NOTES ON THE REGULATORY ENVIRONMENT OF THE BRAZILIAN (RE)INSURANCE MARKET

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Introduction:

Some seven years after the opening of the Brazilian reinsurance market, achieved essentially through Complementary Law[1] 126/2007 and CNSP[2] Normative Resolution 168/2007, there are 122 reinsurers active in the country, of which 16 are classified as local, 35 as admitted and 71 as occasional reinsurers.

Irrespective of the current economic situation of the country, which as shown by the most recent statistics is in recession[3], the insurance market is continuing to grow and develop as it has over the previous few years, attracting the attention of foreign investors.

Official statistics disclosed by the Superintendency of Private Insurance (*Superintendência de Seguros Privados* - SUSEP), the regulatory body, reveal that the insurance market's participation in the country's gross domestic product rose from 2.81% in 2001 to 3.56% in 2012, or growth of 0.75 in 11 years (0.068 p.p. per year). In developed economies this is typically much higher. For example, in United States this participation was 7.9% of GDP in 2012[4] and in the United Kingdom it was 9.4% in 2011[5].

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[1] A complementary law (*lei complementar*) is an enablilng law of constitutional provisions.

[2] CNSP is the National Private Insurance Council, which sets overall policy for the insurance market.

[3] In a recent interview, Finance Minister Joaquim Levy commented that "the country might register economic contraction in the first half of a 2015", but stated that the recession should be brief: "One quarter of recession means nothing in terms of growth (…)". Source: http://www.brasilemfoco.com.br/arquivos/category/economia, consulted on February 11, 2015. The IMF's latest growth forecast for the Brazilian economy in 2015 is only 0.3%, down from the previous estimate of 1.4%. The change is due to the possible outflow of capital from the country and the effect of deceleration of the Chinese economy (Source: http://www.cartacapital.com.br/economia/fmi-preve-brasil-com-crescimento-de-apenas-0-3-em-2015-3405.html, consulted on February 11, 2015. "The market predicts lower growth and more inflation in 2015. Financial market analysts surveyed by the Focus Report of the Central Bank reduced their expectation for gross domestic product (GDP) and increased their expectation for the National Consumer Price Index (IPCA), a measure of inflation, for 2015. In relation to growth, the estimate was reduced from 0.5% to 0.4%. In turn, the inflation projection increased from 6.56% to 6.60%. For 2016, the estimates remained at 1.80% for GDP growth and 5.70% for the IPCA. The inflation projection for this year, which is above the top of the target interval of 6.50%, is in line with recent statements by the Central Bank's president, Alexandre Tombini. In comments to the press and also testimony before Congress, he admitted that the IPCA would rise in the first months this year, but should enter a period of decline later and close 2016 at the central target of 4.5%. In relation to the Selic rate, the market maintained its expectation of an increase in the basic interest rate to 12.50% in 2015, followed by a decline to 11.50% in 2016. At present the basic rate is 11.75% and according to analysts it should rise to 12.25% after the next meeting of the Central Bank's Monetary Policy Committee (COPOM), which will occur on the 20th and 21st of this month." (Source: http://www.brasilemfoco.com.br/arquivos/68810, consulted on February 11, 2015).

[4] Information available at http://selectusa.commerce.gov/industry-snapshots/financial-services-industry-united-states, consulted on October 21, 2014.

[5] Financial Services: contribution to the UK economy. August 2012. Lucinda Maer and Nida Broughton. Available at http://www.google.com.br/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CDUQFjAB&url=htt

The OECD[6], in a study conducted to gauge the level of development of societies in terms of penetration of insurance, revealed some interesting findings: Holland leads all countries in annual insurance spending, at round US$ 6,000 per person, while Bangladesh is in last place, with average annual per capita spending on insurance of only US$ 5. In comparison to the more developed insurance markets – United States, United Kingdom and Europe – the Brazilian market has plenty of room to grow and develop.

That study also examined the estimated percentage of penetration of insurance in the countries, corroborating the conclusion regarding the potential for growth of the Brazilian insurance market. For example, in 2013 Luxembourg had a penetration rate of 40.5%, Ireland 20.4%, South Africa 15.1%, United Kingdom 12.2% and United States 10.7%, Brazil's rate was only 3%. Despite a certain degree of imprecision in the comparison due to the different characteristics of each country, comparison of developed and emerging economies shows that the penetration in the Brazilian market has ample room to grow.

This potential for growth naturally attracts foreign investors, in search of opportunities for diversification and expansion in emerging countries. This scenario makes it important to have an adequate understanding of the regulatory environment of the Brazilian insurance market.

The rules on contracting insurance abroad, including additional guarantees regarding policy conditions or limits (DIC or DIL), intra-group transactions, fronting and the various percentages applicable to reinsurance with local, admitted and occasional reinsurers, are very complex and require careful analysis. This is the purpose of this article.

Complex regulatory framework:

The main law on insurance in Brazil is still Decree-Law[7] 73 of 1966, issued during the military dictatorship period. Since then society has undergone huge transformations, making this law largely obsolete.

Insurance contracts are specifically regulated by Articles 757 to 802 of the 2002 Civil Code, which replaced the previous Code of 1916. However, this new Code was the result of more than 30 years of debate in Congress, and the legal framework regarding insurance contracts was already outmoded in various aspects when the new Code was finally approved. In a work dedicated to the analysis of risk in modern society, Ulrich Beck provides some noteworthy insights into the immense changes that have occurred regarding the level of risks faced by modern humanity[8].

> "(...) this categorical change is likewise dependent upon the fact that in the course of the exponentially growing productive forces in the modernization process, hazards and potential threats have been unleashed to an extent previously unknown. (...) In systematic terms, sooner or later in the continuity of modernization the social positions and conflicts of a 'wealth-distributing' society begin to be joined by those of a 'risk-distributing' society (...). Anyone who set out to discover new countries and continents – like Columbus – certainly accepted 'risks'. But these were *personal* risks, not global dangers like those that arise for all of humanity from nuclear fission or the storage of radioactive waste. In that earlier period, the word 'risk' had a note of bravery and adventure, not the threat of self-destruction of all life on Earth."

The greater need by modern society for insurance to cover electronic risks, liability in mergers and acquisitions, agribusiness, satellite launches, biotechnology and genetic studies and environmental damages, to name a few, show that the risk scenario today is far different than that in the 1970s, when the

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p%3A%2F%2Fwww.parliament.uk%2Fbriefing-papers%2Fsn06193.pdf&ei=Za9GVJbbF8rMggSvlILQBw&usg=AFQjCNEZiCnQQfOfYGl83B22ondDPz4_iw, consulted on October 21, 2014.

[6] Organization for Economic Cooperation and Development. Data available at http://stats.oecd.org/Index.aspx?DatasetCode=INSIND, consulted on February 11, 2015.

[7] Decree-laws are laws promulgated during periods of military dictatorship, most recently from 1964 to 1988.

[8] BECK, Ulrich. *Sociedade de risco: rumo a uma outra modernidade*. (Risk society: Towards a new modernity). Translated by Sebastião Nascimento. São Paulo: Ed. 34, 2011, pp. 23 and 25.

bill leading to the 2002 Civil Code was first introduced in Congress. The risks people and companies want to protect themselves against these days are often extremely hard to measure, requiring creative adaptations and interpretations of the legal and regulatory rules, to enable the transfer of risks from insureds to insurers.

In parallel to the Civil Code, matters particular to health insurance are treated separately, by Law 9,656/98, while private pension plans are covered by Complementary Law 109/2001.

Regarding reinsurance, Complementary Law 126/2007, after 70 years of government monopoly, loosened the existing rigid controls. It was followed by a series of administrative rules issued by the National Private Insurance Council (CNSP) and SUSEP.

Therefore, insurance in general is covered by various laws, enacted at different times, and further governed by a welter of resolutions, circulars, circular letters, findings, orientations, among other rules, issued by the regulatory authorities. This situation requires care in interpreting the legal and regulatory system. Indeed, the reason for all these infra-legal rules is the silence of the law regarding many crucial aspects of insurance. As can be imagined, this complexity makes compliance a difficult task.

Establishing rules on insurance is the exclusive reserve of the federal government, according to Art. 22, VII, of the 1988 Federal Constitution[9]. This can be accomplished through enactment of laws as well as issuance of regulations by the executive branch, through its various policymaking and regulatory entities. The key difference between laws and regulations is that the latter, in theory, are eminently technical in nature, while legislation is based on political questions. In practice, however, this hierarchy is not always respected by regulators. It is not uncommon for regulations to be issued that overstep the permission granted in the applicable law, requiring redoubled attention by interpreters.

Therefore, the legal and regulatory structure governing insurance and reinsurance in Brazil can be described as dispersed and complex.

Opening of the reinsurance market, but with reservations:

The history of reinsurance in the country dates to the then-named Instituto de Resseguros do Brasil – IRB (predecessor to today's company IRB-Brasil Re), created in 1939 by President Getúlio Vargas[10] by means of Decree 1,186. The then Institute was given a monopoly on reinsurance in the country, based on the perceived need to protect the Brazilian insurance market from foreign dominance and nurture a truly homegrown insurance industry. Besides having a monopoly on reinsurance (with certain exceptions in extraordinary cases), IRB also acted as the regulator, by issuing so-called general rules on reinsurance and retrocession (*normas gerais de reinsurance e retrocession* - NGRR).

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[9] "Art. 22. The Federal Government is solely empowered to legislate on: (...) VII – policy on credit, foreign exchange, **insurance** and transfer of valuables;" (emphasis added). Regarding the eminently technical function inherent to regulatory activity, Marcos Juruena Villela Souto comments that: "(...) The regulatory function stands out, primarily, from the legislative function, which involves decisions of a political nature seen as serving the public interest by the private sector, set by the majority defined in the electoral process. As known, the principle of free initiative protects private economic activity as an instrument to serve the collective interest, stimulating the production and circulation of wealth, aiming to construct a free, just and solidary society. Private economic activity is, however, subject to regulatory intervention in furtherance of public policies for economic and social development, creation of classes of consumers, generation of jobs and production, with security and accessibility of essential goods and services. The law – and only the law – innovates in the legal world, creating rights and obligations, a competency that is not delegated to regulatory rules. (...)". SOUTO, Marcos Juruena Villela. "Função Regulatória". In *Revista Eletrônica de Direito Administrativo Econômico*, no. 13, Feb.-April 2008, p. 2. Available at http://www.direitodoestado.com/revista/REDAE-13-FEVEREIRO-2008-MARCOS%20JURUENA%20VILLELA%20SOUTO.pdf.

[10] For a detailed analysis of the period covering the creation of IRB, establishment of the monopoly in its benefit and subsequent creation of the Brazilian reinsurance market, we refer to the book *Do Monopólio à Livre Concorrência. A criação do mercado ressegurador brasileiro*, ("From monopoly to free competition: The creation of the Brazilian reinsurance market). by Ilan Goldberg. Rio de Janeiro: Lúmen Juris, 2008, also available in English.

Seventy years later, the general consensus of market observers and of the federal government itself was that this monopoly was inefficient and no longer justified. This change of heart was part of the general movement to open the economy and privatize state-owned companies that began in the 1990s. This culminated with the enactment of Complementary Law 126/2007, which was signed into law by the President in January 2007.

That law structured the reinsurance market with equal concern for development and continuing protection of the domestic market, in the latter case by determining the adoption of protective measures, mainly to favor local reinsurers[11] by assuring them of the right of first refusal regarding 40% of all reinsurance cessions (Art. 11).

With the objective of regulating Complementary Law 126, the CNSP published Normative Resolution 168 in 2007. Its Art. 15 reiterates the 40% market reservation for local reinsurers, with no restrictions on the remaining risks laid off, be it to admitted and/or occasional reinsurers. This 40% reservation was ratified by CNSP Resolution 225/2010, whose Art. 1 states:

> CNSP Resolution 225/2010.
> Alters Arts. 15 and 39 of CNSP Resolution 168 of December 17, 2007.
> Art. 1. Art. 15 of CNSP Resolution 168 of December 17, 2007 henceforth takes on the following wording:
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> "Art. 15. Insurance companies shall contract with local reinsurers at least forty percent of each cession of reinsurance under automatic or facultative contracts."

Upon definition of this 40% rule, doubts immediately arose regarding the possibility of insufficient local capacity to handle the demand. If insufficiency were detected, what would be the alternatives? Because of these questions, the CNSP issued Resolution 241/2011, authorizing insurers to contract risk shares below 40% if local incapacity is demonstrated. This is established in Art. 6, main section and § 1:

> CHAPTER IV
> Contracting with local reinsurers
> Art. 6. Insurance companies are authorized to contract with local reinsurers a percentage smaller than that set forth in Art. 15 of CNSP Resolution 168 of December 17, 2007, as amended by CNSP Resolution 225 of December 6, 2010, **exclusively** when there is proof of **insufficient offer of capacity of local reinsurers**, irrespective of the prices and conditions offered, with observance of the same criteria established in Art. 5 of this Resolution.

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[11] Complementary Law 126/2007, in Art. 4, defines three categories of reinsurer: local, admitted and occasional. Local reinsurers must be headquartered in the country, organized as corporations, with exclusive business purpose of engaging in reinsurance and retrocession transactions. Local reinsurers are subject to the same rules as insurance companies, such as those for authorization to operate, transfer of control, election and responsibilities of the directors and officers and constitution of technical reserves. They must have minimum capitalization composed of the sum of the "base capital" (R$60 million) and "additional capital" (calculated based on the risks inherent to the portfolio of contracts). Admitted reinsurers have headquarters abroad and must have a representation office in Brazil and be enrolled with SUSEP to carry out reinsurance and retrocession transactions in Brazil. Among the requirements for enrollment and operation of admitted reinsurers are at least five years of experience in reinsurance in the country of origin in the intended lines, net equity of at least US$100 million, minimum solvency classification (S&P: BBB-; Fitch: BBB-; Moody's: Baa3; AM Best: B+) and maintenance of an escrow account in foreign currency in Brazil, tied to SUSEP, with a minimum balance of US$ 5 million for reinsurers active in all lines or US$ 1 million for those operating only in insurance of persons. Finally, occasional reinsurers are foreign reinsurers that do not have a representation office in Brazil. They also must be enrolled with SUSEP and their activities in Brazil are limited to reinsurance and retrocession. The main requirements for their enrollment and operation are at least five years of experience in reinsurance in the country of origin in the intended lines, net equity of at least US$150 million, and minimum solvency classification (S&P: BBB; Fitch: BBB; Moody's: Baa2; AM Best: B++). Additionally, they may not be established in a tax haven jurisdiction.

§ 1. A situation of insufficient offer of capacity, as mentioned in the main section, is deemed to exist when, after all local reinsurers have been consulted, they as a set have refused all or part of the risk subject to the cession. (emphasis added).

The cases of total refusal and partial acceptance by local reinsurers are covered in §§ 2 and 3 of that article. Total refusal logically authorizes insurers to lay off all the risks to admitted and/or occasional reinsurers, while with partial acceptance, only the refused portion can be ceded to those other reinsurers:

§ 2. In the case of total refusal of the risk by all local reinsurers, insurance companies may cede the risk in full to admitted and occasional reinsurers, and if there is still any portion of the risk not covered, to parties not covered by Art. 9, numerals I and II, of Complementary Law 126 of 2007, under the hypotheses, conditions and criteria established in this Resolution.

§ 3. Should there be partial acceptance of the risk by local reinsurers, only the portion of the risk not finding coverage may be ceded to admitted and occasional reinsurers, and if there is still any portion of the risk not covered, to parties not covered by Art. 9, numerals I and II, of Complementary Law 126 of 2007, under the hypotheses, conditions and criteria established in this Resolution.

In summary, as authorized by Art. 11 of Complementary Law 126/2007, the CNSP, in Resolutions 168, 225 and 241, further solidified the rules on the 40% preference of local reinsurers in the newly created Brazilian reinsurance market.

Intra-group transactions:

The publication of CNSP Resolutions 224 and 225 in December 2010 stirred up heated discussions in the market because of the significant changes they brought to Resolution 168, published shortly after enactment of Complementary Law 126.

Resolution 224 prohibited all transfers/cessions between companies belonging to the same business group, by creating a series of restrictions, in contrast to Resolution 168, which did not contain any restriction. Resolution 225, subsequently amended by Resolution 241 (already discussed above), determined the obligation to contract 40% of reinsurance with local reinsurers and also established rules on the claims adjustment process.

This bar on intra-group cessions/transfers was poorly received by the market, bringing immediate questions both about the form used by the CNSP to alter the established regulation and the content of the new rules[12]. In response to this negative reception, the CNSP first delayed the entry into force of Resolution 224, from January 31 to March 31, 2011, the same date stipulated for Resolution 225 to take effect. Then, on the eve of the newly scheduled date, the CNSP published Resolution 232, revoking Resolution 224 (which never took effect), replacing the total prohibition with a partial one. Instead of total restriction, the new resolution established an upper limit of 20% on intra-group cessions/transfers. Additionally, some specific cases were excepted, thus authorizing without limitation laying off coverage in the segments of guarantees (performance and bid bonds, among others), internal credit, export credit, farm and nuclear risk insurance.

[12] Complementary Law 126/2007 does not contain any express restriction on intra-group transactions, which was confirmed by CNSP Resolution 168/2007. The criticism of Resolution 224 on the matter of form resulted from the fact that a mere administrative rule altered a theme treated differently in a complementary law. Besides the matter of form, the content was also questioned, since intra-group transactions are common in the international arena, undermining any plausible justification for Brazil to impose different treatment. On intra-group transactions, Complementary Law 126 states as follows: "Art. 12. The insurance regulatory body shall establish the guidelines for transactions involving reinsurance, retrocession and reinsurance brokerage and for the activities of the representation offices of admitted reinsurers, with observance of the provisions of this Complementary Law. Sole paragraph. The insurance regulatory body may establish: (…) IV – requirements for limits, accompaniment and monitoring of intra-group transactions; (…)". Defining requirements for limits and monitoring intra-group transactions is totally different than simply forbidding them.

The concept of companies belonging to the same group was (and is) stipulated as follows[13]:

> Companies that are related or belong to the same financial conglomerate are defined as the set of legal entities, related directly or indirectly, by equity participation of 10% (ten percent) or more, or by effective operational control characterized by common administration or management, or by action in the market under the same trademark or trade name.

The goal of the regulator was very clear, in the sense of protecting the local market by stimulating foreign companies to invest in local presence. While this concern was to some extent justifiable, the mechanism adopted still is open to criticism. In particular, based on a prerogative granted to the regulator in Complementary Law 126, to *"establish requirements for limits, accompaniment and monitoring of intra-group transactions,"* the regulator went further, first flatly forbidding them and then allowing only 20%.

Limits to cession of reinsurance:

Besides the right of first refusal of local reinsurers to 40% of reinsurance and the restrictions on intra-group transactions, limited to 20% of each cession, other rules have been established to try to strengthen the local market.

In this respect, additional limits were created for laying off risks, considering the entire portfolios of insurers, of 50% of the premiums under policies underwritten, although repeating the exceptions regarding the segments of guarantee, export credit, internal credit and farm insurance. For risks involving oil and gas exploration and production, due to its specific features, the annual limit is 40% by value of the portfolio of policies.

For occasional reinsurers, the annual cessions cannot exceed 10% of the premiums issued, except in the case of insurance to guarantee public obligations and oil and gas risks, where the level is 25%.

To facilitate understanding of the various limits indicated above, they are summarized in the table below:

Company	Limit on cession, considering the total value of transactions in each calendar year	Legal basis
Insurer	Up to 50% in reinsurance and retrocession of the premiums issued from coverage underwritten	Article 16 of CNSP Resolution 168/2007
	Segments that can exceed 50%: (i) guarantee insurance, (ii) export credit insurance, (iii) farm insurance and (iv) internal credit insurance.	Article 16, § 1, of CNSP Resolution 168/2007
	Up to 40% for oil and gas risks.	SUSEP Circular 495/2014
	Up to 10% of the total value of the premiums ceded under reinsurance to occasional reinsurers.	Art. 1 of Decree 6,499/2008
	Up to 25% of the total value of the premiums ceded under reinsurance to occasional reinsurers in the segments of guarantee of public obligations and oil and gas risks.	CNSP Resolution 203/09

[13] This is the wording of § 5, added to Art. 14 of Resolution 168.

Mention should also be made of the limit of 50% for cession to local reinsurers in reinsurance and retrocession of premiums.

Company	Limit on cession, considering the total value of transactions in each calendar year	Legal basis
Local reinsurer	Up to 50% in reinsurance and retrocession of the premiums issued from coverage underwritten.	Article 16 of CNSP Resolution 168/2007

Contracting insurance abroad – legal restrictions:

As can be seen from the matters covered above, the aim of creating the Brazilian reinsurance market, has been to strengthen the local insurance market in general. Although open to criticism in many respects from a formal legal standpoint, the market opening has prompted the granting of various reservations and prerogatives to local reinsurers, including on the matter of fronting[14], transactions with occasional reinsurers and intra-group transactions, among others.

The same concern for the local market is behind the legal treatment of contracting insurance abroad, which in most cases is forbidden, the exceptions being those allowed by Complementary Law 126, which we comment on below.

The transactions carried out in foreign insurance markets under the abbreviations DIC (difference in conditions) and DIL (difference in limits) are subject to various restrictions established in the regulations for the Brazilian market. For large insurers with multinational scope to regularize the contracting of policies for risks located in the country, they must establish these contractual deals in Brazil, through one or more insurers registered with SUSEP. The insurer(s) in question may have foreign origin (local subsidiary), something that is very common in the Brazilian market, but the regularity of the arrangement requires prior authorization for the company to work with domestic insurance.

The legal base for these restrictions is provided by Articles 19 and 20 of Complementary Law 126:

> Art. 19. The following policies **shall be exclusively contracted in the Country**, reservation made for that set forth in Art. 20 of this Complementary Law:
> I. Compulsory insurance; and
> II. **Non-compulsory insurance** contracted by individuals residing i the Country or by **legal entities** domiciled in national territory, regardless of the legal form, **to guarantee risks located in the Country**.
>
> Art. 20. The **contracting of insurance abroad** by individuals residing in the Country or by **legal entities domiciled in national territory** is **restricted to the following situations**:
>
> I. Coverage of **risks for which there is no offer of insurance in the Country**, provided such contracting does not represent an infraction of legislation in force;
> II. **Coverage of risks abroad** where the insured is an individual residing in the Country and the duration of the insurance contracted is restricted exclusively to the **period when the insured is abroad**;
> III. Insurance subject to international accords ratified by the National Congress; and
> IV. Insurance that was contracted abroad under the legislation in force on the publication date of this Complementary Law.

[14] Fronting or integral cession: A contract in which an Insurer reinsures, in full or in large part, risks that that it does not have an interest in retaining or for which there is an agreement in this sense with a Reinsurer. Although the term has been translated, the word "fronting" is often used in Portuguese. (definition available in the glossary published by the CNSeg - http://www.cnseg.org.br/cnseg/resseguro/, consulted on February 11, 2015.

> Sole paragraph. Legal entities may contract insurance abroad to cover risks assumed abroad, under the condition that they inform this contracting to the oversight authority of Brazilian insurance within the time limit and under the conditions determined by the Brazilian insurance regulator. (emphasis added).

Initially Art. 19 establishes that contracting compulsory and non-compulsory insurance to cover risks located in the country must be done with a Brazilian insurer. The exceptions in Art. 20 are: (i) coverage of risks for which there are no policies available in the local market; (ii) coverage of risks abroad by Brazilian residents who are overseas for travel or work; (iii) insurance related to international accords ratified by Congress; and (iv) insurance contracted legally abroad before Complementary Law 126 took effect.

Of all the exceptional cases, the most complex is the first one, since demonstration of the absence of local coverage can be a hard task. Therefore, the CNSP and SUSEP respectively issued Resolution 197/2008 and Circular 392/2009 to provide more details of the conditions for contracting insurance abroad when no coverage is available domestically.

According to Circular 392/2009, to prove that risks have no coverage in the country, SUSEP may at any time require the insurer and/or broker to present the following documents:

Documents that can be required by the regulator	Legal basis
- Copies of the uniform consultations posed to at least 10 Brazilian insurers that operate in the line of insurance for which coverage is sought, or all such insurers if the number is less than 10.	Art. 11, numeral I, and § 1, SUSEP Circular 392/2009
- Copies of the responses to the consultations posed, expressing the reasons for denying the coverage sought.	Art. 11, numeral II, SUSEP Circular 392/2009
- Copy of the consultation sent to the foreign insurer (with sworn translation into Portuguese), under the same terms as those sent to national insurers.	Art. 11, numeral III, SUSEP Circular 392/2009

For the effect of Law 9,432/97 (insurance for hulls, machinery and civil liability of vessels registered on the Special Brazilian Registry – REB) and of CNSP Resolution 197/08 (cases when the domestic market does not offer prices compatible with the international market|), SUSEP can at any time require the insured and/or broker to present the following documents:

Documents that can be required by the regulator	Legal basis
- Copies of at least five uniform consultations posed to Brazilian insurers that operate in the coverage line in question.	Art. 15, numeral I, SUSEP Circular 392/2009
- Copies of the documents issued by the Brazilian insurers with the quotation for the coverage sought.	Art. 15, numeral II, SUSEP Circular 392/2009
- Copies of the consultation sent to the foreign insurer and the respective quotation obtained (and sworn translation), in the same terms as the queries posed to national insurers, and the new consultations sent to Brazilian insurers asking if they want to match the offer received from the foreign insurer.	Art. 15, numeral III and § 1, SUSEP Circular 392/2009
- Copies of the respective refusals by the Brazilian insurers to the new consultations sent.	Art. 15, numeral IV, SUSEP Circular 392/2009

Some considerations on global insurance programs involving DIC and DIL:

The abbreviations DIC (difference in conditions)[15] and DIL (difference in limits)[16] are very common in the international insurance market. When there is a need to contract coverages that are different than those offered in a determined original country, some countries allow insureds and insurers to look for coverage of the additional conditions or amount above the local policy limits in other markets.

Brazil, along with China, Japan, Russia, Switzerland, India, Malaysia, Mexico, Turkey, Thailand and Hong-Kong,[17] requires issuance of the policy locally, which consequently prevents the use of the DIC and DIL mechanisms of a global program in foreign territories.

Large companies with international operations typically like to contract global coverages through master policies, and when there are deficiencies regarding the desired coverages offered, either regarding the policy conditions or limits, they contract the necessary additional coverages locally.

For such arrangements to be considered regular in Brazil, it is necessary to verify the treatment given locally, to assure compliance with laws and regulations. In this sense, it is necessary to obtain information on the contracting of insurance abroad, the possibility of fronting, how placement of reinsurance is treated (preferential rights, percentages, exceptions), the treatment of intra-group transactions and the percentages mentioned in the table for reinsurance and/or retrocession, as mentioned previously.

As seen, for risks where coverage is available in the Brazilian market, the contracting must be in the domestic market, i.e., with insurers that have obtained authorization to operate in Brazil from the regulator.

Conclusions:

Irrespective of the difficulties facing the Brazilian economy, at least this year, the insurance market continues to expand, mainly because of the small penetration in society and participation of insurance services in GPD.

From a legal and regulatory standpoint, a company interested in establishing a local presence in the Brazilian insurance market must carefully consider the existing rules, among them those summarized here, as they apply to the lines of insurance/reinsurance of interest. These include the right of preference

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[15] Difference-in-conditions (DIC) insurance: (1) A policy designed to broaden coverage by providing additional limits of coverage for specific perils when standard markets won't provide adequate limits of coverage, providing coverage for perils that are excluded on standard coverage forms, or supplementing international policies that are written by admitted insurers in the applicable foreign countries. (2) An all risks property insurance policy that is purchased in addition to a commercial property policy to obtain coverage for perils not insured against in the commercial property policy (usually flood and earthquake). (3) An endorsement to a contractor's blanket builders risk insurance policy that fills the gaps between a policy provided by the project owner and the contractor's policy so that the contractor has insurance comparable to what it would have had if coverage had been arranged under the contractor's builders risk program. When a project owner elects to provide the builders risk coverage for all parties with an insurable interest, the project is normally removed from coverage under the contractor's policy. A DIC endorsement typically states that, to the extent a loss is not covered under the owner-provided policy but would be covered under the contractor's policy, coverage will apply on an excess basis. (4) An insurance policy that is designed to fill the gaps between the coverage provided by a multinational organization's master insurance policies (property or liability) and coverage provided by policies purchased locally in accordance with each country's insurance requirements so that the organization has uniformity of coverage regardless of location. This policy is referred to as a foreign DIC policy. Source: http://www.irmi.com/online/insurance-glossary/terms/d/difference-in-conditions-dic-insurance.aspx, consulted on February 12, 2015.

[16] Difference-in-limits (DIL) clause: A provision contained in a master international insurance program (often referred to as a master controlled program) that provides coverage for the difference in limits between the limits of local underlying policies and the limits of the master international policy. Source: http://www.irmi.com/online/insurance-glossary/terms/d/difference-in-limits-dil-policy.aspx, consulted on February 12, 2015.

[17] STRNAD, Martin et al. Method for underwriting multinational insurance business in accordance with national and international laws. Available at http://www.google.com/patents/US20080162194, consulted on consulted on February 9, 2014.

of local reinsurers and the percentages that can be laid off to admitted and occasional reinsurers, restrictions on contracting insurance abroad, rules on intra-group transactions and fronting and DIC/DIL arrangements. As described briefly in this article, these and other rules are complex and in constant flux, requiring redoubled attention.