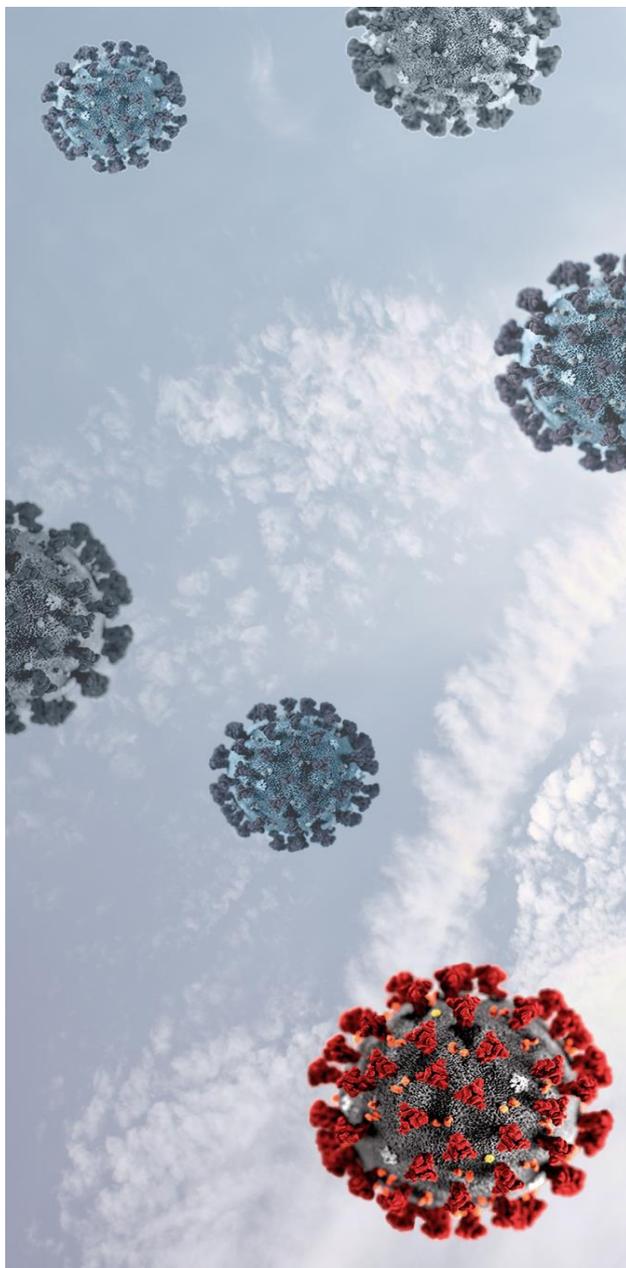

COVID-19: New developments in insurance contracts

Newsletter | Portugal

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- **Exceptional and temporary system applicable to insurance contracts: Decree-Law 20-F/2020, of May 12**



I. Exceptional and temporary system applicable to insurance contracts

Decree-Law 20-F/2020, of May 12

Decree-Law 20-F/2020, of May 12 (“DL 20-F/2020”), establishes an exceptional and temporary legal system as opposed to that established in the Legal System for Insurance Contracts, approved by Decree-Law 72/2008, of April 16 (“RJCS”), regarding the applicable consequences of default in payment of the insurance premium on the due date and the decreased risk during the term of the insurance contract.

Legal system applicable under RJCS

Under the general rule established in section 59 of the RJCS, risk coverage depends on previous payment of the insurance premium. Under section 61 RJCS, failure to pay the premium or make the initial payment on the due date automatically terminates the contract from the date on which it is entered into, and failure to pay a fraction of the premium during the year results in automatic termination of the contract on the due date.

Sections 59 and 61 do not apply to (i) the insurance and transactions regulated in the chapter on life insurance, (ii) crop and livestock insurance, (iii) mutual insurance in which the premium is paid with the income and insurance covering large risks, except when applied within the scope of an agreement between the parties and they are not contrary to the nature of the relationship.

The provisions in section 61 are absolutely imperative for other insurance contracts and the parties are not allowed to agree otherwise, with the sole exception of insurance covering large risks, which allows the parties to agree otherwise (section 12 of the RJCS).

Regarding the decreased risk, under section 92 of the RJCS, the insurance company only needs to reflect the decreased risk in the contract premium when it is definite and long lasting. In this case, if no agreement regarding the new premium is reached, the policyholder has the right to terminate the contract. The provisions in section 92 of the RJCS are relatively imperative, and of course a more favorable system for the policyholder, the insured party, or the beneficiary may be established.



Exceptional and temporary system

To mitigate the impact of the pandemic, as well as the impact of the exceptional measures taken for prevention and control in insurance contracts, and given the legal nature of the provisions described above, DL 20-F/2020 approved the following three measures, which will apply in the period between May 13 and September 30, 2020:

> Premium payment

For most insurance contracts, DL 20-F/2020 establishes that the provisions in section 61 of the RJCS are relatively imperative. Thus, the parties may reach an agreement that is more favorable for the policyholder, the insured party, or the beneficiary.

The parties are thus free, during the period specified above, to set another legal penalty for default in payment instead of automatic termination of the contract, particularly:

- payment of the premium on a later date than that when the coverage for risk started;
- deferral of the automatic termination or non-extension in the event of default;
- fractioning of the premium;
- extension of the term of the insurance contract;
- temporary suspension of payment of the premium; and
- temporary reduction of the premium amount based on the temporary risk reduction.

> Mandatory insurance

In the case of insurance contracts with mandatory coverage, DL 20-F/2020 establishes that if the parties do not otherwise agree, in the event of default in payment of the premium (or part of it) on the due date, the contract will be automatically extended for 60 days from the due date for the premium or the premium fraction.

Under DL 20-F/2020:

- the insurance company must inform the policyholder of the system established in the previous paragraph at least 10 business days before the premium due date, and the policyholder may oppose the maintenance of coverage until the due date;
- the extension of the contract must be reflected in the contract's certificate of validity, when required; and
- the policyholder will not be exempt from paying the premium due for the period in which the contract was in force.



> Decreased risk

Regarding insurance contracts covering the risks in the activity of those policyholders who, due to the exceptional and temporary measures implemented against the COVID-19 pandemic, had to suspend their activity or whose establishments and facilities are still closed or whose activities were substantially decreased as a result of the direct or indirect impact of those measures, DL 20-F/2020 entitles them to request:

- that these circumstances be reflected in the premium of these insurance contracts, applying the provisions in section 92 of the RJCS with the necessary adjustments; or
- fractioned payment of the insurance premium for the year, at no additional cost.

A substantial drop in activity is considered to take place when the policyholder is undergoing a business crisis, including when there is a sudden, sharp drop in turnover by at least 40%. This measure does not apply to insurance covering large risks.

Any contractual amendments resulting from implementing these measures must be set in writing as an addendum or a specific clause, which the insurance company must send to the policyholder within 10 business days of the agreement date or of the policyholder exercising its rights.

The Portuguese Supervisory Authority for Insurance and Pension Funds (ASF) is expected to publish the regulatory standards regarding the obligations of insurance companies under DL 20-F/2020.



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