

NEWSLETTER No. 95

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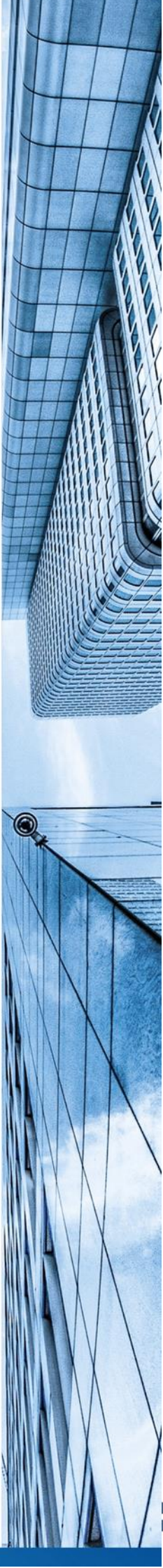
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SUMMARY

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NEW LEGAL FRAMEWORK FOR SECURITIZATION ENACTED

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NEW LEGAL FRAMEWORK FOR SECURITIZATION ENACTED

On August 4, 2022, Law No. 14,430/2022 was published, which covers, among other matters, the issuance of Insurance Risk Letters (*Letras de Risco de Seguro* – LRSs) by special purpose insurance companies (SSPEs), as well as general rules on securitization of credit rights and issuance of Receivables Certificates.

Law No. 14,430/2022 is the result of conversion of Provisional Measure No. 1,103/2022 (“[MP 1,103/2022](#)”), approved by the Chamber of Deputies on June 22, 2022 and by the Senate on July 14, 2022, and establishes the so-called Brazilian Securitization Legal Framework.

Among the main innovations of Law No. 14,430/2022 is the creation of the Insurance Risk Letter, a nominative credit instrument, freely transferrable and traded, representing the promise of payment in cash associated specifically with insurance and reinsurance risks. For all legal purposes, the LRSs are considered to be directly enforceable extrajudicial debt instruments.

The LRSs must be issued in book-entry form and exclusively by Special Purpose Insurance Companies, which have the purpose of engaging in transactions for acceptance of risks related to insurance, reinsurance, retrocession, private pension plans and health insurance plans.

According to Law No. 14,430/2022, among the possible entities that can assign risks to SSPEs are insurers, reinsurers, private pension plan operators and health plan operators, irrespective of having headquarters in Brazil.

The referred agents will remain fully responsible for payment of the indemnity or providing the proper coverage, except in cases of insolvency, liquidation or bankruptcy of the entity that transferred the risks. In these cases, with reservation made for certain situations defined in Law No. 14,430/2022, the SSPE that accepted the risk will be required to make direct payment of the portion of the indemnity or benefit corresponding to the assigned risk.

Under the terms of Law No. 14,430/2022, each transaction for acceptance of risks and all financing obtained by placement of LRS tied to risk acceptance will have independent equity (ring fencing) in relation to the other transactions carried out by a single SSPE, as well as in relation to the SSPE itself. For this reason, the equity involved in of each transaction may not be used for payment of obligations related to other transactions of the same SSPE. Instead, it must be earmarked exclusively for settlement of the associated LRSs and the respective payment of loss claims, administrative costs and tax obligations.

Further regarding issuance of LRSs by SSPEs, Law No. 14,430/2022 grants powers: (i) to the National Private Insurance Council (CNSP), among other attributions, to establish guidelines and standards referring to the contracts and acceptance by the SSPEs of the insurance and reinsurance risks, their financing through LRSs, and the conditions for issuing those instruments; (ii) to the CVM, to establish rules for the distribution and public offering of LRSs; and (iii) to the CNSP together with the National Monetary Council, to define rules for the activities of fiduciary agents in transactions for acceptance of risks regulated by Law No. 14,430/2022.

Additionally Law No. 14,430/2022 contains the legal definition of “securitization transaction”, which can be understood as the “acquisition of credit rights to back the issuance of certificates of receivables or other securities to investors, whose payment is primarily a condition for receiving resources from the credit rights and the other assets, rights and guarantees that support them”.

In light of this new definition of “securitization transaction”, Law No. 14,430/2022 allows the use of any type of credit right to underpin certificates of receivables. Until the issuance of MP No. 1,103/2022, such certificates could only be used to support real estate or agribusiness credit rights.

Law No. 14,430/2022 took effect on the date of its publication (August 4, 2022).

More information, as well as the full text of Law No. 14,430/2022, can be found at the “Planalto” portal at the website of the Brazilian Federal Government (www.gov.br/planalto).

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