

# MEMORANDUM

Circular SUSEP nº 683,  
of 18/12/2022

English version



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## MEMORANDUM - CIRCULAR SUSEP No. 683, OF 18/12/2022

Published on the December 21st, 2022, Circular SUSEP No. 683 of 18/12/2022 ("Circular SUSEP No. 683/22"), provides for the operational procedures, all of which are stated in the Complementary Law nº. 126 of 2007 regarding (i) the preferential offer of risks to local reinsurers, (ii) proof of insufficient offer of capacity of local and foreign reinsurers for the purposes of transferring risks with reinsurers not authorised to operate in Brazil and (iii) for contracting insurance abroad.

Its publication was in conjunction with CNSP Resolution No. 451 of 19/12/2022 ("CNSP Resolution No. 451/22"), which pertains to reinsurance and retrocession assignment and acceptance operations and its intermediation, coinsurance operations, foreign currency transactions and insurance contracts abroad, meaning that both are intertwined and effective as of the same date: January 1st of 2023.

The edition of Circular SUSEP No. 683/22 aimed to consolidate, modernize and compatibilize the various regulations which dealt with these themes (4 SUSEP Circulars) in on single publication, including provisions contained in CNSP Resolution No. 241/2011, which had already been repealed, in addition to reducing costs of regulatory compliance.

The normative was structured in four chapters, with the first presenting preliminary provisions, the second bringing provisions on items (i) and (ii) above, the third containing norms on item (iii) and the latter drawing up the final provisions. In addition to the rules on these topics, the regulation presents three annexes, in which the market will find forms for communication to the Superintendence of Private Insurance - SUSEP of the following operations:

**Annex I** - Risk transfers, pursuant to paragraph 4, article 9 of the Complementary Law No. 126/07;

**Annex II** - Contracting insurance abroad to cover risks also abroad – article 12 of the normative; and

**Annex III** - Notice of contracting insurance abroad due to lack of coverage in Brazil – article 15 of the normative.

Evaluating the chapters in closer detail, the highlight of the Chapter I is the standardization of nomenclatures with CNSP Resolution No. 451, 2022 in relation to foreign reinsurers (term that includes admitted and occasional reinsurers), which had already been implemented by CNSP Resolution No. 422/2021.

In Chapter II, divided into three sections, the first deals with the preferential offer of risks to local reinsurers that, on essence, has not changed, only now refraining from directly referencing to the corresponding CNSP Resolution (currently CNSP Resolution No. 451/22), to prevent the need to update the norm in the future.

The second section, which deals with the lack of offer capacity of local and foreign reinsurers, also did not change in relation to the rule contained in Article 5 of CNSP Resolution No. 241/11, but the initial term for counting the reporting period of the operation to SUSEP was modified.

Whereas previously the date was the acceptance of risk assignment, it is now considered the beginning of the validity of the contract or of the validity of the coverage, which occurs last (art. 7).<sup>1</sup> Here, it should be emphasized that the same initial term (beginning of the coverage's validity) was also adopted in art. 10 of CNSP Resolution No. 451/22 in relation to the beginning of deadline for the contractual formalization of reinsurance operations (180 days after this milestone).

Finally, there is no longer, for ceding companies that make the transfer due to insufficient offer of capacity by local and foreign reinsurers, the express obligation to send to SUSEP the reinsurance or retrocession contract after the formalization of the operation, as previously required by Article 8 of CNSP Resolution No. 241/11. In this regard, according to Article 10 of the Complementary Law No. 126/07,<sup>2</sup> the agency may access any reinsurance and retrocession contract, being thus unnecessary to maintain this regulatory cost on the supervised entities.

In the last section of Chapter II, in which the operational procedures for the preferential offer of risks to local reinsurers and proof of insufficient offer of capacity by local and foreign reinsurers are foreseen, the regulation no longer provides for the need for the formal consultation to be made through electronic addresses to be disclosed by SUSEP, pursuant to articles 5, § 2, and 7, item 2, of Res. CNSP no. 241/11, providing only for the need for "operational procedures that guarantee the effective sending of the offer" (art. 8, § 2).

In Chapter III, the rules for contracting insurance abroad are presented, restricted to the hypotheses provided for by article 20 of Complementary Law No. 126/07 and now disciplined through arts. 33 to 36 of CNSP Resolution No. 451/22.<sup>3</sup>

In accordance with the rules, to allow legal entities to contract insurance abroad to cover risks abroad (art. 20, sole paragraph, Complementary Law No. 126/07), the form set out in Annex II must be used to provide information to SUSEP, within 60 (sixty) days from the beginning of the validity period of the risk (art. 12). For the contracting of insurance abroad due to the absence of coverage in Brazil (art. 20, item I, Complementary Law No. 126/07), the form to be used is set out in Annex III and the deadline for communication to SUSEP, by the insured entity or its intermediary, is also 60 (sixty) days from the beginning of the validity period of the risk (art. 15).

<sup>1</sup> " In the event of risk transfer in reinsurance and retrocession operations, with reinsurers not authorised to operate in Brazil, exclusively when the insufficient offer of capacity by local and foreign reinsurers is proven, in accordance with art. 6, cedents should, within a maximum period of 30 (thirty) days as of the date of the beginning of the validity of the contract or the beginning of the validity of the coverage, whichever occurs last, communicate it to Susep, under the terms of the form of Annex I."

<sup>2</sup> "Art. 10. The insurance supervisory body shall have access to all reinsurance and retrocession contracts, including those concluded abroad, under penalty of being disconsidered, for all purposes, the existence of the reinsurance and retrocession contract".

<sup>3</sup> "Art. 20. The contracting of insurance abroad by natural persons residing in the country or by legal entities domiciled in the national territory is restricted to the following situations: I - coverage of risks for which there is no insurance offer in the country, provided that their contract does not represent an infringement of current legislation; II - coverage of risks abroad in which the insured person is a natural person resident in the country, for which the validity of the contracted insurance is restricted, exclusively, to the period in which the insured person is abroad; III - insurance that is the subject of international agreements referred by the National Congress; and IV - insurance that, by the legislation in force, on the date of publication of this Supplementary Law, have been contracted abroad. Single paragraph. Legal entities may contract insurance abroad to cover risks abroad, informing this contract to the Brazilian insurance supervisory body within the time and under the conditions determined by the Brazilian insurance regulatory body."

The last chapter, which deals with final provisions, contains the revocation of four circulars<sup>4</sup> and the Electronic Circular Letter CGRES/DIR1/SUSEP No. 1, of December 10th 2020 the latter of which provided for rules regarding the provision of monthly information to SUSEP relating to transactions carried out with individuals and legal entities who are not resident in Brazil, aiming to compose the balance of payments, which falls under the Central Bank of Brazil's ("BCB") responsibility.

When elaborating the normative act, SUSEP understood, together with the BCB, that the information provided by the former, through its Statistics System (SES) would be sufficient for the second, without the need for the supervised companies to do so. In addition, once the Operations Registration System – SRO is fully registered<sup>5</sup>, the information can be obtained in a timely and accurate manner, meaning that it became unnecessary to incorporate the provisions of said Electronic Circular Letter No. 1 in Circular SUSEP No. 683/22.

**Chalfin, Goldberg & Vainboin's** insurance and reinsurance team is at your disposal to clarify the mentioned topics, as well as to advise the adequacy of the operation of the supervised entities in line with the new regulatory framework

<sup>4</sup> They are: (i) Circular SUSEP No. 524 of January 14, 2016; (ii) Circular SUSEP No. 545 of January 27, 2017; (iii) Circular SUSEP No. 562 of December 24, 2017; and (iv) Circular SUSEP No. 603 of May 12, 2020.

<sup>5</sup> The SRO was implemented by CNSP Resolution No. 383 on March 20th, 2020. Available in: <https://www2.susep.gov.br/safe/scripts/bnweb/bnmap.exe?router=upload/21969>. Access in: 26/12/2022.