

## Proinde Circular 16-10-2024: New rules for mandatory cargo carrier liability insurance

**Brazil's private insurance regulator has issued a resolution introducing rules applicable to compulsory liability insurance for domestic cargo carriers**

### Legislative reform

Over the past two years, there have been significant changes to the regulations governing the procurement of cargo transport liability insurance. Previously, road hauliers had the option to acquire civil liability insurance to cover cargo theft, and it was up to the carrier and shipper to agree on who would arrange the compulsory liability insurance for cargo transport. Usually, the latter would take out this insurance, especially when contracting freight from individual truckers.

However, following recent amendments to the [Road Cargo Transport Law](#), the road carrier, whether an individual or legal entity, is now exclusively accountable for purchasing insurance coverage against risks of cargo loss or damage arising from road accidents, including collision, ramming, rollover, overturning, fire or explosion (RCTR-C, in the Portuguese acronym). Besides the RCTR-C insurance, the legislative reform also made it mandatory for the carrier to contract civil liability insurance to cover the disappearance of the cargo due to theft, pilferage, fraud, extortion or hijacking (RC-DC), as well as vehicle civil liability insurance to cover third-party bodily injury and property damage (RC-V).

The revised law does not prevent the carrier from procuring additional insurance for risks not covered under the mandatory insurance policies. At the same time, the shipper retains the option to purchase facultative insurance for cargo loss or damage, irrespective of the insurance acquired by the carrier.

### Regulatory update

Following substantial changes to the road cargo law, the Superintendent's Office for Private Insurance (Susep), the federal regulatory agency, recognised the need to update its cargo liability insurance framework to align with the new legal provisions. After conducting public consultations and hearings with civil society and stakeholders, Susep issued [Resolution CNSP 472](#), published on 30 September 2024, whereby it reinforces the mandatory nature of civil liability cargo insurance for all modes of transport and provides general provisions and guidelines, as follows:

- Civil Liability Insurance for Air Cargo Carrier – RCTA-C
- Civil Liability Insurance for Waterway Cargo Carrier – RCA-C
- Civil Liability Insurance for Rail Cargo Carrier – RCTF-C
- Civil Liability Insurance for Road Cargo Carrier – RCTR-C
- Civil Liability Insurance for Multimodal Cargo Transport Operator – RCOTM-C
- Civil Liability Insurance for Road Carrier due to Cargo Disappearance – RC-DC

All domestic cargo carriers, except multimodal operators (RCOTM-C), are required by law to obtain one or more of the third-party liability policies mentioned above from local insurers. Under Susep’s new regulation, these insurance products cannot be taken out collectively; each insured party must have an individualised policy.

## Mandatory cargo liability insurance

### Minimum coverage

Resolution CNSP 472/2024 consolidates mandatory civil liability insurance for road transport and comprehensively regulates liability insurance requirements for all other transport modes. It establishes general rules, guidelines and risks covered for each cargo liability insurance product.

<p><b>RCTA-C (air)</b></p>	<p><b>Insured:</b> air carrier authorised by the National Civil Aviation Agency (ANAC) and other relevant authorities.</p> <p><b>Coverage:</b> RCTA-C insurance must guarantee compensation up to the insured amount, as stipulated by the Brazilian Aeronautics Code (CBA) or by conventions regulating air cargo transportation, for the carrier’s liability for material damage suffered by cargo covered by an airwaybill or equivalent, on a domestic air voyage. This coverage applies when cargo damage occurs during transportation and is directly caused by:</p> <ul style="list-style-type: none"> <li>• Collision, crash or forced landing of the aircraft;</li> <li>• Fire or explosion on the aircraft; or</li> <li>• Fire or explosion in the warehouses, storage facilities or yards used by the insured in the places of departure, overnight stay, transfer and shipping destination, even if the goods are outside the aircraft.</li> </ul>
<p><b>RCA-C (waterway)</b></p>	<p><b>Insured:</b> legal entity authorised by the National Waterway Transportation Agency (ANTAQ) to operate cargo transportation in national waters as a Brazilian shipping company (EBN).</p> <p><b>Coverage:</b> RCA-C insurance must guarantee compensation up to the insured amount for which the carrier is legally liable to pay due to damage to cargo covered by a bill of lading or equivalent document during waterway transportation on a domestic voyage directly resulting from:</p> <ul style="list-style-type: none"> <li>• Grounding, stranding, sinking or capsizing of the ship;</li> <li>• Fire or explosion on the ship;</li> <li>• Collision, allision, or contact of the ship with fixed or floating object; or</li> <li>• Fire or explosion in the warehouses, stores or yards used by the insured carrier in the places of departure, overnight stay, transfer and destination, even if the goods are not on board the ship.</li> </ul>

<p><b>RCTF-C (rail)</b></p>	<p><b>Insured:</b> the rail carrier duly authorised by the National Land Transport Agency (ANTT).</p> <p><b>Coverage:</b> RCTF-C insurance must guarantee compensation, up to the insured amount, for which the carrier is legally liable to pay due to loss or damage to cargo covered by a rail bill of lading or equivalent document during a national rail journey, provided these are caused by:</p> <ul style="list-style-type: none"> <li>• Collision, rollover, ramming, overturning or derailment of wagons or the entire railway train;</li> <li>• Fire or explosion on wagons or railway trains; or</li> <li>• Fire or explosion in the depots, warehouses or yards used by the insured carrier, in the places of departure, overnight stay, transfer and destination, even if the goods are outside the railway train.</li> </ul>
<p><b>RCTR-C (road)</b></p>	<p><b>Insured:</b> road cargo transport company (ETC) or autonomous individual carrier (TAC) registered in the National Register of Road Freight Carriers (RNTR-C) of the ANNT.</p> <p><b>Coverage:</b> RCTR-C insurance must guarantee compensation up to the insured amount or any loss or damage caused to cargo covered by a road bill of lading or equivalent document during transportation within the national territory. This coverage applies for cargo loss or damage resulting from:</p> <ul style="list-style-type: none"> <li>• Collision, rollover, ramming or overturning of the transporting vehicle;</li> <li>• Fire or explosion in the transporting vehicle; and</li> <li>• Fire or explosion in the transporting vehicle located in the warehouses, storage facilities or yards used by the insured, in the places of departure, overnight stay, transfer and destination, even if the goods are outside the vehicle.</li> </ul>
<p><b>RCOTM-C (multimodal)</b></p>	<p><b>Insured:</b> the multimodal transport operator (OIT), a legal entity contracted as the principal to handle multimodal cargo transport on its own or outsourcing duly authorised and registered with the ANTT.</p> <p><b>Coverage:</b> RCOTM-C insurance must provide compensation, up to the insured amount, for which the carrier is legally liable to pay due to loss or damage caused to cargo covered by a multimodal bill of lading while under the care or responsibility of the insured, as follows:</p> <ul style="list-style-type: none"> <li>• Land transport: collision, rollover, ramming, overturning or derailment; or by fire or explosion in the transporting vehicle;</li> <li>• Waterway transport: sinking or capsizing, grounding, stranding, allision, collision or contact of the ship with fixed or floating object, or by fire or explosion on the ship;</li> <li>• Air transport: fire, explosion, ramming, collision, fall or forced landing of the aircraft;</li> <li>• Transshipment or transfer: accidents arising from loading and unloading operations when these are carried out by the insured or its subcontractors; or</li> <li>• Storage: fire or explosion while the goods are in the warehouses, depots or yards used by the insured for unitisation/consolidation, deunitisation/deconsolidation and transit of the cargo subject to multimodal transport for a period which must not be less than 15 days or more than 30 days, as established in the policy, for each warehouse, depot or yard, counted from the respective date of entry.</li> </ul>

	<p>RCOTM-C insurance does not replace the mandatory civil liability insurance for cargo transport when carried out by third parties hired by the OIT. However, should the OIT use its own leased or chartered fleet, it can be exempt from contracting this insurance if the RCOTM-C policy is in place. Nevertheless, the road carriage must still be covered by an RC-DC policy.</p> <p>This class of insurance allows the parties to mutually agree on a premium reduction through mandatory participation of the insured in the claimed losses, as long as the percentage of the insured's share in the losses is clearly stated in the policy. When agreed, the deductible or participation of the insured cannot be set at values or percentages incompatible with the insured's economic and financial standing.</p>
<p><b>RC-DC (road)</b></p>	<p><b>Insured:</b> the road carrier registered with the ANTT and active in the RNTRC. The insured haulier may only maintain a single RC-DC insurance policy, which must be linked to its RNTRC registration.</p> <p><b>Coverage:</b> RC-DC insurance provides compensation, up to the insured amount, for which the carrier is legally liable to pay due to losses or material damages suffered by cargo covered by a road transport bill or equivalent document in the national territory, provided they are caused exclusively by:</p> <ul style="list-style-type: none"> <li>• Disappearance of the cargo due to robbery, theft, pilferage, misappropriation, fraud, extortion or hijacking, even if the crime was perpetrated during a river leg complementary to the road leg;</li> <li>• Disappearance of the cargo as a result of robbery, theft, pilferage, misappropriation, fraud, extortion or hijacking of goods loaded in transport vehicles while parked inside warehouses or where the insured's warehouses are located or under their control or administration, provided that such warehouses have been previously listed in the policy and that certain cumulative conditions are met.</li> </ul>

### Scope of cover

The insurance coverage begins upon the carrier's receipt of the cargo at the place of origin under a complete bill of lading or equivalent document. It ends upon delivery to the consignee at the agreed destination (or when it is deposited in court if the consignee cannot be located). For RCTR-C, RCOTM-C and RC-DC insurance, the coverage extends to urban and suburban routes for cargo collection and delivery by the insured carrier as a complement to the primary voyage.

Coverage remains in effect if the goods require transfer to another aircraft, railcar, ship or land vehicle to resume the voyage. Furthermore, coverage will not be prejudiced in instances where rail, road, or waterway traffic is disrupted due to maintenance activities, bridge or viaduct collapses, landslides, or natural events. Similarly, in the case of road transport, coverage will remain intact when the use of regular ferry boats or similar ships is necessary due to the absence of bridges or viaducts for crossing water bodies.

### Risk management plan

The new rules require that the hauliers' coverage for third-party cargo liabilities (RCTR-C and RC-DC) be contracted through a single policy for each type of insurance per insured. Both policies must be linked to a risk management plan (PGR) agreed upon between the carrier and the insurer and registered in the National Register of Road Freight Carriers (RNTR-C). This plan should outline the rules and conditions for risk management and claims handling. Cargo shippers will be able to access the insurance policies and the PGR in place and may request additional risk management measures at their own expense.

## Sue and labour and defence cover

In addition to covering thirty-party cargo loss, damage, or theft, the insurance company must also reimburse the insured for expenses incurred to avert loss, minimise damage, or save the insured cargo or property. The amount of compensation and reimbursement is limited to the insured value of the shipment if no specific coverage is contracted. Equally, the insurer must reimburse the legal costs and fees of the defence attorneys of the insured and the claimant, provided this cover is set out in the insurance policy and specific conditions for contracting legal assistance are met.

## Insured value and cargo declarations

The insurance contract must clearly state the maximum guarantee limit for each shipment. The insured amount per shipment should match the full declared cargo value in the bill of lading or another tax document, with the possibility of endorsements.

The insured carrier must inform the insurer of all shipments covered by the policies before departure from the origin by submitting a copy or electronic transmission of the bills of lading or equivalent. For RCTR-C and RC-DC insurance plans, if the issuance of Electronic Manifest of Tax Documents ([MDF-e](#)) is required by law, the complete file of these documents must be transmitted to the insurer before shipping commences.

Additionally, the insurer must notify the insurance company at least three business days before the intended operation if the shipment exceeds the insured limit. If no response is received within this timeframe, it will mean the insurer's tacit acceptance of the proposed risk.

If the shipper fails to declare the cargo value in the intermodal bill of lading, the liability of the RCOTM-C insurer will be subject to package limitation, as set out in the [Multimodal Transport Law](#) and its regulations. Likewise, the liability of the RCTA-C insurer for shipments without declared value in domestic air transport will be calculated based on package limitation under the [Brazilian Aeronautical Code](#) unless specific cover is obtained.

## Claims handling

### Claim settlement

The insurance company is primarily responsible for settling claims under mandatory cargo liability policies. They pay directly to the third-party claimant with the insured's knowledge. Alternatively, the insured may be authorised to pay the claim in the first instance and then seek reimbursement from the insurer.

### Subrogation and waiving of rights

Upon paying compensation under the insurance policy to the rightful claimant, the insurer automatically subrogates all rights and actions of the insured to pursue recovery from third parties responsible for the cargo loss or damage, except subcontracted carriers, which are otherwise considered agents of the insured carrier who issued the bill of lading or equivalent document.

According to Susep's regulations, the existence of a clause waiving the transfer of rights of recovery (DDR), an institute widely used by insurers in transport operations, whether in the transport insurance contracted by the shipper or any other contractual stipulation to that end, does not exempt the contracting of mandatory cargo civil liability insurance by the carrier.

## Transitional period

RCTA-C, RCA-C, RCTF-C, and RCOTM-C insurance plans registered with Susep before 30 September 2024 that are not in compliance with the provisions must be adjusted to meet the new standards within 180 days. RCTR-C and RCF-DC insurance plans must also be updated within the same time frame, after which the policies will be automatically cancelled.

## Impact on the market

While over 90% of Brazilian exports are transported by cargo ships, about 65% of domestic cargo is moved by road, except for the Amazon region, where waterway transport is prevalent. With such a large volume of road freight domestically, the recent changes in the insurance regime and the carrier's obligation to purchase policies for cargo theft (RC-DV) and third-party damage (RC-V) have significantly impacted the dynamics of cargo transport and vehicle insurance.

On the one hand, the regulation places a heavier burden on hauliers, as they can no longer transfer the duty to insure against cargo risks to the shipper; on the other hand, the new rules have boosted the liability insurance market while affording greater control and peace of mind to cargo owners, independent transporters, and the society in general.

As far as air, rail and waterway transport are concerned, Susep's resolution did not introduce significant new features compared to previous regulations, except for making it mandatory for carriers to take out sufficient civil liability cargo insurance. However, since most cargo transport insurance policies are renewed yearly, the impact of the new rules across the various modes of transport will only be fully perceived late next year. Please read our [disclaimer](#).

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