido indemnizatório ao abrigo de um contrato de seguro automóvel com cobertura de danos próprios, no qual a seguradora recusou a regularização do sinistro, questionando a veracidade da versão apresentada pelo segurado.

## A lie has no legs

The Coimbra Court of Appeal confirms that concealing, in the initial risk disclosure, that the habitual driver was the policyholder's young son holding a probationary licence renders the optional own-damage insurance contract voidable, without the insurer incurring abuse of right

*Coimbra Court of Appeal, Judgment of 23 June 2026, Case No. 1152/23.7T8CTB.C1*

At issue was the voidability of an optional own-damage insurance contract for wilful misrepresentation in the initial risk disclosure (Article 25(1) of the Insurance Contract Act), on the basis that the policyholder had stated she was the habitual driver of the vehicle when the habitual driver was in fact her son, who held a probationary driving licence, the identification of whom would have entailed a premium three times higher.

The Court confirmed the voidability, finding that the deliberate concealment of the habitual driver's identity constitutes wilful breach of the duty of risk disclosure. It rejected the argument of abuse of right invoked by the claimant, applying the tu quoque doctrine: a party who acts wilfully to obtain an advantage cannot invoke abuse of right against the counterparty that legitimately exercises the right to annul the contract (Article 334 of the Civil Code).

The ruling is relevant in confirming that the identity of the habitual driver is a material circumstance for the insurer's assessment of the risk and that its wilful concealment justifies the annulment of the contract, even when invoked after the insured event.

## Seeing is believing

The Lisbon Court of Appeal upholds the dismissal of an own-damage motor insurance claim, maintaining the finding that the reported accident was not proven to have occurred as alleged by the policyholder

*Lisbon Court of Appeal, Judgment of 16 June 2026, Case No. 13863/24.5T8LSB.L1-7*

At issue was a claim for indemnification under an own-damage motor insurance contract, in which the insurer refused to settle the claim, questioning the veracity of the policyholder's account.

O Tribunal reiterou que, nos seguros de danos próprios, incumbe ao segurado o ónus de provar a ocorrência do sinistro coberto pela apólice e o nexo de causalidade com os danos reclamados, não bastando a mera constatação de danos no veículo para fazer operar a cobertura contratada.

A decisão reafirma a exigência de prova rigorosa da ocorrência do sinistro nos seguros facultativos de danos próprios, confirmando que dúvidas ou incongruências na versão apresentada pelo segurado podem determinar a improcedência da pretensão indemnizatória, com o correspondente ónus probatório a recair sobre este.

## Seguro de vida e invalidez associado ao crédito

### ▸ Quem conta um conto, acrescenta um ponto.

**O Tribunal da Relação de Lisboa confirma a validade de um contrato de seguro e a exclusão da restituição de prémios por dolo, clarificando os limites do dever de declaração do risco pelo tomador do seguro**

*Tribunal da Relação de Lisboa, Acórdão de 25 de junho de 2026, Processo n.º 12545/24.2T8LSB.L1-2*

Em causa estava a recusa da seguradora em cobrir sinistro de invalidez, invocando incumprimento doloso do dever de declaração inicial do risco (art. 24.º/1 da LCS), por o tomador ter respondido negativamente a perguntas sobre patologias otorrinolaringológicas e neurológicas quando já era acompanhado em consulta desde 2019 e fora encaminhado para neurologia antes da celebração do contrato.

O TRL confirmou a anulabilidade do contrato por dolo simples, mas julgou parcialmente procedente o recurso quanto à restituição dos prémios, condenando a seguradora a restituir €739,06, por o direito ao prémio cessar três meses após o conhecimento das circunstâncias (art. 25.º/2 a 4 da LCS).

O Tribunal distinguiu o dolo simples – suficiente para a anulabilidade do contrato – do dolo pela fraude a que se refere o regime resultante dos artigos 24.º, n.º 3, e 25.º, n.ºs 4 e 5, da LCS, esclarecendo que só este último, que exige a demonstração do propósito de obter uma vantagem, permite à seguradora reter os prémios cobrados.

A decisão é relevante por esclarecer que a seguradora que pretenda reter os prémios cobrados deve alegar e provar o dolo qualificado pela fraude, não bastando a demonstração do dolo simples que fundamenta a anulação do contrato.

The Court reiterated that, in own-damage insurance, the burden of proving the occurrence of the insured event covered by the policy and the causal link with the claimed losses falls on the policyholder, the mere existence of damage to the vehicle being insufficient to trigger the contracted cover.

The ruling reaffirms the requirement for rigorous proof of the occurrence of the insured event in optional own-damage insurance, confirming that doubts or inconsistencies in the policyholder's account may lead to the dismissal of the indemnification claim, with the corresponding burden of proof falling on the policyholder.

## Credit-linked life and disability insurance

### ▸ A story grows with the telling

The Lisbon Court of Appeal confirms the voidability of an insurance contract for wilful non-disclosure, while ordering the partial refund of premiums in the absence of fraud and clarifying the limits of the policyholder's duty of risk disclosure

*Lisbon Court of Appeal, Judgment of 25 June 2026, Case No. 12545/24.2T8LSB.L1-2*

At issue was the insurer's refusal to cover a disability claim, invoking wilful breach of the duty of initial risk disclosure (Article 24(1) of the Insurance Contract Act), on the basis that the policyholder had answered negatively to questions about ENT and neurological conditions despite being under medical follow-up since 2019 and having been referred to neurology before entering into the contract.

The Court confirmed the voidability of the contract on the grounds of simple wilful non-disclosure, but partially upheld the appeal as regards the refund of premiums, ordering the insurer to refund €739.06, on the basis that the right to the premium ceases three months after knowledge of the circumstances (Article 25(2) to (4) of the Insurance Contract Act).

The Court distinguished simple wilful non-disclosure – sufficient for the voidability of the contract – from the fraud type referred to by Articles 24(3) and 25(4) and (5), of the Insurance Contract Act, clarifying that only the latter, which requires proof of an intention to obtain an advantage, entitles the insurer to retain the premiums collected.

The ruling is relevant in clarifying that simple wilful non-disclosure, sufficient to ground annulment of the contract, is not on its own enough for an insurer to retain the premiums collected: to do so, the insurer must plead and prove wilful non-disclosure qualified by fraud.

## A ignorância da lei não aproveita a ninguém. Mas da saúde, sim

**O Tribunal da Relação de Lisboa confirma que a segurada não omitiu dolosamente informação de saúde ao subscrever seguro de vida associado a crédito, por não lhe ter sido diagnosticada patologia neurológica à data do contrato, e afasta a exclusão por patologia pré-existente**

*Tribunal da Relação de Lisboa, Acórdão de 25 de junho de 2026, Processo n.º 11819/25.9T8LSB.L1*

Em causa estava a recusa de uma seguradora em pagar o capital seguro ao abrigo de um seguro de vida associado a crédito à habitação, com cobertura de invalidez total e permanente, invocando a anulabilidade do contrato por omissão de informação relevante sobre o estado de saúde da segurada e a exclusão da cobertura por patologia pré-existente.

O TRL confirmou a procedência parcial da providência cautelar, concluindo que a segurada não omitiu dolosamente informação de saúde relevante, uma vez que à data da celebração do contrato não lhe havia sido diagnosticada qualquer patologia neurológica e os sintomas anteriores, por si só, não eram enquadráveis pelo cidadão médio nas categorias do questionário médico. Afastou igualmente a exclusão por patologia pré-existente, por não estar demonstrada qualquer invalidez parcial prévia à vigência da apólice.

A decisão é relevante por reafirmar que o dever de declaração inicial do risco (art. 24.º da LCS) não impõe à segurada a comunicação de sintomas não enquadrados num diagnóstico concreto, e que a exclusão por patologia pré-existente exige prova de que a doença estava efetivamente diagnosticada ou era conhecida à data de início do contrato.

## Ignorance of the law is no excuse. But ignorance of one's health is

The Lisbon Court of Appeal confirms that the insured did not wilfully omit health information when taking out credit-linked life insurance, as no neurological condition had been diagnosed at the date of the contract, and rejects the exclusion for pre-existing conditions

*Lisbon Court of Appeal, Judgment of 25 June 2026, Case No. 11819/25.9T8LSB.L1*

At issue was the insurer's refusal to pay the insured capital under a credit-linked life insurance policy with cover for total and permanent disability, invoking the voidability of the contract for omission of material health information and the exclusion of cover for pre-existing conditions.

The Court confirmed the partial success of the interim injunction, concluding that the insured had not wilfully omitted material health information, as no neurological condition had been diagnosed at the date the contract was entered into and the prior symptoms alone could not reasonably be categorised by an average person under the headings of the medical questionnaire. The Court also rejected the exclusion for pre-existing conditions, as no partial disability prior to the commencement of the policy had been established.

The ruling is relevant in reaffirming that the duty of initial risk disclosure (Article 24 of the Insurance Contract Act) does not require the insured to report symptoms not covered by a specific diagnosis, and that the exclusion for pre-existing conditions requires proof that the illness was effectively diagnosed or known at the inception date of the contract.

## Não se atira pérolas a porcos

**O Tribunal da Relação de Lisboa mantém a validade de contrato de seguro de vida, afastando a anulabilidade por dolo na declaração do risco e concluindo pela falta de prova da essencialidade da omissão negligente para efeitos do artigo 26.º da LCS**

*Tribunal da Relação de Lisboa, Acórdão de 9 de julho de 2026, Processo n.º 31219/24.8T8LSB.L1-2*

Em causa estava a anulação de um contrato de seguro de vida associado a crédito à habitação, invocada pela seguradora com fundamento na omissão, pelo segurado, de patologia diabética com retinopatia na declaração inicial do risco (art. 24.º/1 da LCS), tendo o segurado respondido negativa-

## Do not cast pearls before swine

The Lisbon Court of Appeal upholds the validity of a life insurance contract, rejecting voidability for wilful non-disclosure of risk and finding a lack of proof of the materiality of the negligent omission for the purposes of Article 26 of the Insurance Contract Act

*Lisbon Court of Appeal, Judgment of 9 July 2026, Case No. 31219/24.8T8LSB.L1-2*

At issue was the annulment of a credit-linked life insurance contract, sought by the insurer on the grounds that the insured had omitted a diabetic condition with retinopathy in the initial risk disclosure (Article 24(1) of the Insurance Contract Act), having answered negatively to



mente a perguntas do questionário clínico realizado por tele-entrevista.

O TRL confirmou a validade do contrato, concluindo que não se verificou o dolo exigido pelo art. 25.º/1 da LCS – apesar de o segurado conhecer a diabetes, não ficou provado que tivesse compreendido o questionário clínico (realizado por via telefónica com termos técnicos) nem que tivesse omitido conscientemente as patologias. Quanto à negligência (art. 26.º da LCS), o Tribunal reconheceu o incumprimento negligente do dever de declaração, mas a seguradora não logrou provar a essencialidade da omissão, isto é, que não teria celebrado o contrato se conhecesse o historial clínico.

A decisão é relevante por reafirmar que a anulabilidade por dolo (art. 25.º da LCS) exige três requisitos cumulativos – dolo, nexo causal e essencialidade do erro – e que a omissão negligente (art. 26.º da LCS) só produz efeitos se a seguradora provar que não teria contratado, recaindo sobre esta o ónus da prova.

## A verdade vem sempre ao de cima

**O Tribunal da Relação do Porto confirma a validade da recusa de cobertura de um seguro de vida associado a crédito, por incumprimento doloso do dever de declaração inicial do risco relativo ao estado de saúde do tomador**

*Tribunal da Relação do Porto, Acórdão de 1 de julho de 2026, Processo n.º 14/21.7T8BAO.P1*

Em causa estava a recusa de cobertura de um seguro de vida associado a crédito à habitação, por a segurada ter respondido negativamente, no questionário clínico, a perguntas específicas sobre diabetes, hipertensão arterial e toma de medicação, quando padecia dessas patologias e era acompanhada em consultas desde pelo menos 2014.

O TRP confirmou a anulabilidade do contrato por incumprimento doloso do dever de declaração inicial do risco (arts. 24.º e 25.º da LCS), esclarecendo que, em caso de dolo, não é exigível nexo de causalidade entre a informação omitida

questions in the clinical questionnaire conducted by telephone interview.

The Court upheld the validity of the contract, finding that the wilful non-disclosure required by Article 25(1) of the Insurance Contract Act had not been established – although the insured was aware of the diabetes, it was not proven that he had understood the clinical questionnaire (conducted by telephone using technical terms) or that he had consciously omitted the conditions. As to negligence (Article 26 of the Insurance Contract Act), the Court acknowledged the negligent breach of the duty of disclosure, but the insurer failed to prove the materiality of the omission, i.e. that it would not have entered into the contract had it known the medical history.

The ruling is relevant in reaffirming that voidability for wilful non-disclosure (Article 25 of the Insurance Contract Act) requires three cumulative requirements – wilful conduct, causal link and materiality of the error – and that negligent omission (Article 26 of the Insurance Contract Act) only produces effects if the insurer proves that it would not have contracted, the burden of proof falling on the insurer.

## The truth always comes out

The Porto Court of Appeal confirms the validity of the refusal of cover under a credit-linked life insurance policy for wilful breach of the duty of initial risk disclosure regarding the policyholder's health

*Porto Court of Appeal, Judgment of 1 July 2026, Case No. 14/21.7T8BAO.P1*

At issue was the refusal of cover under a credit-linked life insurance policy, on the basis that the insured had answered negatively, in the clinical questionnaire, to specific questions about diabetes, arterial hypertension and medication, despite suffering from those conditions and being under medical follow-up since at least 2014.

The Court confirmed the voidability of the contract for wilful breach of the duty of initial risk disclosure (Articles 24 and 25 of the Insurance Contract Act), clarifying that, in cases of wilful non-disclosure, no causal link between the omitted information

e o sinistro, bastando que a omissão tenha influenciado a decisão de contratar da seguradora.

A decisão é relevante por confirmar que a omissão deliberada de patologias diagnosticadas e medicadas, ainda que o segurado não se tenha apercebido da respetiva gravidade, configura incumprimento doloso do dever de declaração do risco e legitima a anulabilidade da adesão ao contrato, afastando, no caso, a pretensão de pagamento do capital seguro.

## Ninguém é bom juiz em causa própria

**O Tribunal da Relação de Évora anula a sentença que julgou improcedente pedido de pagamento de capital seguro por invalidez, determinando a realização de segunda perícia médica colegial e declarando nula, por abusiva, a cláusula da apólice que faz depender o reconhecimento da invalidez de confirmação por médico nomeado pela seguradora**

*Tribunal da Relação de Évora, Acórdão de 2 de julho de 2026, Processo n.º 81/23.9T8EVR.E1*

Em causa estava a validade de uma cláusula das condições gerais de uma apólice de seguro de vida grupo com cobertura de invalidez total e definitiva, que exigia que o grau de incapacidade geral do segurado, determinado com base na Tabela Nacional de Incapacidades, fosse "confirmado pelo médico nomeado" pela seguradora como requisito para o acionamento da cobertura.

O TRE declarou oficiosamente a nulidade desse segmento da cláusula, por ofensa aos princípios da boa-fé e do equilíbrio contratual consagrados nos artigos 15.º e 16.º do Regime das Cláusulas Contratuais Gerais. Considerou que a exigência confere à seguradora o poder unilateral de decidir se paga ou não o capital seguro, frustrando a utilidade e finalidade do contrato de seguro de vida/invalidez, cuja razão de ser é obrigar a seguradora a pagar quando o segurado fica impossibilitado de o fazer por si. Reafirmou ainda que a nulidade de cláusulas contratuais gerais é de conhecimento oficioso e pode ser suscitada apenas em sede de recurso, desde que cumprido o princípio do contraditório e sem necessidade de apreciação de matéria de facto nova.

A decisão é particularmente relevante para as seguradoras que utilizam cláusulas de confirmação médica unilateral em apólices de seguro de vida/invalidez, alertando para o risco de nulidade dessas cláusulas por desequilíbrio contratual.

and the insured event is required, it being sufficient that the omission influenced the insurer's decision to enter into the contract.

The ruling is relevant in confirming that the deliberate omission of diagnosed and medicated conditions, even where the insured was not aware of their severity, constitutes wilful breach of the duty of risk disclosure and legitimizes the annulment of the contract adherence, putting aside the payment request.

## No one is a good judge in their own cause

The Évora Court of Appeal sets aside the judgment dismissing a claim for payment of disability insurance capital, ordering a second expert medical examination and declaring void, as unfair, the policy clause making recognition of disability conditional on confirmation by a doctor appointed by the insurer

*Évora Court of Appeal, Judgment of 2 July 2026, Case No. 81/23.9T8EVR.E1*

At issue was the validity of a clause in the general conditions of a group life insurance policy with cover for total and permanent disability, requiring that the insured's degree of general incapacity, determined on the basis of the National Disability Table, be "confirmed by the doctor appointed" by the insurer as a condition for triggering the cover.

The Court, of its own motion, declared that part of the clause void for breach of the principles of good faith and contractual balance enshrined in Articles 15 and 16 of the General Terms and Conditions Regime. It held that the requirement gives the insurer the unilateral power to decide whether or not to pay the insured capital, frustrating the purpose of the life/disability insurance contract, the rationale of which is to require the insurer to pay when the insured is unable to do so. The Court further reaffirmed that the nullity of unfair contract terms may be raised of the court's own motion and may be invoked for the first time on appeal, provided the principle of adversarial proceedings is observed and no new findings of fact are required.

The ruling is particularly relevant for insurers using unilateral medical confirmation clauses in life/disability insurance policies, highlighting the risk of such clauses being declared null for contractual imbalance.

### ▸ Dai a César o que é de César

**O Supremo Tribunal de Justiça confirma que, verificado o sinistro coberto por seguro de vida associado a mútuo, o capital é devido desde a data da ocorrência, devendo ser restituídas ao segurado, por enriquecimento sem causa, as prestações do empréstimo pagas após essa data**

*Supremo Tribunal de Justiça, Acórdão de 18 de junho de 2026, Processo n.º 6380/22.0T8GMR.G2.S1*

Em causa estava a determinação do momento relevante para o cálculo do capital seguro devido pela seguradora ao banco beneficiário, no âmbito de um seguro de vida grupo contributivo associado a um contrato de mútuo, verificado o sinistro de invalidez absoluta e definitiva do segurado.

O STJ confirmou que, verificado o risco coberto pela apólice, o montante a pagar pela seguradora ao banco é o capital em dívida reportado à data da ocorrência do sinistro, e não a uma data posterior. As prestações do empréstimo pagas pelos segurados após essa data são juridicamente inoperativas para extinguir a obrigação da seguradora, devendo ser restituídas aos mutuários ao abrigo do instituto do enriquecimento sem causa (artigo 476.º, n.º 1, do Código Civil).

A decisão reafirma que a obrigação da seguradora se constitui na data do sinistro e que o pagamento continuado das prestações do mútuo pelos segurados não desonera a seguradora, com relevância direta para a articulação entre seguradoras e instituições de crédito na gestão de sinistros de invalidez cobertos por seguros de vida associados a crédito.

### ▸ Render unto Caesar what is Caesar's

The Supreme Court of Justice confirms that, once the insured event covered by life insurance linked to a loan has occurred, the capital is due from the date of the event, and loan instalments paid by the insured after that date must be returned under unjust enrichment

*Supreme Court of Justice, Judgment of 18 June 2026, Case No. 6380/22.0T8GMR.G2.S1*

At issue was the determination of the relevant date for calculating the insured capital owed by the insurer to the beneficiary bank under a contributory group life insurance policy linked to a loan agreement, following the occurrence of the insured's total and permanent disability.

The STJ confirmed that, once the risk covered by the policy has materialised, the amount payable by the insurer to the bank is the outstanding capital as at the date of the insured event, and not at a later date. Loan instalments paid by the insured after that date are legally ineffective to discharge the insurer's obligation and must be returned to the borrowers under the rules on unjust enrichment (Article 476(1) of the Civil Code).

The ruling reaffirms that the insurer's obligation arises on the date of the insured event and that the continued payment of loan instalments by the insured does not relieve the insurer, with direct relevance to the coordination between insurers and credit institutions in managing disability claims covered by credit-linked life insurance.

## Seguro de responsabilidade civil

### ▸ Não se bate em cachorro morto

**O Supremo Tribunal de Justiça declara nula, por contrariedade aos bons costumes, a transação extrajudicial e remissão abdicativa celebradas entre o lesado e a seguradora do responsável por acidente de viação, por aproveitamento da situação de vulnerabilidade daquele**

*Supremo Tribunal de Justiça, Acórdão de 9 de julho de 2026, Processo n.º 613/22.0T8AGH.L1.S2*

Em causa estava a validade de um acordo indemnizatório extrajudicial – composto por uma transação preventiva (artigo 1248.º do Código Civil) e por uma remissão abdicativa (artigo 863.º do mesmo Código) – celebrado entre a seguradora do responsável por um acidente de viação e o lesado, pelo qual este aceitou uma indemnização de € 40.478,46 e

## Civil liability Insurance

### ▸ Don't kick a man when he's down

The Supreme Court of Justice declares null, on grounds of public morals (*bons costumes*), the extrajudicial settlement and waiver entered into between the injured party and the insurer of the tortfeasor, for taking advantage of the injured party's vulnerability

*Supreme Court of Justice, Judgment of 9 July 2026, Case No. 613/22.0T8AGH.L1.S2*

At issue was the validity of an extrajudicial settlement agreement – comprising a preventive transaction (Article 1248 of the Civil Code) and a waiver (Article 863 of the Civil Code) – entered into between the insurer of the tortfeasor and the injured party, whereby the latter accepted compensation of €40,478.46 and waived any fu-

renunciou a quaisquer pretensões futuras, antes da consolidação médico-legal das suas lesões.

O STJ concluiu que o regime do Código Civil admite, em casos especialmente graves, o concurso entre o regime da usura (artigo 282.º), gerador de anulabilidade, e a contrariedade aos bons costumes (artigo 280.º, n.º 2), geradora de nulidade. No caso concreto, entendeu que a seguradora se aproveitou, em seu benefício, da situação de particular vulnerabilidade do lesado – um jovem com reduzida literacia, afetado por lesões neurológicas e em circunstâncias cognitivas e emocionais especialmente frágeis – para obter a subscrição de um acordo cujo valor indemnizatório era manifestamente desproporcional face à real extensão dos danos, declarando o acordo nulo por contrariedade aos bons costumes.

A decisão foi concedida em parte e alerta as seguradoras para o risco de invalidação de acordos extrajudiciais celebrados com lesados em contexto de vulnerabilidade acentuada, reafirmando que a desproporcionalidade da indemnização acordada, associada ao aproveitamento dessa fragilidade, pode determinar a nulidade do acordo independentemente da verificação dos pressupostos da usura.

## ▸ Mais vale prevenir do que remediar

**O Tribunal da Relação de Lisboa admite a intervenção principal provocada de seguradoras de responsabilidade civil facultativa, revogando o indeferimento da primeira instância, por considerar que a transferência do risco confere à seguradora interesse direto no desfecho da causa**

*Tribunal da Relação de Lisboa, Acórdão de 18 de junho de 2026, Processo n.º 10461/21.9T8LSB-A.L1-8*

Em causa estava a admissibilidade da intervenção principal provocada de duas seguradoras de responsabilidade civil facultativa – uma cobrindo o empreiteiro contratado pelo réu, e outra correspondente ao seguro do edifício – num litígio relativo a infiltrações, tendo o tribunal de primeira instância indeferido o chamamento por se tratar de seguros facultativos sem previsão de ação direta.

ture claims, before the medico-legal consolidation of his injuries.

The STJ held that the Civil Code regime permits, in particularly serious cases, the concurrent application of the rules on usury (Article 282), giving rise to voidability, and the rules on public morals (Article 280(2)), giving rise to nullity. In the case at hand, the Court found that the insurer had taken advantage of the injured party's particular vulnerability – a young man with limited literacy, affected by neurological injuries and in especially fragile cognitive and emotional circumstances – to obtain his signature on a settlement whose compensation was manifestly disproportionate to the actual extent of the damage, and declared the agreement null on grounds of public morals.

The ruling was partly favourable and alerts insurers to the risk of invalidation of extrajudicial settlements entered into with injured parties in a context of heightened vulnerability, reaffirming that the disproportionality of the agreed compensation, combined with the exploitation of that vulnerability, may render the agreement null regardless of whether the requirements for usury are met.

## ▸ Better safe than sorry

The Lisbon Court of Appeal allows the third-party joinder as a principal party of optional liability insurers, overturning the first-instance refusal, on the basis that the transfer of risk gives the insurer a direct interest in the outcome of the proceedings

*Lisbon Court of Appeal, Judgment of 18 June 2026, Case No. 10461/21.9T8LSB-A.L1-8*

At issue was the admissibility of the third-party joinder as a principal party of two optional third-party liability insurers – one covering the contractor engaged by the defendant, and the other corresponding to the building insurance – in a dispute relating to water infiltration, the first-instance court having refused the joinder on the grounds that optional insurance does not provide for a direct action.



O TRL revogou parcialmente a decisão, reconhecendo a existência de jurisprudência divergente sobre a matéria e admitindo a intervenção principal das seguradoras com fundamento na transferência do risco para estas, que lhes confere interesse direto e relevante no desfecho da causa, não se limitando a um eventual direito de regresso futuro.

A decisão é relevante por acolher a tese segundo a qual, nos seguros facultativos de responsabilidade civil, a transferência válida do risco pode legitimar a intervenção principal provocada da seguradora, afastando-se da orientação que restringe a sua participação à intervenção acessória (art. 321.º do CPC).

## Seguros de danos

### ▸ Quem pouco semeia, pouco colhe

**O Tribunal da Relação de Guimarães reafirma que, em caso de subseguro, a responsabilidade da seguradora corresponde à proporção entre o capital seguro e o valor real do bem, cabendo à seguradora o ónus de prova dessa exceção perentória**

*Tribunal da Relação de Guimarães, Acórdão de 18 de junho de 2026, Processo n.º 6045/24.8T8BRG.G1*

Em causa estava o regime do subseguro no âmbito de um contrato de seguro Multirriscos Empresas acionado na sequência de um incêndio, discutindo-se a medida da responsabilidade da seguradora quando o capital seguro é inferior ao valor real dos bens seguros.

O TRG sistematizou o regime do subseguro e do sobresseguro nos seguros de danos, esclarecendo que ambas as situações constituem exceções perentórias cujo ónus de alegação e prova recai sobre a seguradora. Verificado o subseguro, a responsabilidade da seguradora corresponde à proporção entre o capital seguro e o valor real do bem, aplicada ao valor do dano (artigo 134.º do Decreto-Lei n.º 72/2008), sendo que no caso concreto, sendo a perda total e não estando demonstrado o subseguro, foi considerado devido, quanto ao item em causa, o capital seguro. No sobresseguro, a seguradora responde apenas até ao valor do interesse seguro (artigos 128.º e 131.º do mesmo diploma). O Tribunal rejeitou ainda a invocação do sobresseguro em sede de recurso como questão nova, por não ter sido submetida à primeira instância.

A decisão tem relevância prática direta para a instrução e fundamentação probatória das seguradoras nestes litígios, recaindo sobre estas o ónus de demonstrar a desproporção entre o capital seguro e o valor real do interesse seguro.

The Court partially overturned the decision, acknowledging the existence of divergent case law on the matter and allowing the joinder of the insurers on the basis that the transfer of risk to them confers a direct and relevant interest in the outcome of the proceedings, not limited to a possible future right of recourse.

The ruling is relevant in adopting the view that, in optional third-party liability insurance, a valid transfer of risk may justify the insurer's joinder as a principal party, departing from the approach that restricts the insurer's participation to ancillary intervention (Article 321 of the Code of Civil Procedure).

## Damage insurance

### ▸ You reap what you sow

The Guimarães Court of Appeal reaffirms that, in cases of underinsurance, the insurer's liability corresponds to the proportion between the sum insured and the actual value of the property, with the burden of proof of this peremptory defence falling on the insurer

*Guimarães Court of Appeal, Judgment of 18 June 2026, Case No. 6045/24.8T8BRG.G1*

At issue was the underinsurance regime under a Multi-Risk Business insurance contract triggered following a fire, the dispute concerning the extent of the insurer's liability when the sum insured is lower than the actual value of the insured property.

The Court systematised the underinsurance and overinsurance regimes in indemnity insurance, clarifying that both constitute peremptory defences, the burden of pleading and proving which rests with the insurer. Where underinsurance is established, the insurer's liability corresponds to the proportion between the sum insured and the actual value of the property, applied to the amount of the loss (Article 134 of Decree-Law No. 72/2008). In the specific case at hand, however, since it was a total loss and underinsurance had not been established, the insured capital was held to be due. In cases of overinsurance, the insurer is only liable up to the value of the insurable interest (Articles 128 and 131 of the same statute). The Court further rejected the invocation of overinsurance on appeal as a new issue, as it had not been submitted to the court of first instance.

The ruling has direct practical relevance for the evidentiary preparation and substantiation by insurers in such disputes, as the burden of demonstrating the disproportion between the sum insured and the actual value of the insurable interest falls on them.

## Quem anda à chuva, molha-se

**O Tribunal da Relação de Lisboa revoga parcialmente decisão arbitral que afastara a regra proporcional do subseguro com fundamento em violação do princípio da boa-fé pela seguradora, determinando a devolução do processo ao tribunal arbitral para nova decisão**

*Tribunal da Relação de Lisboa, Acórdão de 9 de julho de 2026, Processo n.º 1813/26.9YRLSB-8*

Em causa estava a possibilidade de afastar a regra proporcional do subseguro (artigo 134.º do RJCS) com fundamento no princípio da boa-fé, no âmbito de um seguro Multirriscos Empresa com cobertura facultativa de tempestades em que o capital seguro correspondia a cerca de 58% do valor de reconstrução do imóvel.

O TRL revogou a decisão arbitral, esclarecendo que, nos seguros facultativos, cabe ao tomador – e não à seguradora – determinar o capital seguro (artigo 49.º, n.º 2, do RJCS), ao contrário do que sucede no seguro obrigatório de incêndio e no seguro de riscos relativos à habitação, onde o incumprimento dos deveres de informação da seguradora impede a aplicação da regra proporcional (artigo 135.º, n.ºs 2 e 3, do RJCS). Concluiu que o afastamento do artigo 134.º por invocação da boa-fé exige a prova de factos concretos sobre o comportamento da seguradora na fase pré-contratual, não bastando presunções genéricas, e aplicou a regra proporcional, reduzindo a indemnização de € 49.000 para € 27.890.

A decisão é relevante para a gestão do risco de subseguro pelas seguradoras em coberturas facultativas, confirmando que a regra proporcional opera independentemente dos deveres gerais de informação, sem prejuízo de eventual responsabilidade ao abrigo do artigo 23.º do RJCS.

## Whoever walks in the rain gets wet

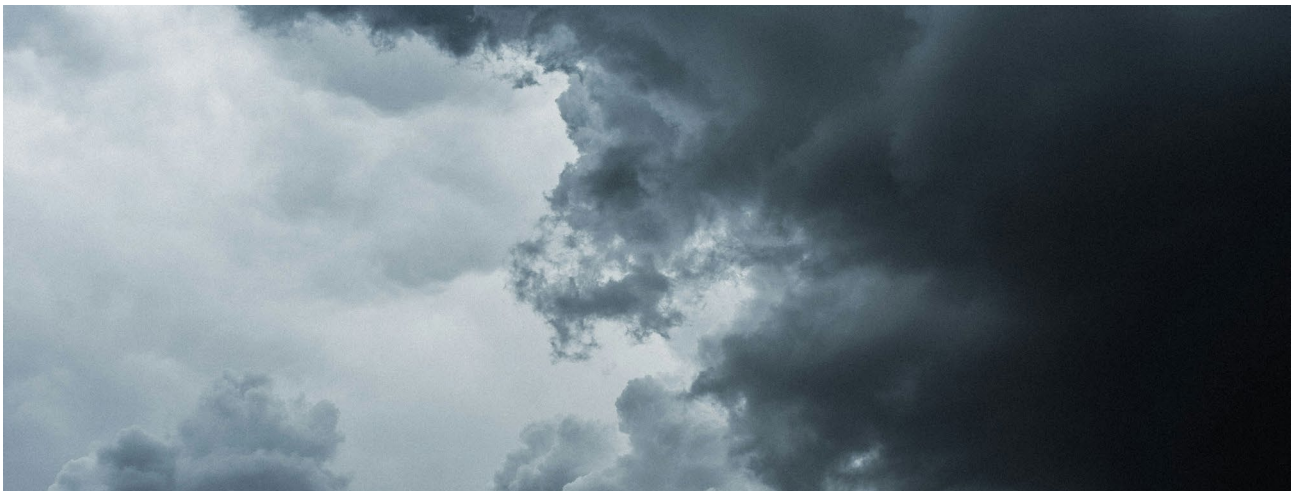
The Lisbon Court of Appeal partly overturns an arbitral award that had disapplied the proportional rule on underinsurance on the basis of a breach of the good faith principle by the insurer, remitting the case to the arbitral tribunal for a new decision

*Lisbon Court of Appeal, Judgment of 9 July 2026, Case No. 1813/26.9YRLSB-8*

At issue was the possibility of disapplying the proportional rule on underinsurance (Article 134 of the Insurance Contract Act) on the basis of the good faith principle, in a Multi-Risk Business insurance policy with optional storm cover where the sum insured corresponded to approximately 58% of the rebuilding value of the property.

The Court overturned the arbitral award, clarifying that, in optional insurance, it falls to the policyholder – and not the insurer – to determine the sum insured (Article 49(2) of the Insurance Contract Act), unlike compulsory fire insurance and household-related risk insurance, where the insurer's failure to comply with its duty to inform prevents the application of the proportional rule (Article 135(2) and (3) of the Insurance Contract Act). The Court held that disapplying Article 134 on the basis of good faith requires evidence of specific facts regarding the insurer's conduct at the pre-contractual stage, generic presumptions being insufficient, and applied the proportional rule, reducing the indemnity from €49,000 to €27,890.

The ruling is relevant for the management of underinsurance risk by insurers in optional coverages, confirming that the proportional rule applies regardless of general information duties, without prejudice to potential liability under Article 23 of the Insurance Contract Act.



## Quem vende o campo, perde a seara

**O Tribunal da Relação de Lisboa confirma o indeferimento de providência cautelar por não se verificar aparência de direito indemnizatório quando o contrato de seguro de danos se extinguiu por caducidade superveniente, não bastando a ausência de estorno de prémio para manter a cobertura**

*Tribunal da Relação de Lisboa, Acórdão de 25 de junho de 2026, Processo n.º 23741/25.5T8LSB.L1-2*

Em causa estava a questão de saber se a caducidade superveniente de um contrato de seguro de danos, por perda do interesse segurável na sequência da alienação da totalidade das participações sociais da sociedade proprietária do imóvel seguro, opera independentemente do estorno do prémio, e se a ausência desse estorno pode sustentar a aparência de um direito indemnizatório em sede cautelar.

O TRL confirmou a improcedência da providência cautelar, entendendo que, tratando-se de seguro de danos celebrado por conta própria (artigo 47.º do RJCS), a alienação da totalidade das participações da sociedade proprietária do imóvel seguro extinguiu o interesse da tomadora na conservação do bem, determinando a caducidade do contrato por perda superveniente do interesse segurável (artigo 110.º, n.º 1, do RJCS). O Tribunal esclareceu que a falta de estorno do prémio, embora possa gerar um direito de crédito na esfera do tomador (artigo 107.º do RJCS), não determina, por si só, a manutenção do contrato nem cria expectativas legítimas de acionamento da cobertura, quando a própria seguradora só tomou conhecimento do facto extintivo no decurso da averiguação do sinistro.

A decisão é relevante para as seguradoras, confirmando que a caducidade do contrato de seguro de danos por perda superveniente do interesse segurável opera automaticamente, sem necessidade de declaração das partes, e que a falta de estorno do prémio não obsta à invocação da caducidade, designadamente quando a seguradora desconhecia o facto que a determinou.

## Whoever sells the field loses the harvest

The Lisbon Court of Appeal upholds the dismissal of an interim injunction for lack of an arguable right to indemnification where the indemnity insurance contract had lapsed due to supervening loss of insurable interest, the failure to refund the premium being insufficient to maintain cover

*Lisbon Court of Appeal, Judgment of 25 June 2026, Case No. 23741/25.5T8LSB.L1-2*

At issue was whether the supervening lapse of an indemnity insurance contract, due to loss of insurable interest following the disposal of all shares in the company owning the insured property, operates regardless of the refund of the premium, and whether the absence of such refund can support an arguable right to indemnification in interim proceedings.

The Court upheld the dismissal of the interim injunction, holding that, in an indemnity insurance contract taken out on the policyholder's own account (Article 47 of the Insurance Contract Act), the disposal of all shares in the company owning the insured property extinguished the policyholder's interest in preserving the property, triggering the lapse of the contract due to supervening loss of insurable interest (Article 110(1) of the Insurance Contract Act). The Court clarified that the failure to refund the premium, although it may give rise to a credit right in favour of the policyholder (Article 107 of the Insurance Contract Act), does not, of itself, maintain the contract in force or create legitimate expectations of triggering cover, particularly where the insurer only became aware of the extinguishing event during the investigation of the claim.

The ruling is relevant for insurers, confirming that the lapse of an indemnity insurance contract due to supervening loss of insurable interest operates automatically, without requiring any declaration by the parties, and that the failure to refund the premium does not preclude reliance on the lapse, particularly where the insurer was unaware of the event giving rise to it.

# Tribuna Pérez-Llorca
Pérez-Llorca Tribune

## O Direito ao Esquecimento no Setor Segurador: de 2021 a 2026

## The Right to be forgotten in the Insurance Sector: from 2021 to 2026



**Inês Palma Ramalho**
Sócia Financial Services
Partner, Financial Services

### Enquadramento

Há temas de regulação financeira que têm um impacto direto e sensível na vida das pessoas e o direito ao esquecimento no setor segurador é um deles. Em termos simples, trata-se do direito de uma pessoa que superou ou mitigou uma doença oncológica, ou outra situação de risco agravado de saúde ou de deficiência, deixar de ter de a revelar quando contrata um seguro ou um crédito associado, e de deixar de sofrer, por causa dela, um agravamento de prémio ou uma exclusão de cobertura.

Durante décadas, uma pessoa que tivesse superado um cancro, por exemplo, continuava a ser tratada pelo risco em função de um risco que não representaria. Um tomador nestas circunstâncias podia ver o seu pedido de seguro de vida recusado, ou sujeito a um prémio agravado, ou a exclusões de cobertura relacionadas com uma doença que já não existia à data da subscrição do seguro. O direito ao esquecimento veio quebrar esta lógica: decorridos determinados prazos desde o fim do tratamento, a pessoa deixa de ter de prestar essa informação de saúde e a seguradora deixa de a poder usar.

Este tema tem particular relevância no setor segurador porque atravessa, em simultâneo, a proteção do consumidor, a não discriminação e a técnica atuarial de avaliação do risco. E tem sido objeto de uma evolução legislativa intensa nos últimos cinco anos, que culminou em dois diplomas aprovados em 2026 que densificam e alargam significativamente o regime original de 2021.

### Background

There are areas of financial regulation that have a direct and significant impact on people's lives, and the right to be forgotten in the insurance sector is one of them. Put simply, it is the right of a person who has overcome or managed a cancer diagnosis, or another condition involving an increased health risk or disability, to no longer be required to disclose this when taking out insurance or an associated loan, and to no longer face, as a result, a higher premium or an exclusion from cover.

For decades, a person who had overcome cancer, for example, continued to be treated as a high-risk case on the basis of a risk they no longer posed. A policyholder in such circumstances might have their application for life insurance refused, or be subject to a higher premium, or face exclusions from cover relating to an illness that no longer existed at the time the policy was taken out. The right to be forgotten has overturned this logic: once certain time limits have elapsed since the end of treatment, the individual is no longer required to provide that health information and the insurer is no longer permitted to use it.

This issue is particularly relevant in the insurance sector because it simultaneously touches on consumer protection, non-discrimination and the actuarial technique of risk assessment. It has been the subject of intense legislative development over the last five years, culminating in two pieces of legislation passed in 2026 which significantly strengthen and expand the original 2021 framework.

## A origem: a Lei n.º 75/2021, de 18 de novembro

O direito ao esquecimento foi consagrado em Portugal pela Lei n.º 75/2021, de 18 de novembro, que reforçou o acesso ao crédito e a contratos de seguro por pessoas que tenham superado ou mitigado situações de risco agravado de saúde ou de deficiência, proibindo práticas discriminatórias nesse âmbito.

O regime focava-se em três ângulos. Em primeiro lugar, consagrando um pilar de não discriminação: as pessoas nesta situação não podem ser sujeitas a um aumento de prémio de seguro ou a exclusão de garantias, nem pode ser recolhida ou tratada informação de saúde relativa à doença ou deficiência superada em contexto pré-contratual. Em segundo lugar e no que diz respeito a prazos, definindo, consoante os casos, um período de 10 anos desde o fim do protocolo terapêutico para quem superou a situação de risco, de 5 anos quando a patologia foi superada antes dos 21 anos de idade, e de 2 anos de tratamento continuado e eficaz para quem mitigou a situação. Decorridos estes prazos, a seguradora deixaria, sequer, de poder sequer questionar o tomador sobre estes temas. Em terceiro lugar, prevendo um pilar institucional, aditando ao Regime Jurídico do Contrato de Seguro um artigo 15.º-A, que obriga o Estado a celebrar um acordo nacional com as associações representativas das instituições de crédito, sociedades financeiras, sociedades mútuas, instituições de previdência e empresas de seguros e resseguros, bem como com organizações que representam pessoas com risco agravado de saúde e pessoas com deficiência. Este acordo deveria, entre outras funções, fixar uma grelha de referência com prazos mais favoráveis ao consumidor para cada patologia específica, atualizável de dois em dois anos.

A lei definiu ainda, de forma relevante para a prática seguradora, que as técnicas de avaliação, seleção e aceitação de riscos continuam permitidas fora do âmbito do direito ao esquecimento, mas devem ser objetivamente fundamentadas em dados estatísticos e atuariais rigorosos e estão sujeitas a supervisão da Autoridade de Supervisão de Seguros e Fundos de Pensões (“**ASF**”). Nunca foi, portanto, um regime de proibição genérica de segmentação de risco por razões de saúde: é um regime que delimita, com prazos e garantias específicas, até onde essa segmentação pode ir.

A grelha de referência nunca chegou a ser acordada dentro do prazo previsto na lei, o que viria a ser um dos fatores que moldaram a intervenção legislativa de 2026.

## 2026: dois diplomas que densificam e alargam o regime

Em 2026, o legislador interveio por duas vias complementares: através de regulamentação governamental do regime

## The origin: Law No. 75/2021 of 18 November

The right to be forgotten was enshrined in Portugal by Law No. 75/2021 of 18 November, which strengthened access to credit and insurance contracts for people who have overcome or mitigated situations of heightened health risk or disability, prohibiting discriminatory practices in this regard.

The framework focused on three aspects. Firstly, it established a principle of non-discrimination: people in this situation may not be subject to an increase in insurance premiums or the exclusion of cover, nor may health information relating to the illness or disability they have overcome be collected or processed in a pre-contractual context. Secondly, with regard to time limits, it defined, depending on the case, a period of 10 years from the end of the treatment protocol for those who had overcome the risk, five years where the condition had been overcome before the age of 21, and two years of continuous and effective treatment for those who had mitigated the situation. Once these time limits have elapsed, the insurer would no longer even be able to question the policyholder on these matters. Thirdly, it provided for an institutional framework by adding Article 15-A to the Legal Regime for Insurance Contracts, which obliges the State to enter into a national agreement with associations representing credit institutions, financial companies, mutual societies, provident institutions and insurance and reinsurance companies, as well as with organisations representing people with aggravated health risks and people with disabilities. This agreement should, amongst other functions, establish a reference grid with more consumer-friendly time limits for each specific medical condition, to be updated every two years.

The law also stipulated, in a manner relevant to insurance practice, that risk assessment, selection and underwriting techniques remain permitted outside the scope of the right to be forgotten, but must be objectively substantiated by rigorous statistical and actuarial data and are subject to supervision by the ASF. It was therefore never a regime of blanket prohibition on risk segmentation on health grounds: it is a regime that sets out, with specific timeframes and safeguards, the limits to which such segmentation may extend.

The reference grid was never agreed within the timeframe set out in the law, which would go on to be one of the factors that shaped the legislative intervention of 2026.

## 2026: two pieces of legislation that consolidate and extend the framework

In 2026, the legislature intervened in two complementary ways: through government regulations governing the exist-

já existente e através de uma nova alteração à própria Lei n.º 75/2021.

O Decreto-Lei n.º 79/2026, de 17 de março, surge precisamente para colmatar o incumprimento do prazo fixado para o acordo nacional entre o Estado e os setores envolvidos. Na falta desse acordo, o Governo assumiu diretamente a tarefa de regulamentar a matéria, com base nos trabalhos de um grupo multidisciplinar que incluiu as áreas das finanças, da saúde e da igualdade, bem como a ASF, o Banco de Portugal e a Direção-Geral da Saúde, e após ouvir entidades como a Associação Portuguesa de Seguradores, a DECO e associações de doentes.

Este decreto-lei trouxe três mudanças centrais para o setor segurador. Desde logo, alargou o âmbito subjetivo do regime: além das instituições de crédito, sociedades financeiras, sociedades mútuas, instituições de previdência e empresas de seguros, o direito ao esquecimento passou expressamente a aplicar-se às instituições de pagamento, às instituições de moeda eletrónica e aos distribuidores de seguros, por estes últimos interagirem diretamente com os consumidores na comercialização de seguros associados a crédito. Em contrapartida, as empresas de resseguros deixaram de estar abrangidas, por não terem relação direta com o consumidor final.

O diploma aprovou também uma primeira grelha de referência, mas limitada, nesta fase, às doenças oncológicas, por serem as que reúnem evidência científica consolidada e critérios clínicos objetivos que permitem fixar prazos uniformes. Para todas as restantes patologias, continuam a aplicar-se os prazos gerais de 10, 5 ou 2 anos previstos na lei de 2021. Esta grelha é atualizada de dois em dois anos, ouvidas a Direção-Geral da Saúde e a Ordem dos Médicos, e divulgada no sítio do SNS24.

Por fim, o decreto-lei densificou os deveres de informação e de reclamação: as seguradoras, os distribuidores de seguros e as demais entidades abrangidas passaram a ter de divulgar nos respetivos *website* informação clara sobre o direito ao esquecimento, e os consumidores passaram a dispor de um canal de reclamação direto junto da ASF, sem prejuízo dos mecanismos de resolução alternativa de litígios já existentes no setor segurador. O incumprimento destes deveres pelas seguradoras é sancionado ao abrigo do regime contraordenacional do Regime Jurídico de Acesso e Exercício da Atividade Seguradora e Resseguradora.

Poucas semanas depois, a Lei n.º 14/2026, de 27 de abril, reforçou ainda mais o regime, desta vez através de uma terceira alteração direta à Lei n.º 75/2021. Esta lei introduziu uma

ing framework and through a further amendment to Law No. 75/2021 itself.

Decree-Law No. 79/2026 of 17 March was introduced specifically to address the failure to meet the deadline set for a national agreement between the State and the sectors concerned. In the absence of such an agreement, the Government took on the task of regulating the matter directly, based on the work of a multidisciplinary group comprising representatives from the fields of finance, health and equality, as well as the ASF, the Bank of Portugal and the Directorate-General for Health, and after consulting bodies such as the Portuguese Insurers' Association, DECO and patients' associations.

The Decree-Law introduced three key changes for the insurance sector. Firstly, it broadened the scope of the scheme: in addition to credit institutions, financial companies, mutual societies, pension institutions and insurance companies, the right to be forgotten now expressly applies to payment institutions, electronic money institutions and insurance distributors, as the latter interact directly with consumers in the marketing of credit-related insurance. Conversely, reinsurance companies are no longer covered, as they have no direct relationship with the end consumer.

The legislation also approved an initial reference grid, though limited at this stage to oncological diseases, as these are the conditions for which there is established scientific evidence and objective clinical criteria that allow for the setting of uniform time limits. For all other conditions, the general time limits of 10, five or two years set out in the 2021 Law continue to apply. This schedule is updated every two years, following consultation with the Directorate-General for Health and the Portuguese Medical Association, and is published on the SNS24 website.

Finally, the Decree-Law has strengthened the obligations regarding information provision and complaints: insurers, insurance distributors and other entities covered by the legislation are now required to publish clear information on their respective websites regarding the right to be forgotten, and consumers now have a direct complaints channel with the ASF, without prejudice to the alternative dispute resolution mechanisms already in place in the insurance sector. Failure by insurers to comply with these obligations is penalised under the administrative offence regime of the Legal Framework for Access to and the Exercise of Insurance and Reinsurance Activities.

A few weeks later, Law No. 14/2026 of 27 April further strengthened the regime, this time through a third direct amendment to Law No. 75/2021. This Law introduced a significant change:

novidade significativa: passou a identificar expressamente, no corpo da própria lei, um conjunto de patologias que se consideram sempre abrangidas pelas definições de risco agravado de saúde superado ou mitigado e pelos respetivos prazos, a doença oncológica, a infeção por VIH, a diabetes e a hepatite C. Esta identificação direta na lei, e não apenas por via de regulamentação ou de grelha de referência, confere maior certeza e previsibilidade às pessoas nestas situações e às próprias seguradoras na aplicação do regime.

A Lei n.º 14/2026 alargou também o âmbito objetivo do direito ao esquecimento aos créditos para fins comerciais ou profissionais quando contratados por pessoas singulares, e respetivos seguros associados, e reforçou os deveres de esclarecimento e de informação ao consumidor, incluindo o desenvolvimento de campanhas de informação em articulação com estabelecimentos de saúde e organizações de base comunitária.

### O que isto significa, na prática, para quem opera no setor segurador

Para as seguradoras e os distribuidores de seguros, o quadro de 2026 implica uma revisão ativa de processos internos. Cabe-lhes reconfirmar que os questionários de saúde na subscrição de seguros de vida, de seguros associados a crédito e de outros produtos pessoais não captam, direta ou indiretamente, informação sobre patologias já cobertas pelos prazos legais ou pela grelha de referência das doenças oncológicas, e que essa verificação é feita também ao nível dos distribuidores de seguros, agora expressamente sujeitos ao regime.

É também necessário assegurar que a informação disponibilizada nos *websites* destas entidades sobre o direito ao esquecimento está atualizada e cumpre os novos deveres de clareza impostos pelo Decreto-Lei n.º 79/2026, que as equipas de *customer service* estão preparadas para esta nova realidade e que os circuitos internos de reclamações estão preparados para encaminhar adequadamente as reclamações que os consumidores podem agora apresentar diretamente à ASF.

Para as empresas de seguros com atividade internacional ou que operam em Portugal através de sucursal ou em regime de livre prestação de serviços, há ainda uma dimensão adicional a não ignorar: o direito ao esquecimento integra o núcleo de normas que a ASF tem identificado como condições fundadas em razões de interesse geral, pelo que a sua aplicabilidade não depende da sede da seguradora, mas do facto de o risco, o tomador ou o segurado se localizarem em Portugal.

it now expressly identifies, within the text of the Law itself, a set of conditions that are always deemed to fall within the definitions of 'aggravated health risk' – whether overcome or mitigated – and the respective time limits: cancer, HIV infection, diabetes and hepatitis C. This direct identification in the Law itself – rather than merely through regulations or a reference grid – provides greater certainty and predictability for individuals in these situations and for the insurers themselves when applying the scheme.

Law No. 14/2026 also extended the scope of the right to be forgotten to loans for commercial or professional purposes when taken out by natural persons, and the associated insurance policies, and strengthened the duties of clarification and information provision to consumers, including the development of information campaigns in conjunction with healthcare establishments and community-based organisations.

### What this means in practice for those operating in the insurance sector

For insurers and insurance distributors, the 2026 framework requires an active review of internal processes. It is their responsibility to reconfirm that health questionnaires used when taking out life insurance, credit-related insurance and other personal insurance products do not, directly or indirectly, collect information on medical conditions already covered by the statutory time limits or by the reference grid of oncological diseases, and that this verification is also carried out at the level of insurance distributors, who are now expressly subject to the regime.

It is also necessary to ensure that the information provided on these organisations' websites regarding the right to be forgotten is up to date and complies with the new clarity requirements imposed by Decree-Law No. 79/2026, that customer service teams are prepared for this new reality, and that internal complaints procedures are in place to handle appropriately any complaints that consumers may now submit directly to the ASF.

For insurance companies with international operations or those operating in Portugal through a branch or under the freedom to provide services, there is a further aspect that must not be overlooked: the right to be forgotten forms part of the core set of rules that the ASF has identified as conditions based on grounds of general interest; consequently, its applicability does not depend on the insurer's registered office, but on whether the risk, the policyholder or the insured person is located in Portugal.

## Conclusão

Em cinco anos, o direito ao esquecimento passou de um princípio geral consagrado em 2021 para um regime denso e operacional, com uma grelha de referência própria para as doenças oncológicas, um âmbito subjetivo alargado a novos intervenientes do setor financeiro e segurador, patologias identificadas diretamente na lei e mecanismos de reclamação reforçados.

Esta evolução confirma uma tendência que já vínhamos acompanhando noutras áreas da regulação seguradora: o regulador e o legislador português têm vindo a substituir princípios abertos por regras concretas, mensuráveis e sancionáveis. Para quem opera no setor, isso significa que a conformidade deixou de se bastar com uma leitura genérica da lei de 2021: exige acompanhar, com rigor técnico, as grelhas de referência, as listas de patologias e os deveres de informação que vão sendo publicados e atualizados.

## Conclusion

In five years, the right to be forgotten has evolved from a general principle enshrined in 2021 into a comprehensive and operational framework, featuring a dedicated reference grid for oncological conditions, a subjective scope extended to new players in the financial and insurance sectors, medical conditions identified directly in the law, and strengthened complaint mechanisms.

This development confirms a trend we have already been observing in other areas of insurance regulation: the Portuguese regulator and legislator have been replacing open-ended principles with concrete, measurable and enforceable rules. For those operating in the sector, this means that compliance is no longer achieved simply by a general reading of the 2021 Law: it requires monitoring, with technical rigour, the reference grids, lists of medical conditions and disclosure obligations as they are published and updated.

# Anexo I
Annex I

## Otra información de interés
Further information of interest

| FECHA<br>DATE | DEPARTAMENTO<br>DEPARTMENT | TÍTULO<br>TITLE | AUTORES<br>AUTHORS | PAÍS<br>COUNTRY |
|---|---|---|---|---|
| 03/07/2026<br>ESP | Litigio y Resolución de Controversias y Tributario<br>Litigation & Conflict Resolution and Tax | La Corte Constitucional avala con límites estrictos la emergencia por la ola invernal<br>The Constitutional Court has approved the state of emergency declared due to the winter storm, subject to strict conditions | Equipo de Litigio y Resolución de Controversias y Tributario<br>Litigation & Conflict Resolution and Tax team | Colombia<br>Colombia |
| 03/07/2026<br>ESP | Corporativo<br>Corporate | Nueva Circular Básica Jurídica de la Supersociedades: Guía con las principales novedades<br>New Basic Legal Circular from the Superintendency of Companies: A guide to the main changes | Equipo de Corporativo<br>Corporate team | Colombia<br>Colombia |
| 07/07/2026<br>ESP | Infraestructura<br>Infrastructure | ¡Cali le apuesta al alumbrado inteligente! EMCALI abre proceso para seleccionar Aliado Estratégico<br>Cali is investing in smart lighting! EMCALI launches a process to select a Strategic Partner | Equipo de Infraestructura<br>Infrastructure team | Colombia<br>Colombia |
| 10/07/2026<br>ESP | Innovación, Infraestructura, Energía, Cumplimiento Normativo y Tendencias de Negocio<br>Innovation, Infrastructure, Energy, Regulatory Compliance and Business Trends | Nota Legal Medellín – Julio 2026<br>Medellín Legal Briefing – July 2026 | Adriana Moreno<br>Valeria Aristizábal<br>Manuela Zúñiga<br>Nathaly Bibiana Acero Giraldo<br>Sara Ferrer Buriticá | Colombia<br>Colombia |
| 13/07/2026<br>ESP<br>ENG<br>PT | Laboral, Compensación y Beneficios<br>Employment, Compensation and Benefits | Transparencia Salarial en Portugal<br>Transparência Salarial em Portugal<br>*Pay Transparency in Portugal* | Inês Arruda | Portugal<br>Portugal |
| 16/07/2026<br>ESP | Fiscal<br>Tax | Propuesta de reforma fiscal, impuesto a las herencias y grandes fortunas<br>Proposal for Tax Reform: Inheritance Tax and Tax on High-Net-Worth Individuals | Christian Kaye<br>Sergio Fabela<br>Mónica Paulina<br>Miguel Soto | México<br>Mexico |

| FECHA<br>DATE | DEPARTAMENTO<br>DEPARTMENT | TÍTULO<br>TITLE | AUTORES<br>AUTHORS | PAÍS<br>COUNTRY |
|---|---|---|---|---|
| 16/07/2026<br>ESP | Infraestructura<br>Infrastructure | ¡Manizales avanza en saneamiento hídrico! Aguas de Manizales abre proceso de Asociación Público Privada para la PTAR Los Cámbulos<br>Manizales is making progress on water treatment! Aguas de Manizales launches a Public-Private Association process for the Los Cámbulos Wastewater Treatment Plant | Equipo de infraestructura<br>Infrastructure team | Colombia<br>Colombia |
| 17/07/2026<br>ESP | Laboral y Seguridad Social<br>Labor and Social Security | IMSS: Implementación de la e.firma como único certificado digital válido para actos ante el Instituto<br>IMSS: Implementation of the e.firma as the Exclusive Valid Digital Certificate for Transactions with the IMSS | Santiago Villanueva Durán<br>Daniela Hidalgo Martínez<br>Monserrat Soledad Ramos Aguilar | México<br>Mexico |
| 17/07/2026<br>ESP<br>ENG | Propiedad Intelectual<br>Intellectual Property | El IMPI es designado Autoridad Internacional de Búsqueda y Examen Preliminar en el marco del PCT<br>The IMPI Has Been Designated as an International Searching and Preliminary Examining Authority Under the PCT | Pablo Hooper<br>Alberto Pliego Beguerisse<br>Lirio Salgado Ramos | México<br>Mexico |
| 20/07/2026<br>ESP<br>ENG | Corporate/M&A<br>Corporate/M&A | Novedades Regulatorias en materia de Abuso de Mercado: Reglamento Delegado (UE) 2026/789 y Reglamento de Ejecución (UE) 2026/1291<br>Regulatory updates on Market Abuse: Commission Delegated Regulation (EU) 2026/789 and Commission Implementing Regulation (EU) 2026/1291 | Javier Carvajal García Valdecasas<br>Eduardo Arbizu<br>Andrea Zubiaga | España<br>Spain |
| 23/07/2026<br>ESP | Administrativo y Constitucional<br>Administrative & Constitutional | Empresas y derechos humanos: el nuevo marco regulatorio y sus efectos prácticos<br>Businesses and human rights: the new regulatory framework and its practical implications | Equipo de Administrativo y Constitucional<br>Administrative & Constitutional Team | Colombia<br>Colombia |

| FECHA<br>DATE | DEPARTAMENTO<br>DEPARTMENT | TÍTULO<br>TITLE | AUTORES<br>AUTHORS | PAÍS<br>COUNTRY |
|---|---|---|---|---|
| 23/07/2026<br>ESP | Laboral<br>Labor | Renuncia inducida y despido indirecto<br>Coerced resignation and constructive dismissal | Juan Pablo Procel Añez | Colombia<br>Colombia |
| 24/07/2026<br>ESP | Aduanas y Comercio Exterior<br>Customs & International Trade | Estados Unidos impone aranceles por trabajo forzoso: Colombia, entre los países afectados<br>US imposes tariffs over forced labor: Colombia among the countries affected | Equipo de Aduanas y Comercio Exterior<br>Customs & International Trade Team | Colombia<br>Colombia |
| 30/07/2026<br>ESP | Laboral, Compensación y Beneficios<br>Employment, Compensation and Benefits | Medidas laborales y de Seguridad Social extraordinarias por incendios forestales<br>Extraordinary employment and Social Security measures in response to forest fires | Yolanda Valdeolivas | España<br>Spain |
| 30/07/2026<br>ESP | Laboral<br>Labor | Trabajo en casa para reducir la demanda energética<br>Working from home to reduce energy demand | Equipo de Laboral<br>Labor Team | Colombia<br>Colombia |
| 31/07/2026<br>ESP | Laboral, Compensación y Beneficios<br>Employment, Compensation and Benefits | Novedades del Real Decreto 643/2026 en materia de gestión y recaudación de la Seguridad Social<br>Changes introduced by Royal Decree 643/2026 regarding the administration and collection of Social Security contributions | Yolanda Valdeolivas | España<br>Spain |
| 03/08/2026<br>ESP | Seguros y Reaseguros<br>Insurance & Reinsurance | Seguros con participación de utilidades: exigencias de información para las aseguradoras en Colombia<br>Profit-sharing insurance: information requirements for insurers in Colombia | Esteban Cristancho Garcés | Colombia<br>Colombia |

| FECHA<br>DATE | DEPARTAMENTO<br>DEPARTMENT | TÍTULO<br>TITLE | AUTORES<br>AUTHORS | PAÍS<br>COUNTRY |
|---|---|---|---|---|
| 05/08/2026<br>ESP | Tecnología, Comunicaciones y Protección de Datos<br>Technology, Communications & Data Protection | En agosto de 2026 vence el plazo para reportar al RNBD de la SIC las reclamaciones sobre datos personales<br>The deadline for reporting complaints regarding personal data to the SIC's RNBD is in August 2026 | Equipo de Tecnología, Comunicaciones y Protección de Datos<br>Technology, Communications & Data Protection Team | Colombia<br>Colombia |
| 06/08/2026<br>ESP<br>ENG | Medio Ambiente<br>Environment | Reglamento para la Determinación y Pago de la Cuota de Garantía de No Caducidad de Derechos de Aguas Nacionales<br>Regulation for the Determination and Payment of the Fee to Guarantee the Non-Expiration of National Water Rights | Enrique Muñoz Guízar<br>Georgina Zavala González<br>Ivanna Parada Valenzuela | México<br>Mexico |
| 11/08/2026<br>ESP<br>ENG | Energía y Recursos Naturales<br>Energy & Natural Resources | La respuesta al Fenómeno de El Niño: La CREG activa un programa de incentivos que todo usuario regulado debe conocer<br>Responding to El Niño: CREG Launches an Incentive Program Every Regulated Customer Should Know About | Equipo de Energía y Recursos Naturales<br>Energy & Natural Resources Team | Colombia<br>Colombia |
| 11/08/2026<br>ESP | Infraestructura<br>Infrastructure | Cundinamarca avanza en conectividad férrea regional con la apertura de la licitación para la concesión del RegioTram del Norte (Tren de Zipaquirá)<br>Cundinamarca moves forward with regional rail connectivity following the launch of the tender process for the RegioTram del Norte (Zipaquirá Train) concession | Equipo de Infraestructura<br>Infrastructure Team | Colombia<br>Colombia |
| 12/08/2026<br>ESP<br>ENG | Laboral y Seguridad Social<br>Labor and Social Security | IMSS: Práctica indebida simulando planes de pensión para el pago complementario del salario de los trabajadores<br>IMSS: The improper use of purported pension plans to supplement employees' wages | Santiago Villanueva Durán<br>Daniela Hidalgo Martínez<br>Monserrat Soledad Ramos Aguilar | México<br>Mexico |

| FECHA<br>DATE | DEPARTAMENTO<br>DEPARTMENT | TÍTULO<br>TITLE | AUTORES<br>AUTHORS | PAÍS<br>COUNTRY |
|---|---|---|---|---|
| 12/08/2026<br>ESP | Tributario<br>Tax | Criterios de la Administración frente a deducciones no procedentes y la sanción por inexactitud<br>The Tax Authority's criteria regarding non-deductible expenses and the penalty for inaccuracy | Sofía Orozco Cortés | Colombia<br>Colombia |
| 14/08/2026<br>ESP<br>ENG | Antilavado de Dinero, Anticorrupción y Cumplimiento y Comercio Exterior y Aduanas<br>AML, Anti-corruption and Compliance and Foreign Trade and Customs | Modificaciones a las Reglas de Carácter General de la Ley Antilavado<br>Amendments to the General Rules of the Anti-Money Laundering Law | Luis Mancera de Arrigunaga<br>Eduardo Poblete | México<br>Mexico |
| 19/08/2026<br>PT | Energía y Fiscal<br>Energy and Tax | IMI nos centros eletroprodutores: Circular n.º 4/2026 da Autoridade Tributária<br>IMI at power generation centres: Tax Authority Circular No. 4/2026 | Susana Estêvão Gonçalves<br>Nicolle Barbetti<br>Miguel Teles<br>Inês Rito | Portugal<br>Portugal |
| 21/08/2026<br>ESP | Laboral<br>Labor | Nuevos criterios tras la derogatoria de once circulares del Ministerio del Trabajo<br>New criteria following the repeal of eleven circulars issued by the Ministry of Labor | Equipo de Laboral<br>Labor team | Colombia<br>Colombia |
| 21/08/2026<br>ESP | Laboral<br>Labor | La justicia colombiana reafirma la inmunidad de jurisdicción de las organizaciones internacionales en materia laboral y de seguridad social<br>The Colombian courts reaffirm the immunity from jurisdiction of international organizations in matters relating to labor and social security | Equipo de Laboral<br>Labor team | Colombia<br>Colombia |
| 27/08/2026<br>ESP | Corporativo<br>Corporate | SuperSociedades expide Resolución donde fija la contribución por vigilancia y control para 2026<br>The Superintendency of Companies issues a resolution setting the supervision and control levy for 2026 | Equipo de Corporativo<br>Corporate Team | Colombia<br>Colombia |

| FECHA<br>DATE | DEPARTAMENTO<br>DEPARTMENT | TÍTULO<br>TITLE | AUTORES<br>AUTHORS | PAÍS<br>COUNTRY |
|---|---|---|---|---|
| 31/08/2026<br>PT | Energía e Infraestructura<br>Energy and Infrastructure | Decreto-Lei n.º 130/2026: o que muda no Sistema Elétrico Nacional a 28 de agosto<br>Decree-Law No. 130/2026: changes to the National Electricity System on 28 August | Joana Alves de Abreu | Portugal<br>Portugal |
| 02/09/2026<br>ESP | Laboral, Compensación y Beneficios<br>Employment, Compensation and Benefits | Medidas en materia de empleo y de Seguridad Social contenidas en el RDL 22/2026, de 1 de septiembre<br>Measures relating to employment and social security contained in RDL 22/2026 of 1 September | Yolanda Valdeolivas | España<br>Spain |
| 02/09/2026<br>ESP<br>ENG | Competencia Económica<br>Antitrust | México Propone Nuevo Régimen para la Evaluación de la IED en Materia de Seguridad Nacional<br>Mexico's Proposed National Security Screening Regime for FDI | Patricio Martínez Osorio | México<br>Mexico |
| 04/09/2026<br>ESP | Seguros y Reaseguros<br>Insurance & Reinsurance | La Superfinanciera impone reglas transitorias de choque a todo el sector vigilado tras terremoto en Colombia<br>The Financial Superintendency imposes emergency transitional rules on the entire regulated sector following the earthquake in Colombia | Equipo de Seguros y Reaseguros<br>Insurance & Reinsurance Team | Colombia<br>Colombia |
| 08/09/2026<br>ESP | Corporativo<br>Corporate | (Re)conectarnos para aprender": nuevas reglas sobre el uso de teléfonos móviles y dispositivos con pantalla en los colegios de Bogotá<br>"(Re)connecting to learn": new rules on the use of mobile phones and screen-based devices in Bogotá's schools | Equipo de Corporativo<br>Corporate Team | Colombia<br>Colombia |
| 09/09/2026<br>ESP | Corporativo<br>Corporate | Licencias de funcionamiento de colegios privados en Bogotá<br>Operating licences for private schools in Bogotá | Equipo de Corporativo<br>Corporate Team | Colombia<br>Colombia |

| FECHA<br>DATE | DEPARTAMENTO<br>DEPARTMENT | TÍTULO<br>TITLE | AUTORES<br>AUTHORS | PAÍS<br>COUNTRY |
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| 10/09/2026<br>ESP<br>ENG | Medio Ambiente<br>Environment | Nuevo acuerdo de aditivos y coadyuvantes en alimentos, bebidas y suplementos alimenticios: primera actualización integral en más de una década<br>New agreement on additives and processing aids in food, beverages and dietary supplements: first comprehensive update in over a decade | Enrique Muñoz Guízar<br>Ivanna Parada Valenzuela<br>Ana Gabriela Suarez | México<br>Mexico |
| 10/09/2026<br>ESP<br>ENG | Laboral y Seguridad Social<br>Labor and Social Security | IMSS: Digitalización de la Tarjeta de Identificación Patronal<br>IMSS: Digitalization of the Employer Identification Card | Santiago Villanueva Durán<br>Daniela Hidalgo Martínez<br>Arantxa Garduño Cordero | México<br>Mexico |
| 10/09/2026<br>ESP<br>ENG | Fiscal<br>Tax | Iniciativa del Paquete Económico 2027<br>2027 Economic Package Bill | Christian Kaye<br>Sergio Fabela<br>Mónica Paulina<br>Miguel Soto | México<br>Mexico |
| 11/09/2026<br>ESP | Tributario<br>Tax | Impuestos que reconstruyen: nueva medida tributaria con ocasión del terremoto<br>Taxes that rebuild: a new tax measure in the wake of the earthquake | Equipo de Tributario<br>Tax Team | Colombia<br>Colombia |

# Anexo II
Annex II

## Glosario de términos y normativa — Colombia
Glossary of legal terms and regulations — Colombia

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| **CNE** | Consejo Nacional Electoral<br>National Electoral Council |
| **COP** | Pesos colombianos<br>Colombian pesos |
| **CPACA** | Código de Procedimiento Administrativo y de lo Contencioso Administrativo<br>Code of Administrative Procedure and Contentious-Administrative Matters |
| **CSJ** | Corte Suprema de Justicia<br>Supreme Court of Justice |
| **IPAT** | Informe Policial de Accidente de Tránsito<br>Police Report on a Traffic Accident |
| **IPC**<br>CPI | Índice de Precios al Consumidor<br>Consumer Price Index |
| **PIB**<br>GDP | Productos Interno Bruto<br>Gross Domestic Product |
| **RETIE** | Reglamento Técnico de Instalaciones Eléctricas<br>Technical Regulations for Electrical Installations |
| **RNEC** | Registraduría Nacional del Estado Civil<br>National Civil Registry Office |
| **SFC** | Superintendencia Financiera de Colombia<br>Financial Superintendency of Colombia |
| **SMLMV** | Salario Mínimo Legal Mensual Vigente<br>Current Statutory Monthly Minimum Wage |
| **SOAT** | Seguro Obligatorio de Accidentes de Tránsito<br>Compulsory Traffic Accident Insurance |

# Anexo III
Annex III

## Glosario de términos y normativa — España
Glossary of legal terms and regulations — Spain

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|---|---|
| **AMAEF** | Asociación para la Mediación Aseguradora de Entidades Financieras<br>Association for Insurance Mediation for Financial Institutions |
| **AEPD** | Agencia Española de Protección de Datos<br>Spanish Data Protection Agency |
| **CC** | Real Decreto de 24 julio 1889 por el que se publica el Código Civil<br>Royal Decree of 24 July 1889 publishing the Civil Code |
| **CCS** | Consorcio de Compensación de Seguros<br>Insurance Compensation Consortium |
| **CNMV** | Comisión Nacional del Mercado de Valores<br>National Securities Market Commission |
| **CSRD** | Directiva (UE) 2022/2464 del Parlamento Europeo y del Consejo de 14 de diciembre de 2022 por la que se modifican el Reglamento (UE) n.o 537/2014, la Directiva 2004/109/CE, la Directiva 2006/43/CE y la Directiva 2013/34/UE, por lo que respecta a la presentación de información sobre sostenibilidad por parte de las empresas<br>Directive (EU) 2022/2464 of the European Parliament and of the Council, of 14 December 2022, amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting |
| **DGSFP** | Dirección General de Seguros y Fondos de Pensiones<br>Directorate General for Insurance and Pension Funds |
| **DGT** | Dirección General de Tributos<br>Directorate General of Taxes |
| **Directiva 2005/29** | Directiva 2005/29/CE del Parlamento Europeo y del Consejo, de 11 de mayo de 2005, relativa a las prácticas comerciales desleales de las empresas en sus relaciones con los consumidores en el mercado interior, que modifica la Directiva 84/450/CEE del Consejo, las Directivas 97/7/CE, 98/27/CE y 2002/65/CE del Parlamento Europeo y del Consejo y el Reglamento (CE) nº 2006/2004 del Parlamento Europeo y del Consejo<br>Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') |
| **Directiva 2009/103** | Directiva 2009/103/CE del Parlamento Europeo y del Consejo, de 16 de septiembre de 2009<br>Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 |

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| **Directiva IRRD**<br>IRRD Directive | Directiva (UE) 2025/1 del Parlamento Europeo y del Consejo, de 27 de noviembre de 2024, por la que se establece un marco para la recuperación y la resolución de las empresas de seguros y reaseguros, y por la que se modifican las Directivas 2002/47/CE, 2004/25/CE, 2007/36/CE, 2014/59/UE y (UE) 2017/1132 y los Reglamentos (UE) n.º 1094/2010, (UE) n.º 648/2012, (UE) n.º 806/2014 y (UE) 2017/1129<br>Directive (EU) 2025/1 of the European Parliament and of the Council of 27 November 2024 establishing a framework for the recovery and resolution of insurance and reinsurance undertakings and amending Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 and Regulations (EU) No 1094/2010, (EU) No 648/2012, (EU) No 806/2014 and (EU) 2017/1129) |
| **Directiva 2025/2** | Directiva 2025/2 del Parlamento Europeo y del Consejo, de 27 de noviembre de 2024 por la Directiva de Solvencia II en lo que respecta a la proporcionalidad, la calidad de la supervisión, la presentación de información, las medidas de garantía a largo plazo, los instrumentos macroprudenciales, los riesgos de sostenibilidad y la supervisión de grupo y transfronteriza, y se modifican las Directivas 2002/87/CE y 2013/34/UE<br>Directive (EU) 2025/2 of the European Parliament and of the Council of 27 November 2024 amending Directive 2009/138/EC as regards proportionality, quality of supervision, reporting, long-term guarantee measures, macro-prudential tools, sustainability risks and group and cross-border supervision, and amending Directives 2002/87/EC and 2013/34/EU |
| **Directiva sobre el IVA** | Directiva 2006/112/CE del Consejo, de 28 de noviembre de 2006, relativa al sistema común del impuesto sobre el valor añadido<br>Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax |
| **Directiva Solvencia II** | Directiva 2009/138/CE del Parlamento Europeo y del Consejo, de 25 de noviembre de 2009, sobre el seguro de vida, el acceso a la actividad de seguro y de reaseguro y su ejercicio<br>Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance) |
| **Directiva IDD** | Directiva (UE) 2016/97 del Parlamento Europeo y del Consejo, de 20 de enero de 2016, sobre la distribución de seguros<br>Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (Insurance Distribution Directive) |
| **DOUE** | Diario Oficial de la Unión Europea<br>Official Journal of the European Union |
| **EBA** | Autoridad Bancaria Europea<br>European Banking Authority |
| **EEE**<br>EEA | Espacio Económico Europeo<br>European Economic Area |
| **EIOPA** | Autoridad Europea de Seguros y Pensiones de Jubilación<br>European Insurance and Occupational Pensions Authority |
| **ESAs** | Autoridades Europeas de Supervisión<br>European Supervisory Authorities |
| **ESMA** | Autoridad Europea de Valores y Mercados<br>European Securities and Markets Authority |

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| **EVI** | Equipo de Valoración de Incapacidades<br>Disability Assessment Team |
| **IFRS** | Normas Internacionales de Información Financiera<br>International Financial Reporting Standards |
| **INSS** | Instituto Nacional de la Seguridad Social<br>National Institute of Social Security |
| **IPS**<br>IPT | Impuesto a las primas de seguro<br>Insurance Premium Tax |
| **IRPF**<br>PIT | Impuesto sobre la Renta de las Personas Físicas<br>Personal Income Tax |
| **ISFAS** | Instituto Social de las Fuerzas Armadas<br>Social Institute of the Armed Forces |
| **IVA**<br>VAT | Impuesto sobre el Valor Añadido<br>Value Added Tax |
| **LCS** | Ley 50/1980, de 8 octubre, de Contrato de Seguro<br>Law 50/1980 of 8 October on Insurance Contracts ("Insurance Contract Law") |
| **LCSP** | Ley 9/2017, de 8 de noviembre, de Contratos del Sector Público, por la que se transponen al ordenamiento jurídico español las Directivas del Parlamento Europeo y del Consejo 2014/23/UE y 2014/24/UE, de 26 de febrero de 2014<br>Law 9/2017 of 8 November on Public Sector Contracts, transposing into Spanish law the Directives of the European Parliament and of the Council 2014/23/EU and 2014/24/EU of 26 February 2014) |
| **LEC** | Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil<br>Law 1/2000 of 7 January 2000 on Civil Procedure |
| **Ley 11/2023**<br>Law 11/2023 | Ley 11/2023, de 8 de mayo, de trasposición de Directivas de la Unión Europea en materia de accesibilidad de determinados productos y servicios, migración de personas altamente cualificadas, tributaria y digitalización de actuaciones notariales y registrales; y por la que se modifica la Ley 12/2011, de 27 de mayo, sobre responsabilidad civil por daños nucleares o producidos por materiales radiactivos<br>Law 11/2023 of 8 May 2023 on the transposition of European Union Directives on the accessibility of certain products and services, migration of highly qualified persons, taxation and digitalisation of notarial and registry actions, and amending Law 12/2011 of 27 May on civil liability for nuclear damage or damage caused by radioactive material |
| **Ley 35/2015**<br>Law 35/2015 | Ley 35/2015, de 22 de septiembre, de reforma del sistema para la valoración de los daños y perjuicios causados a las personas en accidentes de circulación<br>Law 35/2015 of 22 September on the reform of the system for the valuation of loss and damage caused to persons in traffic accidents |
| **Ley 44/2002**<br>Law 44/2002 | Ley 44/2002, de 22 de noviembre, de Medidas de Reforma del Sistema Financiero<br>Law 44/2002 of 22 November on Measures to Reform the Financial System |

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| **Ley 57/1968**<br>Law 57/1968 | Ley 57/1968, de 27 de julio, sobre percibo de cantidades anticipadas en la construcción y venta de viviendas<br>Law 57/1968 of 27 July on the receipt of advance payments in the construction and sale of housing |
| **Ley de auditoría de cuentas**<br>Account Auditing Law | Ley 22/2015, de 20 de julio, de Auditoría de Cuentas<br>Law 22/2015 of 20 July on Account Auditing |
| **Ley de Sociedades de Capital**<br>Capital Companies Law | Real Decreto Legislativo 1/2010, de 2 de julio, por el que se aprueba el texto refundido de la Ley de Sociedades de Capital<br>Royal Legislative Decree 1/2010 of 2 July approving the revised text of the Capital Companies Law |
| **Ley del Mercado de Valores**<br>Securities Market Law | Real Decreto Legislativo 4/2015, de 23 de octubre, por el que se aprueba el texto refundido de la Ley del Mercado de Valores<br>Royal Legislative Decree 4/2015 of 23 October approving the revised text of the Securities Market Law |
| **LGDCU** | Real Decreto Legislativo 1/2007, de 16 de noviembre, por el que se aprueba el texto refundido de la Ley General para la Defensa de los Consumidores y Usuarios y otras leyes complementarias, al provocar un desequilibrio importante en los derechos y obligaciones de las partes en perjuicio del consumidor<br>Royal Legislative Decree 1/2007 of 16 November approving the revised text of the General Law for the Defence of Consumers and Users and other complementary laws, by causing a significant imbalance in the rights and obligations of the parties to the detriment of the consumer |
| **LGSS** | Real Decreto legislativo 8/2015, de 30 de octubre, por el que se aprueba el texto refundido de la Ley General de la Seguridad Social<br>Royal Legislative Decree 8/2015 of 30 October approving the revised text of the General Social Security Law |
| **LIRPF** | Ley 35/2006, de 28 de noviembre, del Impuesto sobre la Renta de las Personas Físicas y de modificación parcial de las leyes de los Impuestos sobre Sociedades, sobre la Renta de no Residentes y sobre el Patrimonio<br>Law 35/2006 of 28 November on Personal Income Tax and partially amending the laws on Corporate Income Tax, Non-Resident Income Tax and Wealth Tax |
| **LISD** | Ley 29/1987, de 18 de diciembre, del Impuesto sobre Sucesiones y Donaciones<br>Law 29/1987 of 18 December on Inheritance and Gift Tax |
| **LIVA** | Ley 37/1992, de 28 de diciembre, del Impuesto sobre el Valor Añadido<br>Law 37/1992 of 28 December 1992 on Value Added Tax |
| **LOSSEAR** | Ley 20/2015, de 14 de julio, de ordenación, supervisión y solvencia de las entidades aseguradoras y reaseguradoras<br>Law 20/2015 of 14 July on the organisation, supervision and solvency of the insurance and reinsurance undertakings |

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| **LRCSCVM** | Real Decreto Legislativo 8/2004, de 29 de octubre, por el que se aprueba el texto refundido de la Ley sobre responsabilidad civil y seguro en la circulación de vehículos a motor<br>Royal Legislative Decree 8/2004 of 29 October approving the revised text of the Law on civil liability and insurance in the circulation of motor vehicles |
| **MUFACE** | Mutualidad General de Funcionarios Civiles del Estado<br>General Mutual Society of State Civil Servants |
| **MUGEJU** | Mutualidad General Judicial<br>General Judicial Mutual Society |
| **NIS 2** | Directiva (UE) 2022/2555 del Parlamento Europeo y del Consejo de 14 de diciembre de 2022 relativa a las medidas destinadas a garantizar un elevado nivel común de ciberseguridad en toda la Unión, por la que se modifican el Reglamento (UE) nº 910/2014 y la Directiva (UE) 2018/1972 y por la que se deroga la Directiva (UE) 2016/1148 (Directiva SRI 2)<br>Directive (EU) 2022/2555 of the European Parliament and of the Council of 14 December 2022 on measures for a high common level of cybersecurity across the Union, amending Regulation (EU) No 910/2014 and Directive (EU) 2018/1972, and repealing Directive (EU) 2016/1148 (NIS 2 Directive) |
| **ONU**<br>UN | Organización de las Naciones Unidas<br>United Nations |
| **ORSA** | Evaluación Interna de Riesgos y Solvencia<br>Own Risk and Solvency Assessment |
| **PEPPs** | Productos Paneuropeos de Pensiones Individuales, por sus siglas en inglés<br>Pan-European Personal Pension Product |
| **PIAS**<br>PAI | Principales incidencias adversas de sostenibilidad<br>Principal Adverse Impacts |
| **PIBS**<br>IBIP | Productos de Inversión basados en seguros<br>Insurance-Based Investment Products |
| **Real Decreto Legislativo 7/2004 (RDL 7/2004)**<br>Royal Legislative Decree 7/2004 (RDL 7/2004) | Real Decreto Legislativo 7/2004, de 29 de octubre, por el que se aprueba el texto refundido del Estatuto Legal del Consorcio de Compensación de Seguros<br>Royal Legislative Decree 7/2004, of 29 October, approving the revised text of the Legal Statute of the Insurance Compensation Consortium |
| **Real Decreto-ley 3/2020 (RDL 3/2020)**<br>Royal Decree-law 3/2020 (RDL 3/2020) | Real Decreto-ley 3/2020, de 4 de febrero, de medidas urgentes por el que se incorporan al ordenamiento jurídico español diversas directivas de la Unión Europea en el ámbito de la contratación pública en determinados sectores; de seguros privados; de planes y fondos de pensiones; del ámbito tributario y de litigios fiscales<br>Royal Decree-law 3/2020 of 4 February on urgent measures by which various directives of the European Union in the field of public procurement in certain sectors are incorporated into the Spanish legal system; of private insurance; of pension plans and funds; in the tax field and tax litigation |

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| **Real Decreto-ley 5/2023 (RDL 5/2023)**<br>Royal Decree-law 5/2023 (RDL 5/2023) | Real Decreto-ley 5/2023, de 28 de junio, por el que se adoptan y prorrogan determinadas medidas de respuesta a las consecuencias económicas y sociales de la Guerra de Ucrania, de apoyo a la reconstrucción de la isla de La Palma y a otras situaciones de vulnerabilidad; de transposición de Directivas de la Unión Europea en materia de modificaciones estructurales de sociedades mercantiles y conciliación de la vida familiar y la vida profesional de los progenitores y los cuidadores; y de ejecución y cumplimiento del Derecho de la Unión Europea<br>Royal Decree-law 5/2023 of 28 June adopting and extending certain measures in response to the economic and social consequences of the war in Ukraine, to support the reconstruction of the island of La Palma and other situations of vulnerability; transposing EU Directives on structural changes in commercial companies and reconciliation of family and professional life for parents and carers; and the implementation and enforcement of European Union Law |
| **Reglamento Delegado (UE) 2022/1288**<br>Commission Delegated Regulation (EU) 2022/1288 | Reglamento Delegado (UE) 2022/1288 de la Comisión de 6 de abril de 2022 por el que se completa el Reglamento (UE) 2019/2088 del Parlamento Europeo y del Consejo respecto a las normas técnicas de regulación que especifican los pormenores en materia de contenido y presentación que ha de cumplir la información relativa al principio de "no causar un perjuicio significativo", y especifican el contenido, los métodos y la presentación para la información relativa a los indicadores de sostenibilidad y las incidencias adversas en materia de sostenibilidad, así como el contenido y la presentación de información relativa a la promoción de características medioambientales o sociales y de objetivos de inversión sostenible en los documentos precontractuales, en los sitios web y en los informes periódicos<br>Commission Delegated Regulation (EU) 2022/1288 of 6 April 2022 supplementing Regulation (EU) 2019/2088 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the content and presentation of the information in relation to the principle of 'do no significant harm', specifying the content, methodologies and presentation of information in relation to sustainability indicators and adverse sustainability impacts, and the content and presentation of the information in relation to the promotion of environmental or social characteristics and sustainable investment objectives in pre-contractual documents, on websites and in periodic reports |
| **Reglamento de Inteligencia Artificial**<br>Artificial Intelligence Regulation | Reglamento (UE) 2024/1689 del Parlamento Europeo y del Consejo, de 13 de junio de 2024, por el que se establecen normas armonizadas en materia de inteligencia artificial<br>Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 |
| **Reglamento DORA**<br>DORA Regulation | Reglamento (UE) 2022/2554 del Parlamento Europeo y del Consejo de 14 de diciembre de 2022 sobre la resiliencia operativa digital del sector financiero y por el que se modifican los Reglamentos (CE) nº 1060/2009, (UE) nº 648/2012, (UE) nº 600/2014, (UE) nº 909/2014 y (UE) 2016/1011<br>Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/1011 |
| **Reglamento MiCA**<br>MiCA Regulation | Reglamento (UE) 2023/1114 del Parlamento Europeo y del Consejo, de 31 de mayo de 2023, relativo a los mercados de criptoactivos y por el que se modifican los Reglamentos (UE) n.o 1093/2010 y (UE) n.o 1095/2010 y las Directivas 2013/36/UE y (UE) 2019/1937<br>Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 |

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| **Reglamento Solvencia II**<br>Solvency II Regulation | Reglamento Delegado (UE) 2015/35 de la Comisión, de 10 de octubre de 2014, por el que se completa la Directiva 2009/138/CE del Parlamento Europeo y del Consejo sobre el acceso a la actividad de seguro y de reaseguro y su ejercicio (Solvencia II)<br>Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) |
| **Reglamento PRIIPs**<br>PRIIPs Regulation | Reglamento (UE) no 1286/2014 del Parlamento Europeo y del Consejo de 26 de noviembre de 2014 sobre los documentos de datos fundamentales relativos a los productos de inversión minorista vinculados y los productos de inversión basados en seguros<br>Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products |
| **RGAT** | Real Decreto 1065/2007, de 27 de julio, por el que se aprueba el Reglamento General de las actuaciones y los procedimientos de gestión e inspección tributaria y de desarrollo de las normas comunes de los procedimientos de aplicación de los tributos<br>Royal Decree 1065/2007 of 27 July which approves the General Regulations for the actions and procedures for tax management and inspection and for the development of common standards for tax application procedures |
| **RGPD**<br>GDPR | Reglamento General de Protección de Datos. Reglamento (UE) 2016/679 relativo a la protección de las personas físicas en lo que respecta al tratamiento de datos personales y a la libre circulación de estos datos<br>General Data Protection Regulation. Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data |
| **Segunda Directiva**<br>Second Directive | Segunda Directiva 84/5/CEE del Consejo, de 30 de diciembre de 1983, relativa a la aproximación de las legislaciones de los Estados Miembros sobre el seguro de responsabilidad civil que resulta de la circulación de los vehículos automóviles<br>Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles |
| **Solvencia II**<br>Solvency II | Directiva 2009/138/CE del Parlamento Europeo y del Consejo, de 25 de noviembre de 2009, sobre el seguro de vida, el acceso a la actividad de seguro y de reaseguro y su ejercicio<br>Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance) |
| **SFDR**<br>Sustainable Finance Disclosures Regulation | Reglamento Delegado (UE) 2022/1288 de la Comisión de 6 de abril de 2022 por el que se completa el Reglamento (UE) 2019/2088 del Parlamento Europeo y del Consejo respecto a las normas técnicas de regulación que especifican los pormenores en materia de contenido y presentación que ha de cumplir la información relativa al principio de "no causar un perjuicio significativo", y especifican el contenido, los métodos y la presentación para la información relativa a los indicadores de sostenibilidad y las incidencias adversas en materia de sostenibilidad, así como el contenido y la presentación de información relativa a la promoción de características medioambientales o sociales y de objetivos de inversión sostenible en los documentos precontractuales, en los sitios web y en los informes periódicos<br>Commission Delegated Regulation (EU) 2022/1288 of 6 April 2022 supplementing Regulation (EU) 2019/2088 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the content and presentation of the information in relation to the principle of 'do no significant harm', specifying the content, methodologies and presentation of information in relation to sustainability indicators and adverse sustainability impacts, and the content and presentation of the information in relation to the promotion of environmental or social characteristics and sustainable investment objectives in pre-contractual documents, on websites and in periodic reports |

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| **TAE**<br>APR | Tasa Anual Equivalente<br>Annual Percentage Rate of Charge |
| **TEAC** | Tribunal Económico-Administrativo Central<br>Central Economic-Administrative Court |
| **TIC**<br>ICT | Tecnologías de la información y comunicación<br>Information and communication technologies |
| **TRLPFP** | Real Decreto Legislativo 1/2002, de 29 de noviembre, por el que se aprueba el texto refundido de la Ley de Regulación de los Planes y Fondos de Pensiones<br>Royal Legislative Decree 1/2002 of 29 November approving the revised text of the Law Regulating Pension Plans and Funds |
| **UE**<br>EU | Unión Europea<br>European Union |
| **UNESPA** | Unión Española de Entidades Aseguradoras y Reaseguradoras<br>Spanish Association of Insurers |

# Anexo IV
Annex IV

## Glosario de términos y normativa — México
Glossary of legal terms and regulations — Mexico

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| **CNSF** | Comisión Nacional de Seguros y Fianzas<br>National Insurance and Surety Commission |
| **CONDUSEF** | Comisión Nacional para la Protección y Defensa de los Usuarios de Servicios Financieros<br>National Commission for the Protection and Defense of Users of Financial Services |
| **CUSF** | Circular Única de Seguros y Fianzas<br>Sole Circular for Insurance and Surety Bonds |
| **DOF** | Diario Oficial de la Federación<br>Official Federal Gazette |
| **LCS** | Ley sobre el Contrato de Seguro publicada en el DOF el 31 de agosto de 1935<br>Insurance Contract Law, published in the DOF on 31 August 1935 |
| **LISF** | Ley de Instituciones de Seguros y de Fianzas publicada en el DOF el 4 de abril de 2013<br>Law of Insurance and Surety Institutions, published in the DOF on 4 April 2013 |
| **SHCP** | Secretaría de Hacienda y Crédito Público<br>Ministry of Finance and Public Credit |

# Anexo V
Annex V

## Glosario de términos y normativa — Perú
Glossary of legal terms and regulations — Peru

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| **CPDC** | Código de Protección y Defensa del Consumidor, aprobado por Ley N°29571<br>Consumer Protection and Defense Code, approved by Law No. 29571 |
| **DEFASEG** | Defensoría del Asegurado<br>Insurance Policyholder Ombudsman |
| **FOGASA** | Fondo de Garantía del Seguro Agropecuario<br>Agricultural Insurance Guarantee Fund |
| **IAIS** | Asociación Internacional de Supervisores de Seguros<br>International Association of Insurance Supervisors |
| **IAIGs** | Grupos Aseguradores Internacionalmente Activos según el listado publicado por la IAIS<br>Internationally Active Insurance Groups, according to the list published by the IAIS |
| **INDECOPI** | Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual<br>National Institute for the Defense of Competition and Intellectual Property Protection, the Peruvian competition and consumer protection authority |
| **Ley del Contrato de Seguro**<br>Insurance Contract Law | Ley N°29946, que regula las relaciones derivadas de la celebración de contratos de seguro<br>Insurance Contract Law, Law No. 29946 |
| **Ley General**<br>General Law | Ley General del Sistema Financiero y del Sistema de Seguros, aprobada mediante Ley N°26702<br>General Law of the Financial System and the Insurance System, approved by Law No. 26702. |
| **OPS** | Órgano Resolutivo de Procedimientos Sumarísimos del INDECOPI<br>Summary Proceedings Resolution Body of INDECOPI, which adjudicates expedited consumer protection claims |
| **RENIEC** | Registro Nacional de Identificación y Estado Civil<br>National Registry of Identification and Civil Status, the government agency responsible for issuing national identity documents |
| **RGS** | Reglamento para la Gestión y Pago de Siniestros, aprobado por Resolución SBS N°3202-2013<br>Regulations for Claims Management and Payment, approved by SBS Resolution No. 3202-2013 |
| **SBS** | Superintendencia de Banca, Seguros y Administradoras Privadas de Fondos de Pensiones<br>Superintendency of Banking, Insurance and Private Pension Fund Managers |
| **UIT** | Unidad Impositiva Tributaria. Para el año 2026, equivale a S/ 5 500,00<br>Tax Unit, a reference value used for tax and regulatory purposes. For 2026, it is equivalent to S/5,500.00 |

# Anexo VI
Annex VI

## Glosario de términos y normativa — Portugal
Glossary of legal terms and regulations — Portugal

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| **ASF** | Autoridade de Supervisão de Seguros e Fundos de Pensões<br>Insurance and Pension Funds Supervisory Authority |
| **Circular n.º 8/2026**<br>Circular No. 8/2026 | Circular ASF n.º 8/2026, de 14 de julho, sobre prevenção do branqueamento de capitais e do financiamento do terrorismo<br>ASF Circular No. 8/2026 of 14 July, on the prevention of money laundering and terrorist financing |
| **Código dos Valores Mobiliários**<br>Portuguese Securities Code | O principal regime jurídico sobre mercado de capitais em Portugal, conforme aprovado pelo Decreto-Lei n.º 486/99, de 13 de novembro, e alterado sucessivamente<br>The main legal regime governing the securities market in Portugal, as approved by Decree-Law no. 486/99, of 13 November, and amended from time to time |
| **Decreto-Lei n.º 72/2008 ou RJCS**<br>Decree-Law No. 72/2008 or Insurance Contract Act | Decreto-Lei n.º 72/2008, de 16 de abril, que aprova o regime jurídico do contrato de seguro<br>Decree-Law No. 72/2008 of 16 April, approving the legal framework for insurance contracts |
| **Decreto-Lei n.º 171/2026**<br>Decree-Law No. 171/2026 | Decreto-Lei n.º 171/2026, de 26 de agosto, que altera o Código dos Valores Mobiliários e introduz o dever de acessibilidade de informação no ESAP no setor segurador<br>Decree-Law No. 171/2026 of 26 August, amending the Portuguese Securities Code and introducing the duty to make information accessible on the ESAP in the insurance sector |
| **Decreto-Lei n.º 202/2015**<br>Decree-Law No. 202/2015 | Decreto-Lei n.º 202/2015, de 17 de setembro, relativo à obtenção do identificador LEI<br>Decree-Law No. 202/2015 of 17 September, on the acquisition of the LEI |
| **Declaração de Retificação n.º 35/2026/1**<br>Rectification Statement No. 35/2026/1 | Declaração publicada em 15 de setembro de 2026, que corrigiu uma inexatidão no artigo 17.º do Decreto-Lei n.º 171/2026<br>Rectification order published on 15 September 2026 in order to correct the erroneous reference of Article 17 of Decree-Law No. 171/2026 of 26 August |
| **EIOPA** | Autoridade Europeia dos Seguros e Pensões Complementares de Reforma.<br>European Insurance and Occupational Pensions Authority. |
| **ESAP** | Ponto de Acesso Único Europeu, criado pela Diretiva (UE) 2023/2864<br>European Single Access Point, established under Directive (EU) 2023/2864 |
| **GAFI** | Grupo de Ação Financeira Internacional<br>Financial Action Task Force |
| **IGS** | Sistemas de Garantia de Seguros<br>Insurance Guarantee Schemes |
| **IRRD** | Diretiva relativa à Recuperação e Resolução de Seguros<br>Insurance Recovery and Resolution Directive |

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| **Lambda factor** | Novo elemento dependente do tempo incorporado no cálculo da margem de risco pelas Orientações revistas da EIOPA sobre a avaliação das provisões técnicas<br>New time-dependent element incorporated into the calculation of the risk margin under EIOPA's revised Guidelines on the valuation of technical provisions |
| **LEI** | Identificador de Entidade Jurídica<br>Legal Entity Identifier |
| **Matching adjustment** | Ajustamento de congruência aplicável ao cálculo das provisões técnicas ao abrigo do regime Solvência II<br>Adjustment applicable to the calculation of technical provisions under the Solvency II regime |
| **MCR** | Requisito de Capital Mínimo ao abrigo do regime Solvência II<br>Minimum Capital Requirement under the Solvency II regime |
| **Norma Regulamentar n.º 4/2026-R**<br>Regulatory Standard No. 4/2026-R | Norma Regulamentar ASF n.º 4/2026-R, de 28 de julho, que prorroga a suspensão da produção de efeitos da Norma Regulamentar n.º 7/2025-R<br>ASF Regulatory Standard No. 4/2026-R of 28 July, extending the suspension of the entry into effect of Regulatory Standard No. 7/2025-R |
| **Norma Regulamentar n.º 5/2026-R**<br>Regulatory Standard No. 5/2026-R | Norma Regulamentar ASF n.º 5/2026-R, de 18 de agosto, que estabelece os índices trimestrais de atualização de capitais para o ramo "Incêndio e elementos da natureza"<br>ASF Regulatory Standard No. 5/2026-R of 18 August, establishing the quarterly capital updating indices for the "Fire and natural elements" class |
| **Norma Regulamentar n.º 7/2025-R**<br>Regulatory Standard No. 7/2025-R | Norma Regulamentar ASF n.º 7/2025-R, de 26 de agosto, relativa a pressupostos e requisitos na divulgação de informações respeitantes a fundos de pensões<br>ASF Regulatory Standard No. 7/2025-R of 26 August, on the assumptions and requirements applicable to the disclosure of information relating to pension funds |
| **Norma Regulamentar n.º 09/2025-R**<br>Regulatory Standard No. 9/2025-R | Norma Regulamentar ASF n.º 9/2025-R, de 30 de dezembro, que suspendeu inicialmente a produção de efeitos da Norma Regulamentar n.º 7/2025-R<br>ASF Regulatory Standard No. 9/2025-R of 30 December, which initially suspended the entry into effect of Regulatory Standard No. 7/2025-R |
| **Relatório de Estabilidade Financeira**<br>Financial Stability Report | Relatório de Estabilidade Financeira da EIOPA de junho de 2026<br>EIOPA's Financial Stability Report of June 2026 |
| **Regime das Cláusulas Contratuais Gerais**<br>General Terms and Conditions Regime | Regime jurídico que regula as cláusulas contratuais gerais, incluindo a sua incorporação nos contratos, os deveres de comunicação e informação, a sua interpretação e o regime das cláusulas proibidas e respetiva nulidade, aprovado pelo Decreto-Lei n.º 446/85, de 25 de outubro, conforme sucessivamente alterado<br>Legal framework governing general terms and conditions, including their incorporation into contracts, communication and information duties, their interpretation, and the regime applicable to prohibited clauses and their nullity, approved by Decree-Law No. 446/85 of 25 October, as subsequently amended |

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| **RJASR** | Regime Jurídico de Acesso e Exercício da Atividade Seguradora e Resseguradora, que regula, designadamente, as condições de acesso e de exercício da atividade seguradora e resseguradora, a supervisão dos grupos seguradores e resseguradores, a recuperação das empresas de seguros e de resseguros e a liquidação das empresas de seguros, aprovado pela Lei n.º 147/2015, de 9 de setembro, conforme sucessivamente alterada<br>Legal Framework on Access to and Pursuit of Insurance and Reinsurance Activities, governing, inter alia, the conditions for access to and pursuit of insurance and reinsurance activities, the supervision of insurance and reinsurance groups, the recovery of insurance and reinsurance undertakings and the winding-up of insurance undertakings, approved by Law No. 147/2015 of 9 September, as subsequently amended |
| **RTS** | Normas técnicas de regulamentação da EIOPA<br>Regulatory Technical Standards da EIOPA |
| **SCR** | Requisito de Capital de Solvência (Solvency Capital Requirement) ao abrigo do regime Solvência II<br>Solvency Capital Requirement under the Solvency II regime |
| **Solvência II**<br>Solvency II | Diretiva 2009/138/CE do Parlamento Europeu e do Conselho, de 25 de novembro de 2009, conforme sucessivamente alterada<br>Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009, as amended from time to time |
| **STJ** | Supremo Tribunal de Justiça<br>Supreme Court of Justice |
| **TRC** | Tribunal da Relação de Coimbra<br>Coimbra Court of Appeal |
| **TRE** | Tribunal da Relação de Évora<br>Évora Court of Appeal |
| **TRG** | Tribunal da Relação de Guimarães<br>Guimarães Court of Appeal |
| **TRL** | Tribunal da Relação de Lisboa<br>Lisbon Court of Appeal |
| **TRP** | Tribunal da Relação do Porto<br>Porto Court of Appeal |

## # Q3 2026

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This document has been prepared by the lawyers of the Insurance and Reinsurance practice area: Joaquín Ruiz Echauri, Rafael Fernández, Felipe Vázquez, Inês Palma Ramalho, Rafael Corzo, Pablo Daniel Morán Salgado, Daniel Londoño Pinzón, David Ricardo Araque Quijano, Patricio Martínez Osorio, Juan Pablo Nieto Brackelmanns, Irene Moreno Garrido, Eduardo Díaz Escagedo, Boris Urquizu Barquet, Fátima Eizaguirre, Diego Alcalde Díaz, Rodrigo Pérez Gil, Javier Navas Rodríguez, Diego Samuel Arroyo Uribe, Elena de Saavedra Gil, Carlos Ojanguren Rodríguez, Ángela Yubero Gutiérrez, Jorge López-Rey, Bárbara Rivero Rodríguez, Manuel Castelo Branco, Paulo Romano Martínez, Carolina de la Torre Ávila, Esteban Cristancho Garcés and Diego Ebergenyi Camarena, with the latter serving as legal advisor.

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**Para más información, pueden ponerse en contacto con:**
For more information, please contact:



**Joaquín Ruiz Echauri**
Socio de Seguros y Reaseguros
Partner, Insurance and Reinsurance
jruiz-echauri@perezllorca.com
T: +34 607 711 962



**Rafael Fernández**
Socio de Seguros y Reaseguros
Partner, Insurance and Reinsurance
rfernandez@perezllorca.com
T: +34 645 910 300



**Felipe Vázquez Acedo**
Socio de Seguros y Reaseguros
Partner, Insurance and Reinsurance
fvazquez@perezllorca.com
T: +34 600 562 311



**Inês Palma Ramalho**
Socia de Bancario y Seguros
Partner, Banking and Insurance
iramalho@perezllorca.com
T: +351 916 237 177



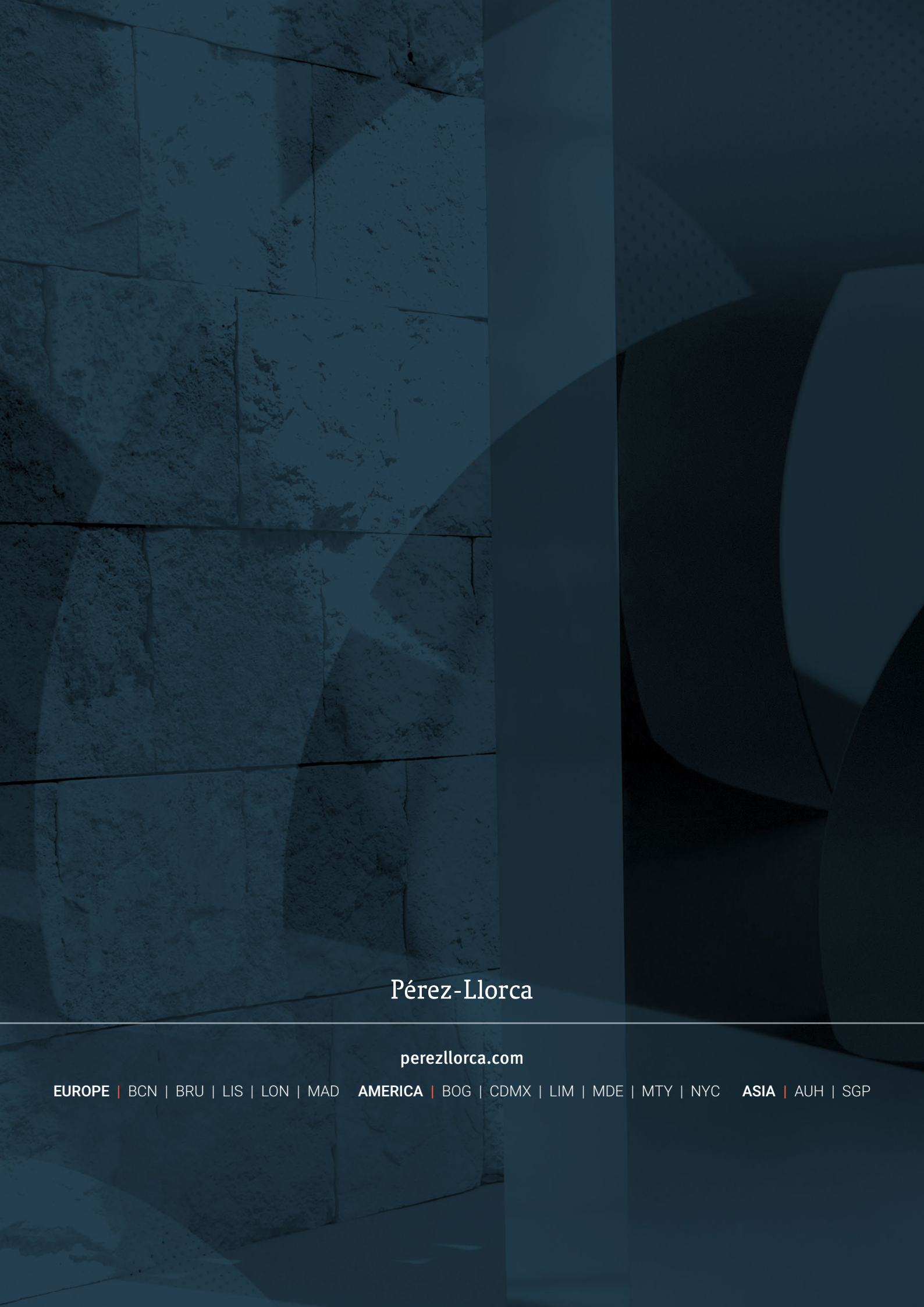
**Pablo Daniel Morán Salgado**
Socio de Seguros y Reaseguros
Partner, Insurance and Reinsurance
daniel.moran@perezllorca.com
T: +52 55 4383 9458



**Daniel Londoño Pinzón**
Socio de Banca, Seguros y Reaseguros
Partner, Banking, Insurance and Reinsurance
daniel.londono@perezllorca.com
T: +57 601 319 2900



**Rafael Corzo**
Socio de Banca, Seguros y Reaseguros
Partner, Banking, Insurance and Reinsurance
rafael.corzo@perezllorca.com
T: +51 1 625 1439



Pérez-Llorca

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