CNSP RESOLUTION No. 494/2026: NEW RULES FOR REINSURANCE, COINSURANCE, FOREIGN CURRENCY TRANSACTIONS, AND INSURANCE ABROAD

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CNSP Resolution No. 494/2026 has been published, which provides for reinsurance and retrocession cession and acceptance operations and their intermediation, coinsurance operations, foreign currency operations and insurance contracting abroad.

The new Resolution is part of the regulatory process for Law No. 15.040/2024, known as the Insurance Contract Law, as well as the regulatory process for Complementary Law No. 213/2025, which introduced new players to the sector, including in several of its provisions references to insurance cooperative societies and mutual property protection administrators.

Below are the main relevant provisions of the regulation, which will come into force on January 2, 2027, revoking CNSP Resolution No. 451/2022, which currently governs the matter.

SCOPE OF APPLICATION

The Resolution provides for:

I. reinsurance and retrocession cession and acceptance operations and their intermediation;

II. coinsurance operations;

III. foreign currency operations; and

IV. insurance contracting abroad.

RELEVANT DEFINITIONS

In addition to the definitions already commonly used, the Resolution introduces some relevant changes, as follows:

- The concept of cedent now includes the new sector players and becomes: '*the insurance company, the insurance cooperative society and the mutual property protection operations administrator that contract reinsurance operations, and the reinsurer that contracts retrocession operations,*' with the following being equivalent to cedent: '*open complementary pension entity - EAPC, closed complementary pension entity - EFPC and private health care plan operator that contract reinsurance operations, without prejudice to the attributions of their regulatory and supervisory bodies, with SUSEP's attributions regarding EFPCs and private health care plan operators being limited to the supervision of reinsurance operations.*'
- Reinsurance contract: '*physical or electronic document by which the reinsurer, upon payment of the equivalent premium, guarantees the cedent's interest against the risks inherent to its activity, arising from the execution and performance of the underlying contracts.*'
- Cover note: '*document issued by the reinsurance broker summarizing the coverage and limits contracted and indicating that the reinsurance placement has been completed.*'
- Coinsurance: '*operation in which two or more insurance companies or insurance cooperative societies, by express agreement among themselves and the insured or the policyholder, guarantee the same interest against the same risk, at the same time, each assuming a quota of guarantee.*'

ATTENTION! REINSURANCE PROPOSAL

The reinsurance proposal is defined as: "a document that formalizes the intention of a cedent to contract reinsurance with the reinsurer(s) identified therein and that contains information about the proposed risk for evaluation and acceptance or refusal by the reinsurer(s)."

The Resolution provides that the reinsurance contract shall be formed immediately upon acceptance by the reinsurer(s) of the reinsurance proposal or, within 20 (twenty) days from receipt of the proposal, by their silence. SUSEP will still provide rules and minimum requirements for the reinsurance proposal.

The rule of contract formation by silence does not apply to endorsements to the reinsurance contract.

PREFERENTIAL OFFER

The preferential offer is defined as the '*legal requirement that determines the cedent to submit a reinsurance proposal to local reinsurers, prior to the possibility of contracting reinsurance with foreign reinsurers, with the objective of enabling them to effectively exercise their right of preference.*'

The Resolution expressly provides that the cedent must submit a reinsurance proposal to local reinsurers, offering preferential contracting of at least 40% (forty percent) of each automatic or facultative reinsurance cession.

The regulation also clarifies that the preferential offer does not apply to retrocession operations. Any misconduct may subject not only the cedent, but also the reinsurance broker responsible for intermediating the operation, to applicable sanctions.

INSUFFICIENT CAPACITY

The transfer of risks in reinsurance and retrocession operations to reinsurers not authorized to operate in the Country is permitted exclusively when there is proven insufficiency of capacity offered by local and foreign reinsurers, regardless of the prices and conditions offered by all such reinsurers.

Except for specific cases applicable to nuclear risks, the situation of insufficient capacity must be proven through consultation with all reinsurers authorized to operate in the Country, both local and foreign, according to criteria established by SUSEP.

CESSION RULES

Insurance companies, insurance cooperative societies, open complementary pension entities - EAPCs, mutual property protection operations administrators and local reinsurers must submit to SUSEP, by March 31 of the following calendar year, under penalty of applicable sanctions, technical justifications for:

I. reinsurance cession in a percentage exceeding 90% (ninety percent), considering the entirety of their operations in the calendar year, in the case of insurance companies, insurance cooperative societies, EAPCs and mutual property protection operations administrators; and

II. retrocession cession in a percentage exceeding 70% (seventy percent), considering the entirety of their operations in the calendar year, in the case of local reinsurers.

CONTRACTUAL FORMALIZATION

The contractual formalization of reinsurance operations must occur within 90 (ninety) days from the start of coverage, under penalty of applicable sanctions, pursuant to specific regulations, thus reducing the currently established deadline.

Contractual formalization is considered to be the signing of the reinsurance contract by the duly identified reinsurer, containing the date and identification of its signatory representative, with the use of remote means being permitted.

PAYMENT IN ADVANCE

The advance of reinsurance recoveries to the cedent may be contractually provided.

Specifically in cases where the advance is directly related to the fulfillment of the underlying contract, the advanced payments must be immediately used for the advance or payment of indemnity or capital to the insured, the beneficiary, the participant, the annuitant or the injured third party.

REINSURANCE CONTRACTS

In principle, the rule of contractual freedom applies, with clauses freely agreed upon between the contracting parties. However, provisions must be included establishing, as previously provided, (i) the beginning and end of the rights and obligations of each party, including how these responsibilities will cease in cases of cancellation; (ii) the criteria for cancellation; (iii) covered risks and excluded risks; (iv) the coverage period, identifying the reinsurer's assumption of liability and the exact moment when losses are covered under the contract.

The regulation introduced as a novelty the provision for inclusion of procedures necessary for reinsurance recovery.

Furthermore, compared to the current regulation, the following provisions are new:

- The parties must structure the respective clauses and terms of the reinsurance contract prioritizing clarity and objectivity, avoiding the use of wording that generates subjectivity of interpretation;
- The reinsurance contract must provide whether, when demanded for review or fulfillment of the contract that motivated the contracting of facultative reinsurance, the cedent, within the response period, will promote judicial or extrajudicial notification of the reinsurer, communicating the filing of the action, or whether another procedure will be adopted;
- Reinsurance contracts aimed at protecting risks located in the country must include a clause determining the submission of any disputes to Brazilian law and jurisdiction (without excepting arbitration), that is, with express provision, as stated in the Insurance Contract Law, that actions and arbitrations promoted between the insurer, reinsurer and retrocessionaire, that may directly interfere with the execution of insurance contracts entered into by an insurer authorized to operate in Brazil, where the insured or the proponent has residence or domicile in the country or that guarantee interests located in Brazil, must be filed in Brazil, in the forum of the defendant's domicile. In our view, this provision is incompatible with the legal system.

CLAIMS COOPERATION CLAUSE AND CLAIMS CONTROL CLAUSE

After several discussions involving claims cooperation and control clauses, there was no prohibition, nor express permission by SUSEP.

Under Article 14, § 2, of the Resolution, any contractual clause or practice that excludes, limits or conditions the cedent's liability to the insured, the beneficiary, the participant, the annuitant or the injured third party is prohibited in the formation, execution or conclusion of the reinsurance contract, including in the adjustment or settlement of claims or covered events.

Furthermore, the regulation provides for the cedent's full and exclusive liability to the insured, the beneficiary, the participant, the annuitant or the injured third party, being responsible for ensuring compliance with the insurance contract, regardless of the provisions of the reinsurance contract or the reinsurer's breach of obligations, with express provision that the cedent may not transfer to the reinsurer obligations or decision-making powers inherent to the execution of the insurance contract.

COINSURANCE

Coinsurance may be documented in one or more contractual instruments issued by each of the coinsurers with the same content. The breach of obligations between the coinsurers will not prejudice the insured, the beneficiary or the third party.

There is no joint liability among the coinsurers, each bearing exclusively its quota of guarantee, unless otherwise provided in the contract.

Coinsurance operations without assumption of liability by the coinsurers are not permitted.

Coinsurance operations involving insurance cooperative societies will also observe the general rules applicable to them.

CONTRACTING IN FOREIGN CURRENCY

The contracting of insurance in foreign currency in the country, characterized by establishing insured capital or maximum indemnity limit values in foreign currency, may be carried out by agreement between the parties, unless otherwise provided by law or regulation.

Reinsurance and retrocession may also be contracted in foreign currency.

CONTRACTING INSURANCE ABROAD

The Resolution expressly provides that Brazilian law applies exclusively to insurance contracts entered into abroad when the insured or the proponent has residence or domicile in the country or when the assets on which the guaranteed interests are based are located in Brazil.

The contracting of insurance abroad by natural persons residing in the country or by legal entities domiciled in the national territory remains restricted to the cases provided for by Law, including contracting coverage of risks for which there is no offer of insurance in the country, provided that the contracting does not constitute a violation of current legislation.

The issuance of an endorsement related to insurance contracted abroad does not constitute new contracting, provided that the contract's validity periods and the original conditions offered to Brazilian insurance companies and contracted abroad are maintained.

EFFECTIVENESS

CNSP Resolution No. 494/2026 will come into force on January 2, 2027, revoking CNSP Resolution No. 451/2022, which currently governs the matter.

According to the new rule, reinsurance and retrocession cessions and their intermediation, coinsurance operations, foreign currency operations and insurance contracting abroad with coverage start date prior to the entry into force from the publication of the Resolution must adapt to the new regulation upon renewal.

Contracts entered into from the effective date of the Resolution must already comply with the criteria defined therein.

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Our Insurance and Reinsurance practice is closely monitoring these developments and remains available to address any questions.