

CLIENT ALERT

Law amending carrier and cargo insurance policies published

Law No. 14,599/2023 is the result of the approval of MP No. 1153/2022, which brings important changes to the insurance structure 20/06/2023

On June 20, 2023, Law No. 14,599/2023 was published, which, among other changes regarding traffic regulations and administrative matters, introduces important changes to cargo transport insurance in Brazil.

The rule sanctioned by the president of Brazil amends article 13 of Law No. 11,442/2007 ("Road Freight Transportation Law"), which provides for the contracting of insurance by shippers and carriers.

The sanction stems from the Draft Conversion Bill No. 10/2023, which resulted from the approval of Provisional Measure No. 1153/2022 ("MP 1153"), drafted in the previous legislative term, and that also affected the transport insurance market.

Therefore, below are the main changes provided for by the legal text sanctioned to cargo and carriers' liability insurance, especially regarding (i) the changes in mandatory insurance and (ii) the maintenance of the possibility of cargo owners as policyholders of carriers' liability insurance (in Brazil, carriers' liability insurance might be retained directly by carriers or by cargo owners as policyholders with the carriers as the insured).

Every item below includes a reference to the article of Law No. 11,442/2007 (amended regulation), displayed in parentheses.

I. Contracting the RCTR-C by policy – upheld (art. 13, main section)

Considered a subject of wide resonance in the transport insurance market, the possibility of cargo owners intermediating the Road Cargo Carriers' Liability Insurance (in the Portuguese acronym "RCTR-C") was upheld in the new regulation.

To this effect, Law No. 14,599/2023 changes the provisions originally provided for in MP 1153 (replaced by Law No. 14,599/2023), which established that retaining RCTR-C was *exclusive* to carriers. On the other hand, the new regulation mirrors provisions previously contained in both Decree-Law No. 73/1966 and Decree No. 61,867/1967, stating that contracting carriers' civil liability insurance coverage is mandatory and not exclusive to carriers.

II. Amendment to mandatory insurance policies (art. 13, items I, II and III, and paragraph 8)

The regulation states that it is mandatory for carriers to contract civil liability insurance policies for road cargo carriers (RCTR-C), as well as for cargo disappearance ("RC-DC"), and for vehicles used in cargo transportation in the event of damages caused to third parties ("RCV").

This is a new development regarding civil liability insurance policies of carriers involved in cargo disappearance (RC-DC) as well as regarding vehicle liability for third-party damages (RCV), which were formerly optional and now compulsory.

In addition, Law No. 14,599/2023 establishes that the national cargo insurance retained by the cargo owner for the transported goods is now optional – an important change regarding the provisions provided for in both Decree-Law No. 73/1966 and Decree No. 61,867/1967, which previously established that cargo owners should retain mandatory insurance for the transportation of goods within Brazil.

However, we highlight that the implicit repeal of Decree-Law No. 73/66 regarding mandatory insurance policies, may be subject to questioning, considering the interpretation that Decree-Law No. 73/66 holds the status of supplementary law and, therefore, cannot be changed by an ordinary law, which is hierarchically inferior (in Brazil, supplementary laws are federal statutes passed by supermajority voting requirement on issues or topics previously established in the Federal Constitution, whilst ordinary laws are federal statutes regarding topics of non-Constitutional matters, which have a simpler voting requirement – therefore, considering the voting requirements, an ordinary law might not revoke a supplementary law).

III. Amendment to risk management plans (art. 13, first paragraph)

Risk management plans ("PGR") are a set of accident and theft prevention measures for cargo transportation, currently associated with clauses waiving recovery rights ("DDR") by cargo insurers.

Prior to this new regulation, the market of cargo insurance had as practice that meeting PGR requirements was a condition so that cargo insurers waive the right to recovery against carriers in the event of cargo disappearance.

In this context, the sanctioned regulation establishes that Carriers' Liability Insurance Policies for cargo damage (RCTR-C), disappearance and theft (former RCF-DC), must be linked to a PGR executed by common agreement between carriers and insurers.

Thus, the PGR will be associated with the carriers' civil liability insurance, unlike the previous market practice, which linked it to the DDR waivers attached to the cargo insurance policies.

On the other hand, Law No. 14,599/2023 also establishes that cargo owners may require security measures in addition to those provided for in the PGR linked to the carrier's liability insurance. However, the law mandates that costs associated with its implementation must be settled by contractors, not by carriers. Moreover, the owners of goods may require a copy of the liability insurance policy from carriers, with details regarding the retained coverage conditions, premium and risk management (paragraph 9).

The new regulation imposes a change in relation to the wording of MP 1153, which formerly provided for restrictions on linking PGR to cargo insurance policies retained by cargo owners when an equivalent carriers' liability insurance coverage was already retained by carriers (for instance, if carriers' liability insurance had theft coverage and cargo insurance also provided coverage for theft).

IV. Single policy for civil liability insurance coverages (art. 13, paragraph 5)

The new law states that the carriers' liability insurance for road transport carriers (RCTR-C) and cargo disappearance (RC-DC) must be retained through a single policy, linked to the National Register of Road Cargo Carriers ("RNTRC").

The provision prevails over the former ruling of CNSP Resolution No. 219/2010 (RCTR-C insurance), which considered the use of a single policy as optional (art. 3).

This provision does not impair the contracting of additional coverage linked to both the RCTR-C and RC-DC insurance types, according to paragraph 2 of article 13 (*the insurance coverage established in items I, II and III of the main section of this article does not exclude nor preclude the optional contracting by carriers of additional coverage for any losses or damages caused to the cargo transported not encompassed in the above mentioned insurance coverages*).

V. Restriction on recoveries involving subcontracting of TACs (art. 13, paragraph 2)

One of the features introduced by Provisional Measure 1153, and upheld by Law No. 14,599/2023, was the protection to Independent Cargo Carriers ("TAC" – individual drivers who own a cargo vehicle and provide freight services), when transportation services are subcontracted.

According to the published text, whenever the TAC is subcontracted, both the RCTR-C and RC-DC insurance types will have to be contracted by the contracting party of the service that issues the bill of transport, in which event the TAC will be considered its representative, and subrogation of the insurance company against the carrier will be prohibited.

VI. Ban on freight discount from insurance fees involving TACs (art. 13-B)

Finally, the newly sanctioned regulation also protects TACs by forbidding shippers, carriers and transport cooperatives to discount the amounts referring to administrative and insurance fees from freight, under penalty of having to reimburse TACs double the amount of the contracted freight.

The regulation under discussion entered into force on June 20, 2023, and [its full text can be accessed in this link](#) (in Portuguese).

Demarest's Insurance, Reinsurance, Health and Private Pension team is monitoring the potential impacts of the sanctioned regulation on the insurance contracted by cargo owners and carriers, and is available to provide any clarifications on the subject.

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Insurance, Reinsurance, Health and Private Pension

RELATED LAWYERS

Andre Alarcon
Camila Affonso Prado
Marcia Cicarelli Barbosa de Oliveira
Juliana da Silva Piolla
Thales Dominguez Barbosa da Costa

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Our Offices

SÃO PAULO

Av. Pedroso de Moraes 1201
São Paulo SP 05419-001
T +55 11 3356 1800

RIO DE JANEIRO

Praia do Flamengo 200 15º andar
Rio de Janeiro RJ 22210-901
T +55 21 37 23 9800

BRASÍLIA

SAFS Quadra 2 Bloco I Lote 9
Edifício Alvoran – 1º andar
Brasília DF 70297-400
T +55 61 3243 1150

NEW YORK

375 Park Avenue
36th Floor
New York NY 10152
T +1 212 371 9191



CONTACT

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