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12 Key Changes Introduced by the New Regulations on Reinsurance, Coinsurance, Foreign-Currency Transactions and the Placement of Insurance Abroad

Yesterday, **CNSP Resolution No. 494/2026** was published in the Brazilian Federal Official Gazette.

The Resolution governs the cession and acceptance of reinsurance and retrocession business and the intermediation thereof, coinsurance arrangements, foreign-currency transactions and the placement of insurance abroad.

In practical terms, the following are the **12 aspects** of the Resolution that require the closest attention from cedants, reinsurers, retrocessionaires, reinsurance brokers and coinsurers:

1. Formation of the reinsurance contract through the reinsurer's acceptance or silence— Article 12, *caput* and paragraphs 1 to 3.

The reinsurance contract will be deemed to have been formed immediately upon acceptance by the reinsurer. In the absence of an express response, the contract will also be formed by silence once **20 days** have elapsed since receipt of the reinsurance proposal, although Susep may establish a longer period where a technical need for doing so is demonstrated. Formation by silence does not apply to endorsements.

A request for a quotation and/or analysis does not constitute a reinsurance proposal. A reinsurance proposal is defined as a *"document formally recording a cedant's intention to enter into reinsurance with the reinsurer(s) identified therein and containing information on the proposed risk for assessment and acceptance or rejection by the reinsurer(s)"*. Susep will issue further regulations establishing the minimum requirements applicable to reinsurance proposals.

In practice, cedants, reinsurers and brokers will need to maintain secure and verifiable records of the date on which the proposal was received, as this record may determine both the formation of the contract and the commencement of cover on the proposed terms.

2. The cedant's full and exclusive responsibility for the performance of the underlying insurance contracts — Article 14.

The cedant remains fully and exclusively responsible for the formation, performance, claims adjustment and settlement of the underlying insurance, pension or mutual protection contracts.

The reinsurance contract may neither transfer to the reinsurer decision-making powers inherent in the performance of those contracts nor exclude, restrict or make conditional the cedant's liability towards insureds, beneficiaries, plan members or third parties.

Although, in our view, the provisions do not prohibit the following clauses, they requires careful review of their content:

- claims control;
- claims cooperation;
- consent to settle;
- prior approval of settlements; and
- reinsurer participation in the claims adjustment process.

The Resolution should not be interpreted as imposing an absolute prohibition on the exchange of information, consultation or technical cooperation. The key point is that the provisions of the reinsurance contract may not grant the reinsurer final decision-making authority capable of limiting or making the cedant's performance of its obligations towards the insured under the underlying contract conditional upon the reinsurer's approval. The governing principle is that the reinsurance contract serves functionally the conduct of the insurance business (Article 60(1) of Law No. 15,040/2024).

3. Reduction of the contract formalisation period to 90 days and deadlines applicable to reinsurance brokers — Articles 12(4) to 12(9) and 27.

Upon the cedant's request, the reinsurance broker must provide duly signed cover notes documenting the transactions within **5 business days** of the request.

The reinsurance contract must be formally documented within **90 days** from the commencement of its term. Formalisation requires a document signed by the identified reinsurer or reinsurers, specifying the date and the respective authorised signatories. The same period applies to endorsements, running from the date of acceptance or the commencement date of the amendment, whichever is later.

While the definitive instrument remains pending, acceptance of the proposal shall prove cover. Where the contract is formed by silence, evidence of receipt of the proposal will constitute proof of cover. A cover note issued by the broker continues not to constitute a substitute for the formally executed contract.

4. Presumed broader scope of the reinsured interest — Article 3. Broad *follow the fortunes* and *follow the settlements* should apply by default.

Unless otherwise agreed in the contract, the reinsurance will cover the entirety of the reinsured interest, including, within the agreed limits (i) the consequences of the cedant's delay in performing the underlying contracts; (ii) loss prevention and salvage expenses; and (iii) claims adjustment and settlement expenses relating to covered claims or events.

Accordingly, if the parties intend to exclude or limit any of these components, the contract must do so expressly and clearly. The rule does not create unlimited cover: the agreed limits, shares, deductibles, priorities and other contractual terms and conditions remain applicable.

5. Advance payment of reinsurance recoveries — Article 13.

The reinsurance contract may provide for advance payments by the reinsurer. Where an advance relates to an indemnity or benefit payable under the underlying insurance contract, the amount must immediately be applied towards the corresponding payment.

This rule seeks to prevent the cedant from retaining sums advanced by the reinsurer that were made available specifically to discharge an obligation towards the insured, beneficiary or injured third party. Regrettably, it is not unheard of for certain insurers to retain amounts advanced by reinsurers, invest them and delay the payment of claims in order to appropriate the investment returns generated by those funds.

6. Minimum contractual content and reinsurance recoveries — Articles 15 and 16.

In addition to specifying the commencement and expiry dates, the circumstances in which the contract may be cancelled, the covered and excluded risks, and the coverage period, the contract must set out the procedures required for obtaining reinsurance recoveries.

7. Brazilian law and forum for certain court proceedings and arbitrations in Brazil — Article 16, main provision and sole paragraph.

Reinsurance and retrocession contracts relating to risks situated in Brazil must provide for the application of Brazilian law and Brazilian jurisdiction. In our view, this blanket governing-law requirement arguably exceeds the CNSP's regulatory authority: although mandatory Brazilian rules remain applicable, neither Decree-Law No. 73/1966, Complementary Law No. 126/2007 nor Law No. 15,040/2024 requires the entire reinsurance contractual relationship to be governed by Brazilian substantive law solely because the underlying risk is situated in Brazil.

Jurisdiction is a separate matter, as Article 131, sole paragraph, of Law No. 15,040/2024 expressly provides for a Brazilian forum for certain disputes affecting the underlying insurance contract. Accordingly, the Resolution requires court proceedings and arbitrations between insurers, reinsurers and retrocessionaires that may directly interfere with the performance of insurance contracts to be brought or seated in Brazil, at the defendant's domicile, where: (i) the insured or proposer is domiciled in Brazil; or (ii) the insured interests are situated in Brazil.

Consequently, foreign jurisdiction and foreign arbitral-seat clauses will need to be reviewed carefully to allow proceedings in Brazil whenever the dispute may directly affect an insurance contract connected with the country.

8. Greater flexibility in the retrocession limit applicable to local reinsurers — Article 8.

The 70% threshold will no longer operate as a strict cap preventing further retrocession. A local reinsurer may retrocede a higher percentage but must submit a technical justification to Susep by 31 March of the following financial year—similar to the regime already applicable to reinsurance cessions by cedants.

The prior approval regime, including exceptions based on lines of business, is therefore replaced by a model of subsequent supervision based on technical justification. As a result of this reform, the new Resolution eliminates the preferential treatment previously afforded to the financial risks, rural and nuclear classes of business.

9. Minimum 40% preferential offer to local reinsurers — Article 6.

There have been no significant changes in this respect. The Resolution now states more expressly that cedants must make a preferential offer to local reinsurers of at least 40% of each treaty or facultative reinsurance cession, in accordance with the requirement established by Complementary Law No. 126/2007. All reinsurers approached must receive equal treatment and identical information concerning the risk and the terms, conditions and pricing of the placement.

The Resolution does not prevent offers from being made simultaneously to local and foreign reinsurers, provided that the local reinsurers' preferential right to at least 40% of the cession is respected.

The Resolution expressly clarifies that this rule does not apply to retrocession transactions. Practices intended to circumvent the preferential offer requirement may expose both the cedant and the reinsurance broker to penalties.

10. Reform of coinsurance arrangements and expansion of the lead coinsurer's responsibilities — Articles 2(VI) (definition of "lead coinsurer") and 31 to 34.

Coinsurance may now be documented in one or more instruments, including documents issued separately by each coinsurer, provided that their contents are consistent.

Any failure by the coinsurers to comply with obligations owed among themselves may not prejudice the insured, beneficiary or third party.

The absence of joint and several liability remains the default rule, but may now be displaced by an express contractual provision under Article 33. Insurance cooperatives may also participate in coinsurance transactions, subject to their specific regulations, pursuant to Article 34.

The lead coinsurer is no longer described merely as the administrator of the policy. It will represent the other coinsurers in the formation and performance of the contract, including by acting in their place, as claimant or defendant, in arbitration and court proceedings.

Contracts, operating agreements and powers of attorney between coinsurers will therefore need to be aligned with this broader representative authority.

11. Foreign-currency transactions — Articles 35 to 37.

The placement of insurance in a foreign currency remains subject to agreement between the parties. For reinsurance and retrocession, the new framework affords the parties greater freedom to specify in the contract the date and method for converting premiums. Susep may issue supplementary rules governing the criteria for the conversion and indexation of claims payments and recoveries.

Foreign-exchange provisions should therefore be reviewed, particularly as regards the conversion date, the source of the exchange rate used, the consequences of exchange-rate fluctuations and the treatment of advance payments and recoveries.

12. Insurance placed abroad and application of Brazilian law — Articles 38 to 40.

The statutory and regulatory circumstances in which insurance may be placed abroad remain unchanged, although proof that no cover is available in Brazil will now be governed by the procedures set out in supplementary regulations to be issued by Susep.

The Resolution requires Brazilian law to apply exclusively where the insured or proposer is resident or domiciled in Brazil, or where the insured interests are situated in Brazil. Furthermore, an endorsement will only avoid being characterised as a new placement abroad if it preserves not only the original terms and conditions but also the term of the contract.

Transitional regime and entry into force

Contracts entered into before the Resolution comes into force must be brought into compliance upon renewal. Contracts entered into on or after its effective date must comply fully with the new framework from the outset. CNSP Resolution No. 451/2022 will be repealed, and **Resolution No. 494/2026** will come into force on **January 2, 2027**.

In conclusion, the Resolution retains the overall structure of the previous framework but introduces material changes to the formation, content, documentation and performance of reinsurance contracts.

Preparing for its entry into force will primarily require a review of:

- **Reinsurance proposals;**
- **Treaty and facultative wordings, particularly claims control and cooperation clauses, notification mechanisms, and jurisdiction and arbitration clauses;**
- **Contract execution procedures;**
- **Reinsurance risk-transfer policies;**
- **Coinsurance agreements; and**
- **Reinsurance brokers' operational controls.**

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