

# BRAZIL

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## I INTRODUCTION

Insurance and reinsurance activities are highly regulated in Brazil. This paternalistic approach seeks to foster the growth and development of the local insurance and reinsurance market. This chapter provides a general overview of the Brazilian insurance and reinsurance market, and the main rules applicable to entities aiming to conduct these activities in Brazil.

### i Overview

The first half of the 20th century saw important milestones that affected the growth of the Brazilian insurance market, reflecting the nationalistic tendencies of the then incumbent governments (especially during the 1930s and 1950s), of which the following can be highlighted:

- a* the enactment of the Civil Code of 1916, with an entire chapter dedicated to setting forth the general rules and principles that should govern insurance contracts and the relationship between insureds and insurers;
- b* the enactment of the Federal Constitution of 1937,<sup>2</sup> which prohibited foreign insurance companies to freely operate in Brazil during the 1930s (only companies headquartered in Brazil could render such activity within the country); and
- c* the creation of the Reinsurance Institute of Brazil (IRB), a state-owned reinsurance company that would hold the monopoly over all reinsurance transactions in Brazil until 2007.

The second half of the 20th century reflected a gradual but bold move towards the opening of the market to foreign competitors, especially during the 1990s. Among the most important events that took place during this period are the following:

- a* the enactment of Decree Law No. 73/1966, which created the regulatory bodies that are currently in charge of setting forth the rules and general guidelines to be followed by those entities deemed to be part of the National Private Insurance System (SNSP) (namely, insurers, reinsurers, open-ended private pension plan entities, public savings companies, and insurance and reinsurance brokers and brokerage companies). These governmental authorities are:

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1 Bruno Balduccini and Diógenes Gonçalves are partners at Pinheiro Neto Advogados. The authors would like to thank Alessandra Carolina Rossi Martins, Mary Hamasaki, Leonardo Bedicks and Gianvito Ardito for their invaluable contributions to this chapter.

2 The Constitution was enacted during the Vargas dictatorship, which explains the nationalistic approach of the regulation of insurance and reinsurance activities provided in such legal document.

- the National Private Insurance Council (CNSP), which sets forth the general rules and guidelines that the entities that comprise SNSP must comply with; and
  - the Private Insurance Authority (SUSEP), which further details the rules enacted by CNSP and supervises the above-mentioned entities of SNSP through routine inspections and disciplinary proceedings in the administrative sphere; and
- b the revocation in 1996 of the general ban prohibiting foreign companies from controlling local SNSP entities, thereby paving the way for foreign competition to enter the Brazilian insurance market once again.

Once foreign competitors were allowed to control local insurance companies, the Brazilian insurance market experienced steady growth in terms of revenue. Allied with the stabilisation of the country's economy, local and foreign players started to pressure the federal government to dismantle IRB's monopoly over reinsurance activities. In response to the market's general outcry in this regard, in 2007, Supplementary Law No. 126 was enacted by the federal government, and reinsurance activity was opened to local and foreign players, as further explained subsection ii, *infra*. Less than four years after IRB's monopoly was dismantled, more than 72 foreign companies were accredited to render reinsurance activities in Brazil, either as an admitted or occasional reinsurer, evidencing the huge success of opening the local market to foreign competitors.

## ii Market overview

Stimulated by Brazil's economic growth and stability, the country's insurance and reinsurance markets have grown constantly since the late 1990s. According to recent surveys, the insurance market represented 2.59 per cent of Brazilian GDP in 2003, and increased to 3.71 per cent up to 2015.<sup>3</sup>

Around the same time, the local market also experienced a change regarding the types of products that had more popular appeal. While in 2003, the most popular insurance products in Brazil were auto-related (auto insurance, extended warranty), representing 29.1 per cent of the total amount of earned premiums, in 2014 and 2015 life insurance products (such as cash value life insurance plans, credit life insurance products, personal accident insurance products and group life insurance products) already represented more than 60 per cent of the total amount of earned premiums.<sup>4</sup> This trend is largely the result of the substantial increase of the Brazilian middle class, a direct consequence of the country's economic stability.

The growth of and changing environment in the insurance and reinsurance markets, combined with the constant overview of the regulatory agencies to improve and align their regulation with local and foreign market realities, set the grounds for a significant increase in the number of merger and acquisition (M&A) deals conducted, and provided the necessary legal and regulatory security for the entry of new players and the development of new products in Brazil.

Notwithstanding the above, market experts unanimously believe that there still is plenty of room for growth in this market in terms of its participation in Brazil's GDP. Comparing

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3 SUSEP Report 2016, updated as of 20 July 2016.

4 Ibid.

the above figures with those of other countries, such as the United States (7.3 per cent), France (9.1 per cent), Japan (10.8 per cent) and the UK (10.6 per cent),<sup>5</sup> it is evident that there is a lot of growth space left.

## **II REGULATION**

### **i The insurance regulator**

As explained in Section I.i, *supra*, the entities that belong to the SNSP are currently regulated by CNSP and SUSEP, both of which are part of the Ministry of Finance.

According to Decree-Law No. 73/1966, CNSP has the authority to regulate the local insurance market with the objective of promoting and developing insurance activities in Brazil. SUSEP oversees the implementation of the rules established by CNSP and monitors the activities of participants of SNSP.

CNSP and SUSEP have recently enacted rules that seek to increase the level of transactions between insurers and reinsurers belonging to the same economic group; reduce the level of risk cession that needs to be allocated to local reinsurers; and increase the number of products under which underwritten risks may be freely ceded by local insurers to reinsurers in general (local, admitted and occasional). The expectation is that the rules will not only stimulate the growth of the local market, but also align its practices with markets of other jurisdictions.

### **ii The issuance of insurance products**

In Brazil, there is a general rule for residents and legal entities headquartered in the country that 'local risks should be run by local policies'. In other words, risks that may take place in Brazil should be covered by policies issued by local accredited insurance companies. This does not mean that foreign insurers cannot underwrite local risks for residents and legal entities headquartered in Brazil through policies issued abroad, but this practice is restricted to a narrow list of circumstances (e.g., whenever there is no local insurer interested in underwriting the local risks).

It is also worth stressing that prior to offering any type of insurance product to the public at large, regardless of the nature of the embedded coverage, the general and special terms and conditions of said product, as well as the related technical actuarial note (which sets forth the conditions for provisioning related to the insurance product) needs to be approved by SUSEP.

### **iii Authorisation to operate as an insurance company**

Authorisation to operate as a Brazilian insurance company is granted according to the business segment and the regions of the country where the entity seeking to do business will distribute its products. The authorisation procedure is divided into three major steps: prior approval, ratification and product approval.

A prior approval request must first be submitted to SUSEP by the entities that intend to control the insurance company. This request must be made prior to any organisational corporate act. The prior approval phase focuses on the financial and operational capacity of the shareholders in relation to the types of insurance segments that they intend to operate

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5 Ibid, footnote 3.

(life, non-life, private pension plans, etc.). Together with the prior approval request, an applicant also needs to submit a business plan to SUSEP detailing the estimated projections of the insurance company's business for a time span of at least three years. This phase tends to last between three to four months.

Once the prior approval of the project is granted by SUSEP, applicants must undertake to hold the relevant corporate acts for organising the insurance company, which are subsequently submitted to SUSEP for ratification purposes. The ratification phase seeks to confirm, through the documents submitted to SUSEP at this stage, whether the organisational structure described in the prior approval phase was duly implemented by the insurer's controlling shareholders; and to check whether the minimum capital requirements (which vary according to the types and number of products the insurance company intends to offer to the public at large, and the regions of the country in which it wishes to operate) were duly met. This phase usually lasts between three and six months, and SUSEP has the prerogative to summon the controlling shareholders of the newly organised insurance company for an explanatory interview should it deem this necessary. Only after the ratification is granted will the above-mentioned organisational corporate acts be duly registered with the Board of Trade, thereby becoming valid before third parties.

Even though the authorisation to operate is granted by SUSEP in the same document in which it ratifies the resolutions taken in the insurer's organisational corporate acts, the insurer still needs to file before SUSEP a product approval request enabling it to sell its insurance products within Brazil. During this third and last phase, which lasts between three and six months, the insurer submits to SUSEP the documents related to the products it intends to sell to the public at large (including the drafts of the general terms and conditions of each product, and the respective technical actuarial note or notes).

M&A involving local entities that comprise SNSP are also subject to the prior approval and ratification proceedings described above.

#### **iv Other regulatory requirements of insurance companies**

There are other restrictions inherent in insurance and reinsurance activities, most of which seek to protect insured parties by preventing insurers from engaging in several types of transactions, especially with assets and funds of the technical provisions of each product. A good example of this is the rule that forbids entities regulated by SUSEP from granting any type of guarantee or security to any third party; and from granting, receiving, or both, any loan to or from any related parties (shareholders, managers, subsidiaries or any affiliates).

It is worth noting that Brazilian insurance companies are not subject to the insolvency and bankruptcy laws applicable to non-regulated entities. If an insurance company is in a dire financial situation, it will be subject to the following specific procedures originally created to target financial institutions: intervention, extrajudicial liquidation and the temporary special management regime. SUSEP is entitled to check the solvency situation of all entities accredited to do business within SNSP and, if necessary, implement the above proceedings. This authority may also place insurance companies under a fiscal management regime,<sup>6</sup> which is essentially a measure under which SUSEP allocates one of its agents to supervise all

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<sup>6</sup> As provided in Decree-Law No. 73/1966 and in Decree No. 60,459/1967.

activities of the regulated entity that are not meeting the applicable solvency requirements. The supervisor agent has broad powers to conduct – jointly with the entity’s management – the latter’s business, and must keep SUSEP informed about all activities of said company.

As a general rule, insurance companies are not subject to bankruptcy. They can, however, be adjudicated bankrupt under two specific circumstances: if a filing for extrajudicial liquidation is issued, but the assets are not enough to settle its liabilities with at least half of its unsecured creditors; or if there is sufficient evidence of bankruptcy crime.

#### **v Reinsurance and retrocession**

Reinsurance and retrocession activities can be carried out in Brazil by the following types of reinsurers, all of which need to be accredited as such by SUSEP prior to engaging in any related activities:

- a* Local reinsurers must be organised as joint-stock companies headquartered in Brazil. Such entities must engage exclusively in reinsurance and retrocession activities (with exclusive corporate purpose). The proceedings to obtain a prior authorisation to operate, transfer control, and elect officers and directors, as well as the minimum capital rules, are the same as those applicable to local insurers. Since these rules are more stringent, there are less local reinsurers than admitted or occasional reinsurers doing business in Brazil. Currently, Brazil’s biggest local reinsurer is still IRB.
- b* Admitted reinsurers may be headquartered abroad, but need to have a representative office in Brazil. The representative office must be organised either as a joint-stock or limited liability company, but must have as its exclusive corporate purpose the representation of the offshore admitted reinsurer in reinsurance and retrocession transactions. There are some eligibility requirements that must be met by this type of reinsurer for purposes of accreditation, in particular the requirements to opening a local bank account and to keep, at all times, a balance of US\$5 million in such account. The representative office’s management must follow the same ratification rules applicable to local insurers upon the election, appointment or replacement of its officer or director, or both.
- c* Occasional reinsurers are in many ways very similar to admitted reinsurers, the only difference being that they do not need to have a representative office in Brazil. For this reason, eligibility requirements for purposes of accreditation by SUSEP are more stringent than those applicable to admitted reinsurers.

All types of reinsurers accredited to do business in Brazil must report to SUSEP periodically and – in the case of admitted and occasional reinsurers – renew their licences before such authority on an annual basis.

Resolution CNSP No. 168/2007 provides a limitation for risk cession between local insurers and reinsurers admitted to do business in Brazil. According to the current applicable regulatory provisions, local reinsurers have a pre-emptive right to underwrite at least 30 per cent of premiums assigned by local insurers in reinsurance transactions. This percentage will be gradually reduced as follows:

- a* to 25 per cent in 2018;
- b* to 20 per cent in 2019; and
- c* to 15 per cent in 2020.

The remaining portion may be reinsured by admitted and occasional reinsurers.

The regulation also determines that insurance companies may only assign 30 per cent of the premium of each considered coverage to foreign reinsurers that belong to its economic group. This limit will be gradually increased as follows:

- a* to 45 per cent in 2018;
- b* to 60 per cent in 2019; and
- c* to 75 per cent in 2020.

The objective of such regulation is to foster more competition in the Brazilian reinsurance market and align it with global practices and tendencies. Market experts predict that the increase in this limit will also lead to more investment in local reinsurance activities.

#### **vi Compulsory insurance**

The contracting of certain insurance coverage is mandatory according to the applicable Brazilian law and regulations, such as property insurance with respect to damages to assets and facilities of legal entities headquartered in Brazil arising from fire, lightning and explosion; and civil liability insurance for damages caused to third parties by land-based vehicles.

The need to contract mandatory coverage prescribed by law varies according to the activities conducted by the Brazilian entities or individuals (except for the above-mentioned property insurance, which must be contracted by all legal entities headquartered in Brazil).

### **III INSURANCE AND REINSURANCE LAW**

#### **i Sources of law**

Brazil's legal system is based on civil law; therefore, its framework is composed of numerous laws and legal codes. For this reason, the Brazilian insurance market is not regulated by a single law or code, but is governed by several different types of legal documents, including the following:

- a* the Civil Code (enacted by Law No. 10,406/2001), which dedicates an entire chapter to insurance contracts and the main principles that must govern the relationship between insured and insurer;
- b* Decree-Law No. 73/1966, which is still in full force and effect, and which allows the regulation of this specific activity and market through regulations enacted by CNSP and SUSEP; and
- c* Supplementary Law No. 126/2007, which sets forth the main rules for reinsurance and retrocession transactions in Brazil after dismantling IRB's monopoly in this area.

Notwithstanding the above, given the adhesive nature of insurance policies (there is no arm's-length negotiation of their terms and conditions), the interpretation of insurance agreements by the courts tend to protect insureds. Protection tends to be more intense in cases where the insured is a consumer (especially under the Consumer Protection Code enacted by Law No. 8,078/1990).

#### **ii Making the contract**

According to the Civil Code, the main elements that have to be present in insurance contracts are the identification of the parties (insurer, insured, beneficiaries, policyholder, insurance taker), amount of the premium, details of the obligation to indemnify (claim notification and regulation rules), term of effectiveness, limit of liability and covered risks.

As a general rule, insurance coverage has to be contracted by means of the insured's signature on a written proposal. Local regulation, however, already admits the contracting of policies through virtual channels via electronic signatures, provided that certain minimum conditions are met.

Automatic coverage renewal may also take place, but only once. Further renewal will depend upon express agreement by the parties.

At the time of placement, the applicable law and regulations demand the exchange of certain information between the insurance company and insured parties. This exchange of information must always be ruled by the principle of good faith in such a way that the necessary circumstances involving the risk and coverage are adequately explained to the respective counterparties. In this regard, should the insured party fail to provide the requested information (or omit relevant data), the insurance company may refuse to cover any claims that would otherwise be covered under the terms and conditions of the policy issued to the insured party.

The insurance company, in its turn, also has to provide very clear and objective information to the insured parties regarding the specific terms of the coverage being taken out, especially the events that are excluded from coverage, limits to the right to indemnification (maximum indemnification limits, deductibles, etc.) and the claim regulation procedures to be carried out in the event that a covered claim takes place.

As mentioned in Section II.iii, *supra*, the wording of any insurance product's general and special terms and conditions (as well as its respective technical actuarial notes) must be submitted to SUSEP's analysis prior to being distributed to the public at large. At this stage, SUSEP will review and check whether the wording of such product meets the requirements established by the applicable regulation, and is drafted in a clear and objective manner so as to comply with the principles set forth by the Civil Code and Consumer Protection Code.

### **iii Interpreting the contract**

The interpreting of insurance contracts must abide by the general rules for interpretation of private contracts under Brazilian law.

The Civil Code establishes the general rules for interpretation of private transactions. In this sense, the interpretation of any contract between private parties should seek and comply with the genuine intention of the parties when entering into the transaction; the uses and customs or traditions of the place where it took place; and the principle of good faith of the contracting parties.

In addition to this general rule, the interpretation of insurance contracts is also subject to the rules of interpretation of the adhesive nature of contracts (set forth by the Civil Code and Consumer Protection Code, as the case may be), which determines that in the event that any provisions are ambiguous or contradictory, the contract must be interpreted in favour of the party who adhered to such contract.

### **iv Intermediaries and the role of the broker**

The distribution of insurance contracts may be carried out either directly by the insurer or its agents (without using any broker or brokerage firm), or through an accredited insurance broker or brokerage firm.

According to Law No. 4,594/1964, insurance brokers are the only legally authorised intermediaries for the distribution and promotion of insurance contracts, policies and plans.

To conduct insurance brokerage activities, an individual or company needs to be previously accredited for such by SUSEP. The accreditation entails undergoing a procedure before such authority, in which the individual or firm will have to provide evidence that all the eligibility requirements for accreditation purposes have been duly met. In the case of brokerage firms, the above-mentioned requirements include the following: being headquartered in Brazil, having at least one officer who is an accredited broker and having insurance brokerage activities among the businesses listed in its corporate purpose. Once an applicant firm is accredited as a brokerage company, it must keep SUSEP updated about any changes relating to its corporate documents and governance or its organisational structure.

#### **v Claims**

Claim regulation procedures for payment of indemnifications by the insurer are generally triggered by the remittance of a claim notice by the insured or beneficiary to the insurer as soon as the insured or beneficiary becomes aware of a potentially covered event (claim).

Upon receipt of the claim notice, the insurance company will start procedures to verify the information provided by the insured party, whether the claim is covered by the policy and the amount of the sum to be paid as indemnification. This procedure is known as claim adjustment or regulation. SUSEP establishes a maximum term for claim adjustment proceedings, which varies according to the type of insurance product. In general, the term is 30 days, counted as from the date on which all documents requested from the insured or beneficiary for claim regulation purposes are forwarded by the latter to the insurer (SUSEP allows an insurance company to make one request for additional documents and information during the above-mentioned term, the counting of which is suspended until such additional request is met by the insured or beneficiary).

## **IV DISPUTE RESOLUTION**

### **i General remarks**

Although the Brazilian insurance market has recently grown considerably, as yet there are no relevant court precedents or specialised courts for insurance and reinsurance matters. The lack of familiarity of judges (especially those of lower instances) with the laws and regulations applicable to insurance and the lengthy nature of judicial proceedings (i.e., some proceedings may last more than 10 years) have caused complex insurance-related disputes to end up being decided in arbitration courts with experience in this field of law.

Owing to the current economic crisis, insurance companies are expected to be more stringent and rigorous in their claim regulation procedures. This most likely will result in an increase in the volume of litigation and arbitration procedures concerning insurance matters.

### **ii Litigation**

Disputes involving insurance matters vary according to the underlying coverage.

Life insurance policies are considered extrajudicial enforcement instruments and, for this reason, provide grounds for the insured party to obtain the due indemnification through a simpler proceeding before the courts. This procedure does not require a court's analysis of the rights of the parties; the objective of such procedure is simply to collect the due amounts.

When it comes to other types of insurance products, discussions will be carried out through a more time-consuming cognitive procedure. This procedure will assess the rights of the parties and, if necessary, courts will order the due payment of indemnification.

The New Civil Procedure Code (NCPC), which became effective in March 2016, attempts to make litigation less time-consuming by developing and enhancing the rules concerning alternative dispute resolution mechanisms (especially arbitration and mediation); rendering former court decisions by the superior courts binding; and making a decision in a single case the model for court decisions in cases that are similar.

The NCPC's incentive for conciliation and mediation is clear, since judges, upon receiving any petition, shall establish a conciliation or mediation hearing to be carried out by experts in the matter who will try to resolve the situation by consensus. This rationale is only applicable to cognitive procedures.

The defendant will only have to present its defence arguments after all conciliation alternatives have been unsuccessful. Parties shall have the opportunity to produce all necessary pieces of evidence, especially documents, expert reports and testimonies.

As mentioned above, decisions of the superior courts have also become binding on the lower courts. The objective of this innovation is to diffuse the typical aspects of common law systems that grant more legal certainty and predictability regarding court decisions, so that similar cases are decided the same way. The most significant change brought about by the NCPC is the mechanism for the resolution of similar cases. A judgment in one single case shall be taken as a model for court decisions for all other similar cases in the lower courts.

The courts are not specialised in insurance litigation to the extent that judges have very broad experience, and they are frequently geared towards civil and consumer protection law. In addition to this, there are countless procedures with similar circumstances. The standardisation of court decisions in this regard will avoid extensive discussions in every situation.

The Superior Court of Justice has recently been granting technical decisions involving insurance-related issues. Four decisions are worth mentioning:

- a* the Consumer Protection Code shall only be applicable in situations where the covered assets are property of the insured. In cases where the damaged assets belong to a third party, the consumer relation is disregarded, in which case certain restrictions that would not be acceptable regarding consumers may be applied;
- b* regarding civil liability insurance, the victim will be allowed to not only sue the party that caused the damage, but also to sue both the responsible party and its respective insurance company in a court proceeding seeking indemnification or reimbursement of losses incurred;
- c* the total loss of the covered asset will not always result in the payment of the full limit of liability. The indemnification must be limited to the amount of the losses actually suffered by the insured party; and
- d* as to life insurance products, the insured party and his or her beneficiaries will not be entitled to indemnification if a certain medical condition was deliberately not mentioned to the insurer prior to the policy being issued.

Such decisions evidence the fact that the courts are evolving in terms of insurance matters, although they have not yet reached the necessary level of sophistication of other jurisdictions such as the UK and the US.

### **iii Arbitration**

Arbitration has gained a lot of attention in Brazil, as demonstrated by the development of arbitration chambers, specialised courses and lawyers focused on this practice. Recent adjustments to the applicable law have provided more solidity regarding this alternative dispute resolution mechanism.

The growth in popularity of arbitration is connected to the following:

- a* it is a faster procedure;
- b* arbitrators are chosen by the parties and may be more experienced on specific technical questions (as is the case regarding insurance and reinsurance matters);
- c* parties may choose the applicable law;
- d* the procedure is more flexible; and
- e* arbitration decisions may be enforced by courts.

These characteristics make arbitration procedures more attractive than regular court procedures, especially considering that insurance matters are highly specific and complex.

Sometimes parties resort to the courts to obtain urgency measures or to examine the regularity of the arbitration clause set forth in the underlying insurance policy.

Court decisions have recognised the validity of arbitration clauses for civil and commercial matters. Courts have challenged the mandatory inclusion of arbitration clauses when consumers are involved. In this situation, an arbitration procedure shall only be established if the consumers expressly agree to it. Otherwise, the matter will be decided by the courts.

In fact, SUSEP encourages those entities that belong to SNSP and operate big risk portfolios to include specific arbitration clauses in the general terms and conditions of this type of product.

### **iv Mediation**

The use of mediation procedures has also grown in the past year. As stated above, a court procedure starts with the judge receiving a complaint and establishing a conciliation or mediation hearing. Nevertheless, Law No. 13,140/2015, applicable to mediation, also disciplines extrajudicial mediation.

An agreement executed among the parties may determine that they will be subject to extrajudicial mediation, regardless of any arbitration or court procedure. If any of such procedures have already begun, such procedures will be suspended until the end of the negotiations. In the event that there is no ongoing procedure, the limitation period shall be suspended until the end of the negotiations.

The parties may also determine the form of the mediation, including its date, the place of any meetings and the mediator.

The main characteristics of mediation are informality, good faith and confidentiality. The mediation seeks to resolve conflicts in a consensual manner, without resorting to any court or arbitration proceedings (but not prejudicing the right to resort to said dispute resolution mechanisms).

## **V YEAR IN REVIEW**

Important changes in Brazil's insurance and reinsurance regulation took place in 2016, and 2017 seems set to follow a similar pattern. The authorities are constantly seeking to improve

and adapt the country's regulations to the reality of the market. In 2016, some of the main changes related to (1) the proceedings that need to be met for the organisation of local insurers, corporate restructuring transactions involving regulated entities, M&A activity, and election, appointment, dismissal and resignation of members of decision-making bodies of such regulated entities; and (2) directors and officers (D&O) insurance.

**i Organisation, corporate reorganisations, M&A, and election and dismissal of managers and directors**

Resolution CNSP No. 330/2015, Circular SUSEP No. 529/2016 and Circular SUSEP No. 526/2016 considerably changed the rules for the organisation, corporate reorganisation and procedures related to the election, appointment, dismissal and resignation of members of decision-making bodies of SNSP-regulated entities, and became effective in March 2016.

**ii Specific D&O insurance regulation**

Although D&O insurance has been offered to the public since the 1990s, Circular SUSEP No. 541/2016 is the first D&O insurance regulation enacted in Brazil. The main change arising from said normative act is the possibility of the insurance taker to take out specific coverage for losses arising from or incurred as a result of fines imposed to the insured individuals (which was previously not allowed). The regulation became effective in October 2016.<sup>7</sup> Insurance companies have until 1 June 2017 to ensure that their D&O insurance products comply with Circular SUSEP No. 541/2016.

## **VI OUTLOOK AND CONCLUSIONS**

The current recession hit Brazil's economy hard, and the insurance and reinsurance sector was the only segment of the economy that experienced growth between 2015 and 2016. In spite of the economic downturn that the country is still experiencing, market experts believe that there is still room for growth in this segment's contribution to Brazil's GDP. Growth will take place at a slower pace than that seen between 2002 and 2014, but there will nevertheless be growth. Key factors for such increase are:

- a* clearer and less bureaucratic regulations for doing business in this segment;
- b* a reduction in the regulatory restrictions in the reinsurance sector, enabling more participation by offshore reinsurers;
- c* an increase in the demand for liability products given the country's economic atmosphere (directors' and officers' liability insurance, errors and omissions insurance, civil liability insurance, engineering risks insurance, performance bonds insurance, etc.); and
- d* new infrastructure construction stimulus programmes.

The above-mentioned changes are sufficient evidence that – in spite of the current pessimism surrounding Brazil's economy – insurance and reinsurance activities still offer good business opportunities. Every year, the rules are being simplified, and are becoming more market-oriented and more open to foreign competition.

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<sup>7</sup> Market experts are in negotiation with SUSEP to change some provisions of this regulation, but so far no amendments have been made.

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