

MARKET BULLETIN

REF: Y5023

Title	Brazil: Reinsurance Contract Formalisation Requirements
Purpose	<p>a) To provide an overview of contract formalisation requirements in Brazil following the release of Circular SUSEP 524/2016, and</p> <p>b) To provide managing agents with a checklist that assists in meeting these requirements.</p>
Type	Ad-hoc
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Date	22 September 2016
Deadline	None
Related links	Y4149 is replaced by the contents of this new bulletin in the area of reinsurance contract formalisation rules

Purpose

This Market Bulletin is to remind managing agents and brokers of contract formalisation requirements in Brazil following the release of Circular SUSEP 524/2016, and provides managing agents with a checklist that will assist in meeting these requirements.

Background

In January 2016 the Superintendent of the Private Insurance Superintendence (SUSEP) released Circular SUSEP 524/2016 in order to clarify existing provisions on contract formalisation of reinsurance transactions in Brazil. The Circular addressed a number of uncertainties around the application of Article 37 of CNSP Resolution 168/2007 in response to discussions and concerns previously raised with SUSEP by the market.

Following these changes, LITA issued an e-Alert¹ in February to compliance officers at managing agents and brokers outlining the principal changes brought about by Circular SUSEP 524/2016, which were also reflected on [Crystal](#). This Market Bulletin reproduces the guidance issued to compliance officers and amends Market Bulletin Y4149 of 16 April 2008, which in part outlined contract formalisation rules at the time the bulletin was issued. Given the evolution and extent of reinsurance contract formalisation rules in Brazil, this Market Bulletin also includes an Appendix with a checklist that Lloyd's has prepared to assist managing agents in meeting these requirements.

¹ *Compliance officers have access to this. Those interested in receiving a copy should contact their Compliance Officer.*

Please note – this guidance and the checklist provided by Lloyd's is for use by managing agents, brokers, coverholders and service companies operating at Lloyd's. It is designed to provide assistance and not assurance.²

Circular SUSEP 524/2016: Principal changes

Formalising contracts and endorsements by electronic means

The Circular most significantly clarified that SUSEP accepts the formalisation of reinsurance contracts to be done electronically, as well as by physical means – this also applies to any changes in terms, conditions and/or prevailing contract terms via endorsements. The cedant's receipt of a scanned copy of the formal contract, which shall be stored on any electronic or magnetic recording media, is admissible for the purposes of providing contractual certainty. No hard copies need to be stored if electronic copies are saved by the cedant.

Requirement for date and full signature

Endorsements – as well as original contracts – need to be signed by reinsurers, containing the date and identification of its representative and signatory to achieve contract certainty.

1. This means that Lloyd's underwriters have to sign contracts and endorsements with their full names.
2. For endorsements, the time frame for contractual certainty (270 days) begins with the validity of the endorsement and is separate from the signing of the original contract. Lloyd's underwriters are therefore required to add the date of signing to all endorsements.

Counter-signature of cedants waived for contractual compliance

The signing of the reinsurance contract by the reinsurer, containing the date and the identification of its representative and signatory will suffice for contract certainty purposes. However, the waiver for the requirement of the cedant's signature does not prevent the cedant and/or insurer from agreeing otherwise if it is deemed necessary for their own protection.

Acceptance of terms and conditions by the reinsurance broker

The acceptance of the terms and conditions of a contract by the reinsurance broker will not eliminate the requirement for the cedant to provide express consent for such terms and conditions. Additionally, a cover note issued by a reinsurance broker will not substitute the need for a proper reinsurance contract.

The above provisions also apply to retrocession contracts.

Please note that Article 37 of CNSP Resolution 168/2007 (as amended by CNSP Resolution 203/2009) remains in force and the new provisions of Circular 524/2016 complement and clarify the existing requirements.

English translations of Circular SUSEP 524/2016 and its provisions described above are available in [Crystal](#)³

² Whilst care has been taken in developing this guidance, Lloyd's does not make any representations or warranties as to its accuracy or completeness and expressly excludes to the maximum extent permitted by law all those that might otherwise be implied.

³ Please note that in order to access this information managing agents and brokers will need to have a lloyds.com account and be registered for enhanced access to Crystal. Access is a two-step process: 1) [create](#) a lloyds.com account and 2) [request](#) enhanced access to Crystal and the Risk Locator Tool under 'Lloyd's General Business Tools'. If you already have a

APPENDIX 1: BRAZIL CONTRACT FORMALISATION RULES CHECKLIST

1. If the contract is formalised electronically, has the cedant received a scanned copy of the formal contract and has the cedant stored it on any electronic or magnetic recording data for the purposes of providing contractual certainty?
2. Has the reinsurance contract been formalised within 270 days after becoming effective?
3. Has the reinsurance contract – as well as all endorsements – been signed by the reinsurer, containing the date and the identification of its representative and signatory?
 - a) New contracts: All Lloyd’s underwriters are required to sign the document; “*Identification of its representative and signatory*” requires the full name, syndicate and number, and managing agent the underwriter is representing. Has this been done?
 - b) Endorsements: Where contract terms and conditions state that endorsements can be agreed by the Leader only, only the lead underwriter’s signature. In all other cases, all underwriters need to sign the endorsement. “*Identification of its representative and signatory*” requires the full name, syndicate and number, and managing agent the underwriter is representing. Has this been done?
 - c) Endorsements: The time frame for contractual certainty (270 days) begins with the validity of the endorsement and is separate from the signing of the original contract. Lloyd’s underwriters are therefore required to add the date of signing to all endorsements. Have you ensured this is the case?
4. Have you included a Brazilian insolvency clause (LMA5100) in the reinsurance contract?
 - If not, what steps have you taken to ensure you are satisfied that you are covered from that angle?
5. Have you included a Brazilian Intermediary Clause 1 (LMA5101) in the reinsurance contract?
 - If not, what steps have you taken to ensure you are satisfied that you are covered from that angle?
6. Have you included a Brazilian Jurisdiction Clause (LMA5103) in the reinsurance contract?
 - If not, what steps have you taken to ensure you are satisfied that you are covered from that angle?
7. Have you included a Brazilian Arbitration Clause (LMA5104) in the reinsurance contract?
 - If not, what steps have you taken to ensure you are satisfied that you are covered from that angle?
8. Has the cedant provided express consent for the terms and conditions of the contract?
9. Does the contract comply with the provision set out under Article 40 of CNSP Resolution 168/2007. Namely:
 - i) Date of proposal from the insurer to the reinsurer;

- ii) Date of acceptance and inception date, specifying the time zone that will be used as the reference to define the time of the beginning and termination of the contract;
- iii) The date on which the rights and obligations of each party shall take effect and terminate, including details of how and when such obligations shall cease in the event of cancellation;
- iv) The cancellation criteria;
- v) Risks covered and excluded;
- vi) The coverage period, identifying the beginning of the reinsurer's liability and the exact moment at which the losses are covered by the contract.

Further information

Please cascade this information within your organisation as necessary. If you have any further questions, please contact LITA.

Lloyd's International Trading Advice

Primary point of contact for advice and information on Lloyd's trading status worldwide.

On line: For quick and easy access to Lloyd's international regulatory and taxation information visit:

www.lloyds.com/crystal

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