



ANNEX ON GENERAL RULES APPLICABLE TO (LIFE AND NON-LIFE) INSURERS OPERATING IN SPAIN UNDER FREEDOM TO PROVIDE SERVICES OR RIGHT OF ESTABLISHMENT

The list set out below is not exhaustive, but rather intends to include some of the most important Spanish rules applicable to insurance and pension plans, without prejudice to any others that may be in place in non-financial domains.

I. Tax representative in Spain for undertakings seeking to operate under freedom to provide services.

In accordance with Article 86.1 of the Texto Refundido de la Ley de Ordenación y Supervisión de los Seguros Privados aprobado por Real Decreto 6/2004 of 29 October and Article 135 of the respective regulations, approved by R.D. 2486/1998 of 20 November, insurance establishments with registered offices in the European Economic Area seeking to operate in Spain under freedom to provide services must designate a tax representative for the intents and purposes of compliance with tax obligations in Spain. In light of these provisions, the aforementioned undertaking is requested to designate such tax representative, specifying denomination, address and telephone, fax and tax registration numbers, as a prerequisite to initiate their insurance business.

II. Extraordinary risk surcharge payable to the *Consortio de Compensación de Seguros* (Insurance Compensation Consortium) and legally enforceable tax obligations

a. Extraordinary risk surcharges

Insurance contracts concluded under right of establishment or freedom to provide services that cover risks or assume commitments located in Spain are subject to **surcharges payable to the *Consortio de Compensación de Seguros***, which are used to meet the consortium's needs relating to the compensation of losses stemming from extraordinary events occurring in Spain. Such contracts are likewise subject to payment of all other legally enforceable charges and taxes levied, under the same conditions, on contracts concluded by Spanish undertakings.

Such surcharges are regulated by Article 7 Texto Refundido de la Ley de Ordenación y Supervisión de los Seguros Privados, aprobado por Real Decreto Legislativo 6/2004 de 29 de octubre. The said article was recently amended by Ley 12/2006 de 16 de Mayo, which establishes a surcharge applicable to: **extraordinary life insurance cover** in contracts referring exclusively or primarily to death cover, including policies that also guarantee monetary indemnities for permanent or temporary disability; and accident insurance, in contracts



including death cover or that guarantee monetary indemnity for permanent or temporary disability.

The undertaking concerned must report the information required to compute such charges to the Consorcio directly (paragraph 10, section 5, "associated powers" of ANNEX VI "Nature of the mutual obligations imposed upon the supervisory authorities by the Directives" of the Protocol relating to the Collaboration of the Supervisory Authorities of the Member States; and paragraph 1, Article 82 Texto Refundido de la Ley de Ordenación y Supervisión de los Seguros Privados, aprobado por Real Decreto Legislativo 6/2004 de 29 de octubre.

b. Other legally enforceable taxes

In property and casualty insurance, insurance and capitalization operations with risks or commitments located in Spain are subject to an insurance premium tax. This tax is governed by Article 12 Ley 13/1996 de 30 de diciembre, de medidas fiscales, administrativas y del orden social (Official State Journal, B.O.E. 31st December 1996).

c. The basic legislation applicable to these questions is listed below:

- Texto Refundido del Estatuto Legal del *Consorcio de Compensación de Seguros* aprobado por Real Decreto Legislativo 7/2004, de 29 de octubre (amended by a number of subsequent legal texts).
- Reglamento del Seguro de riesgos extraordinarios aprobado por Real Decreto 300/2004 de 20 de febrero and amended by Real Decreto 1265/2006 of 8 Noviembre.
- *Resolución del Consorcio de Compensación de Seguros* de 31 de Mayo de 2004 adopting the standard forms for the on-line reporting and payment of the surcharges payable to the consortium.
- Resolución de la Dirección General de Seguros y Fondos de Pensiones de 27 Noviembre de 2006, approving the surcharges payable by the insured to the *Consorcio de Compensación de Seguros* toward the exercise of its duties relating to extraordinary risk insurance; the cover clause to be included in ordinary insurance policies; and the information to be provided by insu on policies included in the extraordinary risk cover scheme.
- *Resolución del Consorcio de Compensación de Seguros* de 27 de Noviembre de 2006 amending form 10 for reporting and paying the extraordinary risk surcharge, property and casualty insurance, and the form for reporting representatives' details.
- Article 12 of Ley 13/1996 de 30 de Diciembre sobre medidas fiscales, administrativas y del orden social, amended (tax rate raised from 4% to 6%) by Ley 65/1997 de 30 de Diciembre, de Presupuestos Generales del Estado para 1998.



III. Registration of death insurance contracts

Ley 20/2005 on the Creation of an Insurance Contract Registry for Death Cover Policies was adopted on 14 November 2005. This Act institutes a public registry in which all life insurance contracts including death cover as well as accident insurance contracts covering the death of the insured must be registered, except as otherwise provided in Article 4.2 of the Act.

The Act requires undertakings to notify the existence of the insurance and the details included therein (data identifying the insured, the insurer and the insurance contract) via Internet. The obligation to furnish this information applies to both Spanish undertakings and undertakings with registered offices in other European Economic Area countries conducting business in the life or accident classes in Spain under right of establishment or freedom to provide services, or which cover the latter as an ancillary risk in other types of policies.

The abovementioned requirement is applicable to insurance contracts in place on the date the act came into effect, 15 May 2006, and any concluded subsequent to such date; the form and deadlines for forwarding the abovementioned details are laid down in Real Decreto 398/2007 de 23 de marzo, published in the Official State Journal (B.O.E.) on 19 April 2007, which establishes the provisions for implementation of the Act.

Pursuant to Disposición Transitoria 1ª of the Act, insurance companies must proceed to comply with its provisions in respect of the contracts in effect on the date of its entry into force (15 May 2006) within one year of the said date. Consequently, the final deadline lapsed on 15 May 2007.

Disposición Transitoria 2ª establishes a longer compliance period for credit card life or accident insurance contracts, finalizing on 20 April 2008.

IV. Information to be furnished to policyholders

Spanish legislation requires all insurance companies to provide policyholders with the information specified in the Act on and Procedures for the Regulation and Supervision of Private Insurance, prior to concluding the contract.

This requirement is applicable to Spanish insurers operating on Spanish soil or in other Member States under right of establishment or freedom to provide services, as well as to non-Spanish insurers operating in Spain under right of establishment or freedom to provide services. The purpose of this regulation is to require insurers to specify, in all their policies or other contractual documents, the insurance company, the address of its registered offices or the address of the branch concluding the contract, and the applicable legislation.



The provisions in this regard are laid down in Articles 53, 60 and 81 Texto Refundido de la Ley de Ordenación y Supervisión de los Seguros Privados, aprobado por Real Decreto Legislativo 6/2004 de 29 de octubre. The rules for implementing these articles are contained in Articles 104 *et sequentes* Reglamento de Ordenación y Supervisión de los Seguros Privados aprobado por Real Decreto 2486/1988 de 20 de Noviembre.

In conclusion, the most prominent aspects of Spanish regulations on the duty to inform policyholders include:

- The general scheme in place on prior information is applicable to all (life and non-life) insurance contracts, while more detailed information must be provided in the case of life insurance. A distinction is drawn in this latter class between individual and collective insurance.
- The special scheme envisaged in the Act on Tele-insurance, requiring the inclusion of clearer and more precise information in contracts, is applicable to life insurance contracts in which the policyholder assumes investment risk.
- Finally, in recent years Spanish legislation has reinforced the means for protecting the insured. In this regard, the provisions in effect require companies to inform their customers of the various types of internal and external action that may be taken in the event of litigation over claims. For the internal resources that insurers must provide for settling complaints that may be lodged, see section IV of this Annex.

V. Customer support departments (for right of establishment only)

Significant new provisions have been introduced in the legislation on protection for the users of financial services in recent years. In the insurance area, for instance, Article 62.2 Texto Refundido de la Ley de Ordenación y Supervisión de los Seguros Privados stipulates that the protection provided by public authorities in the field of private insurance will be governed by the existing legislation on the protection for users of financial services contained in Ley 44/2002 de 22 de Noviembre sobre medidas para la reforma del sistema financiero, and the rules for its implementation.

The procedures for implementing the provisions for protecting the insured contained in the abovementioned Act on Measures for Reforming the Financial System are laid down in Real Decreto 303/2004 de 20 de Febrero, adopting the Reglamento de los Comisionados para la defensa del cliente de servicios financieros and Orden ECO 734/2004 de 11 de marzo, sobre los departamentos y servicios de atención al cliente de las entidades financieras.

That Order specifies the procedures for implementing the provisions of Article 63 of the Consolidated Text for insurers that require financial institutions and services to create customer support departments or services and envisage the possibility of appointing a customers' ombudsman. The purpose of all such devices is to respond to and settle any complaints that



may be lodged by the users of financial services in the defence of their interests and legally acknowledged rights.

Consequently, both Spanish insurers and the **branches in Spain** of undertakings established in other countries are required to create a customer support service or department. Insurers with registered offices in the European Economic Area and conducting business in Spain under freedom to provide services are likewise obliged to respond to and settle their customers' complaints, but they are not required to create customer support departments or services.

Undertakings must respond to a complaint within two months from the date it is filed; if it has not been settled within that period, if it has not been accepted or if the request is denied, the consumer may take the matter to the Servicio de Reclamaciones de la Dirección General de Seguros y Fondos de Pensiones.

VI. Information to be provided in contracts formalizing pension commitments

Pension commitments assumed by employers, including pensions caused, must be formalized under insurance contracts, a pension plan or both.

The legislation establishes a special scheme for such commitments, mandatory for insurers assuming such risks, which specify the information to be furnished to the insured and beneficiaries on the one hand, and the supervisory body (Dirección General de Seguros y Fondos de Pensiones) on the other.

Information to be furnished to the insured and beneficiaries:

This question is governed by Reglamento sobre la instrumentación de los compromisos por pensiones de las empresas con los trabajadores y beneficiarios, aprobado por el Real Decreto 1588/1999, 15 de octubre.

Specifically, a special scheme is established for the information to be provided the insured and beneficiaries in insurance contracts formalizing pension commitments. In addition to Article 104 *et sequentes* Reglamento de Ordenación y Supervisión de los Seguros Privados (Real Decreto 2486/1988), the provisions of Article 34 Reglamento sobre instrumentación de compromisos por pensiones are likewise applicable.

Such Article 34 stipulates the information on the insurance contract, the fiscal attribution of premiums and the value of the technical provisions at year-end that must be forwarded annually to the insured and beneficiaries. Mention is also made of the insured's and beneficiaries' right to information in the event of surrender to transfer their policy to another insurer.



Information to be furnished to the insurance supervisory body (Dirección General de Seguros y Fondos de Pensiones):

The Orden de 24 Julio de 2001 (B.O.E. of 7 August) regulates the reporting of information on contracts implementing pension commitments that are: covered by Disposición Adicional 1ª del Real Decreto Legislativo 1/2002, de 29 de noviembre, por el que se aprueba el Texto Refundido de la Ley de Regulación de los Planes y Fondos de Pensiones; and adapted to the provisions of the Reglamento de instrumentación de compromisos por pensiones de las empresas con sus trabajadores y beneficiarios, aprobado por Real Decreto 1588/1999, de 15 de octubre. Annex I of the abovementioned order specifies the forms that must be returned to the Dirección General de Seguros y Fondos de Pensiones by insurance companies.

The forms approved are:

1. Form 1: information on the insurance undertaking.
2. Form 2: contracts concluded by insurance undertakings involving 250 or more insured.
3. Form 3: contracts concluded by insurance companies involving under 250 insured.

VII. Insurance Contract Act

In the absence of a specifically applicable Act, the various insurance formulas will be governed by the provisions of Ley 50/1980 de 17 de Octubre de 1980 de Contrato de Seguro. The stipulations laid down in this Act are mandatory for all insurance contracts except contracts covering large risks as defined in Article 107.2, or where the Act itself provides otherwise.

When drafting their insurance contracts, companies must abide by the provisions of Real Decreto 1/2007 de 16 de Noviembre adopting the texto refundido de la Ley General para la Defensa de los Consumidores y Usuarios and supplementary legislation. The abovementioned consolidated text incorporates Spanish and Community law on the protection of consumers' and users' interests.

Article 107 *et sequentes* Ley de Contrato de Seguro establish the rules on international private law, specifying the Law applicable to each contract.

Generally speaking, the Spanish Insurance Contract Act will apply to all property and casualty insurance contracts with risks located on Spanish soil in which the policyholder's normal place of abode in the event of a natural person, or registered offices or headquarters in the event of bodies corporate, are located in Spain. It will also apply where the contract is mandatory pursuant to Spanish legislation.



Parties to insurance contracts covering large risks will be free to choose the law applicable thereto.

In life insurance, Spanish law is applicable when the policyholder's address, normal place of abode or effective headquarters is on Spanish soil or when the policyholder is a Spanish national with residence in another country, subject in this case to the insurer's consent.

Spanish law will also apply to collective life insurance contracts concluded in compliance with or as a result of work subject to Spanish law.

VIII. Policy content

Article 8 Ley de Contrato de Seguro establishes the minimum content for insurance policies. Further to that article, policies must include the following:

1. Name and surname(s) or company name of the contracting parties and their address, as well as the identity of the insured and beneficiary, as appropriate.
2. Object of the insurance.
3. Nature of the risk covered.
4. Identification of the objects insured and their location.
5. Sum insured or scope of cover.
6. Amount of the premium, surcharges and taxes.
7. Premium maturity date, place and form of payment.
8. Contract duration, specifying the day and time cover begins and ends.
9. Name of agent or agents, if any are involved in the contract.

Floating policies must also specify the manner in which credit statements must be applied.

For land motor vehicle liability (excluding shipper liability) insurance contracts concluded under freedom to provide services, Article 130.2 Reglamento de Ordenación y Supervisión de los Seguros Privados stipulates that the policy must include the name of the representative for automobile insurance, referred to in Article 86.2 Texto Refundido de la Ley de Ordenación y Supervisión de los Seguros Privados.

For legal expenses insurance, Article 76 f) Ley de Contrato de Seguro provides that the policy must explicitly list the rights acknowledged to the insured under Articles 76 d) and 76 e) of that Act: namely, their right to freely choose their attorney and barrister for their representation and defence in whatsoever manner of proceedings and in particular in the event of conflicting interests between the parties to the contract; and their right to submit to arbitration any difference that may arise between them and the insurer with respect to the insurance contract.



VIII. Personal data processing by insurers

Pursuant to Article 25.4 Texto Refundido de la Ley de Ordenación y Supervisión de los Seguros Privados aprobado por Real Decreto Legislativo 6/2004 de 29 de octubre, undertakings may establish common files containing personal data for the purposes of claim settlement, compilation of actuarial statistics to value and select risks, and studies on insurance techniques. The transfer of data to such files will not be subject to the prior consent of the persons concerned, who must, however, be informed of the possible transfer of their personal data to such common files for the purposes specified. These notices must explicitly indicate name of the person or organization responsible in order to enable data subjects to exercise their rights of access, rectification and cancellation provide by law.

Common files may also be established to prevent insurance fraud, for which the consent of the person concerned will not be necessary. When their data are entered for the first time, however, data subjects must be notified of the name of the person or organization responsible for the file and the manners in which they may exercise their rights of access, rectification and cancellation.

In any event, processing of health-related data will be subject to the explicit consent of the person concerned.

Common files may also include information on non-compliance affecting the insurance contracts listed in the respective portfolios.

The creation of the above files will be subject to prior notification to the Dirección General de Seguros y Fondos de Pensiones specifying the organization responsible for the file and the type of data contained therein, as well as to the Agencia de Protección de Datos (Data Protection Agency).

Ley Orgánica 15/1999 de 13 de diciembre de Protección de Datos de Carácter Personal will be applicable to this matter.