

REINSURANCE RULES IN BRAZIL – NEW OPPORTUNITIES FOR FOREIGN INVESTORS

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Starting April 15th, 2008, the Brazilian reinsurance market will be open to foreign and domestic competitors. IRB Brasil Re, until now the only authorized reinsurance entity, will lose its statutory monopoly. Susep (Private Insurance Superintendency) will regulate the reinsurance market (which covers both reinsurance and retrocession, usually involved in large policies). IRB is allowed to continue operations as a qualified local reinsurer.

CNSP Resolution No. 168/2007 and its supplementary Resolutions, issued December 17, 2007, thus complete the change in statutory regime provided for in Complementary Law No. 126 issued 15th January 2007. The Law contemplates three types of reinsurers: “local”, “admitted” and “occasional” and sets different criteria for each, although all must be registered at Susep. Although no regulated reinsurer may engage in other types of business or insurance activities, a Local Reinsurer may act as the representative of an Occasional Reinsurer, and companies of the same group may contract reinsurance or retrocession coverage from a related insurer.

Local Reinsurers must take the form of a Brazilian *sociedade anônima*, or corporation. Admitted Reinsurers and Occasional Reinsurers are foreign reinsurance companies, the former having a representative office in Brazil, while the latter are exempt from this requirement. Both must have been operating in their regulated home market for at least five (5) years. Occasional Reinsurers may not be incorporated in tax haven jurisdictions, defined by statute as those who tax corporate income at a rate less than 20% or whose corporation laws do not permit the identification of shareholders. The minimum capital for Local Reinsurers is R\$60 million (around US\$ 33 million), that Admitted Reinsurers is US\$100 million, while that for Occasional Reinsurers is US\$150 million.

Local reinsurers are subject to standard regulatory controls, such as minimum capital, loss to premium ratios and actuarial tables. Foreign reinsurers must have a minimum solvency classification issued by international risk evaluation agencies and Admitted Reinsurers must maintain an account with Susep to guarantee its obligations.

Under the statute, through January 16, 2010, Brazilian insurers must offer at least 60% of their reinsurance needs to Local Reinsurers, and 40% after that date. Moreover, reinsurance of life insurance and private pension funds is restricted to Local Reinsurers. Reinsurance is to be contracted in Brazilian currency save where permitted by the regulations—where the insurance itself is in foreign currency, where losses may occur abroad or where the majority of non-proportional reinsurance is by foreign reinsurers.

The regulations permit the participation of reinsurance brokers, and stipulate certain contractual terms of interest to foreign reinsurers, among which are some that permit disputes to be resolved by arbitration, without regard to Brazilian law, and which permit reinsurers to be involved in claim adjustments, without prejudice to the ultimate liability of the insurer to the insured.