

SPECIAL INFORMATION REPORT



RESOLUTION ELIMINATING THE LIMITS ON INTRAGROUP REINSURANCE AND RETROCESSION TRANSACTIONS AND THE MARKET RESERVE WAS PUBLISHED

The much-expected [CNSP Resolution no. 353](#) that eliminates (i) the limits on risk cession between Brazilian cedents and affiliated companies or companies in a same financial conglomerate based

abroad; and (ii) the market reserve in favor of the domestic reinsurers.

The Resolution no. 353/2017 issued by the National Council of Private Insurance - CNSP revoked pars. 4, 6, and 7 of art. 14 (that addressed the limits on intragroup transactions) and sole paragraph of art. 15 (that addressed the market reserve), both of CNSP Resolution no. 168/2007. The Resolution also revoked Chapter IV of CNSP Resolution no. 241/2011 (that addressed incapacity arising from the market reserve, which is now extinguished).

The new Resolution requires that the parties of intragroup transactions ensure an effective transfer of risks and the balance of the competition conditions. It

This report is for information purposes only and does not contain any opinion, recommendation or legal advisement from Santos Bevilaqua Advogados in regard to the matters addressed.



also establishes that the audit committees of the insurers and their independent auditors must confirm the fulfillment of the rules on preferred offering through detailed reports.

On the other side, CNSP Resolution no. 353/2017 sets very clear rules establishing that (i) the 40% preferred offering must ensure an equal treatment to all reinsurers, (ii) once illegal practices are identified in regard the compliance with the preferred offering, including “unequal treatment to consulted reinsurers or any change to the offered contractual terms and conditions, upon issuance of endorsements that distort the final terms and conditions of the placement, the reinsurance contract will be disregarded, without prejudice to the application of other applicable penalties.”

Finally, the Resolution established delegation of powers to SUSEP for it to provide for the effects of the identification of unfair practices in regard to the preferred offering.

SUSEP Circular no. 545/2017, which regulates the preferred offering, remains applicable to the extent

that it does not conflict with the new Resolution enacted.

CNSP Resolution no. 353/2017 is technically correct. The only proviso is that it is no longer possible to also revoke par. 5 of art. 14 of CNSP Resolution no. 168/2007, which contains an unnecessary specific definition of affiliated companies (now, of minor relevance) which is different from the definition in CNSP Resolution no. 321/2015.

However, more than technically correct, CNSP Resolution no. 353/2017 is a great advancement to eliminate the confusing rules of difficult implementation set by CNSP Resolution no. 325/2015, which conflated the market reserve and the preference and, on the top of that, upheld the limitations to intragroup transactions. Now, we have again the preferred offering regime, as it happened when the reinsurance market was opened, without the imposition of quantitative limits to intragroup transactions.

This new system is not only much more technically adequate but is also better for the cedents and their

This report is for information purposes only and does not contain any opinion, recommendation or legal advisement from Santos Bevílaqua Advogados in regard to the matters addressed.

insureds and, in the long term, it will be a factor that will make the Brazilian insurance and reinsurance market more attractive for the offer of capacity and investments by the Brazilian as well as the foreign companies.



This report is for information purposes only and does not contain any opinion, recommendation or legal advisement from Santos Bevilaqua Advogados in regard to the matters addressed.

PARTNERS OF THE FIRM AND RESPECTIVE AREAS



Daniela Matos

Insurance and Reinsurance
(55 11) 5643-1065
dmatos@santosbevilaqua.com.br



João Marcelo dos Santos

Insurance and Reinsurance
(55 11) 5643-1066
jsantos@santosbevilaqua.com.br



Julia de Menezes Nogueira

Tax Law
(55 11) 5643-1062
jnogueira@santosbevilaqua.com.br



Juliano Nicolau de Castro

Labour Law
(55 11) 5643-1061
jcastro@santosbevilaqua.com.br



Keila Manangão

Litigation and Arbitration
(55 21) 2103-7638
kmanangao@santosbevilaqua.com.br



Marco Antônio Bevilaqua

Insurance, Reinsurance,
Supplementary Pension and
Supplementary Health
(55 11) 5643-1063
mbevilaqua@santosbevilaqua.com.br



Roberto F. S. Malta Filho

Corporate, Contracts, Mergers and
Acquisitions, Arbitrations and Judicial
Reorganization/Restructuring
(55 11) 5643-1064
rmalta@santosbevilaqua.com.br