

REGULATORY INTELLIGENCE

COUNTRY UPDATE-Uruguay: Insurance

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From 1911 until 1993 the Uruguayan insurance market was closely controlled by the state. The state-owned insurer ("Banco de Seguros del Estado" or "BSE") was the sole entity authorized to deal in the local insurance market, embodying a government monopoly for all insurance lines.

As of 1993, the sale of insurance products was liberalized, enabling privately-owned firms to freely participate in the insurance market, in direct competition with BSE. Following the passage of the Demonopolization Act (No. 16,426), additional insurance companies progressively began to market their policies in Uruguay (with a current total of 16 insurers -15 private insurance companies plus the BSE), with the sole exception of work accidents and occupational illnesses insurance, which to this day still remains under state control.

The Insurance Law (No. 19,678) passed in October 2018 modernized the insurance contract provisions set out in the 1865 Commercial Code to bring them in line with international standards and practices. This law provides a uniform framework for all operators in the sector and resolves issues that in practice gave rise to different interpretations and ended up being resolved at the judicial level. The law updates regulations on various types of insurance (life, farm, etc.) and specifically regulates types of insurance that did not exist when the Commercial Code was approved, and which today are relevant to the economy, for example, civil liability insurance.

The Insurance Law was the result of a long process during which different bills of law were proposed, beginning when the market was demonopolized in 1993. The bill that was finally approved was prepared by the Central Bank of Uruguay in its capacity as an insurance regulator. During the parliamentary discussions, which went on for three years, opinions were surveyed among different participants in the sector, whose proposals and concerns impacted the text approved. Participants included BSE as a government insurer, private insurers (through their chamber AUDEA), insurance brokerage entities, and Uruguayan university faculty.

The Insurance Law requires submission to Uruguayan law in the case of insurance contracts issued by local insurers but allows agreeing to foreign law for reinsurance contracts, which in practice makes it possible for insurers to continue to turn to the international market for reinsurance. Additionally, clauses contained in insurance policies marketed by local insurers that contradict the provisions of the Insurance Law are not applicable (it is a public policy law) unless they are more beneficial to the insured.

Governing principle of market reserve

The elimination of most monopolies and the opening of the market to new companies were accompanied by very strong legal protection against offshore insurance to the benefit of local insurance providers. Act No. 16,426 provides that risks located within Uruguayan territory may only be insured by companies incorporated in the country that are authorized to operate by the Executive branch and approved by the insurance regulator (at the Central Bank of Uruguay), the agency in charge of issuing insurance regulations as well as monitoring compliance. Act No. 16,426 establishes that "insurance contracts covering risks that may arise in Uruguayan territory shall be subject to all its legal, regulatory and tax rules, and may only be issued by authorized companies."

This is known as the principle of market reserve, which is the generally accepted rule, notwithstanding a few exceptions where offshore insurance contracting is expressly permitted by law. These exceptions refer to insurance of (a) goods in international transportation, and (b) merchant vessels, which are defined as any floating construction, either self-propelled or not, of a civil nature, whose purpose is the transportation of goods or persons for trade purposes, in maritime, river or lake environments.

In the specific case of trade credit insurance, the law establishes that trade credit insurance contracts for exports of goods and services, when exportation is made from Uruguayan territory, can only be executed by a Uruguayan insurer and not by a foreign insurer.



Noncompliance with the legal provision requiring contracting with local insurers is penalized by Law No. 16,426, which establishes joint liability of the insurance company, the insured and any intermediary participating in the transaction. Such penalties include payment of any taxes that would have applied if the transaction had been conducted locally, and monetary fines set by the insurance regulator according to the nature and gravity of the infringement, in line with existing regulations.

Compulsory lines of business

Uruguayan law provides that insurance is compulsory for certain risk-bearing socially-relevant activities, in line with standard international practices. As a general overview, the following is a brief description of some of the mandatory lines of insurance set forth by Uruguayan legislation:

- Work accidents and occupational illnesses of private sector employees and public sector employees performing manual activities under risk conditions. Insurance is not mandatory for other public employees. This insurance may only be contracted with the BSE, which holds a monopoly for the coverage of such risks.
- Group disability and death insurance and collective annuities for social security pension fund members.
- Civil liability insurance for providers of group national and international passenger surface transport and other tourist services.
- Civil liability insurance for road haulers making international trips covering: (i) damages caused to people or things, either carried or not, and (ii) damages to the cargo carried.
- National flag air carrier insurance that covers the following risks: (i) damage to passengers, luggage and other things being carried, (ii) any accidents suffered by personnel on board the carrier, and (iii) the value of the aircraft itself.
- Third-party motor vehicle and trailer liability insurance. All owners of automobiles and trailers must acquire insurance against third-party claims liability arising out of personal injury or death resulting from traffic accidents. This mandatory insurance also applies to persons making land international trips using vehicles for self-transport.
- Civil liability insurance for port service providers.
- Civil liability insurance of operators or owners of the vessel for clean-up in the event of spills and dumping.

Regulatory framework

Any new insurance company seeking to do business in Uruguay is first required to incorporate as a Uruguayan insurer and to obtain a license to operate as such, granted by the Executive branch and the insurance regulator. New businesses must organize as Uruguayan corporations ("sociedades anónimas").

Additionally, their corporate purpose must be restricted to insurance-related activities and their corporate name must denote such capacity. Their articles of incorporation must expressly provide that the corporation's capital will be entirely represented by registered stock, and that transfer of any such stock shall require prior authorization by the insurance regulator.

According to applicable regulations, directors and senior officers of insurance companies can only be individuals duly authorized by the insurance regulator. As for solvency conditions, insurers must accredit minimum net worth determined by the greater of the following parameters:

- "Basic capital," which sum is fixed by the insurance regulator according to the particular lines of business of the insurer, adjusted quarterly. The basic capital for a single line of business is currently set at approximately 10,000,000 indexed units, which is an adjustable currency which varies according to the inflation variation in Uruguay (you may find the current valuation by referring to the following link: [Click here to view this document](#))
- "Solvency margin," which is calculated based on premiums and claims.

Furthermore, insurance companies must constitute technical reserves pursuant to legally established parameters.

Present legislation requires both the minimum capital and technical reserves to be backed by assets having a certain profitability, liquidity and security. Detailed regulations lay out how these capital investments can be made, establishing which types of investment ventures are expressly permitted and their respective capital limitations.

Reinsurance contracts

Uruguayan insurance companies may freely reinsure their risks with foreign reinsurance companies. The contracting of reinsurance with foreign reinsurance entities may be considered by Uruguayan insurance companies only for purposes of establishing technical reserves, by calculating the minimum capital and determining net worth to allow for computation of minimum capital, provided that such contracting is with reinsurance companies that have complied with the requirements for operating in Uruguay, as set forth below.

Foreign reinsurance firms wishing to cover local risks do not have to file or register with any government agency in order to perform such activities. The foreign reinsure must simply accredit an international risk of A- or higher. Should there be two or more inconsistent ratings, the lower rating will be taken into account. The rating must have been issued by one of the following international risk rating agencies, as indicated by the insurance regulator:

- Standard & Poor's International Ratings LLC;



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- Fitch Ratings;
- Moody's Investors Services; or
- A.M. Best.

The responsibility of accrediting the international risk rating of foreign reinsurers rests with the local insurance company that contracts reinsurance. There are no formal requirements to validate such a rating with the insurance regulator.

Other policy-related requirements

Insurance companies doing business in Uruguay can fix the prices of products they market and determine the content of their policies at will. The only obligation prescribed for locally operating insurers is that they report any new products being launched in the market or any modifications of existing products, and submit to the insurance regulator prior to marketing same, the model policies, terms and conditions, technical information, a note from the insurance company indicating that the policy was evaluated by the person in charge of the actuarial function and a report from a legal counsel stating that the content of the policy is in accordance with the regulations in force on the matter and follows the guidelines contained in instructions given by the Central Bank of Uruguay. This is done under a file and use system: the insurer must simply report all relevant aspects of the product as mentioned above, and no further authorization is required.

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