

NEW RULES FOR BRAZILIAN REINSURANCE

On December 10, 2010, the Brazilian National Council of Private Insurers (CNSP) published two new resolutions (224/2010 and 225/2010) that will have direct impact on insurance and reinsurance activities in Brazil, with a direct consequential effect on multinationals with operations in Brazil.

Resolution 224 reads as follows:

Resolution No. 224/2010 alters § 4 of art. 14 CNSP Resolution No. 168 of December 17, 2007

“Article 1: The article 14th of the Resolution CNSP N° 168, of December 17, 2007, will now be in force including the following paragraph 4th:

Paragraph 4th: The responsibilities taken on insurance, reinsurance or retrocession on the country cannot be transferred (ceded) to companies related or being part of the same financial conglomerate located abroad.

This Resolution is scheduled to enter into force as of March 31st, 2011.

Briefly, local and foreign insurers operating in Brazil will not be able to reinsure their businesses within their own financial group (for example, to a “sister” insurer or reinsurer) located outside Brazil. This prohibition is in force even if the sister reinsurer is a registered admitted or eventual reinsurer in Brazil.

Multinational carriers have recently effected a number of treaty and facultative placements using companies within the same group as reinsurers. Such arrangements are prohibited going forward.

The goal of the resolution is to protect the local reinsurance market. It will directly affect the multinational carriers who were able to integrate Brazil into their programs after the opening of the



Brazilian market in 2007. Effective January 31, such integration will no longer be permitted.

Resolution 225 reads:

Resolution No. 225/2010 alters arts 15 and 39 of CNSP Resolution 168 of December 17, 2007

“Article 1: The article 15th of the Resolution CNSP N° 168, of December 17, 2007, will now be in force with the following wording:

Art. 15. The insurance company will contract with Local Reinsurers at least forty percent of each reinsurance cession in automatic treaties or facultative.

Article 2: The article 39th of the Resolution CNSP N° 168, of December 17, 2007, will be in force with the below paragraph:

The reinsurance contracts, automatic (treaties) or facultative, may include a clause of claims control clause in favor of the local reinsurer, whenever it has the largest proportional participation of the risk.

This Resolution will be in force as of March 31st, 2011.

The above wording means that insurers must place at least 40% of their reinsurance with locally admitted reinsurers. These placements can include a claim control clause in favor of the **Local Reinsurer** when they have the largest proportional share in the risk. The 40% rule goes into effect March 31, 2011.

Until now, **Local Reinsurers** (see our January 2008 **Alert**) had the right to look at every reinsurance risk and had the first right of refusal. In practice, a substantial portion of large Brazilian risks were being placed abroad, with many of them reinsured 100% out of country.

There remain unanswered questions, because the resolution does not spell out all the working details. In principle, the 40% share by the local reinsurer(s) does not have to be at the same terms as that for the remainder of the risk. Thus, local reinsurers will be able to look at every risk and will not have to quote their share at the terms provided for the rest of the placement.

The new rules came as a surprise to the local market and have been met with continuing discussion and criticism. In spite of ongoing appeals from various parties in the industry, it is fair to say that it is unlikely that there will be any changes before the implementation dates.

Multinationals operating in Brazil are advised to review the structure of their insurance and reinsurance programs, and even more so where the 40% local minimum is not met by the current program. It may be wise to allocate more time for the renewal of the local policies, since changes to the reinsurance structure may affect terms and conditions in Brazil, if not elsewhere.

CONTACTS

For more information, contact your Willis Client Advocate® or:

Anthony Harvey
Network Country Manager
Willis Brazil
Tel + 55 11 2161 6010
harveyaw@willis.com

Caio Petroucic
Deputy Network Country Manager
Willis Brazil
Tel + 55 11 2161 6012
petroucicc@willis.com

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