

Important questions related to insolvency/bankruptcy

| | Spain | Argentina | Brasil | Chile | Colombia | Mexico | Peru |
|---|---|--|---|--|--|---|---|
| Are there any specific legal provisions in your jurisdiction regarding the effects of an insured's insolvency or bankruptcy on the insurance company? | No | No | No | Yes | No | Yes | No |
| In the case of an insured's insolvency or bankruptcy, what rights/actions could the insurance company invoke or exercise? | If the insured does not pay the first premium, the insurer may terminate the contract or demand payment. If they do not pay the following premiums, coverage is suspended after a month and the effects of the contract are suspended if the insurer proves the non-payment. | Take part in the insolvency and bankruptcy proceedings to collect the credit | Follow the normal order of creditors | i. Contract termination. ii. Demand that the insolvency secures the fulfillment of the obligations of the insured. iii. The insurer can verify the credit in the insolvency procedure. | The insurance company is entitled to begin the insolvency proceedings against its insured and to also be a part of the proceedings as a creditor in the terms mentioned above. | i. Contract termination ii. Premium collection from the insured iii. Premium collection from the payment to the beneficiary. | Insurance company would be entitled to initiate a standard bankruptcy procedure against the insured |
| How would an insured's insolvency or bankruptcy scenario affect re-insurers and their relationship with the cedent insurance company? | There is no direct relationship between the insured and reinsurers. The insurer is solely responsible to the insured. It must be in accordance with the agreement in the reinsurance contract. | The situation of insolvency or bankruptcy in principle affects the reinsurer in the same way that it affects the insurer | No specific rule for insurers and reinsurers | The reinsurer could be affected in the payment of reinsurance premiums. No direct action by the reinsurer against the insured is considered. | The reinsurer has no direct claim against the insolvent insured; hence the reinsurer will have legal action only against the cedent. | It will depend of what happens to the insurance contract: contract termination, premium collection from the insured or from the payment to the beneficiary. The same effects will exist regarding the reinsurance contract. | From a legal standpoint an insured's insolvency or bankruptcy shall not impact re-insurers. |
| What would be the situation if an insurance company becomes insolvent or bankrupts? How would this scenario affect insureds and reinsurers? | "Consortio de Compensación de Seguros" (CCS), assumes liquidation of the insurer and opens a process of "purchase of credits from creditors by insurance contract." With resources from the CCS, the credit assigned to the insolvent insurer. Reinsurers: the insured has special priority over the credit balance in respect of insurer's account with the reinsured that is in liquidation. | The insurer loses their license, and a judicial liquidation and dissolution process starts. | Insureds must try to receive their credits in the settlement process | The credits of the insured for claims that occurred prior to the bankruptcy will have preference for the payment of the credit | The insurance company faces two stages: i. Preemptive measures to avoid an administrative takeover. ii. Administrative takeover. | Insureds are the first in the list of creditors to get paid. The situation of reinsurers will depend on what the insurer decides to do with the insured contracts. | Special legal regime applicable to insurance companies with financial distress. Debts by the insurance company to the insured and reinsurers would rank second in order of priority |
| What would happen in the above-mentioned scenarios with pending reinsurance premiums? Do reinsurers have any action to collect them? | They would concur as another regular creditor in the liquidation procedure. The reinsurers would enter the liquidation procedure with their credit with the ordinary rating that corresponds to it, without any special priority. | Reinsurers must appear before the insolvency judge and request the recognition of their credit. | Reinsurance premiums follow the same order as ordinary credits and there is no right of first refusal | No special action is established in the case of reinsurers with outstanding premiums. Become part of the insolvency procedure. | Reinsurers will be subject to the measures taken by the appointed takeover agent and in order to exercise their rights they must do it within the takeover proceedings | After the final list with all creditors and the amount of their credits is published, they will get paid within the following 180 days | Pending reinsurance premiums shall be paid second in rank |
| What is the probability of an insurance company becoming insolvent or bankrupt in your jurisdiction? Are there any legal or regulatory measures oriented to preventing such scenario? | Considering Spanish regulations on Insurance Companies supervision, the probability that the Insurance Company will be declared insolvent is very low | Every year insurers must submit balance sheets to the National Insurance Superintendence. | SUSEP inspection has to prevent it | The probability of this happening is low. | The probability of an insurance company becoming insolvent or bankrupt in Colombia is low | The probability is very unlikely. | Insurance companies are closely monitored by the regulator, in order to avoid them from falling in situations of financial stress. |