

# **LAW NO. 20091**

## **ON INSURERS AND THEIRS SUPERVISION**

Buenos Aires, January 11, 1973

### **See regulatory background**

To the honourable President of the Nation, We are pleased to submit for the consideration of the First Magistrate a bill on insurers and their supervision, aimed at replacing the regulatory regime of the superintendence of insurance effective today. The bill favoured is founded on the one prepared by the Advising, Consulting and Reviewing Commission of the General Insurance Law (Decree law No. 5495/59) between 1959 and 1961, together with the professor Isaac Halperín, editor of the draft bill made by National Executive Power's mandate, on which elaboration members of the top scientific hierarchy on the matter on behalf of the Judicial Power, the Superintendence of Insurance of the Nation, the Instituto Nacional de Reaseguro (National Reinsurance Institute, Argentine Federation of Attorneys' Association, School of Law and Social Sciences of Buenos Aires, and Cordoba, School of Economic Sciences of Buenos Aires, Argentine Association of Insurance Companies, Association of Foreign Insurers in Argentina and Argentine Association of Cooperatives and Mutual Insurers. Additionally, the bill prepared in 1967 by the commission formed by professors Rodolfo O. Fontanarrosa, Guillermo Michelson, Juan Carlos Félix Morandi, and Gervasio R. Colombres should be mentioned as background. The text submitted to consideration of V.E. results from a detailed and carefully thought of task, and though it agrees with in general terms with those made in 1961 and 1967, it also includes all the adjustments claimed for as essential by the update thereof. Besides the insurance entity regime, the bill includes the regulation related to the control exercised by the State on those entities through its specific body, the Superintendence of Insurance of the Nation, and in this aspect it completes the stage started in 1967, when the law 17418 on the insurance contract was passed. Though the bill will be incorporated into the legislation in force after some years since the Law 17418 was enacted, it is intended to create, together with it, a complete regulation and to express a unit conception of insurance, that influence necessarily all private

relations of contracting party and the entities' operation and the State control on them. In such a way a unifying criterion is materialized, which has been a constant concern of those who have participate on this long amendment process which started in 1959, and which has been object of specific analysis from our most prestigious treatise writer. Finally, it should be mentioned that all the issues related to insurance policy problems, such as those related to treatment of Argentine and foreign companies, protection of the so called "argentine risks" and the regime of the National Institute of Reinsurance, have been excluded from this bill, as being considered issues unconnected to the specific regulation of the insurance entities and their control, therefore it has been deemed appropriate to put it back to a later stage. The bill submitted to Your Honour's consideration meets the National Policies number 3, 54 and 90, approved by Decree Law

47/70 of the Board of Chief Commanders.  
May God be with you.  
Gervasio R. Colombres

## LAW 20091

Buenos Aires, January 11, 1973

In exercise of the powers conferred by Section 5 of the Statute of the Argentine Revolution, The President of the Argentine Nation has passed and enacted the present law.

### INSURERS AND THEIRS SUPERVISION

## CHAPTER I Insurers

### ARTICLE I

Scope

*The following activities are included:*

**Section 1.** The practice of insurance and reinsurance business anywhere in the territory of the Nation is subject to the regime of this law and the control of the authority created by it.

Scope of the term insurance

When this law refers to insurance, any shape or form of the insurance business is considered. Reinsurance is also included, provided that the legal reinsurance regime in force is not affected.

### ARTICLE II

#### Entities to be authorized

*Bodies that can operate*

**Section 2.** The following bodies can only carry out insurance operations:

- a)** Limited liability companies, cooperatives and mutual insurance companies;
- b)** Branches or agencies of foreign companies of types shown in previous paragraph;
- c)** Agencies, and official or joint bodies, either national, provincial or municipal.

Prior authorization

The existence or establishment of companies, branches or agencies, bodies or entities listed in this section does not enable them to operate in insurance provided that they are not authorized in advance by the supervisory authority. Inclusion within the law regime

**Section 3.** The supervisory authority shall include within this law regime those entities conducting operations related to insurance, when their nature or scope justifies it.

Term to comply with the Law.

Liquidation  
Punishment

When inclusion shall proceed, the supervisory authority shall fix a period, not exceeding ninety (90) days, to comply with this law regime; in the meantime no new operations may be conducted. In case of default, the supervisory authority shall order the liquidation of the offender in accordance with Section 51, without prejudice of the punishment that it may apply under the regime provided for in Section 61. Agencies and official bodies of private insurance

**Section 4.** Agencies and official bodies are subject to the provisions of this law when operating in insurance or reinsurance; when operating in the later, provisions of legal regime in force shall be observed. They shall be organized based on functional and financial self-management. If their main purpose is not conducting such operations, they shall establish a separate administration with its own assets independently run. Foreign companies.

**Section 5.** Branches or agencies referred to in Section 2, subsection b) shall be authorized to:

Carry out the insurance business under the conditions set forth by this Law for limited liability companies incorporated in the country, if there is reciprocity under the home laws.

Local Representation

Local representation shall be provided by one or more representatives with sufficient powers to carry out together with the supervisory authority and third parties all legal acts pertaining the object of the company, and being on trial on its behalf. The representative has no authority to extend or waive the authorization to operate or to transfer the insurance portfolio voluntarily, unless expressly authorized authorization. Branches in the country, and branches or agencies abroad

**Section 6.** Authorized insurers may set up or close branches in the country as well as branches or agencies abroad, after prior authorization from the supervisory authority, which may set out, in a general and fair manner, the requirements and formalities to be fulfilled. The delegation may be appealed to the National Executive Power in accordance with the provisions of Section 85, whose decision is unappealable.

## ARTICLE III

### Conditions of operation authorization

*Authorization requirements*

**Section 7.** The entities referred to in Section 2 shall be authorized to operate in insurance business when they meet the following conditions:

*Incorporation*

**a)** Having been incorporated under the general laws and the specific provisions of this Law.

*Exclusive purpose*

**b)** Having the sole purpose of carrying out insurance transactions, in which case, being enable to dispose of and manage, pursuant to this Law, the goods on which they have invested their capital and reserves.

They may grant bail or secure third parties' obligations when they set economically and technically approved insurance operations.

Agencies and official bodies shall comply with provisions of Section 4;

#### *Minimum capital stock*

**c)** Proving full subscription of minimum capital stock referred to in Section 30;

#### *Foreign companies.*

**d)** Submitting headquarters' balance sheets of the last five (5) years, in the case of foreign companies;

#### *Duration*

**e)** Having the minimum term required by the nature of the class or classes of the insurance to be traded;

#### *Plans*

**f)** Having insurance plans adjusted to provisions of Section 24 et seq.; Market coexistence.

#### *Resources*

**g)** Having appropriate insurance market performance. Any refusal of authorization based on the grounds listed in subsections a) to f), results in a judicial appeal under Section 83. The refusal based on the insurance market condition enables to file an appeal before the National Executive Power in accordance with the provisions of Section 85, decision of which is unappealable.

#### *Domicile*

The domicile of the authorized entities shall be the one established at its authorization to operate, and shall remain as constituted for all purposes until the establishment of another.

#### *Supervisory authority's previous consent*

**Section 8.** The entities established in the territory of the Nation intended to operate in insurance business, as well as the branches or agencies of foreign companies wishing to operate in insurance business in the country shall only do so once registered with the Public Registry of Commerce of the jurisdiction of their domicile. Such registration shall only be effective, being the incorporation by the appropriate supervisory authority completed, depending on the type of company or form of association taken, the Superintendence of Insurance of the Nation has granted the corresponding authorization to operate in accordance with preceding article.

#### *Proceeding*

For this purpose, the relevant supervisory bodies, once the incorporation been established, in accordance with Law No. 19550 or with special laws applicable to the type or form of association, shall submit the file to the Superintendence of Insurance of the Nation, which, where appropriate, shall grant the authorization to operate. In this case, the Superintendence will directly submit the file and a testimony of the authorization to operate, to the Public Registry of Commerce from the domicile of the entity, for its registration by

clerk, if appropriate.

Additionally, the Superintendence's previous approval shall be required, applying the same procedure, for any amendment to the incorporation contract or to the by-laws and for capital increases, even when they do not mean an amendment of the by-laws. The Superintendence shall inform either the granting or the refusal of authorization to operate, as well as the rejection of the amendments or increases in capital to relevant supervisory authorities. Registration with the Public Registry of Commerce of the domicile of the entity shall be completed within a (60) a sixty-day period after having received the file; otherwise, the authorization to operate shall automatically expire. Should the registration be accepted, the registrar shall send a testimony of the documents with the acknowledgement prove to the Superintendence.

The resolution on the authorization to operate and its refusal shall not be revisable in no case whatsoever by any registrar from the domicile of the entity, but it shall be appealed in the manner established by this Law.

#### *Liability*

Founders, partners, shareholders, managers, directors, advisers, managers, trustees or members of the supervisory boards shall be unlimitedly and severally liable for the obligations assumed until the registration of the entity with the Public Registry of Commerce or once the revocation of the authorization for the insurance business has been registered in accordance with provisions of Section 49.

#### *Sole and exclusive supervision*

Monitoring the operation and performance of all insurance entities, without exception, corresponds to the supervisory authority organized under this Law, excluding any other administrative authority, either national or provincial; however, the Superintendence may require the later to provide their views on issues related to the entities corporate regime, whenever appropriate.

#### *Impediments*

**Section 9.** Besides the individuals encompassed under disqualifications, incompatibilities and hindrances, as prescribed by Law 19550, those who have been condemned for crimes committed for profit or for crimes against property or public trust, or for any crime excluding those involving negligence having imprisonment or disqualification punishment, unless another period of time equal to twice the conviction term has elapsed; and those subject to preventive detention for same crimes until final dismissal; those bankrupt or under reorganization proceeding or being delinquent debtor of the entity; those disqualified to use bank current accounts and issue checks, up to one (1) year after discharge; those who have been punished as directors, administrators or managers of a bankrupt company or if considered responsible for the liquidation of an insurance entity pursuant to section 53 or being disqualified by virtue of sections 59 through 61, shall not be promoters, founders, directors, advisors, trustees, members of the supervisory board, liquidators, managers, administrators or representatives of insurers subject to this Law.

#### *Challenge*

The supervisory authority will challenge those who fall under the aforementioned impediments, and will mandate the entity to put forward the measures intended to the immediate exclusion of those challenged within fifteen (15) days of notification thereof. Should the entity fail to act accordingly, the supervisory authority will deny the authorization to operate, and assuming they were entities already authorized by the Superintendence,

they shall be subject to a fine of up to ten thousand dollars (\$ 10,000), which will rise to double in the event of further refusal.

#### *Compensation on production*

**Section10.** Insurers shall not pay to the auditors and managers, or the staff, whatever their hierarchy, name and functions, in proportion to the gross or net production, total or any section of insurance in particular, or, in the case of solidarity insurance companies, with a percentage of income instalments or entity's shares.

## **ARTICLE IV**

### **Solidarity Insurance**

#### *Companies Social Arbitration*

**Section11.** By-laws may establish that differences with partners resulting from the insurance contract be resolved by arbitration board established thereby, when accepted, in each case, by the affected partner. If such being established, they shall regulate their formation and functions, as well as the acceptable corporate resources.

#### *Reinsurance*

**Section12.** Solidarity insurance companies may reinsure with any reinsurer, and accept reinsurance and retrocession even from those who are not partners, in the conditions set by the supervisory authority, provided that it is authorized by their by-laws and the reinsurance legal regime in force is not infringed.

#### *Producers*

**Section 13.** Solidarity insurance companies may employ assistants on commission for the execution of insurance contracts with their partners.

#### *Representation and voting at meetings*

**Section 14.** Assistants on commission may not represent shareholders at the meetings. At the general meetings, only partners holding an insurance contract in force in the year may vote.

#### *Real Estate*

**Section 15.** Purchase or sale of property requires the general meeting's authorization. Voluntary reserves The general meeting may decide to hold voluntary reserves. Return on surplus Liquid surplus made in the year shall return to shareholders based on premiums taken during such year or as otherwise stated in the rules of participation approved by the supervisory authority. Administration.

#### *Prohibition*

**Section 16.** Social administration or management cannot be fully or partially delegated to third parties

#### *Remuneration*

By-laws may establish remuneration of directors, officers, and trustees for the performance of their duties, provided that it is approved by the general meeting.

#### *Challenge*

The supervisory authority will challenge compensations which are not proportionated to the company's economic and financial capacity, or do not meet, according to the market practice, the task performed. Trustees shall be applied any and all requirements, disqualifications, incompatibilities, powers, duties and responsibilities applicable to corporations' syndics shall be applied to syndics.

Cooperative Corporations

#### *Scope of underwriting*

**Section 17.** Cooperative corporations may only underwrite policies with their partners, who shall be owners of the insurable interest at the time of underwriting. Mutual insurance companies

#### *Partners: requirements*

**Section 18.** By-laws shall set out the requirements for being a partner and any reasons for losing such capacity.

#### *Partners*

Any individual who, when being incorporated, enters into an insurance contract with the company shall be able to become a partner, and shall stop being such upon the termination of the insurance contract, unless otherwise stated by statutory provision which accepts its interruption by a maximum of (1) year.

#### *Benefits, privileges, preferences*

All partners under the same conditions shall be treated equally. No benefit or privilege whatsoever may be granted to founders, directors, managers or trustees, neither any preference over any portion of the social fund.

#### *Honorary members and benefactors*

By-laws may provide for categories of honorary members and benefactors without conferring them any social right.

#### *Guarantee Fund*

**Section 19.** They will have a guarantee fund equivalent to the capital required by Section 7, subsection c).

#### *Shareholders: liability*

By-laws shall establish the shareholders' proportional liability, except for honorary members and benefactors, - whenever the guarantee fund is affected, which shall be limited.

#### *Date*

Section 20. The general meeting shall meet on an annual basis within four (4) months after the year end.

#### *Quorum*

Quorum on first call is a majority of shareholders, unless higher quorum is required by by-laws; quorum on second call shall be with any number of members.

#### *Majority*

Decisions will be made by the majority of votes per person present; unless a higher number is required by by-laws.

#### *Representation*

By-laws authorize the representation by proxy. A proxy cannot represent more than two (2) shareholders. And directors cannot act as proxies.

#### *Board of Directors*

**Section 21.** The administration shall be exercised by a board consisting of at least five (5) members, elected by the general meeting, for a maximum period of three (3) years. Members of the Board shall be re-elected.

#### *Statutory Auditors*

**Section 22.** Auditing is exercised by auditor selected among the shareholders by the general meeting.

They last up to three (3) years in office, and may be re-elected.

## **SECTION V**

### **Lines of insurance, plans and technical and contractual items**

#### *Lines of insurance*

**Section 23.** Insurers cannot operate in any line of insurance provided that they are expressly authorised to do so.

#### *Plans, technical and contractual elements.*

Insurance plans and their technical and contractual elements, must be approved by the supervisory authority before implementation.

#### *General rule*

**Section 24.** The plans, in addition to the elements required by the supervisory authority in accordance with the characteristics of each of them, must include the following:

- a)** Text of the insurance proposal and the policy;
- b)** Premiums and their technical foundations;
- c)** Basis for the calculation of technical reserves, where there are no applicable general rules.

#### *Special rules for life line of insurance*

Plans to operate in life insurance shall also include the following:

- I)** Text of questionnaires to be used.
- II)** Principles and technical foundations for calculating premiums and pure reserves; stating, when dealing with insurance having profit-sharing or accumulation funds, the rights granted to insured, the supporting reasons and the procedure to be used in the creation of such fund.
- III)** Basis for the calculation of surrender values, insurances reduced in amount or term (settled insurances), and loans to policyholders.

The elements referred to in subsections b) and c), as well as paragraphs II) and III), shall be submitted with the authorized actuarial opinion.

#### *Prohibited plans*



The following plans are prohibited:

1. Plans called tontine, leakage and those that include lottery.
2. Hedging operations from pure financial credit.

#### *Policies*

**Section 25.** Text of the policies shall meet section 11, second part, and section 158, Law 17418, and be supported by authorised legal opinion.

The supervisory authority will assure that contractual terms are fair.

Policies shall be written in national language, except for maritime risk policies that may be written in foreign language.

#### *Premiums*

**Section 26.** Premiums must be sufficient to fulfil the insurer's obligations and its ongoing economic and financial training.

Commissions may be freely set by insurers within any minimum and maximum authorised by the supervisory authority.

The supervisory authority shall observe the premiums that are insufficient, unfair or arbitrarily discriminatory.

Uniform minimum premiums net of commissions may be approved, only by justified resolution, when market stability is affected. The supervisory authority shall proceed upon the request of any association of insurer after hearing the other associations of insurers.

#### *Life insurance line with profit-sharing*

**Section 27.** Profits from life insurance line with profit-sharing shall be determined and paid annually, or they might be charged to future premiums or credited to an account which should enjoy an interest no lower than the one charged by insurer for loans on policies, or applied to the granting of additional benefits authorised by the supervisory authority.

#### *Plans, modifications and premiums approval*

**Section 28.** In the case of insurance plans for lines already authorised, the insurer or of amendments to their technical and contractual elements, the supervisory authority shall decide within ninety (90) days as from submission of the relevant approval request. When the premiums modification or the application of special premiums are exclusively managed, in relation to plans already approved for the insurer, the supervisory authority shall decide within thirty (30) days as from submission of the relevant approval request.

#### *Prohibited operations*

**Section 29.** Insurers shall not:

- a) Have jointly owned property, without prior approval of the supervisory authority;
- b) Levy property with security interests, except for in the case of real estate for personal use as guarantee for the balance of purchase price and in the conditions established by the supervisory authority;
- c) Issue debentures or bills of exchange and notes;
- d) Discount receivables from policyholders or third parties, or negotiate the checks they receive, unless the later are transferred by endorsement in favour of a specific individual;
- e) Meet their obligations to policyholders in bills of exchange or notes of their own or from third parties;
- f) Make payments but by checks drawn to the order of the creditor, except for what the

supervisory authority may establish on the management of the so-called "imprest fund";

- g)** Use bank credit for any reason, unless it is intended to build real estate for rent or sale, in each case, requiring the supervisory authority's previous authorization;
- h)** Make arrangements for free, except for contributions for charity or cultural purposes, or if made with net and earned profits in accordance with the by-laws provisions and the general meeting's resolution;
- i)** Grant bails or guarantee obligations of third parties, except as stated in Section 7, subsection b);
- j)** Make up other companies, unless as stated in section 35, subsection f). The supervisory authority may consider as included within the list of preceding prohibitions any operation similar to those provided.

## **SECTION VI**

### **Insurance company management**

#### *Minimum capital*

Upon situations of the insurer's temporary illiquidity, the SUPERINTENDENCE OF INSURANCE OF THE NATION under the UNDER-SECRETARIAT OF FINANCIAL SERVICES of the SECRETARIAT OF FINANCE, MINISTRY OF ECONOMY, may waive the prohibition contained in subsection g) of this section. (Paragraph added by section 1 of the Decree Law No. 558/2002 BO 3/4/2002, Official Gazette 3/4/2002). Insurers may draw a subordinated debt upon general and special privileges arising from insurance contracts and subject to regulations set by the supervisory authority. (Paragraph as inserted by section 1 of the Decree No. 558/2002, Official Gazette 3/4/2002).

**Section 30.** The supervisory authority shall establish, on uniform and comprehensive criterion, for all insurers with no exception, the amount and minimum capital standards, to which insurers to be authorized or already authorized shall adapt.

#### *Foreign companies*

Foreign companies' branches and agencies must have and constitute in the country funds equivalent to the minimum capital required to insurers incorporated in it. Reduction of minimum capital due to losses

#### *Regularization and restructuring plan*

**Section 31.** Should the insurer be in some of the cases provided for in Section 86 of this Law, the SUPERINTENDENCE OF INSURANCE OF THE NATION, under the UNDER-SECRETARIAT OF FINANCIAL SERVICES, of THE SECRETARY OF FINANCE, of the MINISTRY OF ECONOMY, shall demand for explanations within a FIVE (5) business day term. Having these been given, and under the nature and severity of the reasons, the supervisory authority may demand the insurer to solve the situation within a period not exceeding FIFTEEN (15) business days or, to submit a regularization and restructuring plan within that same period, which shall be approved by the supervisory authority and fulfilled within the terms and conditions established by it.

The regularization and restricting plan might consider different mechanisms:

- a)** Capital contribution.

- b) Merger.
- c) Administration with purchase or merger option.
- d) Transfer of portfolio, being inapplicable to these cases Law on Transfer of Goodwill, and the publicity provided for in Section 47 of this law.
- e) Exclusion of the assets of certain assets (tangible or not) and the insurer's liabilities and the transfer for of the title for consideration of them to other insurer and / or the establishment of trusts.

The acts caused by the measures provided for in this subsection shall not fall under the Law on sale of business or the publicity provisions stated in section 47 hereof. No levy of execution against assets excluded by enforcement of this subsection shall be implemented, unless it is intended to recover a mortgage or lien. Additionally, no preliminary injunctions shall be levied on such assets. Should any of these measures been filed or levied, the hearing judge, in order to enable use of powers granted herein, shall order the immediate discharge of attachments and/or general inhibitions.

All the acts authorised, ordered or set by the supervisory authority resulting in the transfer of assets and liabilities are not subject to any judicial authorization whatsoever and cannot be reputed ineffective for the creditors of the insurer, owner of the excluded assets, even when there is insolvency prior to exclusion.

Creditors of the insurer shall not be entitled to any right or action whatsoever against such assets, unless they hold special privileges covering specific assets. The supervisory authority, in order to make the implementation of Reorganization and restructuring plan viable, and ensure the insurer's continued performance, shall admit on a temporary basis, exceptions to the relevant limits and technical relationships, without requiring to set the measure to prohibit the execution of new insurance contracts. During the restructuring process of an insurance company, the rules of this law and the resolutions of the SUPERINTENDENCE OF INSURANCE OF THE NATION, under the UNDER-SECRETARIAT OF FINANCIAL SERVICES, of the SECRETARY OF FINANCE of the MINISTRY OF ECONOMY shall prevail over the rules governing the type of company, and over the resolutions or acts of the legal entity's supervisory bodies. (Section substituted by Section 2 of the Decree Law No. 558/2002, Official Gazette 3/4/2002).

**Section 32.** Insurers shall freely establish their withholding tables freely, regardless of any comment the supervisory authority may put forward and the legal reinsurance regime in force.

#### *Technical reserves*

**Section 33.** The supervisory authority shall determine, in an even and general term, the technical and loss reserves insurers shall set, provided that it is necessary to address compliance with their obligations to policyholders.

Insurers holding obligations arising from the insurance and reinsurance contracts payable in foreign currency, shall set appropriate technical reserves in the same currencies or in other permitted, as established by the supervisory authority.

#### *Amortization, reserves and forecast funds*

They shall also affect assets for the support of technical commitments deriving from certain types or forms of contract, subject to previous authorization by the SUPERINTENDENCE OF INSURANCE OF THE NATION under the UNDER-SECRETARIAT OF FINANCIAL SERVICES of the SECRETARIAT OF FINANCE of

the MINISTRY OF ECONOMY.

(Paragraph as inserted by section 4 of the Decree Law No. 558/2002, Official Gazette3/4/2002).

**Section 34.** Insurers shall set on the profit and loss account or as distribution of profits, as determined by the supervisory authority, amortization, forecast funds and reserves, it establishes in general, without prejudice of the funds set by the supervisory control in particular for each insurer according to their economic and financial situation.

*Coverage calculation: possible lines of insurance*

**Section 35.** The amounts of the reserves provided for in Section 33 and of the reserve deposits held as collateral by reinsurers -net in liquidity and reserve deposits held as collateral by reinsurers, shall be invested entirely in the assets listed hereinafter, being those assuming greater liquidity and involving sufficient profitability and guarantee the preferred ones:

*Investment: assets*

**a)** Securities or other national public debt securities or Nation-guaranteed, loans, in which the Nation through the Secretariat of Finance of the Ministry of Economy or the Central Bank of the Argentine Republic is debtor, and debt securities from provinces issued under their respective Constitutions, as well as those from municipalities having guarantees from the respective districts; (subsection replaced by section 14 of Decree Law No. 1387/2001, Official Gazette2/11/2001).

**b)** Foreign government bonds, up to the amount of the technical reserves corresponding to policies issued in the currencies of those countries;

**c)** Negotiable bond having authorised public offering issued by joint stock corporations, Limited Liability Company, cooperatives or civil associations in civil, and debentures, both with special or floating security interest in first degree on assets located in the country. (Subsection replaced by section 49 of Law No. 27264, Official Gazette 1/8/2016). Loans secured by a chattel mortgage in first degree on assets located in the country, excluding deposits, quarries and mines. The loan shall not exceed fifty percent (50%) of the realizable value of the asset, especially valued to such effect by the insurer;

**d)** Property located in the country for their own use, building, rental or sale;

**e)** Shares of corporations incorporated in the country or abroad covered by section 124 of Law No. 19550 or foreign companies whose main purpose of the provision of public services within the Nation, which are traded on stock exchanges of the country or abroad;

**f)** Loans secured by securities, debentures and shares of subsections a), b), c) and f), up to fifty percent (50%) of the market value of those securities;

**g)** Financial transactions secured entirely by banks or other financial institutions duly authorized to operate in the country by the Central Bank of Argentina, in each case requiring the supervisory authority's previous authorization, and provided that the insurer's economic and financial conditions allows for it.

The supervisory authority shall establish on general terms the investment rates in such assets and may object the investments made in assets that do not meet the characteristics of liquidity, profitability and security or whose purchase price exceeds its net realizable value; in the latter case, the supervisory authority shall set measures leading to making such investment registers on the balance sheet a value equivalent to of its net realizable value based on the current market price.

Assets acquired with a lien shall be computed for investment rates for a total amount, net of depreciation; for the balance of coverage, they shall be considered with the tax deduction.

*Coverage calculation:*

life line of insurance In life insurance line, insurers may also deduce from investing reserves loans for insured, overdue receivable premiums and premiums fractions to be expired.

Other authorized investments Capital, legal reserve and forecast funds and reserves of Section 34, deducting what is intended to fixed assets for the insurance business installation, operation and development, and premium credit shall be invested in the same assets without being subject to rates, or in other assets, with prior authorization of the supervisory authority. Investment instruments shall remain in the country, unless the supervisory authority expressly authorizes it in each case.

*Passive reinsurance*

**Section 36.** When an insurer reassures abroad in accordance with the reinsurance legal regime in force, it shall retain, effectively and really, the technical reserve corresponding to the part transferred from the original premium.

*Active reinsurance*

On the acceptance of foreign reinsurance, the relevant technical reserves may be held abroad.

*Facultative reinsurance*

These provisions do not apply in facultative reinsurance.

*Termination clause*

It's the contracts entered into with foreign reinsurers shall agree on a termination clause for non-compliance, economic and financial difficulties experienced by the reinsurer, and other situations that might jeopardize the insurer's interests based in the country, such as war, invasion, civil war, rebellion, sedition, governmental measures or other similar events. In these cases, the reinsurer shall be obliged to refund unearned premiums up to the termination; the insurer, in turn, shall be entitled to keep possession of withheld reserves until full compliance with the reinsurer's obligations, allowing that purpose if remittances are not made within a reasonable time.

## **SECTION VII**

### **Administration and balance sheets**

*Administration*

**Section 37.** Insurers shall keep their transactions in the books and records established by the supervisory authority, which shall be kept in national language and with the formalities it provides. The relevant documentation will be filed in an orderly manner to facilitate the auditing tasks. Documentation referring to the insurance contracts shall be kept for a minimum of ten (10) years overdue.

*Annual report*

**Section 38.** Insurers shall submit to the supervisory authority, at least thirty (30) days

in advance of general meeting, in the forms established thereby, the annual report, balance sheet, profit and loss account, statutory auditor's report or the surveillance board report in turn accompanied by the opinion of an independent licensed professional.

#### *Closing of the fiscal year*

Fiscal year shall end on June 30th each year. The respective general meeting shall be held within the following four (4) months; and this term shall also rule for cooperative and mutual insurance companies.

#### *Foreign Companies*

Closing date for foreign branches and agencies' fiscal year is that of its parent company, unless they opt to close by June 30th each year. Within a six (6) month term as from that date, they shall submit the relevant foregoing items, relating to the transactions made in the country. The annual report shall be replaced by the representative's report.

#### *Life line of insurance*

Insurers operating in the life line shall submit an actuarial opinion undersigned by an independent licensed professional.

#### *Accounting standards and chart of accounts*

**Section 39.** The supervisory authority shall pass accounting rules and establish an accountability plan, both on a uniform term.

Insurers who wish to not observe these rules or the plan must obtain prior approval of intended changes from the supervisory authority.

#### *Quarterly Balances*

**Section 40.** Insurers are not required to submit quarterly balance sheets, but the supervisory authority may require so to a particular insurer when deemed it appropriate. Publishing of annual report All insurers with no exceptions are only bound to the publishing of the annual report, which can be summarised based on official forms. The supervisory authority will pass the rules which insurers must conform to for the publishing of their balance sheets.

#### *Appraisal of the assets*

**Section 41.** The supervisory authority will establish uniform rules for the appraisal of the assets.

#### *Commissions to be paid off: life line of insurance*

**Section 42.** Insurance companies operating in the life insurance line shall include in their balance sheets assets column the item "commissions to be paid off", made up by the purchase commissions paid for new businesses, which, for the purposes the item "commissions to be paid off" shall not exceed the maximum limit fixed by the supervisory authority within the eighty percent (80%) of the amount of annual rate premium for premium periods of twenty (20) years or more , or whole life, with a reduction of two and a half percent (2 ½%) of the annual premium for each year less in duration. Commissions to be paid off will be established separately for each payment year.

Balances of commissions for insurance completed, expired or terminated still to be

paid off shall be discharges from the account and settled as loss.

Life insurance commissions to the effect of "commissions to be paid off" line shall be amortized in five (5) years or less, and at proportion not lower than twenty percent (20%) per annum on the balance sheets, counting as from the first year in which they were added into assets.

#### *Legal reserve*

**Section 43.** Without prejudice to what the supervisory authority sets in accordance with Section 34, underwriters shall allocated by way of legal reserve not less than five percent (5%) of realized net profits stated in P&L statement for the year, up to reaching twenty percent (20%) of their capital.

#### *Cooperatives*

Cooperative companies shall allocate to said reserve the rate mentioned but with such limitation.

#### *Reimbursement*

Whenever the legal reserve decreases for any reason, it shall be reimbursed entirely with first profits.

#### *Objections to the balance sheet*

**Section 44.** The supervisory authority may object the balance sheet. When notes are intended to delete or reduce profits or surplus of the year, it may order the suspension or consecutively limitation of the distribution.

#### *Report on the insurer's condition*

**Section 45.** Insurers shall make available to policyholders, and to any stakeholders requesting so, the annual report, balance sheet, profit and loss account, and the auditor's or surveillance board report, if necessary.

## **SECTION VIII**

### **Merger and transfer of portfolio**

#### *Requirements*

**Section 46.** Merger of insurers or total or partial transfer of portfolio requires the authorization of the supervisory authority.

Total or partial transfer of portfolio can only be made to insurers established in the country in accordance with this law.

#### *Advertising*

**Section 47.** Insurers agreeing total or partial transfer of portfolio shall submit the proposed contract to the supervisory authority, and shall publish notices for a term of three (3) days of announcing the assignment in the official gazettes of the headquarters and branches, so that policyholders may submit a founded objection founded before that authority within fifteen (15) days as from the last publication.

#### *Resolution*

Once term expires, the supervisory authority shall make up a decision within thirty

(30) days. Approval may be denied if background and verified facts do not show policyholders' interests are not sufficiently protected.

*Appeal*

Refusal is appealable in accordance with Section 83.

*Approval: effects*

Should contract be approved, it will bound cedents, cessioners, underwriters and their interested parties. For the other creditors, transfer provisions for commercial facilities shall govern, whenever appropriate.

*Manner*

The act of transfer may be granted by a public or private instrument.

## **SECTION IX**

### **Authorization withdrawal**

*Appropriate cases*

**Section 48.** The authorization granted in accordance with section 7 must be revoked by the supervisory authority when:

- a)** The insurer does not actually start its operations in a six (6) month term;
- b)** Provisions of section 31 herein, in the cases of loss of minimum capital, are not fulfilled;
- c)** The insurer does not operate in accordance with the by-laws, the authorization conditions or section 4, or does not exclude entities challenged according to section 9 after having applied the fines established in that provision;
- d)** Dissolution for any reason, pursuant to Code of Commerce becomes effective;
- e)** Headquarters of a foreign company is dissolved, liquidated, becomes bankrupt, or similar position, or authorized branch or agency is closed;
- f)** Liquidation as provided in sections 50, 51 and 52 occurs;
- g)** Provisions in Section 58 are applied.

*Procedure*

The resolution of the supervisory authority shall observe the procedure established in Section 82.

*Effects*

**Section 49.** Final revocation of the authorization shall mean automatic termination, and the insurer shall proceed to its immediate liquidation.

*Revocation registration*

The revocation registration shall be ordered by the registrar of the domicile of the insurer, effective as from the sole notification of the Superintendence of Insurance of the Nation, and it shall not be reviewed in any way whatsoever by him.

## **SECTION X**

### **Liquidation**



## Voluntary liquidation

### *Liquidator*

**Section 50.** When an insurer voluntarily resolves their dissolution, liquidation shall be by statutory bodies, without prejudice of the supervisory authority's audit.

### *Official receiver*

Should the insurer not come to their immediate liquidation or should the protection of policyholders' interests require so, the supervisory authority may request the competent ordinary judge its appointment as official receiver. The decision shall be issued upon the insurer's summons for an oral proceeding convened for that purpose, and shall only be appealed in second instance.

## Compulsory liquidation

### *Receiver*

**Section 51.** When the liquidation results from the revocation ordered by the supervisory authority, this shall assume it by means of the receiver appointed by the competent ordinary judge.

### *Bankruptcy substitute procedure*

Insurers cannot enter into a composition with creditors and are not subject to be declared bankrupt.

If compulsory liquidation set in first paragraph has not been started, and the requirements for the bankruptcy declaration have been met, the competent ordinary judge shall order the dissolution of the company and its liquidation by the supervisory authority.

### *Additional bankruptcy proceedings regulated by the commercial code*

**Section 52.** In the cases of sections 50 and 51, the supervisory authority shall adjust liquidation to provisions of bankruptcy proceedings regulated by the commercial code, and, shall have all the powers of the trustee in those areas.

Insurance contracts shall be terminated on a fifteen (15) day notice, informing the insured by registered letter with return receipt or by other appropriate means. The insurer is liable for any claim incurred in the meantime, unless the insured enters into another insurance contract. In life insurance line, the insurer shall previously set the transfer of the portfolio by tender in accordance with the basis set. If the transfer is not possible, the above paragraph provisions shall rule.

### *Penalties*

**Section 53.** The supervisory authority shall submit to the judge hearing the case the insurer's full background to make effective, regarding its administrators, directors, officers, trustees, members of the surveillance board and managers, the measures foreseen in the Bankruptcy Act for the bankrupt in case of fault or fraud, and, where applicable, impose the penalties prescribed in the Criminal Code for the fraudulent or guilty bankrupt.

### *Privileges*

**Section 54.** The following shall enjoy the general privilege set out in section 270 of the Bankruptcy Act:

**a)** Underwriters and their beneficiaries in the life insurance line, for the due capital or income, or for mathematical reserves at the same level of credits referred to in

subsection

1) of that section, and at the same extent to which Section 271 of such Act grants to the emerging capital of salaries, wages and compensations.

b) Credits for the claims produced in the other insurance. Liquidation costs, including those levied by the supervisory authority, have the privilege provided for in section 264 of such the Act.

## **Section XI**

Assistants' intervention

### *Liabilities*

**Section 55.** Producers, agents, intermediaries, appraisers and insurance adjusters are required to perform transactions pursuant to the legal provisions and technical principles applicable to the operation in which they are involved, and to act with diligence and good faith.

## **Section XII**

Advertising

### *Limiting the use of the term insurance and similar expressions*

**Section 56.** The words, insurance, insured or typical and characteristic expressions of insurance operations, cannot be used in trade names or emblems by those who are not authorised as insurers in accordance with this law.

### *Punishment*

Those who infringe the provisions hereof, shall have the rules stated in section 61 applied.

### *Prohibition of misleading advertising*

**Section 57.** Advertising containing false, misleading or ambiguous information or which may lead to misunderstanding regarding the nature of operations, the insurer's economic and financial situation or conduct, or in respect of the contracts entered into, as well as the use of improper means or which are likely to mislead for obtaining business shall be prohibited. Branches and agencies of foreign companies shall state this feature, with expression of the domicile of headquarters, and shall separate the data resulting from their activities in the country from those related to the headquarters or other branches.

## **Section XIII**

Punishment

### *Insurers*

**Section 58.** When an insurer violates the provisions hereof or the regulations stated hereunder or fails to comply with the measures imposed hereof by the supervisory authority, and this results in the unusual performance of the insurance activity or a decrease in the insurer's economic and financial capacity or a real obstacle to the supervision, he shall be subject to the following penalties to be reasonably adjusted according to the insurer's conduct, the seriousness and recidivism:

**a)** Warning;

**b)** Caution;

Fine from 0.01 percent to 0.1 percent of total premiums and fees earned, net of cancellations, in the previous financial year which shall not be less than 0.5 percent of the minimum capital required ; (Subsection replaced by Section 155 of Law 24241, Official Gazette 18/10/1993);

**d)** Suspension for up to three (3) months to operate in one or more lines of insurance authorized or the revocation of the authorization to operate as insurer, in the cases of unusual performance of the insurance activity or decrease of the economic and financial capacity.

The insurer may not invoke fault or wilful misconduct of its officers or employees in order to escape liability

#### *Assistants*

**Section 59.** Producers, agents, intermediaries, appraisers and liquidators, not dependent on the insurer, that violate the rules referred to in Section 55, or who do not supply the reports required by the supervisory authority in the exercise of their functions shall be subject to the following penalties:

**a)** Warning;

**b)** Caution;

**c)** Fine of up to five thousand dollars (\$5000.-);

**d)** Disqualification for up to five (5) years.

The penalty shall be adjusted according to the functions of the offender, the seriousness of the offense and recidivism. Those responsible shall be jointly liable to the payment of the fine. Insurers may not pay the fines imposed, nor pay any compensation where disqualification is imposed.

Should the fine not be paid, it shall become arrest at the rate of one day imprisonment for forty dollars (\$ 40.-) and it may not exceed sixty (60) days.

#### *Wrongful retention of premiums*

**Section 60.** Producers, agents and other intermediaries that fail to deliver in due time the paid premiums to the insurer, shall be punished with imprisonment of one (1) to six (6) years and disqualification for twice the time of conviction.

#### *Execution of contracts outside the law*

**Section 61.** Those who directly or indirectly advertise in any way, or offer to enter into insurance transactions without being authorised to act as insurers herein, shall be subject to a fine of up to fifty thousand dollars (\$ 50,000.-).

Insurance contracts entered into without the proper authorization shall be void, and the fine shall increase twofold, without prejudice to any liability incurred in respect of the other party by reason of the invalidity.

If he wrongdoer is a corporation, cooperative or mutual company, its directors, administrators, trustees or members of the surveillance board as appropriate and managers, shall be jointly liable for the fines and consequences of invalidity of the contracts. In the case of other type of company, joint liability shall also extend to all

partners.

If the offense were committed by a branch or agency of a foreign corporation, the factor, manager or representative shall be responsible therefor. The unpaid fine will become arrest at a rate of one day for each forty dollars (\$ 40.-) and it may not exceed six (6) months.

Disqualification set forth in Section 59 shall be applied in all cases as accessory. The provisions of this section apply to the cases covered by section 3 after the supervisory authority has declared the respective operations in the regime of this law.

#### *Term and procedure*

**Section 62.** Fines will be paid in within (10) days after the supervisory authority has issue firm and definite resolution, and payment shall be prosecuted by it.

#### *Crimes*

**Section 63.** Penalties applicable by virtue of this law does not exclude those that may be applied for crimes stated under the Criminal Code or other laws.

#### *Complaint*

When the supervisory authority proves the existence or commission of facts that may constitute crimes, shall report such event to the competent criminal judge, referring corresponding background declaration.

#### *Imprisonment*

To fulfil the imprisonment penalty under sections 59 and 61 the national court of original jurisdiction on criminal and correctional matters of the Federal Capital city shall become involved, and within the interior, the appropriate federal judge.

## **CHAPTER II** **Supervisory Authority**

### **SECTION I**

#### **The Superintendence of Insurance of the Nation**

#### *Supervisory authority*

**Section 64.** Supervision of all insurance entities is exercised by the Superintendence of Insurance of the Nation with the duties established herein.

#### *Superintendence of Insurance*

**Section 65.** The Superintendence of Insurance is an independent entity with functional and financial autonomy, under the jurisdiction of the Ministry of Treasury and Finance. It is chaired by an officer holding the title of Superintendent of Insurance appointed by the Executive Power.

#### *Officers*

**Section 66.** The Superintendence shall be equipped with the necessary personnel for the compliance with its duties, preferably composed of university graduates in economics or

law for its technical functions.

#### *Incompatibilities*

No officer or employee of the Superintendence may have interests in insurance companies, neither hold positions in them, except as otherwise provided by law or when they derived from insured. They are also forbidden to have direct or indirect interest in the activities or remuneration of producers, agents, intermediaries, appraisers and insurance adjusters.

#### *Duties and powers*

**Section 67.** The duties and powers of the Superintendence are the following:

- a)** To carry out the duties assigned herein to the supervisory authority;
- b)** To issue general resolutions as provided herein and those which are necessary for its enforcement;
- c)** To object the constitution, statutes and amendments, the internal regulations, capital increases, formation and operation of general meetings and the incorporation of plans or lines of insurance, all insurance companies without exception incorporated in national jurisdiction or outside, that disagree with the general laws, the specific provisions of this Act, and those generally passed on the above matters by the supervisory authority, taking care that the by-laws of solidary insurance companies do not contain rules that distort their corporate nature or mean a reduction of the shareholders' corporate rights;
- d)** To challenge, when appropriate, the contributions made by applying subsection h) of section 29 which are not proportionated to the economic and financial capacity of the entity or to their businesses;
- e)** To make the necessary resolutions to make the audit for each insurer effective, as well as, to take measures, apply the penalties stated herein;
- f)** To monitor the behaviour of producers, agents, intermediaries, appraisers and liquidators not dependent on the insurer, in such manner and by such means it deems appropriate, to be aware of relevant complaints and punish offences;
- g)** To advise the Executive Power on matters related to insurance;
- h)** To plan budget on an annual basis, which shall be submitted to the Executive Power for its approval;
- i)** To collect the funds referred to in Section 81 and make use thereof;
- j)** To appoint, employ, promote, remove and punish their personnel, and to make other internal measures that apply to its operation;
- k)** To be responsible for:
  - A Register of Insurance companies, in which the authorizations to operate shall be recorded in numerical order and which also record the revocations.
  - An updated personal record on the conditions of responsibility and seriousness of the promoters, founders, directors, officers, trustees or members of the surveillance board if appropriate, liquidators, managers, administrators and representatives of the insurance companies subject to the regime herein, being the Superintendence empowered to such effect to require the reports it deems necessary from any authority or agency, either national, provincial or municipal;
  - A record of unauthorized professionals to act in that capacity before the Superintendence.
  - A record of penalties in which the penalties applied in agreement with the regime specified in Sections 58 to 63, shall be kept. The Superintendence may file legal actions and act in any kind of trial as plaintiff or defendant, in criminal trial as a complainant, and

may appoint proxies for this purpose.

#### *Inspection*

**Section 68.** In the course of their duties the Superintendence may examine all elements pertaining to the insurer's transactions, especially to require production of business books and complementary documentation, as well as letters, make certified copies, audits and verifications.

#### *Availability of items*

Insurers are required to keep at the domicile of its headquarters or and branches, available to the Superintendence, all elements related to its operations.

#### *Information*

**Section 69.** In addition to the regular information stated herein that insurers must provide, the Superintendence may require other it deems necessary to perform their duties.

#### *Affidavits*

The Superintendence may require affidavits on specific facts or data.

#### *Other obligations*

**Section 70.** The obligations arising from sections 68 and 69 cover managers of insurance companies and producers, agents, intermediaries, appraisers and liquidators, not dependent on the insurer. Additionally any individual or legal entity is obliged to provide the information required by the supervisory authority, which are necessary to fulfil its mission, even when they are subject to the supervision of other government agencies, either national, provincial or municipal, pursuant to specific laws, and to exhibit its business books and complementary documents to inspectors, the Superintendence, when this is required to determine its position against the regime of this law, or to establish the conditions under which they operate with a licensed insurer or with an individual or legal entity for which the agency has initiated action for the purposes specified in section 3 herein.

#### *Inspection and balance reports*

**Section 71.** The official to whom the inspection of an insurer or the supervision of its balance sheet is entrusted, shall submit a written report. Should there be observations by the Superintendence, this shall give the insurer a copy of parts of the inspection on which it is founded.

#### *General meetings attendance*

**Section 72.** The Superintendence may attend the general meetings of the entities being subject to its control, and the appointed officer shall report on its development.

#### *Search, security forces help and seizure*

**Section 73.** The Superintendence may require search warrants and the help of the security forces for the exercise of its functions. It might seize the documents it considers appropriate to the fulfilment of its supervision duties.

#### *Secrecy of proceedings*

**Section 74.** Actions taken during the exercise of the supervision by virtue of this law are confidential. They cannot be offered as evidence in civil proceedings but by the insurer or the State. Additionally, data not intended to publication and affidavits submitted are confidential. Officers and employees of the Superintendence are required to keep the proceedings secret, outside the performance of their duties. Annual Report

**Section 75.** The Superintendence shall publish before May 1 of each year its report for the previous year, which will include the following:

- a) General statistics of the various lines of insurance analytically;
- b) A global status of the activities of all the insurers on the basis of the financial results of the year and a similar analysis of the transformations their investments have experienced.
- c) Details of business and the financial result of the year of each entity separately; d) A statement of its work during the various phases of its business;
- e) Comments on the operation and organization of the Superintendence that the Superintendent might make in practice, as well as the reforms he thinks appropriate to propose. The Superintendence shall provide at cost price the number of copies of the annual report requested.

## **SECTION II**

### **Advisory Board**

#### *Composition*

**Section 76.** The Superintendent of Insurance is assisted by an Advisory Board consisting of five (5) advisors appointed upon proposal, being one from corporations domiciled in the Federal Capital city, one of the corporations established within the interior of the country, one of cooperatives and mutual insurance companies, and one of each of the insurers stated in subsections b) and c), section 2. Appointment Section 77. Each insurer is authorized to vote for three (3) principal candidates and three (3) alternates for the advisor to be appointed for their sector. Votes shall be signed by an authorized person before the supervisory authority, and must be referred to this by registered letter or delivered by courier, so that the Board does the count on December 15 of the respective year, and if that day is a holiday, the first following business day. Insurers, if they desire, can attend the event. With the result of the election lists of candidates will be drawn up for principal and alternate candidates for each sector among those candidates who had obtained the majority of votes. The National Executive Power shall appoint the principal and alternate advisors elected from the lists mentioned. Alternate directors shall act in case of principals' absence or incapacity, without prejudice to attend Board meetings with voice but without vote.

#### *Requirements*

**Section 78.** To become a member of the Boards the following requirements shall be met:

- a) To have at least a five (5) year career in one or more insurers;
- b) To effectively perform, acting in the capacity of advisor, the power of manager or board member of the board of directors of an insurer.

Advisory Board members shall be three (3) years in office and may be reappointed. The period ends on 31 January of the year as appropriate, and replacement members will join

after that date. However, replaced members shall continue in office until replacement members take over the position. The expenses of principal and alternate advisors are honorary.

#### *Duties*

**Section 79.** The Advisory Board shall have the duties listed below:

- a)** Give its opinion on the following issues, which shall be consulted by the Superintendent:
1. Draft laws, decrees laws and resolutions in general to be met by insurers or insurance assistants;
  2. Rules for the determination of net assets, accounting systems, balance sheets forms and statistics;
  3. General policies, general rates and tariffs; 4. Amounts of the annual fee and uniform fee on premiums;
- b)** Submit to the Superintendent initiatives intended to promote the development of insurance in its various aspects;
- c)** Give its opinion on general issues that might arise and for which, at the Superintendent's opinion, shall be appropriate to know his view.

#### *Operation*

**Section 80.** The Advisory Board shall meet regularly on the day previously fixed for that purpose, and should do so when the Superintendent deems it necessary or when requested by the principal advisor.

Meetings shall be held at the office of the Superintendence with the presence, of at least three (3) advisors chaired by the Superintendent. Statements or judgments made during the meeting shall be recorded in a minute and shall be considered as opinion of the Board when the majority of the advisors present have expressed in the same direction. The bill drafts or decrees the supervisory authority shall submit for the consideration of the Executive Power shall include, when appropriate, the opinion given in that the matter by the Advisory Board.

The Board members shall maintain official relations within their duties solely with the Superintendent of Insurance.

### **SECTION III** **Funds**

**Section 81.** The Superintendence shall pay its operation costs and those of the Advisory Board, with the following funds:

#### *Annual Contribution*

- a)** Annual contribution of insurers, at their sole charge, at the rate of three per ten thousand of direct insurance premiums, net of cancelations. This contribution may not exceed two thousand dollars (\$ 2000) per insurer;

#### *Rate*

- b)** A uniform fee shall be determined by the Executive Power which shall not exceed six per thousand of the amount of premiums policyholders pay. It shall be collected by insurers as withholding agents, being settled on a quarterly basis on direct insurance



business, net of cancelations (rate rises to 6 per thousand by section 1 of Decree Law No. 504/87, Official Gazette 31/7/1987). Fines c) Fines imposed pursuant to this law;

#### *Surcharge*

**d)** Surcharge for lack of timely payment of the charges mentioned above in subsections a), b), c). It shall be automatically accrued and will be calculated at the rate of two percent (2%) per month;

#### *Property or Funds*

**e)** Property acquired on any title and those already owned. As established by subsection b), one per thousand (1 0/00) of premiums shall be destined from the collection by way of a uniform rate to the creation of an incentive fund for the entire staff, whatever the category, which will be distributed annually.

Surplus from one year will be moved to the following.

#### *Payment Date*

Annual fee shall be paid within the first fortnight of February of the corresponding year, using for that purpose the tickets established by the Superintendence and it shall be paid in full regardless of the month in which the authorization to operate is obtained or ceases in insurances.

The uniform rate shall be settled quarterly on forms determined by the Superintendence determines. Filing of affidavit and payment of resulting fee shall be made within fifteen (15) days following the end of a corresponding calendar quarter. Payments shall be made by deposit with the Bank of Argentina, headquarters, to the order of the Superintendence of Insurance of the Nation.

#### *Judicial recovery*

When the annual fee or uniform rate is not paid on the stipulated terms or the fine is not paid in the term pursuant to Section 62, the Superintendence shall extend the debt ticket that will be lawful enforceable right, and shall require collection to the National Judge of Original Jurisdiction on Civil and Commercial Matters of Federal Capital city.

#### *Prohibition*

Insurers cannot compensate credit and debit balances stated in their declarations as uniform rate.

## **SECTION IV** **Procedures and appeals**

#### *Rules of Procedure*

**Section 82.** Final decisions of special nature of the Superintendence shall be issued by reasoned decision based upon the hearing in each case, subject to the following standards: comments or complaints shall be notified for ten (10) business days to those affected, responsible or charged, which when responded shall:

**a)** Enter pleas-in-bar and demurrers;

**b)** Submit any and all documentary evidence or indicate the file, office or notarized registry where it is located;

**c)** State documentary evidence to be produced, identifying the witnesses, with brief statement of the facts;

**d)** Propose expert's evidence and points of expertise indicating the expert's specialization;

e) State any other evidence to be used and its purpose.

The Superintendent of Insurance, or the officer to whom the proceedings preliminary investigation has been delegated, may reject by reasoned ruling, any evidence given or offered, thus following last paragraph of this section.

Notice been responded and evidence offered been received, these shall be received within a term not exceeding twenty (20) business days. The hearings will be public unless they are requested to be reserved and there is a contrary public interest. At the first hearing, whenever the expert's evidence offered is considered appropriate, points of expertise shall be determined and a single expert shall be elected by draw, who will dissociate from the lists drawn up annually by the Court of Appeals composed of actuaries, accountants and university professionals specialized in this matter. In the event of not having prepared the lists of experts, the Court of Appeals shall be requested to appoint one, to which effect the Superintendence shall act expressing the field of expertise and the proposed points. Once the expert's report has been submitted, the Superintendence, at one party's request, or, may call the expert for explanations, which will be considered at a hearing set for that purpose, or given in writing, as otherwise stated by the supervisory authority pursuant to the circumstances of the case.

If information has been submitted as evidence, the Superintendence shall have the same powers granted to judges by the Civil and Commercial Procedural Code of the Nation.

In the same probative stage, the officer in charge of the proceedings may order any measure of evidence, call and bring witnesses, obtain reports and testimony from public and private instruments and produce reports of any nature.

Once probative stage comes to an end, the affected parties, responsible or charged shall submit brief within five (5) business days.

The Superintendent of Insurance will issue a final reasoned decision based, within fifteen (15) business days.

The decisions made during the hearing are inappealable, notwithstanding that the Court of Appeals is aware of the issues before they are reproduced in the statement on which the appeal is founded.

Appellant shall submit the evidence rejected by the supervisory authority again before the Court of Appeals. If possible, the same resolution shall state the receipt of such evidence by the Superintendence of Insurance. Once proceedings are referred within three days, the Superintendence will receive the evidence and shall return the file to the appeal, within three days of having been produced.

### *Appeal*

**Section 83.** Final decisions of the special nature of the Superintendence are appealed before the Court of Appeals on Commercial Matters of the Federal Capital city. Individuals, companies and associations domiciled in the interior, which are not authorized insurers or are not managing authorization with the Superintendence, shall choose to appeal before the Court of Appeals in Federal and Administrative Litigation of the Federal Capital city, choice they shall state when filing the appeal.

The appeal will be brought before the Superintendence of Insurance within five (5) business days after notice, with a brief which shall state the reasons and, where applicable, grievances motivated by decisions made during the administrative procedure shall be produced, as well as by the evidence rejected by parties as they consider appropriate. If the appeal is not founded, as stated herein, it shall be declared abandoned.

The Superintendence shall grant or refuse the appeal within five (5) business days and, where appropriate, it shall file the case within five (5) working days.

The appeal shall be granted with stay of execution, except in the case of Sections 31 and 44 when it is a devolutive appeal.

The Court shall issue judgment within fifteen (15) business days.

#### *Complaint*

If the appeal was denied by the Superintendence or filed within the term, the aggrieved party may recourse a complaint directly to the Court, requesting for the appeal denied. Term to file a complaint shall be five (5) days and the Court shall require the file within three (3) days, without hearing whatsoever to decide whether appeal has been well or bad denied, within ten (10) days. In the latter case, appeal shall proceed.

#### *Appeals in Act 48.*

**Section 84.** If the final judgment of the appellate revokes or amends the decision of the Superintendence of Insurance, this may file the appeals authorized by Law 48.

#### *Administrative appeal*

**Section 85.** General resolutions of the Superintendence are to be reviewed at the request of one party by the Superintendent, and the refusal might be appeal to the Executive Power. This shall be a devolutive appeal only. This shall be filed by an insurer or by any of the associations gathering them within a thirty (30) day term, counted as from its publication in the Official Gazette or since the general resolution is made public by any means.

In the case of judgments stated under Sections 6 and 7, subsection g) herein, the appeal filed before the Executive Power shall only be for the aggrieved party, shall be brought within nine (9) business days, and shall only be devolutive appeal.

#### *Preliminary injunctions*

**Section 86.** When Superintendence's judgment imposes the payment of a fine, it can request a lien on the offender's property. When the judgment sets the suspension or revocation of authorization to operate in insurance, the Court of Appeals shall, upon request of the Superintendence establish the administration and judicial intervention of the insurer, which must not lie on the supervisory authority.

The Superintendence of Insurance of the Nation shall establish -without a hearing for the party- the ban on the insurer to perform, regarding its investments, any act of disposal or management specifically indicated and to enter into new insurance contracts in the following cases:

- a)** Loss of minimum capital; (Subsection replaced by section 3 of Decree Law No. 558/2002, Official Gazette3/4/2002).
- b)** Reduction of economic or financial capacity, or express disproportion between it and the risks retained or deficit in coverage of commitments to policyholders;
- c)** Violation of the rules on expenses and revenues of funds on deposit in custody of government securities and securities in general;
- d)** Lack of submission by the insurer of the financial statements of advertising, property status, or commitments due and claims liquidated to be paid in the statutory terms;
- e)** Irregularities in the formation or performance of management and supervision bodies or meetings;

**f)** Irregularities in the administration or accounting which prevents from knowing the financial statements of the entity;

**g)** Liquidity issues that have determined delay or failure to comply with payments.

To make these measures effective, the Superintendence of Insurance of the Nation shall order the constitutional review to public entities, either national, provincial or municipal, or private as it deems appropriate.

Measures can be lifted to meet obligations to policyholders, for the reinvestment of assets in question -in which case, they shall prevail over its replacement, or when it is checked that the insurer is in normal operation condition.

The administrative or legal appeals brought against the judgment establishing any of these measures shall be devolutive.

(Second and third paragraphs replaced section 155 of Law No. 24241, Official Gazette18/10/1993).

#### *Publication*

**Section 87.** General judgment of the Superintendence, as well as any particular one issued based on sections 3, 6, 7, 31, 46, 48, 56, 58, 59 and 61, will be published for one (1) day in the Official Gazette even if not being firm.. The decision granting the authorization to operate in accordance with section 7, shall be issued, and if necessary,

once the entity has been registered at the Public Registry of Commerce of its domicile and a testimony of documents granted by the registrar shall be received with the constitutional review, as provided forth section 8.

(Expression "even if not being firm " added by Section155 of Law No. 24241, Official Gazette18/10/1993).

## **CHAPTER III**

### **Final and temporary provisions**

**Section 88.** The new composition of the Advisory Board which is established herein shall apply after the expiry of mandates on the first 31 January that follows the effectiveness. Effectiveness

#### *Abolished provisions*

**Section 89.** This law shall be effective as of six (6) months after its enactment, and as from that date the following is abolished:; "Legal Regime on Insurance", Law 11672, dated 1943, section 150 (consolidated text 1962), and Section 52 of Decree Law 14682/46 (Law 12921), Section 39 of Law 15021, Section 61 of Law 15796; Section 61 of Law 16432; Sections 140 and 141 of Internal Tax Act (consolidated text 1938); the decree of 2 January 1923, on transfers of portfolios of insurance companies, Decree 23350/39, Decree 61138/40, Decree 7607/61, Decree 1063/63, and any other provisions contrary hereto.

Within thirty (30) days as from the date of enactment hereof, the Superintendence of Insurance will submit to the Ministry of Treasury and Finance a bill draft on its organizational structure and functional grouping appropriate to the mission and functions as set hereby. If this bill is not approved within the following thirty (30) days, the six (6)

month term provided forth in previous paragraph for the effectiveness hereof shall be automatically extended for the longer term used in the approval of that bill.

**Section 90.** Be it known, published, passed to the National Bureau of Official Registry, and in due course be filed.

LANUSSE

Carlos G. N. Coda, Carlos Alberto Rey, Gervasio R. Colombres.

Regulatory background

*- Section 81, subsection b) amended by section 1 of Decree Law No. 766/78, Official Gazette 11/4/1978;*

*- Section 35, subsection a) replaced by section 1 of Law No. 23488, Official Gazette 25/3/1988;*

*- Section 35, subsection c) replaced by section 46 of Law No. 23576, Official Gazette 27/7/1988.*