

Regulatory Bulletin

4076

FROM: Manager, Policy, Regulatory Division
LOCATION: 58/NC1
EXTENSION: 6708
DATE: 29 December 1997
REFERENCE: 125/97
SUBJECT: REINSURANCE TO CLOSE

ACTIONPOINTS:

1. MANAGING AGENTS TO NOTE REINSURANCE TO CLOSE CONTRACT REQUIREMENTS 1997
2. COMMENTS REQUESTED ON POSSIBLE CHANGE TO THE SYNDICATE ACCOUNTING BYELAW

DEADLINE: COMMENTS TO BE RECEIVED BY 23 JANUARY 1998

The Lloyd's Regulatory Board recently sponsored a consultative bulletin 090/97 entitled 'Reinsurance to Close Contracts', seeking views on proposals to prescribe the inclusion of certain express terms in every reinsurance to close (RITC) contract and to permit, in limited circumstances, the underwriting of an RITC contract by two or more syndicates.

Having reviewed the feedback, the LRB duly made the Reinsurance to Close Contract Requirements 1997 which are attached at Appendix I to this bulletin. Any variations to the draft proposals attached to the earlier consultative bulletin have been sidelined. The requirements, which came into force on 16 December 1997, have the following effects:

- (a) prescribe the standard minimum contents of RITC contracts;
- (b) prohibit the deferral of the whole or any part of an RITC premium beyond 31 December following the date at which the RITC contract takes effect; and

- (c) permit multi-syndicate RITCs in cases where -
- (i) one only of the reinsuring syndicates is contractually responsible for carrying out the entire run-off of the reinsured account;
 - (ii) the reinsuring syndicates are two parallel syndicates approved as such under the Membership and Underwriting Requirements; or
 - (iii) the LRB so permits in a particular case

Comments requested

It is now proposed that all RITCs, whether intra-syndicate or third party, *may* be exempted from the principles of Inception Date Allocation upon application, thereby giving agents greater flexibility in the year of account to which an RITC is allocated. This would necessitate a change to the Syndicate Accounting Byelaw (No. 18 of 1994). In order for Council to consider any potential byelaw changes at its February meeting, comments are invited on this proposal and should be addressed to the Policy Department by no later than Friday 23 January 1998.

Any questions regarding the contents of this bulletin should be referred to Jeremy Raishbrook (extension 6209) of the Policy Department.

This bulletin is being sent to all active underwriters, managing agents, members' agents, Lloyd's advisers, market associations, including the ALM and the LCCA, and corporate members.

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Helen Audaer
Manager, Policy Department
Regulatory Division

REINSURANCE TO CLOSE CONTRACT REQUIREMENTS 1997

(made on 15 December 1997)

In exercise of the Council's powers under paragraph 2(3) of the Syndicate Accounting Byelaw (No. 18 of 1994) the Lloyd's Regulatory Board hereby makes the following requirements.

1. Citation

These requirements may be cited as the Reinsurance to Close Contract Requirements 1997.

2. Mandatory terms in contracts

(1) Without prejudice to sub-paragraph (a) of the definition of "reinsurance to close" in paragraph 1 of Schedule 1 to the Syndicate Accounting Byelaw (No. 18 of 1994) or to the Parallel Syndicates (Reinsurance to Close) Requirements 1997, every contract of reinsurance to close underwritten by members of a syndicate shall include express terms substantially to the following effect -

(a) the reinsuring members unconditionally agree to indemnify the reinsured members, without limit as to time or amount, in respect of the net amount of all known or unknown losses, claims, refunds, reinsurance premiums, outgoings, expenses and other liabilities (including extra-contractual obligations for punitive or penal damages) arising in relation to the underwriting business of the syndicate for the reinsured year of account (or earlier years of account of the same or any other syndicate reinsured to close into that year of account) after taking account of all amounts recoverable by the reinsured members under syndicate reinsurances in respect of those liabilities and actually recovered on or after the inception date of the contract;

(b) notwithstanding that the indemnity under the contract is against liabilities net of syndicate reinsurance recoveries or that the ultimate net liability of the reinsuring members may not yet have been ascertained, the reinsuring members shall discharge or procure the discharge of the liabilities reinsured by the contract;

(c) either

(i) the rights to receive all premiums, recoveries and other monies recoverable at any time in connection with the insurance business reinsured by the contract are assigned to the reinsuring members by the contract or are to be assigned on their subsequent request; or

- (ii) the reinsuring members are authorised by the reinsured members to collect on behalf of the reinsured members the proceeds of all such rights and retain them for their own benefit so far as they are not applied in discharge of the liabilities of the reinsured members;
 - (d) the reinsuring members are required and fully, irrevocably and exclusively authorised on behalf of the reinsured members to run off the underwriting business carried on by them as members of the syndicate for the reinsured year of account, and authorised to sub-delegate that authority to the reinsuring members' managing agent and to any person underwriting any reinsurance to close of the reinsuring members and to permit the further sub-delegation of the whole or part of that authority in either case; and
 - (e) the contract shall not be cancelled or avoided for any reason, including mistake, non-disclosure or misrepresentation (whether innocent or negligent or fraudulent).
- (2) No contract of reinsurance to close shall contain any provision deferring liability of the reinsured members to pay the premium or any part of it beyond 31 December next following the date as at which the contract takes effect.
- (3) The Lloyd's Regulatory Board may grant dispensation from any of the requirements of sub-paragraphs (1) or (2), whether generally or in relation to a particular case.

3. Multi-reinsurer contracts

- (1) No contract of reinsurance to close may be underwritten by more than one syndicate except -
- (a) in the case of a contract to which the Parallel Syndicates (Reinsurance to Close) Requirements 1997 apply;
 - (b) in the case of a contract to which sub-paragraph (3) of this paragraph applies;
 - (c) in the case of a contract under which only one of the reinsuring syndicates is required and authorised to run off on behalf of the reinsured members all the underwriting business carried on by them as members of the reinsured syndicate for the reinsured year of account; or
 - (d) where the Lloyd's Regulatory Board is otherwise satisfied that the contract should be permitted to be underwritten by more than one syndicate and grants its consent.
- (2) Consent granted under sub-paragraph (1)(d) may be subject to such conditions as the Lloyd's Regulatory Board thinks fit.
- (3) Where, under any approval granted under Part H of the Membership and Underwriting Requirements (Corporate Member), the same individual is permitted to act as underwriter for two syndicates managed by the same managing agent, one of which consists only of a single corporate member and the other of which includes individual members, both syndicates may together underwrite a reinsurance to close of another syndicate in the proportions borne by their respective syndicate allocated capacities for the year of account to which the reinsurance to close contract is allocated.

- (4) Any reinsurance to close contract underwritten under sub-paragraph (3) shall require that the authority thereby conferred on both syndicates as constituted for the reinsuring year of account to conduct the underwriting business reinsured under the contract shall at all times thereafter be delegated to the same managing agent for both syndicates.
- (5) Save to the extent that, in accordance with this paragraph, it is underwritten by more than one syndicate but only one syndicate is required and authorised to run off the reinsured business, any contract of reinsurance to close permitted by or under this paragraph 3 shall contain provisions so as to satisfy sub-paragraph (a) of the definition of "reinsurance to close" in paragraph 1 of Schedule 1 to the Syndicate Accounting Byelaw (No. 18 of 1994), modified, if necessary, to comply with sub-paragraph (e) of that paragraph.

4. Commencement

These requirements shall come into force on 16 December 1997.