

# INSURANCE

## Newsletter

NO. 1 / APRIL 2020 TO JUNE 2020

This Insurance Newsletter provides information on the main administrative and regulatory actions and legal texts regarding the Insurance and Reinsurance sector in Brazil. This material is for informative purposes only and should not be used for decision making. Our lawyers are available to provide specific legal advice.

[INSURANCE AND REINSURANCE PRATICE](#)

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### **INSURANCE AND REINSURANCE TEAM**

[Marcia Cicarelli](#), [André Alarcon](#), [Luciana Prado](#), [Camila Prado](#), [Laura Pelegrini](#), [Valéria Santos](#), [Juliana Piolla](#), [Raquel Valente](#), [André Perez](#), [Thais Muchiuti](#), [Ludimilla Rodrigues](#) e [Lucas Nascimento](#).

DEMAREST

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- INSURANCE AND REINSURANCE
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### UPCOMING EVENTS

On March 23, 2020, **Marcia Cicarelli**, partner from the Insurance and Reinsurance team at Demarest, gave an interview for Demarest's Covid-19 Information Portal regarding the effects of the pandemic on multiple branches of the insurance Market. [Read in full.](#)

On April 6, 2020, **Marcia Cicarelli**, partner from the Insurance and Reinsurance team at Demarest, recorded an episode of "Advocast", Demarest's official podcast, regarding the challenges faced by the insurance market resulting from the Covid-19 pandemic. [Read in full.](#)

On April 27, 2020, Demarest announced the arrival of newly hired partner **Luciana Prado** to join the Insurance and Reinsurance team at the firm. [Read in full.](#) The entry of the new partner was covered in the national and international press on the portals [Migalhas](#), [Latin Lawyer](#), [LexLatin](#) and [Conjur.](#)

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On April 27, 2020, **Marcia Cicarelli**, partner of the Insurance and Reinsurance team at Demarest Advogados, published an article entitled “Coronavirus and Cyber Risks Insurance” in the Academic Opinion Report of the National Academy of Insurance and Pension Plans (“ANSP”). [Read in full](#)

On April 28, 2020, **Marcia Cicarelli**, partner of the Insurance and Reinsurance team of Demarest Advogados, participated in a Webinar on the “Impacts of COVID-19 in the Main Areas of Law” hosted by Demarest.

On May 05, 2020, **Luciana Prado**, partner of the Insurance and Reinsurance team at Demarest Advogados, published the article “What about the insurance contracts with exclusion for pandemics?” on digital blog Sonho Seguro. [Read in full](#)

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On May 05, 2020, **Laura Pelegrini**, senior lawyer of the Insurance and Reinsurance team at Demarest Advogados and President of the GNT of Personal Insurance in the Brazilian section of AIDA, participated as a speaker in a seminar hosted by AIDA about the impacts of Covid-19 on coverage and issues related to personal insurance. [Read in full](#)

On June 25, 2020, **Marcia Cicarelli**, partner of the Insurance and Reinsurance team at Demarest Advogados, was one of the speakers for the Webinar promoted by ANSP (National Academy of Insurance and Welfare), on the topic "Force Majeure in Public and Private Contracts and Guarantee Insurance". [Read in full](#)

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SUSEP PUBLIC CONSULTATION No. 005/2020, issued on April 9, 2020

To obtain inputs regarding Susep's circular which sets out specific internal measures to prevent and oppose financial "laundering" crimes or concealment of assets, rights and valuables or relatable crimes, the monitoring of transactions performed, including transactions offers with the politically exposed, as well as protection and restraint against terrorist financing.

SUSEP CIRCULAR No. 600/2020, issued on April 14, 2020

Regulates the financial assistance concession by open complementary pension fund entities and insurance companies, as well as their practice as financial institutions intermediaries.

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SUSEP CIRCULAR No. 601/2020 published on April 17,2020

Provides for the conditions for registration of guarantee insurance operations in systems approved and managed by registering entities accredited by SUSEP.

PROVISIONAL MEASURE No. 955/2020 published on April 20, 2020

Repeals Provisional Measure No. 905, of November 11, 2019, which changed labor legislation and deregulated the insurance broker profession.

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SUSEP CIRCULAR No. 602/2020, published on April 24, 2020

Provides for the re-registration of insurance, capitalization, open supplementary private pension and microinsurance brokers, whether natural persons or legal entities, and sets forth other provisions.

PUBLIC CONSULTATION NOTICE SUSEP No. 007/2020, published on May 12, 2020

Presents a draft of a new normative rule that will regulate the handling of consumer complaints and reports of non-compliance with industry regulatory standards.

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SUSEP CIRCULAR No. 603/2020, published on May 14, 2020

Provides for operating procedures for contracting insurance abroad, and provides for other measures.

PUBLIC CONSULTATION NOTICE No. 010/2020, published on May 25, 2020

Submitted for public consultation a draft Resolution amending CNSP Resolution No. 243 of December 6, 2011, which provides for administrative sanctions for supervised entities and regulates the investigation and administrative sanctioning process within SUSEP.



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SUSEP PUBLIC CONSULTATION No. 011/2020, issued on May 28, 2020

To obtain inputs on the draft of the National Private Insurance Board (CNSP) Resolution which sets out the Special Regimes of Fiscal Administration, Intervention and Extrajudicial and Common Liquidation, applicable to insurance companies, capitalization companies, open complementary pension fund entities and local reinsurance companies.

The deadline was extended for a further ten days by Susep Public Consultation No. 12/2020.

SUSEP CIRCULAR No. 605/2020, issued on May 28, 2020

Establishes a deadline and provisions for the storing of documents regarding insurance, coinsurance, reinsurance, capitalization, retrocession, open complementary pension and brokering operations.

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**CNSP RESOLUTION No. 384/2020 published on June 10, 2020**

Provides for the operation of capitalization, the modalities, preparation, operation and commercialization of capitalization bonds as well as provision for other measures.

**CNSP RESOLUTION No. 386/2020 published on June 10, 2020**

Repeals 51 (fifty-one) Resolutions of the National Private Insurance Council (CNSP), based on Articles 1, 7 and 8 of Decree No. 10,139, of November 28, 2019.

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RESOLUTION CNSP No. 387/2020, published on June 10, 2020

Repeals the sole paragraph and the caput of Article 14 of Annex I of CNSP Resolution No. 330, of December 9, 2015, which provided for the registration as an admitted reinsurer of Lloyd's members.

SUSEP CIRCULAR No. 606/2020, published on May 28, 2020

Provides for the possibility of changing the status of admitted reinsurer's registration to eventual reinsurer's registration, including Lloyds.

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**PREVIC INSTRUCTION No. 24 of 13 April 2020, published on April 17, 2020**

Establishes procedures and defines deadlines for the analysis of applications within the scope of the regulatory competence of the Directorate of Licensing (Dilic) as well as providing for other measures.

**PREVIC INSTRUCTION No. 25 of 22 April 2020, published on April 24, 2020**

Establishes the procedures for the execution by Pension Fund Entities of the measures determined by Law No. 13,810, of March 8, 2019, which provides for compliance with the sanctions imposed by Brazilian United Nations Security Council resolutions.

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**ORDINANCE No. 292 of April 8th, 2020, issued on April 24, 2020.**

Announces the Interest Tax for Period Structure, for the accounting year of 2020, subject to Previc Normative Ruling No. 10, of November 30, 2018.

**ORDINANCE No. 324 of April 27th, 2020, issued on April 24, 2020.**

Establishes the procedures and documents necessary for instructing the licensing processes requirements by EFPC, provided for in Previc Normative Ruling No. 24 of April 13, 2020, which shall conform to the terms of this Ordinance.

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### CNSP RESOLUTION No. 385/2020, published on June 10, 2020

Provides for the coverages that can be offered to closed supplementary pension entities, one of the main novelties being the introduction of the possibility of insurance companies operating in damage insurance to offer stop loss insurance in the event of the insurable part of risk retention by EFPC , as a deductible, for hedges structured in terms of defined benefit or variable contribution.

### ANS RESOLUTION No. 458, published on June 29, 2020

Amends Normative Resolution - RN No. 428 of November 7, 2017, which provides for the List of Health Procedures and Events within the scope of Supplementary Health, to regulate mandatory coverage and the use of serological tests for infection by Coronavirus (COVID-19), in compliance with the judicial determination issued in the records of Public Civil Action No. 0810140-15.2020.4.05.8300.

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## **DEMAREST INFORMATION PORTAL: COVID-19 AND ITS LEGAL IMPACTS**

Demarest Advogados structured a multidisciplinary team with partners from all practice areas and sectors to analyze the current social and economic situation and define strategies to mitigate the impacts of the Covid-19 pandemic.

The information portal contains analyses, articles, client alerts, Q&As and media news, with the participation of partners and invited professionals.

[Read in full](#)

## **ENACTMENT OF LAW No. 14,010/2020, OF JUNE 10, 2020, WHICH INSTITUTES RULES WITH DIRECT IMPLICATIONS REGARDING THE INSURANCE CONTRACT**

Law No. 14,010/2020 establishes the Emergency and Transitional Legal Regime, providing transitional and emergency rules for the regulation of private legal relations due to the Covid-19 pandemic.

Under the terms of Article 3 and paragraphs of the Law, there are new rules for impediments and suspending prescriptive and statutory limitation terms during the pandemic, which directly affect the insurance market.

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## **STANDARDS THAT RAISED THE TAXES ON THE PROFITS OF INSURERS AND FINANCIAL INSTITUTIONS ARE CONSTITUTIONAL (STF)**

The Plenary of the Federal Supreme Court (STF), in the virtual session adjourned on June 15, 2020, unanimously dismissed two Direct Actions of Unconstitutionality (ADIs 4101 and 5485) that challenged rules that imposed differentiated Social Contribution on Net Profit (CSLL) rates for the insurance and financial markets.

The National Confederation of General Insurance, Private Pension and Life, Supplementary Health and Capitalization Companies (CNSeg) challenged the increase from 15% to 20% in the CSLL rate for insurers.

[Read in full](#)

## **PANDEMIC REDUCES NATIONAL INSURANCE INDUSTRY REVENUE BY 26.1% IN APRIL**

The Brazilian insurance industry's revenue fell 21.4% in April compared to the previous month, and 26.1% compared to April of last year, reaching BRL 15.7 billion, the lowest premium collection since February 2016, when it totaled BRL 15.026 billion. The figures were released on June 17, 2020 in Rio de Janeiro and do not include Supplementary Health and Personal Injury Insurance for Land Motor Vehicles.

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## **SUPERIOR COURT OF JUSTICE (STJ) MINISTER AUTHORIZES THE REPLACEMENT OF PECUNIARY DEPOSIT FOR LEGAL INSURANCE GUARANTEE**

Minister Ricardo Villas Bôas Cueva authorized the replacement of pecuniary deposit for legal insurance guarantee in a lawsuit which had two attachment orders fulfilled, in the amounts of BRL 130,5 thousand and BRL 650 thousand.

According to the minister, the replacement is allowed, provided that the amount is increased by 30% in the legal insurance guarantee. The ruling cites precedents which denote the need for compatibility with the lesser financial burden to the debtor.

[Read in full](#)

## **SUPERIOR COURT OF JUSTICE REVISES UNDERSTANDING AND ALLOWS LIFE INSURANCE READJUSTMENT BY AGE RANGE**

The Third Panel of the Superior Court of Justice revised its understanding and allowed life insurance readjustment by age range, deeming valid the readjustment clause.

The board substantiated with the scenario in which the contract had already provided for another form of compensation regarding the so-called elderly insured risk deviation, as in the cases of prior financial reserve composition to cover such deviation.

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## **ANS STRENGTHENS THE COVERAGE OBLIGATION FOR DISTANCE SERVICE**

The National Supplementary Health Agency (ANS) reinforced the mandatory coverage of remote assistance (telehealth) to beneficiaries of health plans through a release sent to operators in compliance with the decision of Public Civil Action No. 0807782-77.2020.4.05.8300.

[Read in full](#)

## **ANS INCLUDES SEROLOGICAL TEST FOR COVID-19 IN THE ROLE OF MANDATORY COVERAGE**

The National Supplementary Health Agency (ANS) included in the list of health mandatory coverage the serological test for the novel Coronavirus.

The procedure becomes mandatory coverage for health plans in outpatient, hospital and referral segments, in cases where the patient presents or has presented specific clinical conditions.

The inclusion of this test in the List of Health Procedures and Events follows a judicial decision of Public Civil Action No. 0810140-15.2020.4.05.8300

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## **STJ ESTABLISHES LIMITATION PERIOD FOR REFUNDS OF COMPLEMENTARY PENSION CONTRIBUTION STATED ILLEGAL**

The Third Panel of the STJ ruled on an appeal regarding the limitation period for complementary pension contribution whose illegality was judicially recognized.

Minister Paulo de Tarso Sanseverino, the rapporteur of the appeal, established the fixed ten-year period and added that the pension fund's enrichment has a legal cause (the preexisting contractual relationship with the plan's participants), and is therefore does not present the grounds for unjust enrichment.

[Read in full](#)

## **EXECUTIVE BRANCH PROPOSAL GIVES ASSET INDEPENDENCE TO PENSION FUNDS**

For Minister Paulo Guedes, who signed the explanatory memorandum, the change may encourage small municipalities to join complementary pension plans.

The Complementary Law Project 164/20 of the Executive Branch guarantees the asset independence of each benefit plan in relation to other plans managed by the same fund and in relation to the equity of the pension fund itself.

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## **SUSEP DEVELOPS RATING METHODOLOGY FOR EVALUATION OF CONSOLIDATED RISK ASSESSMENT**

According to best international supervision practices, Susep is developing a Rating System in order to improve its supervision process.

The final classification will be confidential and communicated only to the supervised entity that is subject to the evaluation, which will not be permitted to disclose it. On June 3, SUSEP held a webinar to present the project for the implementation of the system and engage in dialogue with the sector about its proposal.

[Read in full](#)

## **PREVIC RELEASES RESULTS OF THE IMPACTS OF COVID-19 ON THE MANAGEMENT OF CLOSED COMPLEMENTARY PRIVATE PENSION ENTITIES**

In order to map and evaluate the consequences of the crisis caused by Covid-19, the National Complementary Welfare Superintendence (PREVIC) asked the Closed Complementary Private Pension Entities to send information on aspects related to governance, investments, liquidity, solvency, administration of pension plans and other information deemed important for assessing the functioning of those entities during this pandemic period.

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## **SUSEP HOSTS WEBINAR ON THE UPDATING OF SANCTIONING PROCESSES**

On June 19, 2020, the Superintendence of Private Insurance (SUSEP) hosted a webinar to broaden the dialogue with society on the changes in the sector proposed by the autonomous body which, among other actions, proposes the possibility of replacing the administrative sanctioning process with other instruments and supervisory measures.

The project aims to update CNSP Resolution 243/2011 and absorb part of the regulatory framework present in Resolution 97/2002, which will be repealed.

[See in full](#)

## **SUSEP HOSTS WEBINAR ON SPECIAL REGIMES**

On June 26, 2020, the Superintendence of Private Insurance (SUSEP) hosted a webinar on Special Regimes, with the purpose of discussing the CNSP Resolution on Special Regimes for Tax Management, Intervention and Extrajudicial and Ordinary Liquidation.

The Special Regimes aim to ensure the solidity, stability and regular operation of the National System of Insurance, Capitalization, Reinsurance and Pension Funds Entities.

[See in full](#)

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### **July 02, 2020 - WEBINAR COMPARATIVE D&O: HOW TO DEAL WITH INSOLVENCY AND BANKRUPTCY.**

**Marcia Cicarelli** will participate in a webinar hosted by Legalign Global, in partnership with Wotton & Kearney, BLD, DAC Beachcroft and Wilson Elser. [Subscription link](#)

### **July 10, 2020 - POST-COVID-19 SUPPLEMENTARY HEALTH WEBINAR: FROM M&A TO NEW PAYMENT MODELS**

**Luciana Prado** and **Marcia Cicarelli** will participate in a webinar hosted by Demarest. The registration link will be released soon.

### **July 08, 2020 – INSURANCE WEBINAR JUDICIAL GUARANTEE: A PRACTICAL APPROACH**

**Marcia Cicarelli** will participate in a webinar hosted by Lockton, Demarest and Junto Seguros. [Subscription Link](#)

### **July 14, 2020 - SECURITY AND CREDIT INSURANCE WEBINAR - ALTERNATIVES AND OPPORTUNITIES IN A POST-COVID WORLD**

**Luciana Prado** will participate in a webinar hosted by Euler Hermes and Demarest. [Subscription Link](#)

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