

KLUWER LAW INTERNATIONAL

# INSURANCE LAW IN PORTUGAL

JORGE SINDE MONTEIRO &  
MARIA JOSÉ RANGEL DE MESQUITA



Wolters Kluwer

Law & Business

KLUWER

WAL

# Insurance Law in Portugal

**Jorge Sinde Monteiro & Maria José Rangel de Mesquita**

This book was originally published as a monograph in the International  
Encyclopaedia of Laws/Insurance Law.

General Editor: Roger Branpain

Associate General Editor: Michèle Colucci

Editor: Herman Cohen



**Wolters Kluwer**

Law & Business

AUSTIN BOSTON CHICAGO NEW YORK THE NETHERLANDS

*Published by:*  
Kluwer Law International  
PO Box 316  
2400 AH Alphen aan den Rijn  
The Netherlands  
Website: [www.kluwerlaw.com](http://www.kluwerlaw.com)

*Sold and distributed in North, Central and South America by:*  
Aspen Publishers, Inc.  
7201 McKinney Circle  
Frederick, MD 21704  
United States of America  
Email: [customer.service@aspenpublishers.com](mailto:customer.service@aspenpublishers.com)

*Sold and distributed in all other countries by:*  
Turpin Distribution Services Ltd.  
Stratton Business Park  
Pegasus Drive, Biggleswade  
Bedfordshire SG18 8TQ  
United Kingdom  
Email: [kluwerlaw@turpin-distribution.com](mailto:kluwerlaw@turpin-distribution.com)

DISCLAIMER: The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

*Printed on acid-free paper.*

ISBN 978-90-411-3323-6

© 2010 Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: [permissions@kluwerlaw.com](mailto:permissions@kluwerlaw.com)

Printed and bound in Great Britain by  
CPI Antony Rowe, Chippenham and Eastbourne

# Table of Contents

|  |    |
|--|----|
| The Authors  | 3  |
| List of Abbreviations  | 13 |
| Preface  | 15 |
| General Introduction   | 17 |
| §1. GENERAL BACKGROUND INFORMATION                                 | 17 |
| I. Political System  | 17 |
| II. Commerce and Industry  | 18 |
| III. Financial Institutions  | 19 |
| IV. Currency Legislation and Monetary Regulations                  | 19 |
| V. Insurance Business, General Organization and Special Features   | 20 |
| §2. HISTORICAL BACKGROUND OF INSURANCE AND INSURANCE LEGISLATION   | 21 |
| §3. SOURCES OF INSURANCE LAW                                       | 21 |
| I. Legislation   | 22 |
| A. Supervisory Legislation   | 22 |
| B. Insurance Contract Law  | 23 |
| C. Non-life and Life Insurance Law                                 | 23 |
| II. Governmental Regulations                                       | 23 |
| III. Regulation by Governmental Agencies                           | 23 |
| IV. Private International Law                                      | 23 |
| V. Jurisdiction  | 24 |
| §4. DISPUTE SETTLEMENT AND ARBITRATION                             | 24 |
| §5. CONSUMER PROTECTION (IN GENERAL, AND WITH REGARD TO INSURANCE) | 25 |
| §6. COMPULSORY INSURANCE   | 26 |

## **Table of Contents**

|   |    |
|---|----|
| Selected Bibliography   | 29 |
| Part I. The Insurance Company   | 35 |
| Chapter 1. The Insurance Company: Its Form                                  | 35 |
| §1. MUTUAL INSURANCE, PREMIUM INSURANCE, OTHER                              | 35 |
| §2. PUBLIC OR PRIVATE NATURE  | 36 |
| §3. FACTUAL DATA  | 36 |
| Chapter 2. Access to Business   | 37 |
| §1. GENERAL   | 37 |
| §2. AUTHORIZATION: REQUIREMENTS AND PROCEDURES                              | 37 |
| Chapter 3. Supervision  | 43 |
| §1. SOLVENCY CONTROL  | 43 |
| §2. SUPERVISION OF TARIFFS AND INSURANCE CONDITIONS AND<br>MARKET BEHAVIOUR | 45 |
| Chapter 4. Technical Reserves and Investments                               | 47 |
| Chapter 5. Accountancy  | 48 |
| Chapter 6. Taxation of the Company  | 49 |
| Chapter 7. The Reinsurance Company  | 50 |
| Part II. The Insurance Contract: General                                    | 53 |
| Chapter 1. Generalities   | 53 |
| §1. CHARACTERISTICS   | 54 |
| §2. CATEGORIES  | 56 |
| §3. GENERAL PRINCIPLES  | 56 |
| Chapter 2. Insurable Risk   | 58 |

## Table of Contents

|  |    |
|--|----|
| Chapter 3. Formation of the Insurance Contract   | 60 |
| §1. GENERAL                                      | 60 |
| §2. PRE-CONTRACTUAL PHASE                        | 60 |
| I. Damage Insurance                              | 60 |
| II. Personal Insurance                           | 61 |
| §3. ACTUAL FORMATION OF THE CONTRACT             | 62 |
| §4. VALIDITY REQUIREMENTS                        | 63 |
| §5. PROOF OF THE CONTRACT                        | 63 |
| §6. INSURANCE POLICIES                           | 64 |
| Chapter 4. Obligations of the Insured            | 67 |
| §1. DESCRIPTION OF RISK                          | 67 |
| §2. PAYMENT OF PREMIUM                           | 67 |
| §3. OBLIGATIONS IN THE CASE OF INSURED EVENT     | 69 |
| Chapter 5. Obligations of the Insurer            | 71 |
| §1. NON-LIFE INSURANCE                           | 71 |
| I. Over- and Under-insurance                     | 71 |
| II. Subrogation                                  | 72 |
| III. Multiple Insurance                          | 72 |
| §2. LIFE INSURANCE                               | 73 |
| Chapter 6. Insurance and Third Parties           | 74 |
| Chapter 7. Termination of the Insurance Contract | 75 |
| Chapter 8. Other General Rules                   | 78 |
| Part III. Property and Liability Insurance       | 79 |
| Chapter 1. Fire Insurance                        | 79 |
| §1. INTRODUCTION AND LEGAL FRAMEWORK             | 79 |
| §2. FIRE INSURANCE POLICY                        | 79 |

## Table of Contents

|   |    |
|---|----|
| Chapter 2. Loss of Benefits Insurance                                     | 81 |
| Chapter 3. Transport Insurance  | 82 |
| §1. INTRODUCTION AND LEGAL FRAMEWORK                                      | 82 |
| §2. INSURANCE POLICY  | 82 |
| Chapter 4. Liability Insurance  | 83 |
| §1. INTRODUCTION AND LEGAL FRAMEWORK                                      | 83 |
| §2. PRIVATE LIABILITY INSURANCE   | 85 |
| §3. PROFESSIONAL LIABILITY INSURANCE                                      | 85 |
| §4. COMMERCIAL LIABILITY INSURANCE  | 86 |
| §5. OTHER SPECIAL LIABILITY INSURANCE                                     | 87 |
| Chapter 5. Motor Vehicle Insurance ( <i>pro memoria</i> )                 | 88 |
| Chapter 6. Legal Aid Insurance  | 89 |
| §1. INTRODUCTION AND LEGAL FRAMEWORK                                      | 89 |
| §2. INSURANCE CONTRACT  | 89 |
| §3. LEGAL AID INSURANCE COVERAGE  | 90 |
| Chapter 7. Aviation and Space Insurance                                   | 91 |
| Chapter 8. Theft and Embezzlement Insurance                               | 92 |
| Chapter 9. Agricultural Insurance, Hail Insurance,<br>Livestock Insurance | 93 |
| §1. INTRODUCTION AND LEGAL FRAMEWORK                                      | 93 |
| §2. INSURANCE POLICY  | 93 |
| §3. INTEGRATED SYSTEM FOR PROTECTION AGAINST RANDOM<br>CLIMATIC EVENTS    | 94 |

## Table of Contents

|   |     |
|---|-----|
| Chapter 10. Catastrophe Insurance   | 95  |
| §1. GENERAL   | 95  |
| §2. NUCLEAR RISKS   | 95  |
| §3. NATURAL CATASTROPHES  | 95  |
| Chapter 11. Credit and Caution Insurance  | 96  |
| §1. GENERAL   | 96  |
| §2. CREDIT INSURANCE  | 97  |
| §3. CAUTION INSURANCE   | 98  |
| Chapter 12. Technical Insurance   | 99  |
| Chapter 13. Miscellaneous Insurance   | 100 |
| Part IV. Motor Vehicle Insurance  | 101 |
| §1. INTRODUCTION AND LEGAL FRAMEWORK  | 101 |
| §2. MOTOR INSURANCE POLICIES  | 102 |
| §3. COMPULSORY MOTOR VEHICLE THIRD-PARTY LIABILITY<br>INSURANCE                   | 102 |
| I. Duty to Take Out Compulsory Third-party Liability<br>Insurance                 | 102 |
| II. Scope of Coverage   | 103 |
| III. Main Exclusions  | 104 |
| IV. Territory Covered by Insurance  | 104 |
| V. Recourse (against the Insured)   | 105 |
| VI. Guarantee Institution for Motor Vehicles: The Motor<br>Vehicle Guarantee Fund | 105 |
| VII. Limitation of Actions and Procedural Rules                                   | 106 |
| VIII. Provisions on Claims Handling and on Calculating<br>Indemnity               | 107 |
| §4. OTHER RISK INSURANCE FOR MOTOR VEHICLES                                       | 108 |
| I. Scope of Coverage  | 108 |
| II. Exclusions  | 108 |
| III. Over-insurance   | 109 |



## Table of Contents

|  |     |
|--|-----|
| Part V. Insurance of the Person                              | 111 |
| Chapter 1. Workmen's Compensation and Occupational Disease   | 111 |
| §1. GENERAL  | 111 |
| §2. WORKMEN'S COMPENSATION INSURANCE FOR EMPLOYEES           | 113 |
| §3. WORKMEN'S COMPENSATION INSURANCE FOR INDEPENDENT WORKERS | 114 |
| §4. WORKMEN'S COMPENSATION FUND                              | 114 |
| Chapter 2. Bodily Injuries                                   | 116 |
| Chapter 3. Private Health Insurance                          | 118 |
| Chapter 4. Life Insurance                                    | 120 |
| §1. INDIVIDUAL LIFE INSURANCE                                | 120 |
| §2. GROUP LIFE INSURANCE                                     | 124 |
| Chapter 5. Pension Funds                                     | 126 |
| §1. PENSION PLANS  | 126 |
| §2. PENSION FUNDS  | 127 |
| I. General   | 127 |
| II. Authorization and Modification                           | 128 |
| III. Extinction and Winding-up                               | 128 |
| IV. Governance Structures                                    | 129 |
| A. Management Entities                                       | 129 |
| B. Depositaries and Other Entities                           | 130 |
| V. Governance Mechanisms for Pension Funds                   | 130 |
| VI. Prudential Rules   | 131 |
| VII. Supervision   | 131 |
| Part VI. Private Insurance: Social Security                  | 133 |
| Part VII. Insurance Intermediaries                           | 135 |
| Chapter 1. Law of Establishment and Supervision              | 135 |
| §1. GENERAL INTRODUCTION                                     | 135 |
| §2. REGISTRATION   | 136 |

## Table of Contents

|  |     |
|--|-----|
| Chapter 2. Insurance Intermediaries and the Insurance Contract | 139 |
| Part VIII. Reinsurance and Co-insurance                        | 141 |
| Part IX. Taxation of Insurance                                 | 143 |
| §1. TAXATION   | 143 |
| I. Stamp Tax   | 143 |
| II. Other Tax  | 143 |
| §2. TAX DEDUCTION AND TAX BENEFITS                             | 144 |
| Part X. Risk Management and Prevention                         | 147 |
| Index  | 149 |

KLUWER

NAL

# **Insurance Law in Portugal**

**Jorge Sinde Monteiro & Maria José Rangel de Mesquita**

This book was originally published as a monograph in the International  
Encyclopaedia of Laws/Insurance Law.

General Editor: Roger Blanpain  
Associate General Editor: Michele Colucci  
Editor: Herman Cousy



**Wolters Kluwer**  
Law & Business

AUSTIN BOSTON CHICAGO NEW YORK THE NETHERLANDS

*Published by:*  
Kluwer Law International  
PO Box 316  
2400 AH Alphen aan den Rijn  
The Netherlands  
Website: [www.kluwerlaw.com](http://www.kluwerlaw.com)

*Sold and distributed in North, Central and South America by:*  
Aspen Publishers, Inc.  
7201 McKinney Circle  
Frederick, MD 21704  
United States of America  
Email: [customer.service@aspenpublishers.com](mailto:customer.service@aspenpublishers.com)

*Sold and distributed in all other countries by:*  
Turpin Distribution Services Ltd.  
Stratton Business Park  
Pegasus Drive, Biggleswade  
Bedfordshire SG18 8TQ  
United Kingdom  
Email: [kluwerlaw@turpin-distribution.com](mailto:kluwerlaw@turpin-distribution.com)

**DISCLAIMER:** The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

*Printed on acid-free paper.*

ISBN 978-90-411-3323-6

© 2010 Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: [permissions@kluwerlaw.com](mailto:permissions@kluwerlaw.com)

Printed and bound in Great Britain by  
CPI Antony Rowe, Chippenham and Eastbourne

## The Authors



Jorge Sinde Monteiro is a full Professor at the Faculty of Law of the University of Coimbra, where he runs the course on the Law of Obligations (*Direito das Obrigações*) and post-graduate studies in Civil Law. He is an associate member of the International Academy of Comparative Law, a member of SPAIDA (the Portuguese Section of AIDA) and of the Management Board of the Centre for Biomedical Law (Coimbra).



Maria José Rangel de Mesquita is a Professor at the Faculty of Law of the University of Lisbon where she teaches European Law, Public Law, and International Law. She was vice-president of the board of the Portuguese Green Card Bureau between 1993 and 2003. She is a member of the Board of Direction of SPAIDA (the Portuguese Section of AIDA). She is an associate member of AREP – the European Studies University Association, as well as of the Institute of Political and Juridical Sciences and the European Institute of the Faculty of Law of the University of Lisbon.

## The Authors

# Table of Contents

|  |    |
|--|----|
| The Authors  | 3  |
| List of Abbreviations  | 13 |
| Preface  | 15 |
| General Introduction   | 17 |
| §1. GENERAL BACKGROUND INFORMATION                                 | 17 |
| I. Political System  | 17 |
| II. Commerce and Industry  | 18 |
| III. Financial Institutions  | 19 |
| IV. Currency Legislation and Monetary Regulations                  | 19 |
| V. Insurance Business, General Organization and Special Features   | 20 |
| §2. HISTORICAL BACKGROUND OF INSURANCE AND INSURANCE LEGISLATION   | 21 |
| §3. SOURCES OF INSURANCE LAW                                       | 21 |
| I. Legislation   | 22 |
| A. Supervisory Legislation   | 22 |
| B. Insurance Contract Law  | 23 |
| C. Non-life and Life Insurance Law                                 | 23 |
| II. Governmental Regulations                                       | 23 |
| III. Regulation by Governmental Agencies                           | 23 |
| IV. Private International Law                                      | 23 |
| V. Jurisdiction  | 24 |
| §4. DISPUTE SETTLEMENT AND ARBITRATION                             | 24 |
| §5. CONSUMER PROTECTION (IN GENERAL, AND WITH REGARD TO INSURANCE) | 25 |
| §6. COMPULSORY INSURANCE   | 26 |

## **Table of Contents**

|   |    |
|---|----|
| Selected Bibliography   | 29 |
| Part I. The Insurance Company   | 35 |
| Chapter 1. The Insurance Company: Its Form                                  | 35 |
| §1. MUTUAL INSURANCE, PREMIUM INSURANCE, OTHER                              | 35 |
| §2. PUBLIC OR PRIVATE NATURE  | 36 |
| §3. FACTUAL DATA  | 36 |
| Chapter 2. Access to Business   | 37 |
| §1. GENERAL   | 37 |
| §2. AUTHORIZATION: REQUIREMENTS AND PROCEDURES                              | 37 |
| Chapter 3. Supervision  | 43 |
| §1. SOLVENCY CONTROL  | 43 |
| §2. SUPERVISION OF TARIFFS AND INSURANCE CONDITIONS AND<br>MARKET BEHAVIOUR | 45 |
| Chapter 4. Technical Reserves and Investments                               | 47 |
| Chapter 5. Accountancy  | 48 |
| Chapter 6. Taxation of the Company  | 49 |
| Chapter 7. The Reinsurance Company  | 50 |
| Part II. The Insurance Contract: General                                    | 53 |
| Chapter 1. Generalities   | 53 |
| §1. CHARACTERISTICS   | 54 |
| §2. CATEGORIES  | 56 |
| §3. GENERAL PRINCIPLES  | 56 |
| Chapter 2. Insurable Risk   | 58 |



## Table of Contents

|  |    |
|--|----|
| Chapter 3. Formation of the Insurance Contract   | 60 |
| §1. GENERAL                                      | 60 |
| §2. PRE-CONTRACTUAL PHASE                        | 60 |
| I. Damage Insurance                              | 60 |
| II. Personal Insurance                           | 61 |
| §3. ACTUAL FORMATION OF THE CONTRACT             | 62 |
| §4. VALIDITY REQUIREMENTS                        | 63 |
| §5. PROOF OF THE CONTRACT                        | 63 |
| §6. INSURANCE POLICIES                           | 64 |
| Chapter 4. Obligations of the Insured            | 67 |
| §1. DESCRIPTION OF RISK                          | 67 |
| §2. PAYMENT OF PREMIUM                           | 67 |
| §3. OBLIGATIONS IN THE CASE OF INSURED EVENT     | 69 |
| Chapter 5. Obligations of the Insurer            | 71 |
| §1. NON-LIFE INSURANCE                           | 71 |
| I. Over- and Under-insurance                     | 71 |
| II. Subrogation                                  | 72 |
| III. Multiple Insurance                          | 72 |
| §2. LIFE INSURANCE                               | 73 |
| Chapter 6. Insurance and Third Parties           | 74 |
| Chapter 7. Termination of the Insurance Contract | 75 |
| Chapter 8. Other General Rules                   | 78 |
| Part III. Property and Liability Insurance       | 79 |
| Chapter 1. Fire Insurance                        | 79 |
| §1. INTRODUCTION AND LEGAL FRAMEWORK             | 79 |
| §2. FIRE INSURANCE POLICY                        | 79 |