



**BULLÓ · TASSI · ESTEBENET · LIPERA · TORASSA**  
ABOGADOS

# INSURANCE & REINSURANCE IN ARGENTINA

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*LONDON June 2015*

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**AGENDA.**

- I. Law firm profile. General and specific.
- II. Introduction. Argentina.
- III. Market structure:
  - Insurance and reinsurance companies;
  - Brokers;
  - National Insurance Bureau.
- IV. Legal framework
  - Social types. Minimum capital;
  - Affiliate or admitted reinsurers
- V. Law and Jurisdiction. New Civil and Commercial Code.
- VI. Conflict and dispute resolution.
  - Jurisdictional organization. Insurance litigation;
  - Arbitration.
- VII. New developments. Business opportunities



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## LAW FIRM PROFILE : General

- Since its inception in 1925, Bullo-Tassi-Estebenet-Lipera-Torassa Abogados has consistently been at the forefront of the insurance and finance industry in Argentina and, throughout our history, have played a central role in developing the law of these legal fields.
  - We are known for our dedicated and full-service team and have a reputation for having a cost-efficient and pragmatic approach to our clients' most significant business transactions and most critical disputes.
  - We approach each matter with intensity, thoroughness and creativity and draw upon our diverse industry expertise to build teams appropriate to each circumstance.
  - Our goal is to be the law firm of choice for clients that seek to solve their most challenging legal issues in the most efficient, cost-effective way.
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**LAW FIRM PROFILE : General**

- Business world generally
- Telecommunication and technology
- Insurance, reinsurance and banking
- 150 attorneys-at-law and 18 partners
- Average age :45 years old
- Quality - Timely Response - Added value



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**LAW FIRM PROFILE: General**

**PRACTICE AREAS**

- Banking and Financial Law
- Corporate and M&A
- Capital Markets
- Administrative and Regulatory Law
- Insurance and Reinsurance Law
- Negotiation - Mediation
- Litigation – Arbitration
- Class Actions and Complex litigation
- Consumer Law
- Telecommunications and IT
- Labor Law
- Tax Law
- Energy and infrastructure



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## LAW FIRM PROFILE: Insurance & Reinsurance

- Leading law firm
- 50% of the firm resources
- Civil liability
- Public liability
- Product liability
- Subscription: clauses
- E&O and D&O
- M&A
- Portfolio transfers
- Supervision and legislative matters
- Losses, negotiations, disputes, litigation and arbitration.



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ARGENTINA.



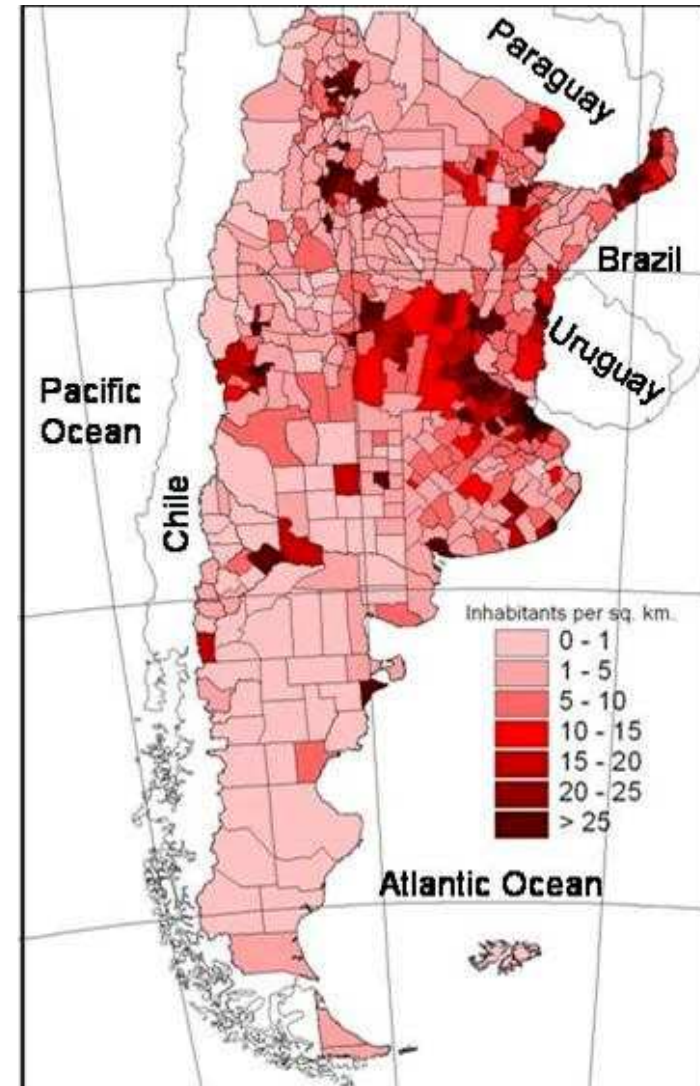
- ✓ 2,295mi long from north to south;
- ✓ 884mi from east to west;
- ✓ Total area more than 1,5million mi<sup>2</sup>.





## POPULATION

- ✓ Argentina has a low demographic density;
- ✓ 42 million people;
- ✓ Urban population 88%;
- ✓ Rural population 12%.



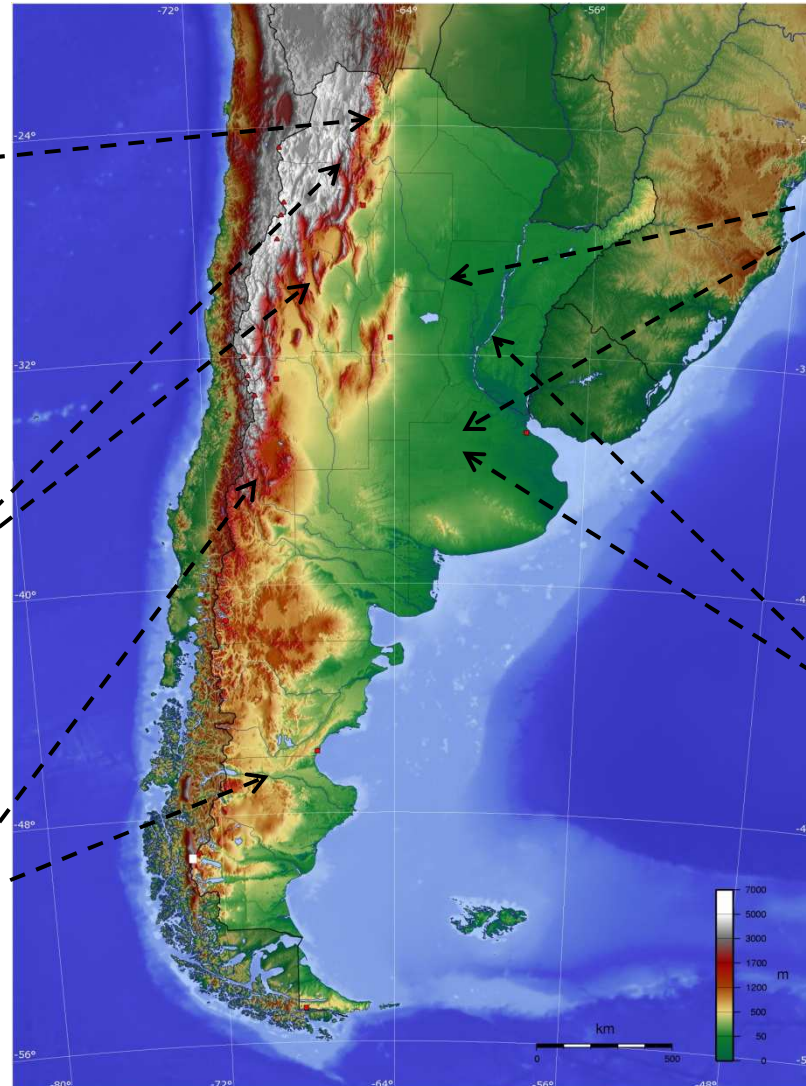


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**Lithium  
(80% of  
world  
reserves)**

**Gold,  
silver,  
copper,  
uranium**

**Oil,  
natural  
gas**

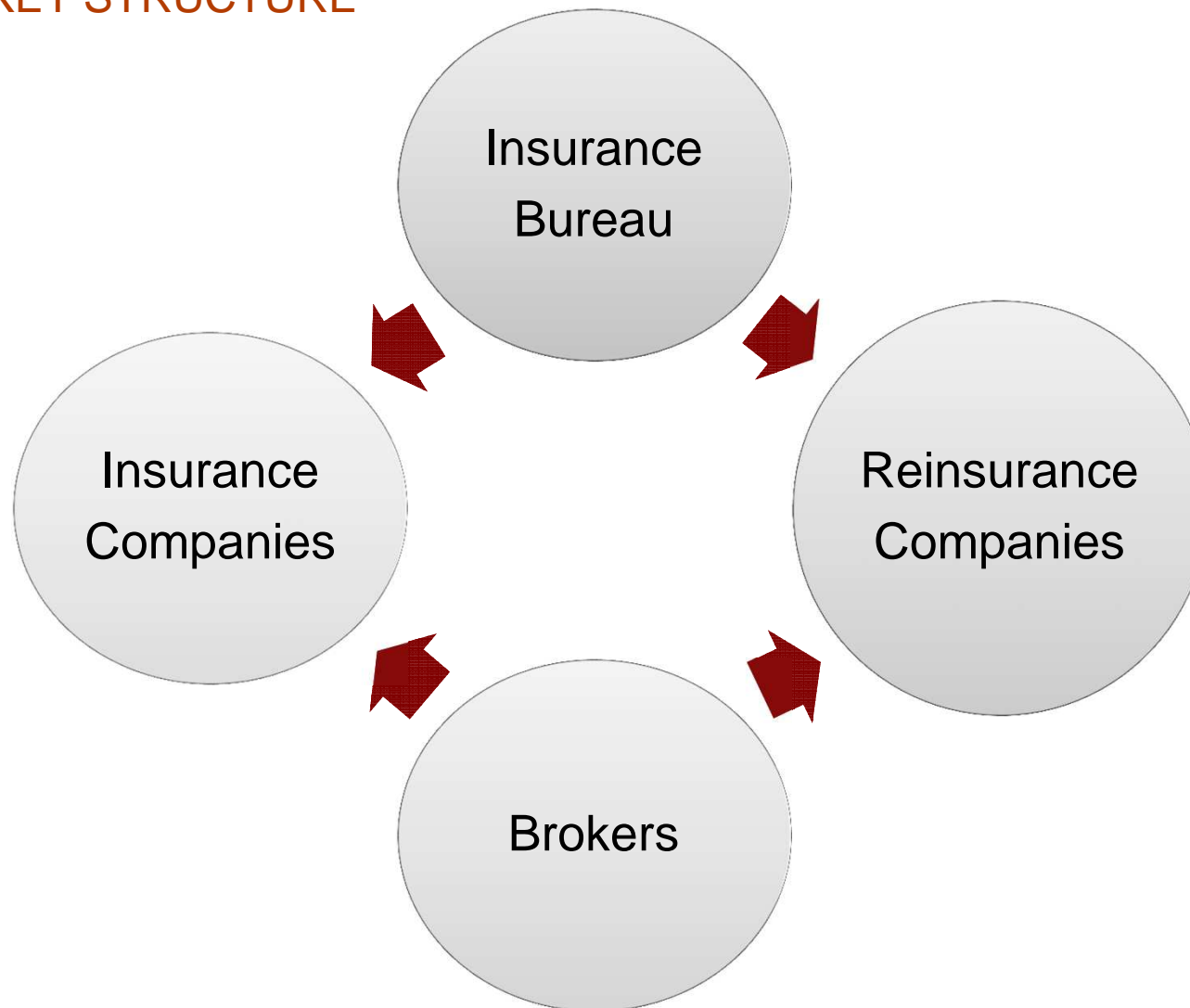


**Soybean,  
corn,  
sunflower**

**Meat**

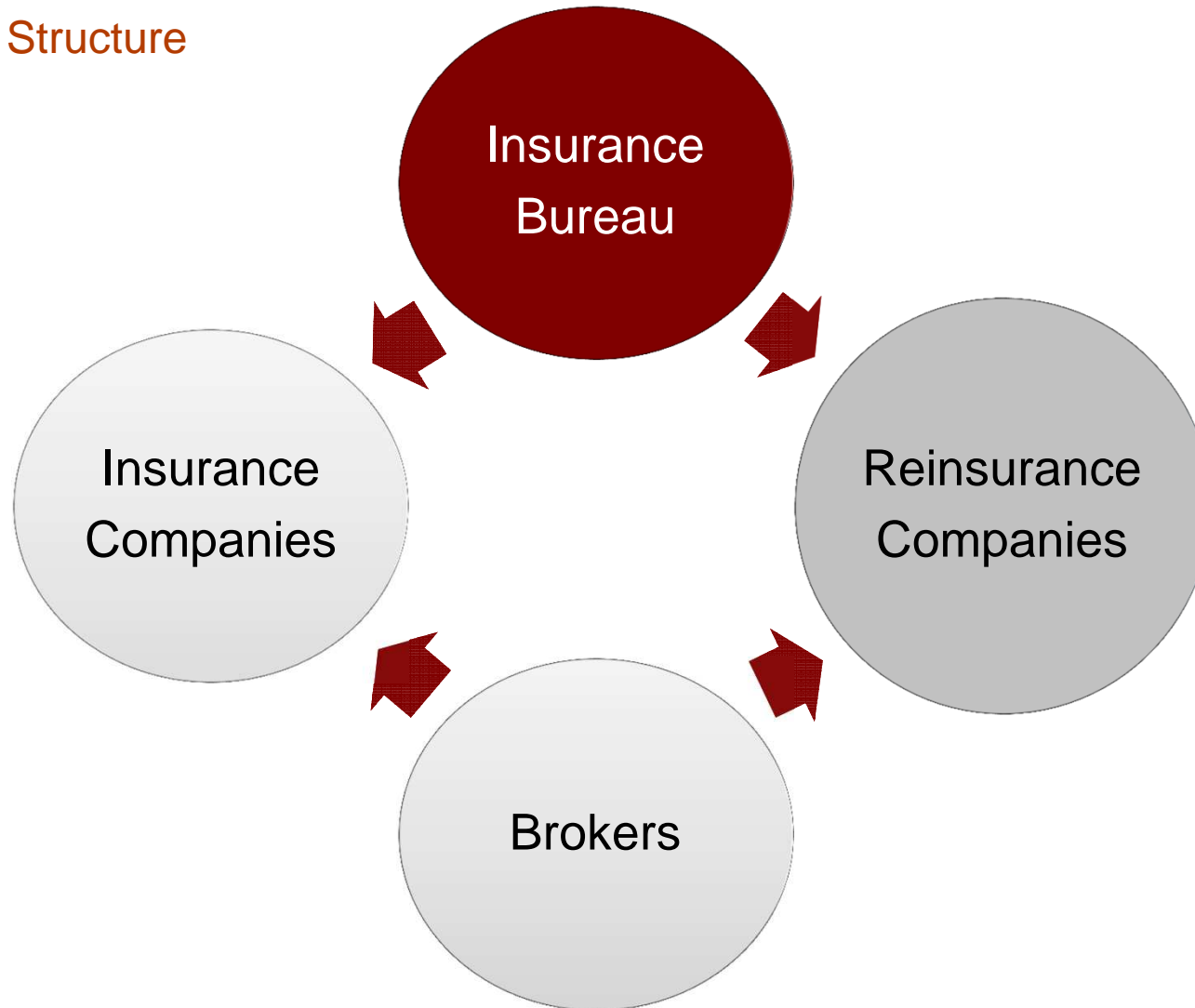


## MARKET STRUCTURE





Market Structure





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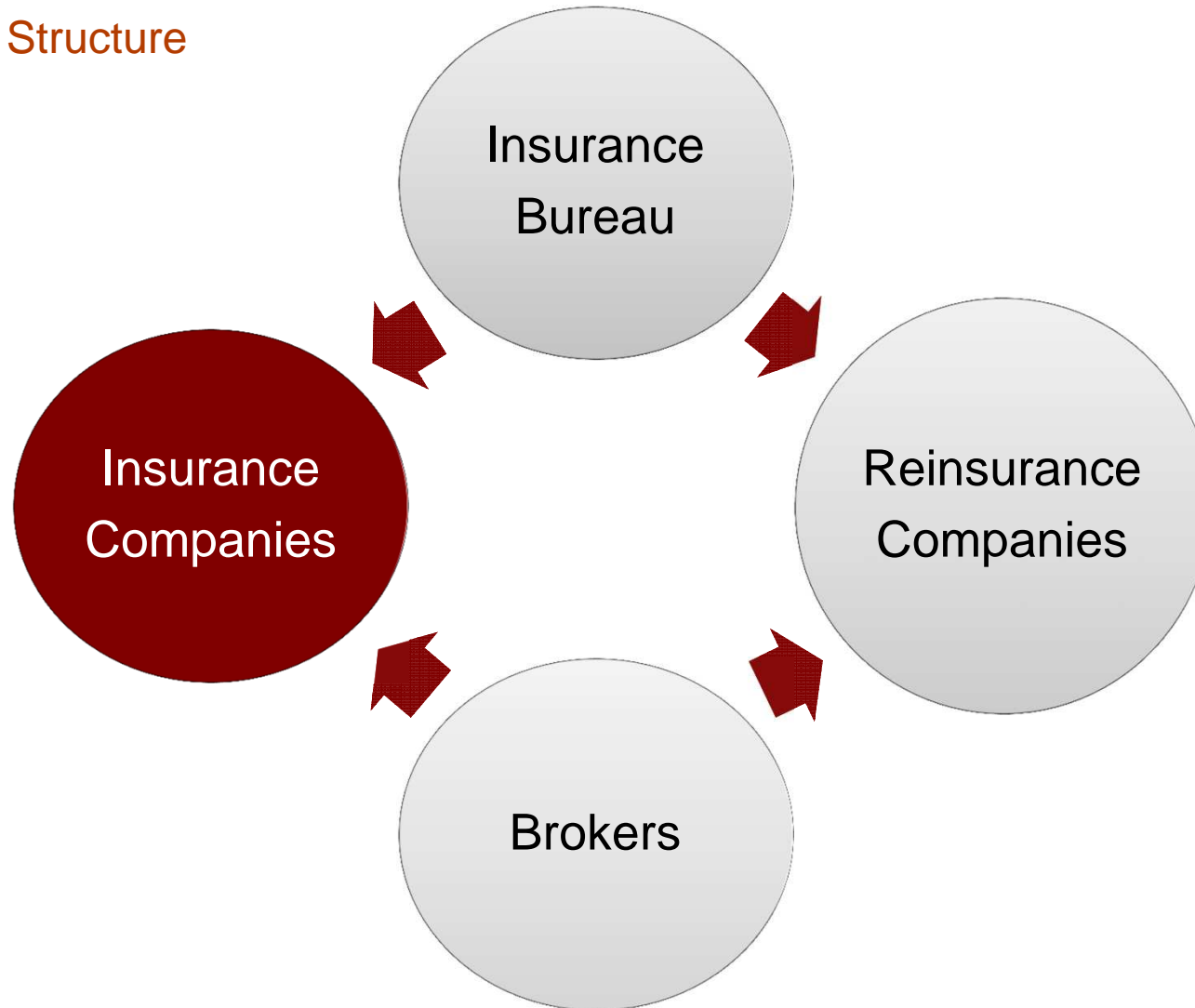
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Market Structure: National Insurance Bureau.

- ✓ Independent agency of the Government;
- ✓ Functional and financial autonomy;
- ✓ Supervision and oversight.



Market Structure





Market Structure. Insurance Companies.

- ✓ 182 Insurances companies.
  - 111 Property (most of them also Life Insurance);
  - 5 Public Transport of Passengers;
  - 14 Workers Compensation;
  - 36 Life Insurance;
  - 16 Retirement.



**MARKET STRUCTURE: INSURANCE COMPANIES.**

✓ **International players:**

➤ QBE

➤ MAPFRE

➤ ZURICH

➤ ROYAL SUN  
ALLIANCE

➤ ALLIANZ

➤ CHUBB

➤ PRUDENTIAL

➤ HDI

➤ GENERALI



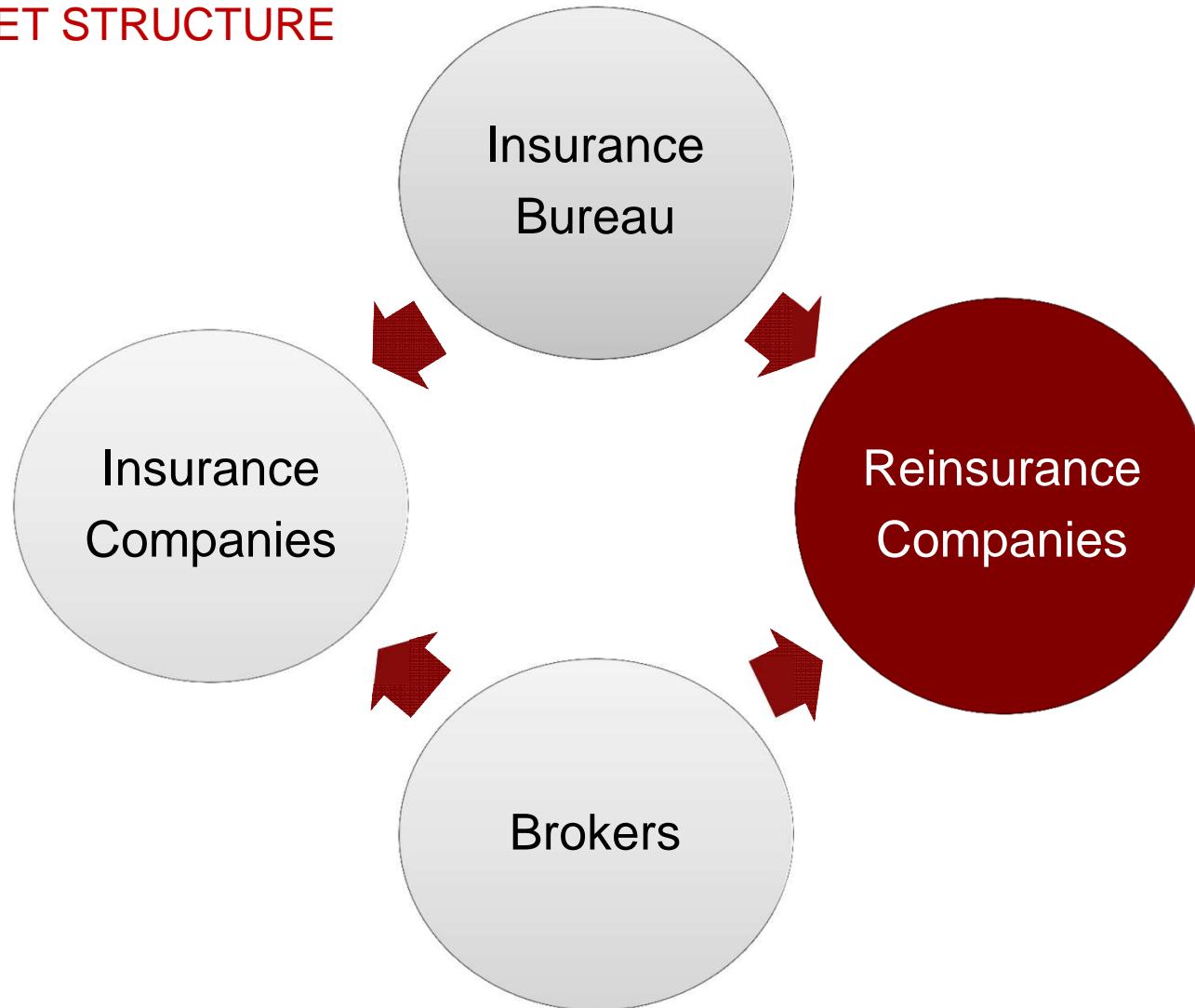


**MARKET STRUCTURE: Insurance companies.**

<b>Class</b>	<b>Property</b>	<b>%</b>	<b>Life</b>	<b>%</b>	<b>Workers Compensation</b>	<b>%</b>	<b>Total</b>	<b>%</b>
	Premiums	4.556.455.297		204.514.005		2.061.318.757	<b>6.822.288.059</b>	
	Damages	-2.362.038.395		-50.446.919		-1.779.402.845	<b>-4.191.888.158</b>	
<b>Technical</b>	Expenses	-2.406.753.136		-138.319.115		-339.070.373	<b>-2.884.142.623</b>	
	Other incomes	-17.390.056		-13.564.870		-42.422.205	<b>-73.377.131</b>	
<b>Technical Result</b>		-229.726.289	-5%	2.183.102	1%	-99.576.665	<b>-327.119.853</b>	-5%
<b>Financial Result</b>		669.621.922	15%	111.925.607	55%	361.871.868	<b>1.143.419.396</b>	17%
<b>Extraordinary incomes</b>		23.492.393		0		0	<b>23.492.393</b>	
<b>Income tax</b>		-137.456.168		-37.154.881		-93.257.901	<b>-267.868.950</b>	
<b>General Result</b>		325.931.857	10%	76.953.828	56%	169.037.302	<b>571.922.987</b>	12%



**MARKET STRUCTURE**





**MARKET STRUCTURE: Reinsurance Companies.**

✓ 84 reinsurance companies.

**Admitted (79)**

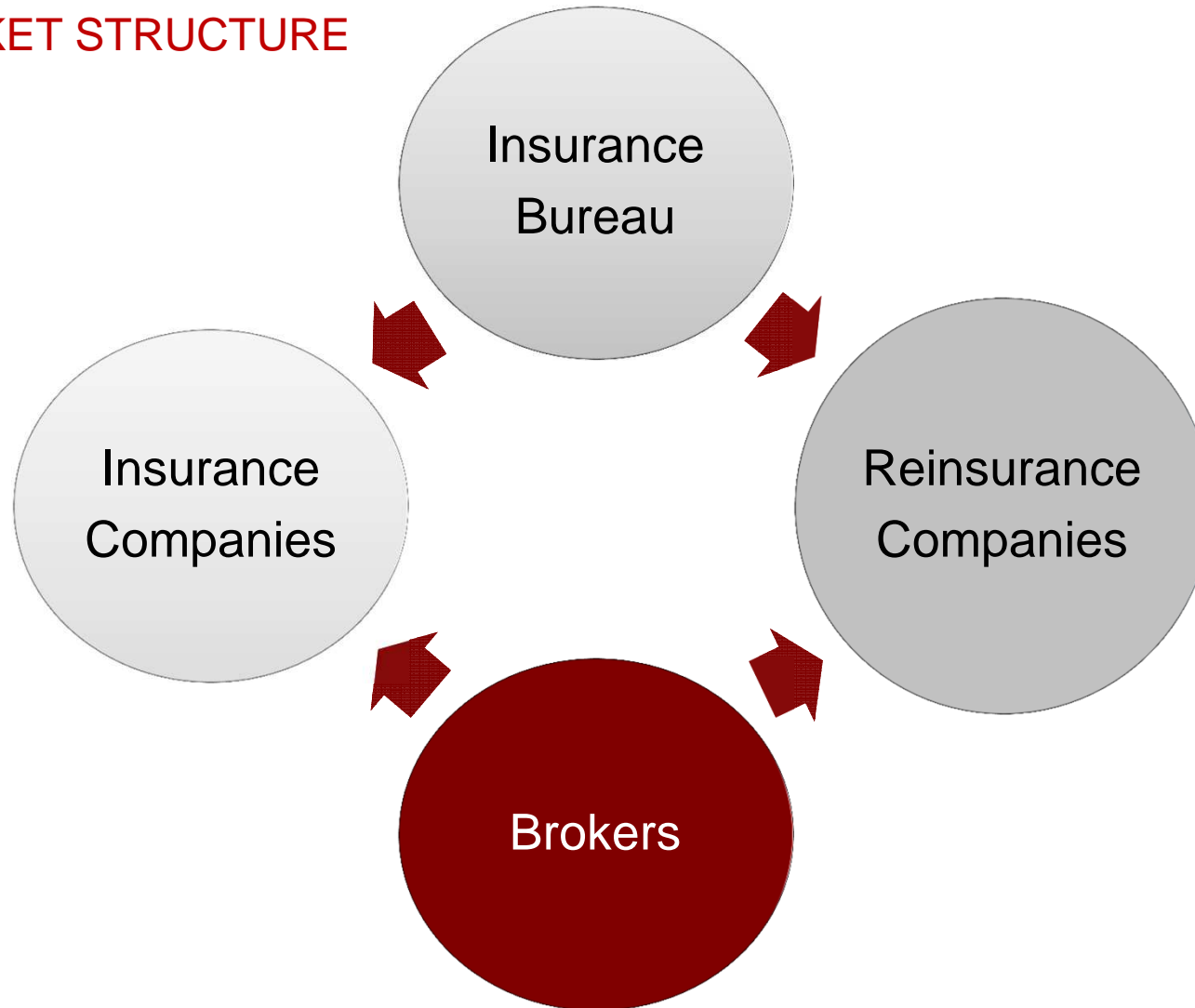
- LLOYDS
- ACE
- ALLIANZ
- SCOR
- IRB (BRAZIL)
- TT CLUB
- AMSTRUST EUROPE LTD
- CHARTIS INSURANCE UK LTD
- HANOVER
- ZURICH

**Full reinsurers (5)**

- Local companies



**MARKET STRUCTURE**





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**MARKET STRUCTURE: Brokers**

- ✓ Individually or associated;
- ✓ Intermediate as a representative;
- ✓ For reinsurance companies:
  - Local companies or branches;
  - Must have an E&O insurance (£ 700,000 or 10% of premiums);
  - Must have authorization to act as brokers in their countries.



## LEGAL FRAMEWORK: Insurance Companies

### CORPORATE

- ✓ Adopt one of the social types allowed by law;
- ✓ Be a branch of a foreign company;
- ✓ Have insurance operations as its sole object.

### TECHNICAL

- ✓ File their insurance plans;
- ✓ Hold a minimum amount of capital in Argentina;
- ✓ Determined by plans, premium or damages.



**LEGAL FRAMEWORK.** Insurance companies. Minimum capital.

(i) By plan

## PROPERTY & CASUALTY

- MOTOR: £ 720,000
  - MOTORCYCLES: £ 432,000
  - MOTOR PUBLIC TRANSP.: £1,440,000
  - WORKERS COMPENSATION: £ 720,000
  - CASUALTY RISKS & AIR NAVIGATION
  - CREDIT AND SURETYSHIP
  - PROPERTY
- } £ 216,000



Legal Framework. Insurance Companies. Minimum Capital. By plan

## LIFE

- LIFE PLANS: £ 216,000
- RETIREMENT: £ 720,000

## ENVIRONMENTAL

- ENVIRONMENTAL CASUALTY RISKS
  - ENVIRONMENTAL SURETYSHIP
- } £ 324,000





**LEGAL FRAMEWORK: Insurance Companies. Minimum Capital.**

(ii) By premium:

- ✓ 16% as minimum amount of capital.

(iii) By damages:

- ✓ Actuarial formula

**The highest of these three parameters**



## LEGAL FRAMEWORK: Reinsurance Companies

### FULL REINSURANCE COMPANIES

- ✓ Minimum capital:
  - Initial: £ 4,320,000 that to be reduced in half in four annual stages;
  - 16% of the retained net premiums - no less than 40% of premiums;
  - The higher one.
- ✓ Retention limit to reinsurers by risk or accumulation of 10% of their capital;
- ✓ Retention of 15% of total issued premiums;
- ✓ Retrocessions are free within locals reinsurers;
- ✓ Retrocessions with related companies 40% of total issued premiums.



## LEGAL FRAMEWORK: Reinsurance Companies

### ADMITTED REINSURANCE COMPANIES

- ✓ Previous registration;
- ✓ For risks starting over £ 32,300,000;
- ✓ No minimum capital required;
- ✓ May receive retrocessions;
- ✓ May grant exceptions for under £ 32,300,000;
- ✓ Lloyd's and STOP LOSS BUREAU admitted



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## LAW AND JURISDICTION: New Civil and Commercial Code

### **INSURANCE CONTRACT**

#### ➤ Law

- The contract entered into and performed in Argentina
- Insurance contract Law
- Consumer defense Law
- Rules of the new Civil and Commercial Code

#### ➤ Jurisdiction

- Arbitration clauses are prohibited.
- Changing the forum “within the country” : Federal organization .
- Exception: Consumer relationship.
- In cross-border cases: Consumer broad faculty



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**LAW AND JURISDICTION: New Civil and Commercial Code**

### **REINSURANCE CONTRACT**

➤ Parties usually arrange:

- Law and Jurisdiction
- Arbitration clause
- Custom and usual international practice in reinsurance matters
- Contract between professionals: Contractual freedom

➤ Current framework

- Argentine supervisory Body establishes by a resolution: Local Law and Jurisdiction
- Arbitration clause is acceptable
- Regulation is coherent with the section 1209 and section 1215 of the present day Civil Code



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**LAW AND JURISDICTION: New Civil and Commercial Code**

**REINSURANCE CONTRACT**

New Civil and Commercial Code: International private law rules

➤ Principle

Free choice of applicable law and forum

➤ Exception: Exclusive Law and Jurisdiction

Determined by special law *In rem* rights validity or nullity of registration in a public register in Argentina.

➤ Question

Has the provision of supervisory body full effect ?

And if so, which could be the consequences of failing to observe it ?



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## LAW AND JURISDICTION: New Civil and Commercial Code

### **REINSURANCE CONTRACT**

- New Civil and Commercial Code: International private law rules

#### Our point of view

- Consider in the context of the Supervisory body and there faculties
  - Penalties established by law
  - Deem the contract unenforceable, for the purpose of comply with solvency parameters
  - Debatable: The contract would exist according to the law
  - But the supervisory Body in fact has the appropriate tools to enforce the resolution
-



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**LAW AND JURISDICTION: New Civil and Commercial Code**

**REINSURANCE CONTRACT**

New Civil and Commercial Code: International private law rules

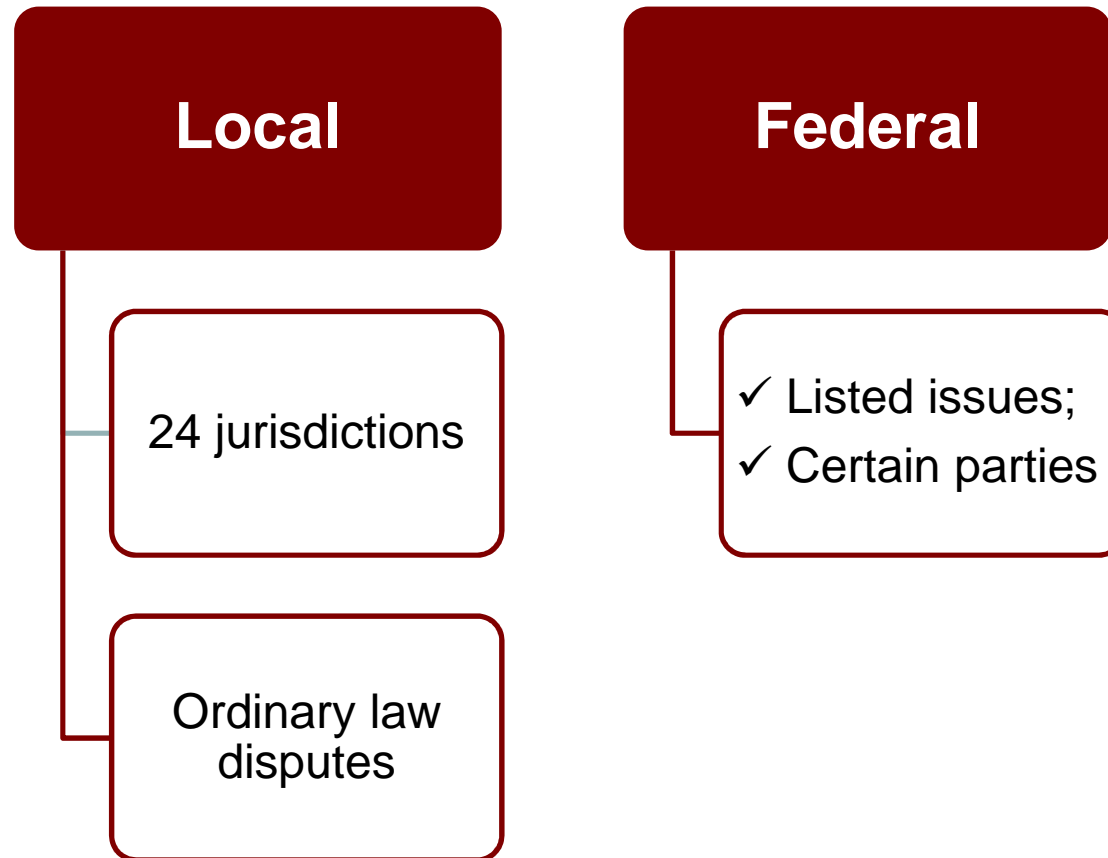
What we suggest ?

- 1) Include the clause on law and jurisdiction in the way of local resolution
- 2) Arbitration Clause with the following items :
  - 2.1 The arbitrators to be proposed must have a background in insurance and reinsurance
  - 2.2 Adding a clause that requires the arbitrators to consider and apply internationally accepted practice on the subject of reinsurance
  - 2.3 Providing that the venue of the tribunal be in Argentina.





**CONFLICT AND DISPUTE RESOLUTION.**





## CONFLICT AND DISPUTE RESOLUTION.

- ✓ Adversarial
- ✓ The proceedings:
  - Public,
  - Written;
  - Structure:
    - ❖ Written pleading and defence;
    - ❖ Hearing;
    - ❖ Discovery;
    - ❖ Judgement.
- ✓ The Consumer Protection Act: class-action proceeding.



## **CONFLICT AND DISPUTE RESOLUTION.**

### ✓ **Evidence:**

- Parties submit proofs;
- The Judge can order disclosure of documents;
- Witnesses;
- Experts.

### ✓ **Appeal:**

- First instance decisions can be appealed;
- The Supreme Court of the Nation only addresses federal issues:
  - ❖ Interpretation of a law
  - ❖ Arbitrary rulings.

### ✓ **Costs:**

- Paid by the losing party.



**CONFLICT AND DISPUTE RESOLUTION: Insurance litigation.**



Companies have to allege and produce evidence:

- ✓ Contract conditions approved by Insurance Bureau;
- ✓ Claim: accept or reject;
- ✓ Indemnity principle.



**CONFLICT AND DISPUTE RESOLUTION:** Insurance litigation. Contractual.

**DISPUTES AND THE NEW CIVIL AND COMERCIAL CODE:**

## CONTRACTS CLASSIFICATION

### PARITY

- \* Freedom of contract;
- \* Good faith;
- \* Law: default rules.

### ADHESION

- \* Adhesion general clauses predisposed;
- \* Understandable and clear clauses;
- \* Interpretation against the contract drafter.

**INSURANCE  
CONTRACT**

### CONSUMER

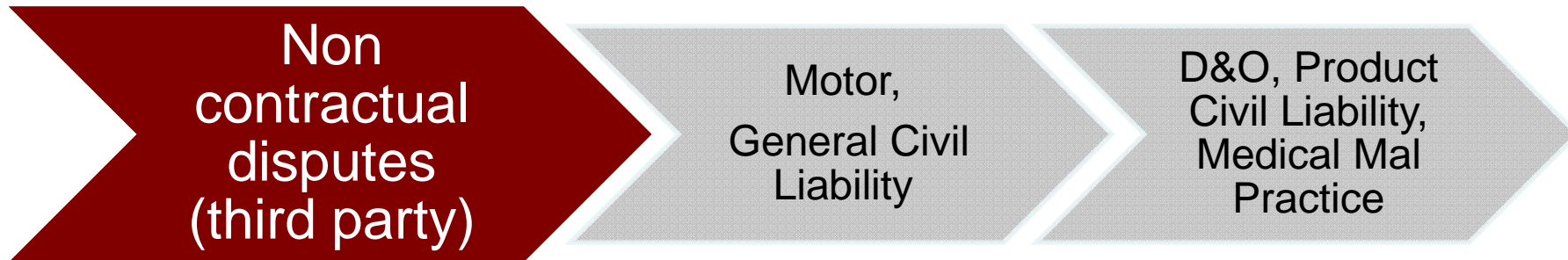
- \* Consumer Protection;
- \* Interpretation most favourable to the consumer



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**CONFLICT AND DISPUTE RESOLUTION: Insurance litigation.**

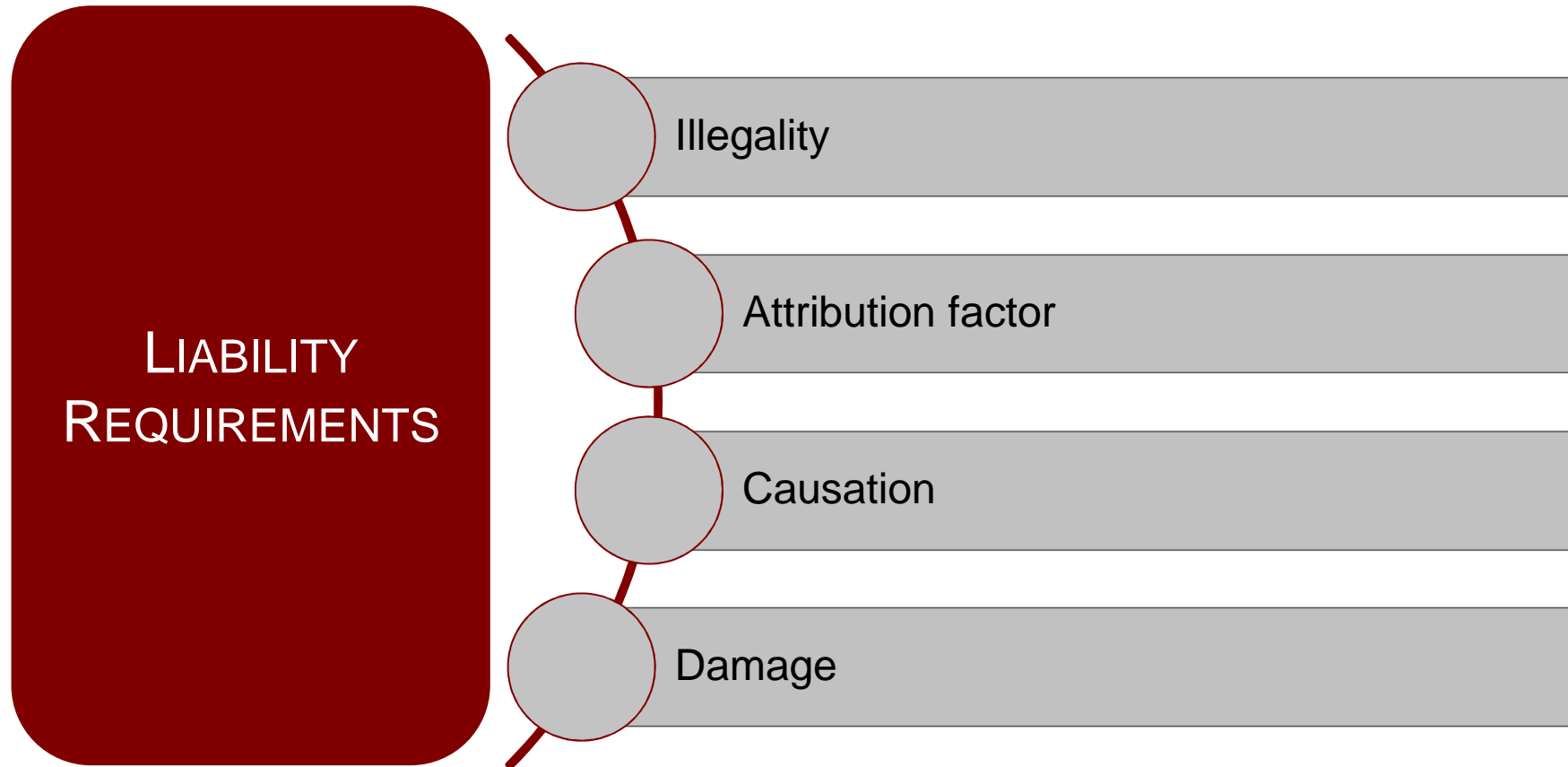
**NON CONTRACTUAL**





**CONFLICT AND DISPUTE RESOLUTION: Insurance litigation.**

**NON CONTRACTUAL**





**CONFLICT AND DISPUTE RESOLUTION: Insurance litigation.**

**NON CONTRACTUAL**

- ✓ Allocation factor: attribution the duty to repair to the author.
  - Subjective
  - Objective
  
- ✓ Class of damage





## ARBITRATION

- ✓ Any dispute may be referred to an arbitral tribunal (except family law or public policy).
- ✓ Arbitral clauses banned in insurance contracts;
- ✓ Reinsurance: Argentina Law and Local Jurisdiction.
- ✓ Two types of arbitration:
  - At law
  - In Equity



**CONCLUSIONS.**

**CONFLICT AND DISPUTE RESOLUTION**

THE LEGAL CONTRACTUAL AND CASUALTY SYSTEM IS HIGHLY DEVELOPED AND WITH INFLUENTIAL AND DYNAMIC JUDICIAL PRECEDENTS.

IN THE FORMAL STRUCTURE IT SHOULD BE CHANGED TO AN ORAL PROCEDURE.

THE GLOBAL COMPANIES ARE MOVING TO A PRE-TRIAL AGREEMENT OR ARBITRATION RESOLUTION.



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## New developments. Business opportunities

### ➤ Plans for 2012 - 2020

- I. Developing the insurance and reinsurance market Increasing its share in the GDP.
- II. Protecting the insured, beneficiaries and third-parties sustaining harm
- III. Insurance culture: Endeavor to disseminate insurance in the community
- IV. Strengthening the control system
- V. Redefining the regulatory environment: Revising the essential insurance laws
- VI. Regional Integration: Giving the market a regional perspective



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## New developments. Business opportunities

- Low entrance barrier
- There are prospects of a return to growth as from 2016
- Infrastructure and energy
- Reinsurance: The local market has limited capacity
- The insurance business requires more capacity and innovative products for the region
- Operators with capitalization needs
- Legal practice: Professional insurance and reinsurance environment
- Regional vision and strategy



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THANK YOU



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