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ADVOGADOS

CNSP Resolution No. 451/2022

Reinsurance: New Rules

On January 1, 2023, two new rules regarding reinsurance came into force: (i) Brazilian National Private Insurance Council (CNSP) Resolution No. 451/2022; and (ii) Superintendence of Private Insurance (SUSEP) Circular No. 683/2022. The rules provide for the cession and acceptance of reinsurance and retrocession operations and their intermediation, coinsurance operations, operations in foreign currency, and insurance contracts abroad.

In general, the rules consolidate the infralegal insurance norms into two single rules. The provisions of Complementary Law No. 126/2007, which provides for reinsurance, remain intact.

The main highlights of the new rules are listed below.

REINSURANCE AND RETROCESSION BETWEEN RELATED COMPANIES

The reinsurance and retrocession between related companies or belonging to the same financial conglomerate must take place under balanced conditions of competition, and it is up to the parties involved to prove that the conditions were carried out under the terms and conditions prevailing in the market, between independent parties.

PREFERENTIAL OFFER OF RISKS TO LOCAL REINSURERS

The new Resolution does not mention specifically the percentage of the preferential offer of the cession of reinsurance to local reinsurers, referring to the applicable law (Complementary Law No. 126/2007).

Beyond simplifying the redaction, the measure intends to avoid the need of updating the text, in case of changing the legal reference.

LIMIT OF GLOBAL CESSION

The rule removes the 50% limit for reinsurance and retrocession cessions, previously provided for by regulation.

Insurers must retain at least 10% of the premiums written for the risks they have underwritten, although it is possible to assign an amount greater than 90% upon presentation of a technical justification to SUSEP. The justification must be submitted to the regulator by March 31 of the subsequent calendar year.

To the local reinsurers, the regulatory percentage to the cessions of retrocession will be increased by up to 70% (seventy percent) of the premiums, except for the following groups of risks: (i) financial, (ii) rural; and (iii) nuclear (without limits).

RISK TRANSFER POLICY

Local insurers and reinsurers must adequately manage their reinsurance and retrocession operations, through the development and implementation of a risk transfer policy.

The risk transfer policy must be complementary to the risk management policy, in accordance with the specific regulation that provides for the internal control system, the risk management structure and the internal audit activity, and must be aligned with its policy subscription.

For the purposes of developing their risk transfer policies, local insurers and reinsurers must establish the risk management structure and the audit activity internal, at least:

- I. the objectives of the adopted risk transfer policy;
- II. the technical criteria used in the preparation of reinsurance and/or retrocession programs, with due justification for the adopted protection structures;
- III. the tolerated limits of exposure to risks;
- IV. mechanisms aimed at guaranteeing the compatibility of the risk exposure limits with the business strategy of the local insurer or reinsurer;
- V. criteria for selection and monitoring of counterparties and intermediaries, including in relation to the way in which credit and liquidity risks are managed;
- VI. the procedures for monitoring, analyzing, and dealing with high levels of concentration with counterparties;
- VII. the procedures for monitoring, analyzing, and dealing with the transfer of risks with related companies, under the terms of current regulations;
- VIII. managing the accumulation of risks in relation to a given product, branch or group of branches, geographic region and/or single insured;
- IX. managing the accumulation of individual losses that may result from catastrophic events and spiraling risks;
- X. the forms of control and monitoring aimed at mitigating risks inherent to the mismatch of terms and conditions of reinsurance and/or retrocession contracts and underlying contracts; and
- XI. operating procedures and systems aimed at internal control of operations and risk management, ensuring compliance with the risk transfer policy.

The deadline for local insurers and reinsurers drafts their risk transfer policy will expire on December 31, 2023.

DEADLINE FOR THE CONTRATUAL FORMALIZATION

Reduction of the deadline for the contractual formalization of reinsurance operations, which will be in 180 (one hundred and eighty) days from the start of the coverage term, instead of the current 270 (two hundred and seventy) days, with the possibility of authorization from remote means.

TRANSFER OF RISKS WITH REINSURERS NOT AUTHORIZED TO OPERATE IN BRAZIL

The new Resolution maintains the rule that the transfer of risk in reinsurance and retrocession operations to reinsurers not authorized to operate in Brazil only is possible when the insufficient supply of capacity by local, admitted, and occasional reinsurers is proven. The insufficiency supply of capacity is regulated by SUSEP Circular No. 683/2022.

In addition, a compliance enforcement mechanism was introduced, with regard to effective verification of the capacity by local and foreign reinsurers, through the inclusion of requirements for reinsurers not authorized to operate in Brazil must have so they can transfer risks (prudent criteria for solvency and net worth).

The new Circular extinguishes the cedant's obligation to send to SUSEP the respective reinsurance or retrocession contracts entered into with reinsurers not registered in Brazil. SUSEP still holds, however, the prerogative to request such contracts, pursuant to the Complementary Law No. 126/2007.

According to the Circular, in case of risk transfer to a reinsurer not registered in Brazil (once the insufficiency of local, admitted and occasional reinsurers is proven), the cedent must communicate such cession to SUSEP within 30 days. Such period must be counted from the effective date of the respective contract or the effective date of the coverage, whichever occurs later (and no longer from the date of cession of risk, as previously provided for in the rules).

ACCEPTANCE OF REINSURANCE AND RETROCESSION

Insurers cannot accept in retrocession more than 2% (two percent) of the premium relative to the risks they had underwritten, considering the entirety of its operations per calendar year (before, the limit was 3%).

REINSURANCE BROKERS' OPERATIONS

Consolidation of the rules regarding the reinsurance brokerage in the rules. Need of timely transfer of premiums, indemnities, and benefits by the reinsurance brokers – this obligation already exists.

COINSURANCE OPERATIONS

Consolidation of the rules regarding the coinsurance in the normative, with the express consent of the insured or their legal representative.

OPERATIONS IN FOREIGN CURRENCY AND INSURANCE ABROAD

Consolidation of the rules regarding the operations in foreign currency and insurance abroad in the normative.

Rule improvement regarding the concept of contraction of insurance in foreign currency and increase of the margin of contractual freedom, allowing the contracting of reinsurance and retrocession in foreign currency in the country, in any situation.

Authorization to, in the contracts of insurance which amount at risk/maximum limit of indemnity established in foreign currency, the premium and the indemnity also can be paid in foreign currency (besides the national currency).

PURCHASE OF INSURANCE ABROAD

Consolidation of the rules regarding the operations in foreign currency and foreign insurance in the normative.

Inclusion of clarification that the issuance of endorsement regarding the insurance contracted abroad does not characterize a new contract, provided that the original conditions offered to the Brazilian insurers. As a result, there will be no need to consult again the Brazilian insurers and the foreign insurer.

VALIDITY AND ADAPTATION DEADLINES

The new rules came into effect on January 1, 2023.

The cessions of reinsure and retrocession and their intermediation, the coinsurance operations, the operations in foreign currency, and the contracting of insurance abroad, effectuated at a previous time, must be adapted when they are renewed.

According to the current practice, there is no need for insurers to obtain specific authorization to accept risks right from foreign countries in the same lines of insurance that they already have been authorized to operate in the country.

REVOKED RULES

▶	CNSP Resolution No. 68/2001
▶	CNSP Resolution No. 168/2007
▶	CNSP Resolution No. 173/2007
▶	CNSP Resolution No. 197/2008
▶	CNSP Resolution No. 241/2011
▶	CNSP Resolution No. 350/2017
▶	Circular SUSEP No. 524/2016
▶	Circular SUSEP No. 545/2017
▶	Circular SUSEP No. 562/2017
▶	Circular SUSEP No. 603/2020



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