

## SUSEP OPENS PUBLIC CONSULTATION ON REINSURANCE, RETROCESSION, COINSURANCE, FOREIGN CURRENCY OPERATIONS, AND PURCHASING OF INSURANCE ABROAD

December 9, 2025

SUSEP published Notice No. 14/2025, placing a draft CNSP Resolution for Public Consultation, which provides for the assignment and acceptance of reinsurance and retrocession operations, as well as their intermediation, coinsurance operations, and operations in foreign currency, including insurance contracts entered into abroad.

The draft was highly awaited and is part of the regulatory process of both Law No. 15.040/2024 (known as the Insurance Contract Law) and Complementary Law No. 213/2025 (which brought new players to the insurance sector and mentions the cooperative insurance societies and mutual asset protection administrators).

Interested parties had until December 29, 2025, to submit suggestions to the draft under Public Consultation. If approved, the draft stipulates that contracts signed on or after the effective date of the new CNSP Resolution shall comply with the new criteria established therein.

Check out the main relevant provisions of the draft CNSP Resolution.

### SCOPE OF THE DRAFT CNSP RESOLUTION

The draft CNSP Resolution provides for:

- I - the operations of assignment and acceptance of reinsurance and retrocession and their intermediation;
- II - coinsurance operations;
- III - operations in foreign currency; and
- IV - contracting insurance abroad.

### MAIN DEFINITIONS

In addition to the definitions usually practiced, the draft CNSP Resolution brings some relevant changes, as follows:

- The concept of cedant now includes the new players in the sector: *"the insurance company, the cooperative insurance company and the administrator of the mutual asset protection operation that contracts a reinsurance operation, and the reinsurer that contracts a retrocession operation, and the following are equivalent to the assignor: 'the open-end pension fund entity – EAPC, the closed-end pension plan entity (EFPC) and the private health care plan operator that contract reinsurance operations, without prejudice to the attributions of their regulatory and supervisory bodies. Regarding EFPCs and private health care plan operators, SUSEP's attributions are limited to the supervision of the operations referred to in the Resolution"*.
- Reinsurance Contract: *"physical or electronic document by which the reinsurer, upon payment of the equivalent premium, guarantees the interest of the cedant against the risks inherent to its activity arising from the signing and execution of the underlying contracts"*.
- Coverage note: *"statement issued by the reinsurance broker with a summary of the coverage and limits contracted and the indication that the placement of the reinsurance has been carried out"*.

- Coinsurance: *"operation in which two or more insurance companies or cooperative insurance societies, by express agreement between themselves and the insured or the policyholder, guarantee the same interest against the same risk, at the same time, each of them assuming a guarantee quota".*



## ATTENTION! REINSURANCE PROPOSAL

A reinsurance proposal is defined as: "a formal document that expresses a cedant's intention to contract a reinsurance and contains the necessary information for a reinsurer or reinsurers in a pool to analyze and decide whether to accept or refuse the proposed risk."

The draft CNSP Resolution replicates the Insurance Contract Law and has not regulated the period for reinsurers to deny a proposal under penalty of tacitly accepting it. The draft CNSP Resolution makes clear that SUSEP will still provide for the rules and minimum requirements related to the reinsurance proposal.

If the reinsurance contract is formed by the silence of the reinsurer within 20 days from the receipt of the reinsurance proposal, the proof of receipt by the reinsurer of the reinsurance proposal is proof of the contracted coverage.

## PREFERENTIAL OFFER

Most of the provisions of the draft CNSP Resolution refer to wording adjustments. However, the adjustments were made to focus on the preferential offer as an obligation of the cedant.

The preferential offer is defined as the obligation of the cedants to offer preferentially to local reinsurers the risks for which they wish to contract a reinsurance, before being able to negotiate with foreign reinsurers. The cedant must observe the percentage established in the current legislation, applicable to each automatic or facultative contract.

If the preferential offer is not fulfilled (including, but not limited to, unequal treatment between the reinsurers or any changes in the contractual terms and conditions offered, through the issuance of endorsements that distort the final contractual terms and conditions), the cedant may be subject to sanctions, according to the specific regulations.

## INSUFFICIENT CAPACITY

According to the draft CNSP Resolution, the cedant may be subject to sanctions under the applicable regulations if misconduct is identified in demonstrating the insufficiency of capacity of local and foreign reinsurers to provide coverage. The following may be deemed as misconduct (but not limited to): unequal treatment between the reinsurers consulted; failure to provide identical information for risk assessment; possible changes to the contractual terms and conditions offered through the issuance of endorsements.

## CHANGE IN THE CESSION RULES

The draft CNSP Resolution provides that, in cases where retrocession assignments exceed 70% of the premiums issued, reinsurers are required to submit to SUSEP the justifications for such volume of assignment. The draft CNSP Resolution adopts an approach similar to that already applicable to insurance companies, to ensure greater alignment with Article 2 of Decree No. 10.167/2019.

The justification is that the retention of higher amounts is inherent to reinsurance operations, and the percentage established for requiring the submission of technical justification is lower than the 90% set for insurance companies.

## CONTRACTUAL FORMALIZATION

The contractual formalization of reinsurance operations must take place within 60 days from the commencement of coverage, under penalty of applicable sanctions pursuant to the specific regulations.

Contractual formalization shall be understood as the signing of the reinsurance agreement. The reinsurer must be duly identified, and the reinsurance agreement shall include the date and the identification of the reinsurer's authorized signatory. The use of remote means for executing the reinsurance agreement is permitted.

## ADVANCE

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

When the advance payment is directly connected to the performance of the underlying contract, the amounts advanced shall be immediately applied toward the advance or payment of the indemnity or capital to the insured, the beneficiary, the participant, the assisted person, or the injured third party.

## REINSURANCE CONTRACTS

The principle of contractual freedom prevails, and clauses may be freely agreed upon by the contracting parties. However, the contract shall include the following, as already established under current regulations: (i) the commencement and termination of the rights and obligations of each party; (ii) the manner in which the parties' obligations shall cease upon termination of the contract; (iii) the criteria governing termination of the contract; (iv) the risks covered and the risks excluded; (v) the coverage period — identifying both the commencement of the reinsurer's liability and the exact moment when losses are deemed covered under the contract.

The draft CNSP Resolution further stipulates that the reinsurance contract shall contain clauses setting forth the procedures and documents required for reinsurance recovery.

In addition, the following provisions of the draft CNSP Resolution are new:

- The parties shall structure the clauses and terms of the reinsurance contract prioritizing clarity and objectivity. Any wording that may give rise to subjective interpretation shall be avoided.
  - The reinsurance contract shall provide whether, when the cedant is required to respond to a claim for review or enforcement of the underlying contract, the cedant shall, within the response period, notify the reinsurer (judicially or extrajudicially) about the filing of the lawsuit, or whether another procedure shall be adopted.
  - Reinsurance contracts covering risks located in Brazil must include a clause providing that any disputes shall be submitted to Brazilian law and jurisdiction (no exception for arbitration was made). Therefore, such as the Insurance Contract Law provides, such clause must expressly provide that actions and arbitrations brought between the insurer, the reinsurer, and the retrocessionaire, shall be filed in Brazil, in the jurisdiction of the defendant's domicile, if the actions and arbitrations is capable of directly affect the performance of insurance contracts entered into by an insurer authorized to operate in Brazil; if the insured or the proposer resides or is domiciled in the country; or if the contracts guarantee interests located in Brazil.
- In our view, this provision is incompatible with the legal system.

## CLAIMS COOPERATION AND CLAIMS CONTROL CLAUSES

SUSEP has eliminated from the current rules the provision permitting both the reinsurer's participation in the adjustment of claims and the inclusion of a claim control clause in reinsurance contracts, without prejudice to the insurer's liability to the insured.

According to SUSEP, the existence of clauses such as claims cooperation and claims control is incompatible with the exclusive liability attributed to the insurer by the legislator. Such clauses should not be allowed under Law No. 15.040/2024.

We respectfully disagree with SUSEP's position. Article 76 of the Law No. 15,040/2024, by referring to the term "exclusivity," reinforces that the relationship is between the insurer and the insured, but does not prohibit the inclusion of clauses in reinsurance contracts. Reinsurance is an inherently equal contract and should not be subject to interference by SUSEP, under penalty of removing Brazil from international reinsurance practices and violating principles of contract law and, more broadly,

economic freedom. This is one of the key points that we expect will be reconsidered in the final draft following the conclusion of the Public Consultation.

## COINSURANCE

Coinsurance may be documented in one or more contractual instruments issued by each of the co-insurers with the same content. Failure to comply with obligations between co-insurers shall not prejudice the insured, the beneficiary or the third party.

There is no joint liability between the co-insurers, each one bearing exclusively its share of guarantee, unless otherwise stipulated in the contract.

According to SUSEP, the elements that must be included in contractual documents, as the information on coinsurance, are subject to specific regulation. Likewise, the elements of the proposal relating to coinsurance must be governed by the same regulation that addresses the other elements of the proposal. Accordingly, information on coinsurance should not be included in advertising materials. Rather, the insured must be properly informed about coinsurance through the proposal and contractual documents.

## CONTRACTING IN FOREIGN CURRENCY AND INSURANCE ABROAD

The draft CNSP Resolution introduces a few changes, most of them of an editorial nature. It stipulates that Brazilian law shall apply exclusively to insurance contracts entered abroad when the insured or the proposer has residence or domicile in Brazil, or when the assets on which the insured interests rest are located in Brazil.

The draft CNSP Resolution partially reproduces the wording of Article 4, paragraph 1, of the Insurance Contract Law. However, it further provides that Brazilian law shall also apply in the cases set forth in Article 20 of Complementary Law No. 126/2007, which concern situations where contracting insurance abroad is authorized. In doing so, the draft CNSP Resolution interprets Article 4, paragraph 1, of the Insurance Contract Law. This interpretation, however, appears to be inconsistent with the provisions of both the Insurance Contract Law and Complementary Law No. 126/2007.

In addition, the draft CNSP Resolution tends to interfere with the freedom granted to parity and symmetrical contracts, as to the possibility for the parties to choose the legislation that will be applicable to the insurance contract.

## VALIDITY

Reinsurance and retrocession contracts, their intermediation, coinsurance operations, foreign currency operations, and insurance contracts entered abroad, with coverage commencing prior to the entry into force of the draft CNSP Resolution (i.e., its date of publication), must comply with the draft CNSP Resolution provisions when they are renewed.

The contracts entered as of the effective date of the CNSP Resolution shall comply with the criteria defined therein.

## EXPRESS REVOCATION

If the draft CNSP Resolution is approved, CNSP Resolution No. 451/2022, which currently deals with the matter, will be revoked.

We remain closely monitoring developments regarding the Insurance Contract Law and its provisions. For more information, visit our dedicated page on the topic, available [here](#).

## CONTACT



**BÁRBARA BASSANI**  
Insurance and Reinsurance  
bbassani@tozzinifreire.com.br  
55 11 5086-5503

This is an informative newsletter produced by the **Insurance and Reinsurance** practice area of TozziniFreire Advogados.