

DECENNIAL INSURANCE IN FRANCE

SSR IBERIA is practically the only operator in the Iberian Peninsula market with the capacity to give real support to the needs of companies and individuals who need to take out insurance from those linked to the construction sector in France: Ten-Year Insurance Damages (Dommages Ouvrage), the Ten-Year Civil Liability Insurance (Responsibility Civile Décennale des Entreprises du Bâtiment) or the Insurance of Contractors All Risk (Tout Risque Chantier).

The Compulsory 10-Year Civil Liability Insurance

The responsibility of builders in France has a long way since it dates from the Civil Code of 1804. From this date, the regime of responsibility has often evolved according to the logic of consumer safety. The same happens with the insurance scheme that covers the responsibility of the builders.

In France, generalized compulsory insurance is intended to guarantee the physical and financial protection of the consumer. They are the legal texts and the standard clauses, which determine the minimum guarantees contained in the insurance contracts.

What is decennial responsibility?

The French system has aimed to guarantee the owner of a property high protection, for ten years, against considerable damage that may appear after the construction of the work.

In France, the responsibility of the builders is subject to the rules of public order. The decennial legal responsibility is contemplated in articles 1792 and 1792-2 of the French Civil Code; it enshrines the principle of presumption of responsibility for a period of ten years without the possibility of reduction.

Who is affected?

Any constructor of a work is responsible in full right before the promoter (1) for the damages that have occurred, even those that result from vice of the ground, that compromise the resistance of the work or that preclude the intended use.

You are a builder if you are:

- An architect, entrepreneur, technician or any other person linked to the developer by a lease of works' contract. (2).
- A seller once the work he built or ordered to build is finished.

He will also be subject to the ten-year liability regime if he intervenes as a seller of the building to be built (selling off plans once finished, or in project, to one or several future owners), real estate developer (professional seller once the real estates he ordered to perform have been finished assuming all the stages and steps of a construction project), individual home builder or technical auditor.

(1) The promoter is the person for whose account the work is performed.

(2) The contract for the lease of works is an agreement whereby a developer resorts to one or several persons or companies to execute a certain work.

What are the principles of responsibility?

Being a constructor, he will be subject to a presumption of public order responsibility for ten years from the reception of the work. It is a principle of public order and, as such, cannot be modified by contract.

The foregoing means that you can only exonerate yourself from this full-fledged responsibility if you prove that the damage comes from an external cause: case of force majeure, failure of a third party or error of the victim.

How long is the obligation?

The constructor will be responsible for ten years, without possible reduction of the term, against the developer and successive acquirers. The date of receipt of the executed work constitutes the starting point of the period of responsibility to which he is subject.

The reception is the act by which the promoter declares to accept the work, with or without reservations. It occurs at the request of the most diligent party and it is generally put in writing. In any case, it is pronounced in the presence of the parties.



(*) Starting Date of the Work or start of the effective execution of the works

What is decennial-liability insurance?

The French construction insurance system, established since 1978, qualifies as a "double phase":

- The insurer of the damages of the work indemnifies the owner in the terms and conditions established in the standard clauses;
- Then he takes action against the responsible builders and their insurance companies for decennial liability.

This system allows the promoter to be quickly compensated and guarantees effective consumer protection.

Is it compulsory to take out the insurance?

If you are a natural or legal person whose ten-year responsibility may be required by virtue of the presumption stipulated in articles 1792 and the following of the French Civil Code (relating to construction to carry out a work), you must be covered by the decennial-liability insurance.

There is an exception; if you perform certain specific works, you will not be subject to the obligation to take out insurance. These are, above all, those related to civil engineering (maritime works, roads' infrastructure, ports, airports, railways, treatment of urban and industrial waste and storage), various routes and networks (VRD by its French acronym) and open-air sports facilities. The same happens if you install equipment elements whose exclusive function is to allow the exercise of a professional activity at the work place (for example, the assembly line in a factory, industrial elevator, automated feeding system for animals, etc.).

The compulsory insurance contract must carry guarantees equivalent to those contained in the standard clauses. The latter are reproduced in the contracts and constitute a minimum guarantee that no contractual element should restrict, although it can be extended. The clauses imposed refer to the term and maintenance of the guarantee, the franchises and the exclusions.

What does decennial liability insurance cover?

The contract guarantees the payment of the repair works when the company is responsible for the construction activities.

The guarantee covers material damages of a certain severity, regardless of their causes or origins, caused by hidden defects at the time of receipt of the work and revealed within a period of ten years.

The damages must be of considerable severity and have as a consequence:

- To compromise the resistance of the work or
- To disable the intended use

The impossibility of the intended use means that the work cannot fulfill the function to which it was destined. It is a subjective notion that is interpreted case by case.

Guarantee coverage

The law does not entail any restriction regarding the amount of the guarantee: the insurer must pay all the repairs for the damaged work.

However, the insurance company can foresee a maximum amount of works in which the company can participate.

The 10-year guarantee systematically includes a franchise, and it is not allowed to subscribe an insurance to cover the portion of risk it represents. Therefore, the company will be responsible for that part of the compensation whose amount is set contractually.

This franchise will not be opposable to the victim. The insurer with which the company has signed a contract will indemnify the owner without deducting the excess but will ask to be reimbursed.

Type of Management

The French construction insurance system responds to a purpose of effective consumer protection: the ten-year guarantee is managed according to a capitalization model. The main characteristic of this scheme is that it is based on the principle of a single premium, unlike the management based on the distribution. The single contribution received at the start of the work must be used to pay for all claims that arise during ten years from the reception of the work.

This system ensures, in any situation, the maintenance of the ten-year liability guarantee without paying additional contributions, even in the following cases: failure of the constructor or termination of the insurance contract.

Formalities

Why must a ten-year liability insurance be signed?

Any company willing to operate in France must take out a ten-year liability insurance because it is mandatory for any builder who carries out building work in France, both for new construction and refurbishing.

When should this insurance be signed up?

The ten-year liability insurance must have been contracted before the work begins.

At the start of any work the company will have to be in a position to justify having signed an insurance contract that covers that responsibility.

If the company was created after starting the work, what matters is that it is insured when they start their own work.

Therefore, it is essential to seek insurance coverage as soon as possible when preparing a project

Covered activities

You must define with precision the activities you exercise.

It is understood by activity the technical aspects (plumbing, electricity, tiling, etc.) as they appear in the nomenclature of the insurer. In fact, the insurance companies that cover the risk.

Necessary professional skills

The exercise of activities in the construction sector in France requires a professional qualification equivalent to at least the Certificate of Professional Proficiency (CAP) or the Diploma of Professional Studies (BEP by its French acronym), or justify at least three years of experience in the sector, independently or as an employee, in one of the Member States.

It must therefore be demonstrated that they have the competences required for the exercise of the profession and the necessary experience to carry out the works that are to be covered by the decennial-liability insurance.

You will have to provide the insurer with detailed information about the nature of the work carried out, the age and evolution of the activity (foundation date of the company, number of employees, turnover, start of the professional activity) and professional experience in the sector (CV, references of works executed, etc.), as well as on previous insurances contracted or their history of accidents.

Construction techniques that can be assured

With the acceleration of the evolution in the construction sector, the non-traditional sector is in full effervescence and the requests for insurance coverage to install renewable energy systems, innovative processes or ecological materials have multiplied.

As long as things do not change, if the company finds itself in this situation, the insurance companies will study the requests on a case-by-case basis, including those of builders already in the portfolio, in the absence of reliable criteria to establish the capacity to subscribe an insurance policy, waiting for the current regulations to evolve. This difficulty for insurers to assess risks exists whether they are national or foreign builders.

The standard clauses refer to the approved French standards or those published by the standardization bodies of other Member States of the European Union.

In order for your insurance application to be accepted, the procedures and/or products used must be identified according to the standards of commissioned work accepted in accordance with the contract.