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NEWS

THE LONG WAIT IS OVER

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The long awaited reform to Chile's insurance contract legislation will finally come into force at the end of this year. Alessandri partner Felipe Cousiño discusses the new law's provisions and explains how it will enable further growth of Chile's insurance market

In May, Chile's Official Gazette published Law 20,667 regulating insurance contracts. The new law will come into force on 1 December 2013 and represents the modernisation of regulation dating back to 1865.

The aim is to bring the legislation in line with the current economic reality by harmonising it with the evolution of the insurance sector, both nationally and internationally. While some critics have said the new law has an excessive focus on insurance contracts as consumer products, the new statute should contribute to furthering the growth of the insurance market in Chile.

It is evident that the new law is designed to reflect the reality of the current insurance market and accommodate basic concepts that are already deeply-rooted in the practices of the market. From now on these concepts will be part of legislation, making it easier to interpret insurance policies.

It is worth highlighting a number of innovations introduced by this law. For example, insurance contracts can now be proven by means such as e-mails and any other documented form of digital or electronic transmission, be it verbal or written. This characteristic is a consequence of the fact that the insurance contract is no longer a formal contract, and its inclusion is clearly in line with current practice.

Next, the duty of disclosure of the insured has been shifted towards insurance companies. Thus, the insured will not have a duty to disclose relevant circumstances to determine risks unless specifically asked by the insurance company. If insurance companies do not ask the relevant questions about risk in the insurance application form, then the future insured will not have a duty of disclosure. This is a clear example of how the legislator views insurance as a consumer product.

The law also introduces detailed regulations regarding the disclosure of events that increase the risks that are being insured against. These rules try to accommodate every possible scenario. They reflect the clauses that are usually established in insurance contracts in the market, especially those created in the last few years. However, personal insurance, except accident insurance, is inexplicably excluded from such regulation, as if the insured were unable to take risk prevention measures. This is another example of the legislator taking a (some would say excessive) consumer protectionist position.

Collective insurance contracts will now be recognised in the law and there is specific regulation as to the form and issuance of certificates of insurance.

Remote contracting will also be regulated and will establish the right of the insured to withdraw from the contract. This right must be exercised within 10 days from receipt of the policy. No expression of cause is necessary and

no added cost can be incurred, maintaining a consumer's right to a full refund of the premium. This regulation is very similar to the relevant provisions of the consumer rights protection law. Again, the legislator seems to be characterising insurance almost exclusively as a consumer product.

The insured have a greater freedom than the insurer to withdraw from the contract. The provisions of the law regulating the insurance contract are "imperative", meaning that they are characterised as public order, except in relation to policies where both insured and beneficiaries are legal entities (ie not individuals) and the value of the annual premiums is more than UF200 (US$9,500).

Conflicts between the insurer and insured can be resolved by arbitration, but in the case of losses below a certain threshold the insured can opt to initiate proceedings with the ordinary courts. This rule has the purpose of protecting small- and medium-sized companies, considering the cost of litigating before the ordinary courts is lower than before an arbitral court. In the case of losses for higher amounts the dispute resolution mechanism will continue to be arbitration.

The insurance companies must send authorised copies of final judgments to the securities and insurance regulator, Superintendencia de Valores y Seguros, meaning the information will be available to the public – thereby greatly improving access to precedents.

The new law will introduce specific recognition and regulations for certain types of insurance – such as civil liability insurance, credit insurance, bonding, loss of gains and business interruption insurance – for the first time.

Other improvements introduced by this new law include those made to the rules on concurrency of policies, the regulation of insurable interest (which is better defined according to the different types of insurance) and concurrency of causes of losses. In relation to the regulation of plurality or concurrency of policies that cover the same subject, interest and risk, the law gives the insured the possibility to claim the payment of any loss to any one insurer. In addition, the law establishes that when the insured reports the loss he or she is obligated to communicate to every insurer the existence of the other policies. This will allow the insurer that pays the loss to be reimbursed pro rata from the other insurers. Also, the law establishes that if the insured gets a payment for an amount which is higher than the amount of his loss, the insurers can claim reimbursement to the insured for what they have paid in excess and have the ability to charge damages or file a criminal suit if the insured acts in bad faith. This way of regulating the concurrency of insurance policies has been applauded by the insurance industry.

All in all, despite certain aspects that may be criticised, this new statute constitutes considerable progress and should reduce many of the uncertainties caused by outdated legislation.

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