



Given that several regulations have been recently published, with impact on the insurance, reinsurance, healthcare, and private pension markets, we prepared a consolidation of information about them.

If you have any doubt or need any help, please do not hesitate in contacting us.

Insurance

1) **SUSEP Circular No. 521 of November 24, 2015:** amends Federal Insurance Commissioner (SUSEP) Circular No. 517/2015, which regulates technical provisions; liabilities adequacy test; reducing assets; subscription, credit, operating, and market risk capital; creation of operating losses databases; solvency compliance plan; registration, custody, and operation of assets, bonds, and securities securing technical provisions; Federal Insurance Commissioner Periodical Information Form (FIP/SUSEP); Accounting Rules and independent accounting audit of insurance companies, open-end private pension entities, capitalization companies; and reinsurers; certification and continued professional education exam for independent auditors; and Technical Pronouncements issued by the Brazilian Institute of Actuarial Science (IBA).

Although this regulation introduces certain punctual amendments to the rules previously in force, its primary purpose was to continue the work of SUSEP (Brazilian Insurance Supervisor) in consolidating regulations.

2) **Law No. 13.195 of November 25, 2015:** amends Law No. 12.712/2012 to establish that the Brazilian Agency Guarantee Funds and Guarantees (ABGF - Agência Brasileira Gestora de Fundos Garantidores e Garantias S.A.) shall be in charge of managing the Rural Insurance Stability Fund (FESR) until the full settlement of the obligations of such Fund, as well as Laws No. 4.829/1965 and No. 10.823/2003 and Decree-Law No. 73/1966.

This is an important change, but a natural and expected one, given that the IRB Brasil Re (the state owned local reinsurer) was originally the administrator of such fund, which does not make sense since the opening of the Brazilian reinsurance market.

3) **SUSEP Instruction No. 76 of November 27, 2015:** establishes directions on the institution and operating procedures to be adopted with respect to sanctioning administrative proceedings and revokes SUSEP Instruction No. 69/2013.

Given that SUSEP Instruction No. 76/2015 revoked SUSEP Instruction No. 69/2013, the procedure for identification of the individual

responsible for a conduct identified as a violation no longer exists.

Therefore, if the inspection carried out by SUSEP fails to find elements supporting the attribution of liability for a violation to an individual, the sanctioning administrative proceedings must be brought solely against the legal entity, which is consistent with recent actions of SUSEP and of the National Council of Private Insurance (CNSP – the insurance market regulator).

4) **SUSEP Deliberation No. 175 of November 30, 2015:** introduces the SUSEP policy for managers, establishing guidelines on the selection, appointment, development, and maintenance of managers of SUSEP, as well as succession planning.

5) **National Council of Private Insurance (CNSP) Resolution No. 330 of December 9, 2015:** establishes requirements and procedures for the organization, authorization for operation, registration, changes in control, corporate restructuring, and conditions for the exercise of positions in statutory or contractual bodies of the entities specified therein and establishes other provisions.

This regulation, in line with other rules previously published by the CNSP and SUSEP, changed little in the rules previously in force and consolidated several regulations on its subject matters. One of the main innovations of this regulation, which will enter into force on March 1, 2016, is the prohibition on foreign-based holding companies from directly controlling local insurance companies, open-end

private pension entities, capitalization companies, and reinsurers. However, this change will only apply to companies incorporated after the publication of CNSP Resolution No. 330/2015 or upon the joining of a shareholder as a member of the entity's control group.

With respect to the conditions for the exercise of positions in statutory bodies, the rule established mandatory prior consultation with SUSEP as to compliance with the conditions and requirements by the persons appointed to such positions.

This is an innovation introduced by this Resolution, which, however, does not apply to cases of reelection or election of those that are already holding or have held positions in statutory bodies of entities supervised by SUSEP in the last 6 months.

The obligation to attribute specific duties to statutory officers by area of activity, as established by SUSEP Circular No. 234/2003, has been maintained. The change in this regard relates to the accumulation of such duties. In accordance with the new rules, management-related duties of an executive or operating nature may not be exercised by the same statutory officer in charge of any governance duties of an audit or control nature.

6) **National Council of Private Insurance (CNSP) Resolution No. 331 of December 9, 2015:** regulates the summary procedure for sanctioning administrative proceedings at the SUSEP and amends certain provisions of CNSP Resolution No. 243/2011.

Under CNSP Resolution No. 331/2015, the summary procedure was established for sanctioning administrative proceedings brought solely against legal entities. Such procedure will apply if the violation is one of the 56 objective conducts listed in Schedule I to such Resolution.

This regulation reveals the concern of SUSEP in speeding up administrative proceedings pending before SUSEP, and also demonstrates the intent of the SUSEP of increasing its revenues by granting discounts to those who waive their right to a defense.

Given that the respondent may pay a provisional basic fine by waiving his right to administrative litigation, it will be necessary to assess the impact of this regulation in recidivism proceedings, particularly in view of the fact that precedents based on CNSP Resolution No. 243/2011 are beginning to appear.

In addition, certain provisions of CNSP Resolution No. 243/2011 have been amended; the primary innovation is certain punctual adjustments to the punishment cases and the possibility of not bringing sanctioning proceedings when it is verified that the consequences of the purported violation have already been remedied without any damage to consumers and that the goals of the industry regulation have not been adversely affected thereby.

7) National Council of Private Insurance (CNSP) Resolution No. 332 of December 9, 2015: establishes provisions on types of bodily injury covered, indemnities, claims

adjustment, premium, rate conditions, and management of the funds of the Compulsory No-Fault Auto Liability Insurance (DPVAT).

The main change introduced by this newly issued Resolution is that the unified operation of the Compulsory No-Fault Auto Liability Insurance (DPVAT) will be carried out by the Compulsory No-Fault Auto Liability Insurance (DPVAT) Consortium, which currently operates in categories 1, 2, 9, and 10 and will not absorb categories 3 and 4.

8) National Council of Private Insurance (CNSP) Resolution No. 333 of December 9, 2015: establishes provisions on the Internal Regulations of SUSEP and repeals CNSP Resolution No. 327/2015.

The changes in the Internal Regulations of SUSEP relate to the powers of internal areas of SUSEP.

9) National Council of Private Insurance (CNSP) Resolution No. 334 of December 9, 2015: amends a provision of CNSP Resolution No. 295/2013, which regulates the activities of insurance brokers' agents and establishes basic requirements for their appointment and registration.

Under CNSP Resolution No. 334/2015, the submission of documentation relating to agents is only to occur beginning on January 1, 2017.

10) National Council of Private Insurance (CNSP) Resolution No. 335 of December 9, 2015: regulates special regimes for fiscal direction and

extrajudicial and ordinary liquidation of entities supervised by SUSEP.

This regulation was issued to regulate the procedures of SUSEP in connection with the administration of special regimes, some of which had already been previously established as a practice of SUSEP.

11) SUSEP Circular No. 522 of December 17, 2015: regulates the sending of data files by insurance companies, capitalization companies, open-end private pension entities, local and approved reinsurers, and reinsurance brokers.

This regulation specifies how data files should be sent, in compliance with the Guidance Manual available on the website of SUSEP, and emphasizes the responsibility of the supervised entities for the sending and correction of any errors.

12) Decree No. 8.614 of December 22, 2015: regulates Supplementary Law No. 121/2006, to institute the National Policy for Repression of Theft and Robbery of Vehicles and Cargo and regulates the implementation of the National System for Prevention, Monitoring, and Repression of Theft and Robbery of Vehicles and Cargo.

This regulation may benefit the insurance market to the extent that it reduces the rate of theft and robbery of vehicles and cargo.

13) SUSEP Circular No. 523 of January 7, 2016: repeals SUSEP Circulars No. 253/2004 and No. 276/2004, which established a questionnaire on risks,

particularly subscription risks, borne by open-end private pension entities and established other provisions; and No. 342/2007, which amended art. 1 and schedule I of SUSEP Circular No. 253/2004.

The rules so repealed were basically aimed at preparing the environment for the implementation of risk-based capital (which has already been implemented), and their existence no longer makes sense.

14) SUSEP Deliberation No. 176 of January 7, 2016: repeals the regulations mentioned therein (i.e. SUSEP Deliberations No. 7/1996; No. 4/1997; No. 10/1997; No. 44/2000; No. 106/2005; No. 124/2008; No. 139/2009; and No. 143/2011; SUSEP Instructions No. 2/1997 and No. 5/1997; SUSEP/Cabinet (GABIN) Instruction No. 1/1998; SUSEP/Administration and Finance Department (DEAFI) Instruction No. 1/2007; and SUSEP/General Secretariat (SEGER) Instructions No. 4/2007; No. 5/2007; No. 6/2007; No. 7/2007; No. 8/2007; and No. 9/2008).

15) Decree No. 8.634 of January 12, 2016: establishes provisions on the Board of Appeals of the National Private Insurance, Private Pension, and Capitalization Market (Conselho de Recursos do Sistema Nacional de Seguros, Previdência Privada Aberta e Capitalização - CRSNSP) and repeals Decree No. 2.824/1998.

The Decree was issued mostly to transfer to the Ministry of Finance the competence to regulate the CRSNSP proceedings (see next item).

16) **MF Ordinance No. 038 of 02.10.2016**, which approves the bylaws of the Board of Appeals of the National Private Insurance, Private Pension, and Capitalization Market (Conselho de Recursos do Sistema Nacional de Seguros, Previdência Privada Aberta e Capitalização - CRSNSP).

The Ordinance was issued to regulate the Decree No. 8634/2016. It brought new bylaws for CRSNSP, updating, in general, the rules related to the CRSNSP's structure and procedures.

In a global view, the main changes, following what happened to similar councils, were introduced to increase the CRSNSP's efficiency, mostly in relation to the speed of the judgments. To achieve that, new procedures and legal instruments were created and new obligations were imposed to the Counselors. The main changes were:

- extension of the period of the mandate from two to three years and the increasing on the number of possible reelections for each Counselor;
- the allocation of CRSNSP's Executive Secretariat, no longer in SUSEP structure, but in the Ministry of Finance's structure (this change has already been physically implemented);
- the possibility of issuance of precedents of mandatory compliance by CRSNSP's members, to be approved by 2/3 of the Counselors;

- the CRSNSP President's prerogative to conduct by himself judgments of appeals related to matters that have been already established in precedents by the Council;
- the CRSNSP President's prerogative to raffle one Counselor Rapporteur to deal with similar issues;
- the possibility to judge together several administrative proceedings with similar issues;
- the establishment of goals to reduce the stock of administrative proceedings and other management measures;
- the publication of the CRSNSP's decisions and minutes of the sessions exclusively in the internet, and;
- the establishment of a more detailed formal rite for CRSNSP to review its decisions.

Unfortunately, the CRSNSP remained with the same number of Counselors. It is a problem because there are only three Counselors for the class entities of the insurance, open-end private pension entities, capitalization, reinsurance and insurance brokerage market, without mentioning reinsurance brokerage. As noted, regardless of the mentioned omission, there are more entities than vacancies, which grants to the Ministry of Finance the prerogative not only to choose the Counselors that will be on the triple lists, but also to choose the entities that will

not have any member appointed as a Counselor.

The changes came from a long-standing concern of the Government with the CRSNSP's results, increased by recent problems identified in the Council of Contributors. These measures will require a very careful conduct of companies and lawyers while performing in appeals and administrative proceedings that already exist and in those that will exist in the future because the changes bring new paradigms (i) to CRSNSP and CRSNSP Counselors' performance and (ii) to the supervision of CRSNSP by the Ministry of Finance.

17) **SUSEP Circular No. 524 of January 14, 2016:** clarifies and provides additional rules with respect to art. 37 of CNSP Resolution No. 168/2007 and establishes other provisions.

In accordance with the clarifications set forth in such Resolution, a formalized reinsurance contract is a hardcopy or electronic document containing all reinsurance terms and conditions, subject to the minimum elements set forth in law, signed and dated by reinsurers and containing the identification of the signatory; in other words, the signature of the assignor is no longer required for its qualification as a formalized reinsurance contract.

This regulation, which generally satisfied the wishes of the market, will favorably impact on several administrative proceedings pending

before SUSEP and aimed at punishing reinsurers, assignors, and reinsurance brokers for the lack of signature of the assignor in reinsurance contracts. The position to be adopted by SUSEP in this regard (i.e. notices of violation, trial of cases in group, denial of representations, etc.) should be followed up.

18) **Decree No. 8.643 of January 21, 2016:** amends Decree No. 3.937/2001, which regulates Law No. 6.704/1979, which establishes provisions on Export Credit Insurance.

This regulation reveals the Government's attempt to foster a recovery of the economic growth, to the extent that it increased the cases for the use of credit insurance as a tool to enable several transactions.

19) **SUSEP Circular No. 525 of January 22, 2016:** establishes rules on the structuring of Aircraft (Hull) insurance plans and repeals several previous rules on this matter.

20) **Office of the Attorney General for the Central Bank (PGBC) Ordinance No. 88.273 of January 29, 2016:** in which the Attorney General for the Central Bank of Brazil, given that surety bonds for tax foreclosures and surety bonds for administrative tax installment plans under the Office of the Attorney General for the Central Bank (PGBC), are intended to secure the payment of overdue tax liabilities in tax foreclosures or administrative installment plans, respectively, establishes the form and conditions for the use thereof.

This regulation shows that judicial surety bonds has becoming increasingly more accepted.

Healthcare

21) **National Agency for Private Health (ANS) Normative Syllabus No. 29 of December 16, 2015:** adopts the following binding understanding: For the purposes of Normative Syllabus No. 25/2012, the term “guardianship” covers both provisional and permanent guardianship, in accordance with articles 33, 34, and 35 of Law No. 8.069/1990. Normative Syllabus No. 25 adopts several binding understandings for private health insurance plans with obstetrics coverage.

Normative Syllabus No. 29 was probably created to standardize understandings, thus ensuring that all beneficiaries of health insurance plans with obstetrics coverage will be treated equally.

22) **National Agency for Private Health (ANS) Normative Resolution No. 395 of January 14, 2016:** establishes the rules to be followed by Private Health Insurance Plan Carriers in requests for procedures and/or healthcare coverage services submitted by beneficiaries under any type of contract.

The purpose of this regulation is certainly to improve the service provided by carriers to its consumers and is a further indication that ANS has been making efforts in this regard.

23) **Normative Resolution No. 396 of January 25, 2016:** amends Normative Resolution (RN) No. 124/2006, which

regulates the application of penalties for violation of laws on private health insurance plans.

24) **Inspection Department (DIFIS) Normative Instruction No. 12 of January 25, 2016:** establishes provisions on the concept and procedures to be following in the issuance of Inspection Department (DIFIS) Understandings, which are the official instruments of the Inspection Department (DIFIS) for establishing and standardizing the understandings applicable to inspection actions and activities, and repeals Inspection Department Service Instruction (IS) No. 15/2011.

Both Normative Resolution No. 396 and Inspection Department (DIFIS) Normative Instruction No. 12 demonstrate the concern of the National Agency for Private Health in making punishment rules more stringent, as well as in standardizing its understandings, thus providing legal safety to entities regulated by it.

25) **Normative Resolution No. 397 of February 4, 2016:** amends the Internal Regulations of ANS, as enacted by Normative Resolution (RN) No. 197/2009, and Normative Resolution (RN) No. 198/2009, which establishes the chart of positions of trust and technical positions of trust of ANS.

Tax Law

26) **Law No. 13.169 of October 6, 2015:** raises the Social Contribution on Net Income (CSLL) rate for insurers to twenty percent (20%) for the period between September 1, 2015 to

December 31, 2018 and fifteen percent (15%) on and after January 1, 2019.

27) Brazilian Federal Revenue Service (RFB) Normative Instruction No. 1.609 of January 19, 2016: amends Brazilian Federal Revenue Service (RFB) Normative Instruction No. 907/2009, which regulates the Tax on Financial Transactions (IOF) on credit transactions, to establish provisions on the non-collection of the Tax on Financial Transactions (IOF) surcharge on the unliquidated balance of previously taxed transactions in the event of extension, renewal, novation, settlement, consolidation, admission of debt, and similar arrangements under credit transactions with maturity in excess of 365 days without replacement of the debtor.

Labor Law

On February 1, 2016, a Collective Labor Agreement was entered into with respect to employees of insurance and reinsurance companies and open-end private pension entities.

In a brief summary, with respect to salary disputes, salaries up to R\$8,000.00 have been adjusted by 11.3%. On the other hand, salaries in excess of R\$8,000.00 will be adjusted by the addition of a fixed amount of R\$904.00, plus a 5% adjustment on any amount in excess of R\$8,000.00 (example: a R\$10,000.00 salary - $10,000.00 + (2,000.00 * 5\%) + R\$904.00 = R\$11,004.00$).

In addition, the amounts of meal and restaurant vouchers will be adjusted by 13%, while the respective floors will be

R\$27.46 (per (sic) worked) and R\$469.85 (per month, in addition to the granting of the 13th meal basket). Likewise, daycare pay will also be adjusted by amounts that may vary between R\$317.14 and R\$687.91, according to the age groups established in the collective agreement.

It should be noted that these are preliminary data, given that the official document has not been made available for public consultation yet.

Finally, it should be noted that the collective agreements relating to employees of insurance brokers, security and exchange brokers, and private pension entities are still pending ratification.

Public Hearings

Furthermore, the following draft regulations have been made available for Public Consultation:

1) **Public Consultation Notice No. 7 of December 17, 2015:** makes a draft National Council of Private Insurance (CNSP) Resolution available for public consultation, which provides rules and standards on the operation of popular auto insurance and allows the use of certified second-hand parts supplied by dismantling companies, in accordance with the specific law thereon, in the repair of damaged vehicles covered by insurance and establishes other provisions.

Upon publication of this regulation, we will probably see an increase in sales of auto insurance, because the possibility of using second-hand parts in damaged

vehicle repairs will certainly reduce insurance prices in such cases.

2) **Public Consultation Notice No. 8 of December 28, 2015:** makes a draft National Council of Private Insurance (CNSP) Resolution available for public consultation, which provides rules and standards on the structuring, marketing, and operationalization of Universal Life Insurance.

The issuance of new rules on Universal Life Insurance may foment the marketing of such product by insurers and promote a culture of purchase thereof by Brazilians. This is a positive initiative of SUSEP, in line with the quest for expanding the range of products sold in the Brazilian market, which has been one of the goals of the Superintendent of SUSEP.

3) **Public Consultation Notice No. 9 of December 28, 2015:** makes a draft National Council of Private Insurance (CNSP) Resolution available for public consultation, which regulates Rural Insurance, the Rural Insurance Stability Fund (FESR), and its administration and control by its Manager and establishes other provisions.

Upon the issuance of this regulation, local reinsurers will no longer be required to place their risks with the Rural Insurance Stability Fund (FESR).

4) **Public Consultation Notice No. 1 of January 15, 2016:** makes a draft National Council of Private Insurance (CNSP) Resolution available for public consultation, which establishes rules on the mechanism and standards for operation of funeral insurance.

The economic impacts introduced by this regulation are significant, given the number of companies that sell funeral assistance insurance and the type of consumers that purchase such product. Accordingly, this regulation, when published, may take a long time to come into force or establish a long transition period.