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Association Internationale de Droit des Assurances

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Ref.: Questionnaire for AIDA World Congress, Rio de Janeiro, Brazil 2018.

New Technologies: Autonomous Vehicles and Robots. Cyber Risks. New Technologies and Insurance Process.

Dear Sirs,

Please find below the answer to your proposed questionnaire regarding new technologies.

## **I. DRIVERLESS/AUTONOMOUS VEHICLES AND VESSELS**

**Question 1.** Are there any specific laws already adopted in your jurisdiction, or proposals for laws, relating to liability in tort for injuries inflicted by the use of such vehicles or vessels? If so, please provide a short explanation.

Comment: answers may include the liability of drivers, producers of vehicles and the suppliers of satellite technology.

### **Answer:**

Bearing in mind the scope of the questionnaire and without the intention of giving a specific consideration to what an autonomous car is, an autonomous vehicle can be considered that which allows transfer driving functions from a human driver to a computer, with different levels of automation.

There is no specific law adopted in Argentina or proposals for Laws relating to liability in tort for injuries inflicted by the use of driverless or autonomous vehicles.

In general terms, the current civil liability law should apply (see answer Question 4).

**Question 2.** Are there any specific laws already adopted in your jurisdiction, or proposals for laws, relating to compulsory insurance coverage for injuries inflicted by the use of such vehicles or vessels? If so, please provide a short explanation.

Comment: answers may relate to motor vehicle insurance and product liability insurance.

**Answer:**

There are no specific laws or proposals for laws relating to compulsory insurance coverage for injuries inflicted by the use of such vehicles or vessels regarding vehicle insurance or product liability insurance for autonomous vehicles.

Nevertheless, in December 2015 the National Insurance Bureau passed Resolution 40250, which regulates the mandatory insurance required for the use of drones.

This insurance covers the assured or the pilot that commands the drone remotely for damages (injuries or material) that could be inflicted by the drone or its load on third parties.

**Question 4.** Driverless cars and autonomous vehicles apart, how do you assess the following technological developments that are expected to not only reshape the auto sector but also the insurance industry around it?

- (a) connected cars (i.e., Internet enabled vehicles, (IEV));
- (b) automated driver assistance systems (ADAS);
- (c) car/ride sharing;
- (d) alternative fuel vehicles.

Comment: answers may include identifying the legal and regulatory regime and provisions in your jurisdiction.

**Answer:**

The new technologies and the continuous development mean a challenge not only for the industry but also for society. It is not under discussion that such technologies shall help reduce the quantity of accidents caused by human error in most cases and make traffic safer. Therefore, a decrease in insurance cost will benefit assureds.

However, there is a question: Should the law adapt to the new scenario?

Regarding our country, the current law might apply and the adaptation would not be necessary.

In general terms, the duty to repair the damage caused is stated in the Civil and Commercial Code (hereinafter CCC), section 1716:

*“The violation of the duty not to harm another, or the breach of an obligation, gives rise to the repair of the damage caused, in accordance with the provisions of this Code”.*

The liability for damage is determined by attribution factors, which can be, according to section 1721:

*“(…)based on objective or subjective factors. In the absence of regulations, the attribution factor is the blame.”*

While blame is the subjective factor, section 1722 defines the objective factor as that when:

*“(…) the fault of the agent is irrelevant for the purpose of attributing responsibility.”*

In those cases where the objective factor applies, the responsible can only be free from liability if he/she proves the cause is of others’, except for a legal provision on the contrary.

On the other hand, the subjective factors are, according to section 1724:

*“(…) the fault and wilful misconduct. The fault consists in the omission of the due diligence according to the nature of the obligation and the circumstances of the persons, the time and the place. It includes imprudence, negligence and lack of skill in the art or profession. The wilful misconduct is configured by the production of damage intentionally or with obvious indifference to the interests of others.”*

Thus, it is necessary to analyse which attribution factor corresponds to the specific case in order to subsequently assess and weigh the responsibility of the parties involved in a possible incident.

The CCC states in section 1749, who the direct liable for a harmful event is:

*“(…) who breaches an obligation or causes unjustified damage by action or omission”.*

In the case of the driver of a car he/she will be liable (subjective factor) for the damage caused to a victim, except if he/she produces evidence to prove that the act was the result of an external reason (e.g. an error in the design of an autonomous car).

Where the incident is produced with the intervention of things or as consequence of the activity, the owner or the guardian shall be liable.

Section 1757 states:

*"Every person responds for the damage caused by the risk or the fact of the things, or of the activities that are risky or dangerous by its nature, by the means used or by the circumstances of its realization, the responsibility is objective."*

Whereas section 1758 defines the responsible subjects:

*"The owner and the guardian are jointly responsible for the damage caused by the things. A guardian is the person who exercises, by himself/herself or by third parties, the use, direction and control of the thing, or who gets a benefit from it. The owner and the guardian do not respond if they prove that the thing was used against their express or presumed will."*

*In case of risky or dangerous activity, the person who carries it out, uses it or obtains profit from it, by himself/herself or by third parties, except as provided by special legislation."*

Car motors incidents have to be solved by the solution given by section 1757, as it is regulated by section 1769:

*"The articles referred to the responsibility derived from the intervention of things apply to the damages caused by the circulation of vehicles."*

On the other hand, Act 24.449 (Transit Law) has been in force since December 1994. It was ratified by almost all the provinces of our country, an indispensable requirement bearing in mind our federal organization.

Section 40 of such law requires the presence in the vehicle of an entitled by authorities driver, who shall be liable under certain circumstances (i.e. driving with alcohol/drugs in his/her blood) as it is regulated in section 72 of the law.

Therefore, the law should be amended in order to include driverless or autonomous vehicles.

Regarding product liability, it is important to highlight that Act 24.240 regulates the consumer protection.

Section 40 states:

*"If the damage to the consumer results from the vice or risk of the thing or of the provision of the service, the producer, the manufacturer, the importer, the distributor, the supplier, the seller and the one who has put his mark in the thing or service. The carrier could be liable will be liable for the damage caused to the item due to or on the occasion of the service."*

*The responsibility is joint and several, without prejudice to the corresponding repetition actions. Only those who demonstrate that the cause of the damage has been alien to them will be released totally or partially.”*

## **II. CYBER RISKS**

**Question 5.** Identify the concerns have emerged in your jurisdiction as a result of cyber risks. Is there any legislation in place or under consideration that might affect such risks?

Comment: possible matters include cyber-terrorism, hacking, computer or software failure and financial fraud.

**Answer:**

Up to this moment, Argentina does not have insurance contracts that tend to cover this type of risks.

As the Director of the National Insurance Bureau (*Superintendencia de Seguros de la Nación*) stated to the media news, the Insurance Bureau is working on the wording of such kind of risk.

The idea is that three types of risks can be insured: the first is the impact to the interruption of the business; the second is reputational risk, and the last one has to do with the demands and claims of third parties based on those attacks and the associated costs.

**Question 6.** How has the insurance industry responded to cyber risks? In particular:

(a) do property policies cover losses from cyber risks, or is special insurance required?

(b) is insurance and reinsurance readily available?

(c) are there any special restrictions imposed on cyber risks, e.g. event limits or deductibles?

**Answer:**

As it was mentioned previously, the specific insurance contract to cover cyber risk is still under study by the authorities. Therefore, some companies offer the coverage under other plans but with a tailor made wording to extent the coverage the coverage to such risks.

This could be accepted in certain cases (it is possible for the insurers to offer special plans to large risks - assured amount more than USD 10 million), where

parties of the contract can reach an agreement about the wording of the different coverage. However, the principles of The Insurance Act must be respected.

### **III. NEW TECHNOLOGIES AND THE INSURANCE PROCESS**

7. To what extent have the availability of new technologies affected the way in which insurance policies are placed? In particular:

(a) has there been any effect on the traditional use of agents and brokers?

(b) has the underwriting process been affected by the availability of information, particularly big data, from sources other than the applicant for insurance?

(c) has the means of providing information to policyholders changed significantly, e.g. are written documents provided or are policyholders directed to websites?

**Answer:**

Although the country is living the transformation of the insurance sector by the implementation of different digital solutions, it is not extended enough.

For example, companies are implementing digital tools to enhance the service for costumers or to optimize their internal proceedings.

Brokers are offering solutions through the use of artificial intelligence (AI) or internet of things (IoT).

**Question 8.** To what extent is genetic testing regarded as important by life and accident insurers? Is there any legislation in place or in contemplation restricting requests for genetic information, and are there any relevant rules on privacy that preclude its disclosure?

**Answer:**

Our country is a signatory of the International Declaration on Human Genetic Data (UNESCO) which aims to "ensure the respect of human dignity and protection of human rights and fundamental freedoms in the collection, processing, use and storage of human genetic data, human proteomic data and of the biological samples from which they are derived...".

Article 14 of the Declaration ("Privacy and Confidentiality") states that: "(b) Human genetic data, human proteomic data and biological samples linked to an identifiable person should not be disclosed or made accessible to third parties, in particular, employers, insurance companies, educational institutions and the family, except for an

important public interest reason in cases restrictively provided for by domestic law consistent with the international law of human rights or where the prior, free, informed and express consent of the person concerned has been obtained provided that such consent is in accordance with domestic law and the international law of human rights. The privacy of an individual participating in a study using human genetic data, human proteomic data or biological samples should be protected and the data should be treated as confidential".

At the federal level, although the Personal Data Protection Law 25.326 doesn't have specific provisions for genetic data, it is generally understood that such data is protected as sensitive data in terms of the law.

On two significant jurisdictions of the country -the City of Buenos Aires and the Province of Córdoba- there are specific laws directly aimed at the protection of genetic data.

Law 712 of the Autonomous City of Buenos Aires forbids explicitly (under section 8) that insurance companies: i) perform or require genetic analysis as a previous condition to provide insurance coverage or health services, ii) demand, gather, exchange or buy genetic information and iii) offer or transfer genetic information -under any concept or condition- to other insurance companies.

Similarly, Law 8953 of the Province of Córdoba prohibits the performance, use, consultation, and disclosure of genetic studies as an element of appraisal, admissibility or categorisation by Insurance Companies.

**Question 9.** Has the assessment of claims been affected by the availability of data. In particular, are there any industry-wide arrangements in place whereby insurers can share information on fraud?

**Answer:**

There are two systems in place that allow insurance companies to share information regarding Auto Insurance claims as a means to prevent fraudulent acts.

1) SOFIA G2 is an integrated system administered by a private organisation formed by insurers (CESVI). The system allows auto insurers (more than 30 of them, that represent 80% of the auto insurance market) to check for similar losses and claims informed or submitted to any of the companies that are part of the network, as a way of detecting fraudulent claims.

2) IRIS is a similar system administered by the National Insurance Bureau that collects data regarding insurance losses reported by all the auto insurers of the market.

Please do not hesitate to contact us for any question you may have in connection with this letter.

Sincerely yours,

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