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**TozziniFreire.**  
ADVOGADOS

## CNSP RESOLUTION No. 453/2022

Insurance Linked Securities  
(ILS)

On January 2, 2023, came into effect the Brazilian National Private Insurance Council (CNSP) Resolution No. 453/2022, which regulates the Law No. 14,430/2022, which provides for the issuance of ILS (in Brazil, "Letra de Risco de Seguro – LRS") by Special Purpose Insurance Company (SSPE) in effect since August 8, 2022.

The Law aims at the development of the insurance industry, especially in large risks, with the reduction of the need for capital of (re)insurance companies and spread of risks as an alternative to reinsurance, in addition to the development of the capital market itself, as there will be a greater diversity of investments.

Inspired by the international market, the legislation enables the securitization of insurance risks, as the insurer may assign risks to the SSPE, issuing the ILS, which will be a security. Investors, by investing in the ILS, receive premiums and interest, but the financial return will depend on the claims occurred.

### OVERVIEW

The CNSP Resolution No. 453/2022 regulates the Law No. 14,430/2022 to define the ILS and its minimum content, Special Purpose Insurance Company (SSPE) and its attributions, giving patrimonial independence of the operations carried out by the same SSPE and in relation to the SSPE itself.

The SSPE is the insurance company whose sole purpose is to carry out one or more operations, independently capital, acceptance of insurance risks, supplementary pension, supplementary health, reinsurance, or retrocession of one or more counterparties and their financing through the issuance of ILS, a debt instrument linked to insurance and reinsurance risks.

The SSPE may only assign reinsurance or retrocession risks in the cases and conditions established by the National Council of Private Insurance (CNSP).

The new Resolution repeals the CNSP Resolution No. 396/2020, which provided for a local reinsurer whose sole purpose was the acceptance of risks, through reinsurance or retrocession operations, and its financing through debt linked to (re)insurance risks. This repeal was necessary, considering that the Law provides different concepts and provisions of the Resolution repealed.

Despite the publication of the new CNSP Resolution, Law No. 14,430/2022 remains pending regulation by the Securities and Exchange Commission of Brazil (CMN), regarding to attributions and responsibilities of the trustee.

### MAIN HIGHLIGHTS

- The process of authorizing the Special Purpose Insurance Company (SSPE) and transferring the securitization operation to another SSPE will depend on prior approval by SUSEP, with the SSPE being subject to supervision by SUSEP, including with regard to the regulation of administrative sanctions applied to insurance companies and operations of ILS securitization;
- The new Resolution deals with the prudential requirements of the SSPE, proposing the need for the SSPE to have a technically responsible actuary, a technically responsible director, and a director responsible for accounting, under the terms of the regulation applied to other insurers;
- In addition, the Resolution proposes specific changes to CNSP Resolution No. 388/2020 and CNSP Resolution No. 432/2021, so that the quantitative and qualitative prudential rules are applied according to the size of the company, observing the principle of proportionality, already applied to the entire market regulated by SUSEP (segmentation), with the constitution of provisions;
- The Minimum Capital Requirement (CMR) for SSPE to operate must be equivalent to the greater of base capital and risk capital. The base capital proposed for SSPE will consist of the sum of the fixed portion (of BRL 1,200,000.00), corresponding to the authorization to operate, and the variable portion (of BRL 100,000.00), corresponding to the number of current securitization operations. The maximum amount of base capital of the SSPE will be limited to the amount of base capital established in specific regulation for insurance companies to operate throughout the country, observing the segment that is framed for purposes of proportional application of prudential regulation;
- The risk capital for the SSPE, with the rules and standard formula defined, will correspond to the sum of the risk capital of each securitization operation and the risk capital of the SSPE itself;
- The SSPE must comply with the Accounting Standards pursuant to the regulations issued by SUSEP for insurance companies. The list of accounts and the model for publishing the SSPE and the securitization operations will be included in a manual published on SUSEP website, including those regarding to securitization operation, as is the case for the other supervised bodies of SUSEP;
- The administrators of the SSPE, as well as the service providers eventually contracted by it, must be independent from counterparties and investors holding the ILS, with the independence requirements being defined;
- SSPE must implement and maintain a Risk Management Structure, Internal Control System, and Internal Audit activity in accordance with the specific regulations applicable to insurers, in addition to the adoption of requirements for preventing and combating crimes of "laundering" or concealment of assets;
- There is a separate chapter dedicated to the operation of the SSPE and the issuance of ILS, with emphasis on the possibility of using a corporate insurance broker or reinsurance broker in the risk transfer operation by the SSPE;
- The issuance of ILS will be linked to a single risk transfer contract, which must be for a single type of insurance and reinsurance risk;
- Express description of the return possibilities of the ILS;
- Limiting the maturity of the ILS to a maximum period of 10 years (in the draft submitted to Public Consultation last year, the maximum period was 5 years);
- Restriction on the acquisition of ILS from a professional investor, with SSPE being responsible for complying with this verification;
- SSPE's obligation to communicate to SUSEP, within a maximum period of 5 days after approval by the Board of Directors and, if applicable, by the Administrative Council, and before the effective issuance of the ILS, each risk transfer operation and consequent issuance of ILS (independently prior approval by SUSEP);
- Proposal for specific provisions of raising funds through the issuance of the ILS, which should correspond to the amount required to cover the Maximum Risk Exposure (EMR) originally established;
- Clarification that the counterparty will be fully responsible for the regulation and settlement of any claims and payment of the respective indemnities;
- Ratification of equity independence and its developments, and the securitization operation will have its own registration in the National Register of Corporate Taxpayers (CNPJ);
- The ILS issued in Brazil must be registered in registration systems or object of centralized deposit in institutions authorized by the Central Bank of Brazil (BCB) or by the Securities and Exchange Commission of Brazil (CVM). The ILS issued abroad must be registered in a centralized registration and deposit system, in a central custody, or regularly registered in institutions authorized by a competent authority in the country where the issue is carried out.
- There is the possibility of SUSEP regulates the registration of insurance or reinsurance risk operations in registration systems previously approved by the Autarchy and administered by duly accredited registration entities (SRO);
- Each insurance and reinsurance risk acceptance operation and consequent financing via the issuance of ILS will have patrimonial independence;
- The rights of investors holding ILS are, at all times, subordinated to the obligations arising from the assignment of risks to the SSPE;
- Investors holding the ILS may not file for bankruptcy or liquidation of the SSPE;
- SSPE will not respond directly to the insured for the amount assumed when the counterparty is an insurance company, reinsurer, supplementary pension entity or health care planner, in which case the counterparty will be fully responsible for the indemnity. In the event of insolvency, liquidation, or bankruptcy of the counterparty, direct payment to the insured, participant, beneficiary, of the portion of indemnity or benefit corresponding to the transfer of risk to SSPE, provided that the installment payment has not been made by the counterparty to the insured or the counterparty itself.



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