

Market access and trade barriers faced by European insurers and reinsurers in foreign jurisdictions

BRAZIL



The European (re)insurance industry acknowledges that recent changes in Brazilian (re)insurance regulations include some positive developments. However, there is continued concern – particularly regarding the newly approved Insurance Law – which may hinder the ability of European (re)insurers to operate in Brazil on a competitive and non-discriminatory basis. Greater ambition is needed to ensure an open and fair market environment that supports the development of international business.

New Insurance Law (Bill n°15.040/2024)

In 2024, the new insurance Act, Bill n°15.040-2024 (the new Act) was approved by the government of Brazil. The initiative had been launched in 2004, subsequently archived in 2019 (PLC n°29/2017) and reopened in March 2023. Although there have been positive developments towards opening competition in Brazil's (re)insurance market, this new Act compromises the benefits of the market liberalisation.

The new Act will enter into force on 10 December 2025, one year after its publication on 10 December 2024. This one-year transition period serves to adapt local market practices, including new enabling regulations from the Brazilian regulator (SUSEP - Superintendência de Seguros Privados). Foreign (re)insurers will need to adjust their operations to comply with the new Act and enabling regulations. The enabling regulations from the SUSEP are expected during the spring-summer period of 2025.

The new Act regulates private insurance and revokes provisions of the Brazilian Civil Code, as well as some articles of Decree-Law n°73/1966, which provides for Brazil's national private insurance system. This new legal framework introduces a series of significant changes, affecting operations, underwriting, products, claims, reinsurance and time limitation, and imposes new obligations, deadlines and legal consequences for the market. The most significant reforms address areas such as underwriting and contract formation, claims handling procedures, limitation period, law and jurisdiction, and reinsurance.

Elements of the law that differ from global insurance practices include:

- the need for prior regulatory registration and approval of contract terms and conditions irrespective of the nature of the risk (past practice that had been eliminated);
- tacit acceptance of reinsurance contracts if an offer is not rejected within 20 days;
- the obligation to provide a reasoned justification in case of non-acceptance of a certain risk;
- the potential life-long exposure to claims beyond the cover period of the policy and several provisions that create operational and regulatory bureaucracies for (re)insurers, in contradiction to the national law of economic freedom and the lack of differentiation between retail and commercial (re)insurance risks;
- an impractical deadline for the adjustment of claims, particularly for large risks, disregarding their complexity;
- an obligation for the reinsurer to cover the entire reinsured interest, including the insurer's interest related to recovering the effects of the delay in fulfilling the insurance contract (including salvage expenses and claims adjustment costs).

These elements are likely to cause unintended consequences, including a further reduction in available reinsurance capacity – especially for large or highly volatile risks like natural catastrophes – further exacerbating existing severe capacity shortages in sectors such as agricultural, and increasing overall operational costs (eg risk questionnaire review, claims regulation costs, litigation, etc.). It may also likely reduce reinsurance contract innovation and customer choice, as well as reduce investment in digital innovation. The

benefits of the new law for customers are unclear, while the damage inflicted on Brazil's large risks and reinsurance markets are foreseeable.

Finally, the market is still awaiting the regulation of the law by SUSEP, which may provide greater clarity and eliminate certain grey areas.

Tacit acceptance of reinsurance proposal

The new Act contains a chapter on reinsurance, under which the government and SUSEP intend to demand a collateral requirement (ie to buy Brazilian government fixed income bonds) for foreign reinsurers (admitted and/or occasional) or an additional payment of a 10% tax, to be called CIDE reinsurance, to be paid by the cedent that purchases reinsurance with a foreign reinsurer. The collateral requirement for foreign reinsurers will probably be included in the new regulation in view of the principle of reciprocity in international relations between states. The implementation date would not be immediately, and it is likely to be in force from January 2026.

Reinsurers have 20 days to reject cedants' proposals as to placement, but this requires care as silence will be interpreted as acceptance. According to Article 60, Paragraph 1 of the new Act, if a reinsurer does not respond within 20 days of receiving a proposal from a ceding company, this lack of response will be considered as automatic acceptance of the reinsurance proposal, leading to the formation of the reinsurance contract.

Paragraph 2 of the new Act permits SUSEP to extend this period "in the event of proven technical need". However, it does not specify the criteria for such an extension or define what constitutes a 'technical need'. Additionally, unlike 'insurance proposals', the law does not clarify what a 'reinsurance proposal' entails or what it must include for automatic acceptance to apply. Therefore, reinsurers must adjust their procedures to prevent unintentional acceptance of a risk. It is anticipated that there will be opportunities for dialogue with SUSEP to establish guidelines that offer reassurance to reinsurers.

Restrictions on the reinsurance and retrocession limits applicable to cessions to occasional reinsurers

The restrictions on the reinsurance and retrocession limits applicable to cessions to occasional reinsurers are the following:

- Local insurance companies can cede to occasional reinsurers up to 95% of the premiums transferred to reinsurers, calculated on the basis of all transactions carried out in a given calendar year.
- Local reinsurers can also cede in retrocession to occasional reinsurers up to 95% of the retroceded premium volume in relation to the risks they have underwritten, calculated based on all transactions carried out in a given calendar year.

In addition, SUSEP is allowed to issue specific regulations authorising insurance companies to cede to occasional reinsurers more than the above-mentioned limit, in relation to certain lines of business or type of insurance.

In November 2021, the National Council of Private Insurance (CNSP) adopted a resolution on the operation of supervised and foreign reinsurers and brokers, which entered into force on 3 January 2022. It simplifies the rules and procedures related to the registration and licensing of Brazilian insurers, capitalisation entities, local and foreign reinsurers, as well as reinsurance brokers, which was a welcome development

Minimum (re)insurance retentions by local cedants

CNSP Resolution 451/2022, effective from 1 January 2023, amended the maximum reinsurance cessions (ie minimum retentions) for local insurers. The new requirement provides that local insurers must submit to SUSEP a technical justification for a reinsurance cession percentage higher than 90%, considering the totality of their operations, per calendar year.

The requirements outlined in the resolution also provide that local reinsurers are not allowed to cede more than 70% of the premium volume in relation to the risks they have underwritten, calculated based on all transactions they have carried out in a given calendar year. The previous limit was 50%.

Several classes of business are explicitly exempt from this requirement and are not considered when the minimum retention of 70% is calculated per calendar year. These are:

- financial risks (ie surety bonds, export credit insurance and domestic credit insurance);
- rural risks (eg agricultural risks);
- nuclear risks.

New Players

In January 2025, Complementary Law No. 213/2025 was approved, which legalises the operations of mutual societies and regulates the operations of insurance cooperatives. The law creates opportunities in Brazil for new players to foster competition within the Brazilian insurance market.

In 2025, SUSEP will issue regulations regarding:

- a) Provisions to ensure the soundness, liquidity, and operation of the administrators
- b) The conditions for issuing authorisation for these operations and the criteria for participation and service provision contracts

The transition of these entities from the informal to the formal legal framework remains uncertain, as it is unclear if it will still be profitable under possible new rules.

Tax reform

The Brazilian Tax Reform was approved in 2023 (*Emenda Constitucional* No. 132) and regulated in January 2025 (*Lei Complementar* No. 214), bringing profound changes to the Brazilian tax system.

In the insurance sector, the reform replaces the current regime based on the Social Integration Program (PIS), the Contribution for the Financing of Social Security (COFINS), and the Tax on Financial Operations (IOF) with a new model that includes insurance and reinsurance operations under a specific regime for financial services. The tax base will be determined by premium revenues and financial income, with the possibility of deductions such as claims expenses and the constitution of technical provisions. Notable aspects include zero rates for reinsurance and retrocession operations, the possibility of IBS/CBS credits for policyholders, and the exclusion of indemnities from the taxable base. The transition process begins in 2026 and extends through 2032, but the final tax rates have yet to be defined, requiring ongoing monitoring.

Reinsurance working group

In 2024, the Brazilian regulator implemented a working group where several members of the market were invited to discuss some impactful matters (*Grupo de Trabalho "Resseguro - Instrumento do Desenvolvimento"*).

One of the topics addressed in this group focused on the **potential introduction of collateral requirements for admitted or eventual reinsurers in Brazil**. Insurance Europe understands that such measures are unlikely to have a positive impact on the Brazilian (re)insurance sector as they are more likely to effectively undermine rather than strengthen both local insurers and reinsurers and to ultimately lead to higher (re)insurance premiums.

Recommendations and preferred outcomes

Additional barriers, such as the requirement of collaterals, may discourage (re)insurers' from operating in the country. Insurance Europe and the Reinsurance Advisory Board (RAB) support close regulatory exchange between the EU and Brazil and take the view that reinsurers need appropriate legislative measures that correctly capture the nature of the reinsurance business.

Insurance Europe is the European insurance and reinsurance federation. Through its 39 member bodies — the national insurance associations — it represents insurance and reinsurance undertakings active in Europe and advocates for policies and conditions that support the sector in delivering value to individuals, businesses, and the broader economy.

Insurance Europe's Reinsurance Advisory Board (RAB) is a specialist representative body for the European reinsurance industry. It is represented at chairman and chief executive officer (CEO) level by the seven largest European reinsurance firms: Gen Re, Hannover Re, Lloyd's, Munich Re, PartnerRe, SCOR and Swiss Re, with Insurance Europe providing the secretariat.