

RAB Response to SUSEP Public Consultation Notice No. 14/2025

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The Insurance Europe Reinsurance Advisory Board (RAB) welcomes the opportunity to comment on SUSEP's Public Consultation No. 14/2025. We appreciate SUSEP's openness to industry feedback and the opportunity to contribute to the development of a robust regulatory framework for the Brazilian reinsurance market.

The RAB notes that the new law and its implementing regulation introduce significant changes for the reinsurance sector, and we welcome the opportunity for dialogue with SUSEP and Brazilian stakeholders. Our comments below reflect the collective expertise of our members, including direct input from colleagues in Brazil and Europe.

1. Claims Cooperation and Control Clauses

SUSEP's Explanatory Memorandum suggests that the inclusion of claims cooperation clauses is inconsistent with the draft Regulation. Any prohibition on claims cooperation would be a concern, especially for large and complex risks. In practice, reinsurers often appoint adjusters and require prior discussion before strategic claims decisions, particularly where the cedent lacks the necessary expertise. This is not only a market norm in Brazil but also essential for effective risk management and operational efficiency.

For large, complex, or highly technical risks, reinsurers often hold specialized expertise, global claims experience, and access to technical resources that materially contribute to the quality and consistency of claims handling. Their involvement through structured cooperation mechanisms supports sound risk management, facilitates early alignment on coverage issues, and reduces the likelihood of disputes.

It is also important to note that reinsurer participation does not alter the insurer's legal responsibilities toward policyholders, nor does it transfer decision-making authority over indemnification. Rather, these clauses serve as governance tools that help ensure coordinated handling of high-impact claims, particularly in programs involving multiple international markets.

The RAB believes the Explanatory Memorandum's interpretation of the law is overly restrictive and should be reconsidered. Given the well-established nature of these practices in mature jurisdictions and their longstanding use in Brazil, we support efforts to propose adjustments and recommend that SUSEP allow for practical cooperation provisions, or at a minimum, alternative wording that preserves the ability for meaningful reinsurer involvement in claims.

2. Definition of Reinsurance Contract

The current draft treats reinsurance contracts as if they were coinsurance agreements, without sufficient recognition of their broader functions, including portfolio coverage, catastrophe protection, and financial safeguards. The RAB recommends clarifying the definition to reflect the specific nature and complexity of reinsurance operations, as highlighted by both European and Brazilian market participants.

3. Cession Limits (Article 8)

The regulation maintains the 70% cession limit for retrocession but removes previous exceptions for financial, agro, and nuclear risks. While the new waiver process for exceeding 70% is a positive development, removing these exceptions could have adverse capital and compliance implications for certain lines of business. The RAB recommends reinstating the exceptions for financial, agro, and nuclear risks, or at least providing clear guidance on the waiver process and technical justification requirements.

4. Formalisation of Reinsurance Contracts (Article 12)

Reducing the contract formalisation deadline from 180 to 60 days is likely to create operational challenges, particularly for facultative contracts, where term alignment often occurs later. The RAB suggests a phased approach: retain the current 180-day period for the first six months after the regulation's entry into force, then transition to a 90-day deadline. This would allow the market to adapt without undue disruption.

5. Acceptance by Silence (Article 12, §10)

To enhance legal certainty, the RAB recommends that the regulation specify that proof of the reinsurer's receipt of the proposal - using the means indicated by the reinsurer - shall constitute evidence of contracted coverage in the event of silence. This would align with international best practice and provide clarity for all parties. Also, it would be important to clarify that the 20 days deadline refers to business days, in order to avoid misinterpretations.

6. Contractual Clause for Reinsurance Recovery

Including a mandatory clause specifying procedures and documents for reinsurance recovery is positive in relevant cases, especially when claims cooperation/control is prohibited. However, for smaller risks, this may add unnecessary bureaucracy. The RAB suggests that the regulation allow for flexibility, with requirements tailored by line of business and risk profile.

7. Broker Transfers (Article 26)

The RAB recommends that SUSEP establish a mandatory timeframe and penalties for the transfer of premiums, recoveries, and other amounts by brokers. This would help prevent delays in indemnity payments and mitigate the risk of reinsurer liability.

8. Dispute Resolution and Arbitration (Article 15)

The proposed requirement for all reinsurance and retrocession contracts to submit disputes exclusively to Brazilian law and jurisdiction represents a significant departure from current practice. Under Resolução CNSP nº 451/2022, parties were permitted to include arbitration clauses and select foreign law and jurisdiction. Restricting this contractual freedom could create friction in the international reinsurance market and appears inconsistent with Article 129 of the new Insurance Law, which applies mandatory jurisdiction only to primary insurance contracts. The RAB recommends that SUSEP allow an arbitration carve-out for reinsurance and retrocession, enabling parties to agree on arbitration and choose governing law and jurisdiction. This approach would preserve Brazil's strong arbitration framework while supporting market stability and international best practice.

9. Administrative Sanctions and Transition Period

The RAB observes that the draft regulation introduces a strict regime under which non-compliance constitutes a direct regulatory infraction. Given the complexity of the new framework, the RAB requests a clear definition of the standards for determining infractions and outline the process for challenging sanctions. Furthermore, we propose a grace or transition period before enforcement begins, allowing market participants to adapt to the new requirements without undue disruption.

The RAB appreciates the opportunity to contribute to this consultation and stands ready to engage further with SUSEP.

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.

Through its member bodies, the RAB represents more than 50% of total worldwide reinsurance premium income. The RAB promotes a stable, innovative and competitive market environment. It further promotes a regulatory and trading framework that facilitates global risk transfer through reinsurance and other insurance-linked capital solutions.