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The new National Council of Private Insurance (CNSP) Resolution no. 353/2017, published in 22th December 2017, presents two relevant alterations for the Brazilian reinsurance market: (i) the end of the restrictions on risk transfer operations involving companies under the same financial group and (ii) the repeal of the minimal compulsory retaining of local reinsurers.

Formally repealing paragraphs 4º, 6º, and 7º of the article 14 of the CNSP Resolution no. 168/2007, the new rule no longer establishes the maximum percentage for allowed risk cessions inside the same financial conglomerate (formerly there was an allowance rate of 30% in 2017, reaching 75% in 2020).

In contrast with the contracting restriction, the new Resolution simply establishes that the reinsurance and retrocession operations inside the same economic conglomerate should "guarantee an effective risk transfer between the parts" and "be held in balanced competition conditions".

Furthermore, CNSP Resolution no. 353/2017 also revokes the single paragraph of the article 15 of CNSP Resolution no. 168/2007 and the entire Chapter IV of CNSP Resolution no. 241/2011, overturning the prior exigency for a minimal compulsory contracting with local reinsurers, remaining in force only the preferential offer of 40% of the risk.

In this sense, the rule of article 15, caput, of CNSP Resolution no.168/2007, returns to its original disposal by just stating the preferential offer of 40% of the reinsurance risk to the local market, as already provided by the Complementary Law no. 126/2007 (article 11, II).

Then, in the current scenario, the insurance companies remain obligated to offer the local market at least 40% of its reinsurances cession, on each automatic or facultative contract, in the same conditions as offered to the remaining insurers.

This offer will hence bind the insurer in case local reinsurers accept the risk in the same conditions offered to the international market. Notwithstanding, there will not be an obligation of a minimal percentage of compulsory retaining with local reinsurers in case they do not accept the offered conditions, accepted by the foreign reinsurance market.

In terms of equal treatment to all reinsurers, article 15, §3º, determines that, in case unfair practices are verified in the compliance with the preferential offer rule, the insurance contract will be "disregarded"; expression not defined by the rule. The following paragraph stipulates that SUSEP will dispose, in a separated rule, on the effects of such disregard of the reinsurance contract.

The modifications introduced by CNSP Resolution no. 353/2017 represent, on one side, a broader liberality of risks cessions between related companies or parts of the same financial conglomerate and, on the other side, promote a wider participation of foreign reinsurance market in Brazilian risks, as long as in more competitive conditions in comparison to the local market.

Fonte: Demarest Advogados, em 02.01.2018.