

In the months of April and May 2016, the Superintendence of Private Insurance (SUSEP) published four new Circulars: Insurance Coding (Circular no. 535), Request for Review in Administrative Procedure for Imposition of Penalty (Circular no. 536), Additional Criteria for compliance with article 14, par. 4, of Resolution no. 168/07, issued by the National Council of Private Insurance (CNSP) (Circular no. 537), and change in the date SUSEP Circular no. 533/2016 takes effect (Circular no. 538).

We summarized below the most important provisions of these Circulars:

1) SUSEP CIRCULAR No. 535, OF 4/28/2016:

This Circular introduces new codes for insurance lines. These codes must be adopted for both property damage insurance and personal lines insurance, and they classify the insurance coverage offered by insurance plans, for purposes of accounting.

As to property damage insurance, it also establishes some conditions to register secondary insurance plans, whose coverage can only be traded as complementary and optional coverage, and the insurer must indicate the SUSEP registration numbers for the primary insurance plans.

This Circular also establishes the coverage from other Groups that may be offered in compound insurance plans related to the Property Group (01), in addition to the coverage already provided for, and sets the criteria to account for the coverage traded for each insurance line.

As to personal lines insurance, only coverage classified in the lines of Groups Collective Personal (09) or Individual Personal (13) may be traded. In addition, insurance plans must be submitted in a complete version, even if they are traded together with any property damage insurance.

Plans currently traded must be adjusted to the rules on development of property damage plans and personal lines plans until 6/30/2017. Policies currently in force must be adjusted on the date of their renewal, if such date is after 6/30/2017. Insurance plans must be accounted for in compliance with the form and lines established in the Circular as of 1/1/2018.

Finally, the Circular establishes that SUSEP may determine the possible classifications for insurance plans in each line by means of the Electronic Registration of Products, and that no Actuarial Technical Note is required for the Portfolio upon accounting of the coverage regularly traded by the insurer, as such fact does not represent the beginning of operation of the line.

2) SUSEP CIRCULAR No. 536, OF 5/6/2016:

This Circular regulates the Request for Review in administrative procedure for imposition of penalty, established in article 131 of CNSP Resolution no. 243/ 2011.

Pursuant to article 131, "administrative procedures for imposition of penalty may be reviewed, at any time, upon request or on the regulatory body's own initiative, when new facts or relevant circumstances are able to prove that the penalty imposed was unsuitable.

The new Circular clarifies that these administrative procedures may be reviewed only where the penalty was imposed by an unappealable administrative decision; merely claiming that the penalty was unfair is not sufficient. The request for review does not stay the effects of the previous decision, does not prevent any act within the ambit of an execution, and will not stiffen the penalty previously imposed.

Such request must be submitted in a specific document (as it will be processed in a separate record, to be inserted in the record of the principal action), addressed to the same authority that rendered the final decision, even if the request is to the Appellate Council of the National System of

Private Insurance, Open Private Pension and Capitalization (CRSNP) or the National Financial System Appellate Council (CRSFN), as SUSEP will not pass any judgment of admissibility.

The Circular also establishes the documents necessary to support the request, such as copies of the challenged decision, the complaint of the administrative procedure for imposition of penalty, the defense, the technical and legal opinions, and orders and opinions that grounded the decision.

If the request for review is granted, the previous decision may be reversed or the case be annulled. However, if the request for review is denied, no administrative appeal may be filed and the request may not be reiterated, except if new facts or relevant circumstances — not existing or not known at the time of the first request for review — arise.

3) SUSEP CIRCULAR No. 537, OF 5/12/2016:

This Circular establishes additional criteria for compliance with art. 14, par. 4, of Resolution no. 168/2007, which provides for the maximum limits on the premium under reinsurance or retrocession agreements, in the transfer of risks from insurer or local reinsurer to companies associated with, or belonging to, the same financial conglomerate and based abroad.

Circular 537 clarifies that "the premium corresponding to each automatic or optional agreement" refers to: (i) the ceded premium for each risk under proportional optional agreements; (ii) the ceded premium for each risk per layer under the non-proportional optional agreements; (iii) the ceded premium, referring to risks underwritten and covered by each proportional automatic agreement; and (iv) the ceded premium per layer under each non-proportional automatic agreement.

This Circular also indicates the period to be taken into account to assess the premium for each type of agreement, and prohibits deduction of commission for the ceded premium.

Agreements in force, even if they do not comply with these rules, will be valid until they are renewed or up to one year after publication of this rule, whichever occurs first.

4) SUSEP CIRCULAR No. 538, OF 5/25/2016:

This Circular only postponed the date SUSEP Circular no. 533/2016 takes effect to 8/1/2016. Circular no. 533/2016 amended Circular no. 438/2012, which provides for the system for Electronic Registration of Products, applicable to the markets of insurance, reinsurance, open supplementary plan and capitalization.

Fonte: Demarest Advogados, em 20.06.2016.