



**Lloyd's General Representative in Australia:**

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This bulletin has been sent to active underwriters and the Compliance Officers of Lloyd's managing agents and for information to the LMA.

More detailed information on Lloyd's trading rights may be found on [www.lloyds.com/worldwide](http://www.lloyds.com/worldwide). Select the appropriate country from the Lloyd's trading status box (located on the right hand side of the web page) and this will take you to the Quick Reference Guide for the country selected. More detailed information may then be obtained for certain countries by selecting 'Manual' from the menu on the left hand side of the screen. You will be asked to input a user name and password. Please contact the Worldwide Market Services (contact details as above) in order to obtain this information.

Julian James  
Director  
Worldwide Markets

**AUSTRALIAN REINSURANCE POOL CORPORATION  
ABN 74 807 136 872**

**REINSURANCE AGREEMENT FOR TERRORISM RISKS  
Lloyd's Version**

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## SCHEDULE ATTACHING TO AND FORMING PART OF THE REINSURANCE AGREEMENT FOR TERRORISM RISKS 11

## REINSURANCE AGREEMENT FOR TERRORISM RISKS

This Reinsurance Agreement, which shall include the Schedule attached hereto (hereinafter called the Schedule), is made between each of the underwriting members of Lloyd's (a society incorporated by an Act of the United Kingdom known as Lloyd's Act 1871) referred to in Item 1 of the Schedule (hereinafter called the Reinsured) of the one part and the Australian Reinsurance Pool Corporation (hereinafter called the Corporation) of the other part.

### 1. Reinsured

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- (a) The *Agent of the Reinsured* may from time to time give notice to the Corporation of a *Syndicate* whose underwriting members are to become Reinsureds under this Agreement in respect of any business undertaken by the *Syndicate*. Each underwriting member of a *Syndicate* notified under this provision shall be a Reinsured as and from the date stated in the notice or if there is no date, on and from the date of the receipt of the notice. The underwriting members of a *Syndicate* notified in Attachment A shall be a Reinsured on and from the *Date of Commencement*.
- (b) Each Reinsured shall be a party to this Agreement for a period from the date the Reinsured first became a party to this Agreement as a result of a notification by the *Agent of the Reinsured* to the Corporation until the next midnight on 31 December.
- (c) At or prior to midnight on 14 January in each year following the *Date of Commencement* the *Agent of the Reinsured* may give a notice to the Corporation specifying the *Syndicates*:
  - (i) to which the Agreement ceases to apply at the immediately preceding midnight on 31 December; and
  - (ii) to which this Agreement shall apply on and from the immediately preceding 1 January.

### 2. Reinsurance Period

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- (a) This Agreement shall commence on the date stated in Item 2 of the Schedule *Date of Commencement* and continue until it is terminated in accordance with Clause 2(c) or Clause 2(d).
- (b) For the purposes of this Agreement in relation to each Reinsured, the *Reinsurance Period* shall be the period or periods during which a Reinsured is a party to this Agreement by the operation of clause 1.
- (c) The Corporation may terminate this Agreement by giving the *Agent of the Reinsured* not less than six (6) months written notice of its decision to terminate the Agreement. The Agreement shall expire at the date and time specified in the written notice given pursuant to this sub-clause (*Date of Expiry*).
- (d) The *Agent of the Reinsured* may terminate this Agreement by giving the Corporation not less than six (6) months written notice of its decision to terminate

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the Agreement. The Agreement shall expire at the date and time specified in the written notice given pursuant to this sub-clause (*Date of Expiry*).

- (e) The Corporation's right of inspection (clause 15) and claims obligations both survive the termination of this Agreement.

### 3. Class of Business Covered

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- (a) This Agreement shall apply only to **eligible insurance contracts** which incept during a *Reinsurance Period*.
- (b) In the event that it is determined that any Reinsured incurs a liability under a contract of insurance solely because of section 8 of the *Terrorism Insurance Act 2003* (Cth) such Reinsured will be entitled to cover under this Agreement in respect of that liability provided that it pays the relevant premium and otherwise agrees to comply with the terms of this Agreement. For the avoidance of doubt, this subsection (b) applies where it was not obvious or apparent that the said contract of insurance was an **eligible insurance contract**.

### 4. Exclusions

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- (a) This Agreement does not cover any loss or liability incurred by a Reinsured under a **protected contract** irrespective of whether the loss or liability arises solely because of section 8 of the *Terrorism Insurance Act 2003* (Cth) or otherwise.
- (b) For the avoidance of doubt, if an endorsement to a **protected contract** has the effect of creating a new or additional contract of insurance, this Agreement shall apply to that new or additional contract PROVIDED THAT the said contract:
  - (i) is not itself a **protected contract**; and
  - (ii) falls within the ambit of clause 3(a) of this Agreement,in which case, a Reinsured will be entitled to cover under this Agreement in respect of a liability under the said contract incurred solely because of section 8 of the *Terrorism Insurance Act 2003* (Cth) provided that it pays the relevant premium calculated by reference to any additional premium payable in respect of the endorsement and otherwise comply with the terms of this Agreement.

### 5. Indemnity

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The Corporation shall indemnify the Reinsureds who are underwriting members of a particular *Syndicate* for that part of the *ultimate net loss* of all those Reinsureds which exceeds the *Syndicate's Retention*.

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## 6. Reinsured's Retention

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- (a) A *Syndicate's Retention*, calculated in accordance with clause 6(b), shall apply in respect of all **declared terrorist incidents** which happen during the same *Retention Period*.
- (b) The *Syndicate's Retention* shall be fixed for each Retention period and an amount equal to the lesser of:
- (i) \$1 million; or
  - (ii) either of the following which is appropriate to the circumstances of the *Syndicate*:
    - (A) 4% of the amount calculated as follows:

The *Syndicate's* Gross Fire/Physical Damage premium LESS the amount of the Fire Service Levy component of that premium which the insured has remitted. (The figures used for this calculation must be the figures used in respect of the *Syndicate* for the purpose of the returns to APRA in respect of Lloyd's insurance business in Australia for the 12 months ending 31 December prior to each Retention Period). The calculation of this amount and documents verifying the calculation must be notified to the Corporation by 31 May each year.

OR
    - (B) If the Fire/Physical Damage premium of the *Syndicate* is not incorporated in the relevant Lloyd's return to APRA or the Fire/Physical Damage premium incorporated in the relevant return is nil, or, being a new *Syndicate*, no return has been submitted by Lloyd's to APRA in respect of the *Syndicate* for the 12 months ending 31 December prior to the relevant Retention Period, the figures used for this calculation will be an appropriate equivalent to that described in clause 6(b)(ii)(A) as determined by the Corporation in its discretion. For the purpose of calculating the amount pursuant to this clause 6(b)(ii)(B), the underwriting members of the *Syndicate* must supply to the Corporation such information or documents as may be required by the Corporation. The Corporation shall notify the *Agent of the Reinsured* of the calculation of this amount.
- (c) The *Syndicate's Retention* may be borne by a Reinsured who is an underwriting member of a *Syndicate* or wholly or partly reinsured elsewhere at the Reinsured's discretion.
- (d) If, however, the sum of the *Syndicate's Retention* and the retentions of all the Corporation's other reinsureds together total more than \$10 million in respect of all **eligible terrorism losses** caused by a single **declared terrorist incident** then the

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amount of the *Syndicate's Retention* in respect of that **declared terrorist incident** shall be adjusted on the following basis:

- (i) the Corporation will determine the *Syndicate's Retention* as a percentage of the total retention of all of the Corporation's reinsureds that incur claims caused by that **declared terrorist incident** (the *Syndicate's Proportion*);
- (ii) the *Syndicate's Retention* shall be an amount equal to the *Syndicate's Proportion* of \$10 million.

*Retention Period* means:

- (i) initially the period from the *Commencement Date* to 30 June 2004;
- (ii) thereafter, each period of 12 consecutive calendar months commencing on 1 July 2004;
- (iii) if the *Date of Expiry* occurs thereafter, each period of 12 consecutive calendar months commencing on the day following the *Date of Expiry*.

For the avoidance of doubt, each such period constitutes a separate *Retention Period* for the purpose of applying the *Syndicate's Retention*.

## 7. Ultimate Net Loss

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The term *ultimate net loss* shall mean the sum of:

- (a) amounts actually paid by the Reinsured:
  - (i) under **eligible insurance contracts** which incept during the *Reinsurance Period*; and
  - (ii) in relation to a loss or liability which arises solely because of section 8 of the *Terrorism Insurance Act 2003* (Cth); and
  - (iii) arising out of **declared terrorist incidents**,
- (b) *claims expenditure* incurred by the Reinsured in connection with the claims that give rise to a liability on the part of the Reinsured to make the payments described in sub-clause 6(a),

less salvages and recoveries, including recoveries from all other reinsurances except those reinsurances arranged to protect the *Syndicate's Retention*. For the avoidance of doubt, if a declaration under section 6 of the *Terrorism Insurance Act 2003* (Cth) specifies a reduction percentage, that reduction percentage shall not apply to *claims expenditure* of the type described in clause 6(b).

*Claims expenditure* means expenditure (other than office expenses and salaries of employees of the Reinsured) reasonably incurred by the Reinsured in connection with, or arising from, the assessment, management, conduct, rejection, defence or settlement of a claim by the insured, to the extent to which the claim is:

- (i) under an **eligible insurance contract** that incepts during the *Reinsurance Period*; and

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- (ii) in respect of a liability that arises (or is alleged to arise) solely because of section 8 of the *Terrorism Insurance Act 2003* (Cth).

## 8. Salvages

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All salvages, recoveries or payments recovered or received subsequent to any loss settlement hereunder shall be applied as if recovered or received prior to the aforesaid settlement and all necessary adjustments shall be made by the parties hereto. Nothing in this Clause shall be construed to mean that a recovery cannot be made hereunder until the Reinsured's total liability in respect of **eligible terrorism losses** has been ascertained.

## 9. Premium

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The premium payable by each Reinsured in respect of each **eligible insurance contract** covered under this Agreement will be calculated in accordance with the rates specified in Item 4 of the Schedule. If an **eligible insurance contract** covered under the Agreement is amended by way of endorsement, and the insured is:

- (a) entitled to a refund of premium as a result of that endorsement; or
  - (b) is obliged to pay an additional amount of premium as a result of that endorsement,
- there shall be commensurate adjustment in the premium payable by the Reinsured under this Agreement in respect of that **eligible insurance contract**.

## 10. Definition of Premium Income

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The term *premium income* shall mean the gross base premium written by the Reinsured during the period of this Agreement in respect of **eligible insurance contracts** less only returned premiums and cancellations. The calculation of gross base premium shall not include the Fire Service Levy, GST and Stamp Duty.

## 11. Remittance of Premium and Provision of Information to the Corporation

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- (a) Within thirty (30) days of the end of each quarter during the *Reinsurance Period* each Reinsured shall:
  - (i) submit to the Corporation a statement setting out the total amount of premium payable to the Corporation in respect of all **eligible insurance contracts** incepted on or after 1 October 2003 which are first processed in the ordinary course of business by the Reinsured during that quarter (*Remittance Statement*); and
  - (ii) remit to the Corporation the total amount specified in the *Remittance Statement*.

The first remittance of premium pursuant to this clause 11(a) is due by 30 January 2004.

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- (b) Within thirty (30) days of the end of each *Retention Period* each Reinsured shall provide to the Corporation a report (in a form to be stipulated by the Corporation) setting out the total sums insured by the Reinsured under the relevant **eligible insurance contracts** (other than **eligible insurance contracts** that provide cover only for the liability of the insured) by reference to postcode.

## 12. Currency and Rates

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- (a) All amounts in this Agreement are stated and shall be paid in Australian dollars.
- (b) Where premium payable to the Reinsured in respect of **eligible insurance contracts** is remitted in a currency other than Australian dollars, the time at which the rate of exchange is determined for the purposes of this Agreement shall be the date on which the premium is remitted to the Reinsured and the rate of exchange shall be calculated using a mid rate.
- (c) Where the Reinsured makes claims payments pursuant to **eligible insurance contracts** in a currency other than Australian dollars, the time at which the rate of exchange is determined for the purposes of this Agreement shall be the date on which the claims payment is made by the Reinsured and the rate of exchange shall be calculated using a mid rate.

## 13. Notification of Claims

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The Reinsured undertakes to advise the Corporation as soon as possible of any circumstances likely to give rise to a claim hereunder together with an estimate of the Corporation's liability and thereafter keep the Corporation fully informed of any developments regarding the claim. The Corporation shall not be liable for any claim of which they have not been advised by the Reinsured before the expiry of twelve months from the date upon which the Reinsured received the first notice of an **eligible terrorism loss** resulting in that claim.

## 14. Claims Settlements

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- (a) All claims settlements made by the Reinsured, provided same are within the terms of the relevant **eligible insurance contract** and within the terms of this Agreement, shall be binding upon the Corporation and amounts falling to the share of the Corporation shall be payable by them upon reasonable evidence of the amount paid being given by the Reinsured.
- (b) The Reinsured may request immediate payment by the Corporation of its share of any settlement made by the Reinsured if any loss to which this Agreement responds exceeds the amount stated in Item 5 of the Schedule. Such payment will be made within 14 days of the request being agreed to.

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## 15. Inspection

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The Corporation or its duly authorised representatives may at any mutually convenient time during normal office hours, and subject to prior mutual concurrence as to the nature and extent of the material involved, inspect and take copies of such of the Reinsured's underwriting, accounting and claims records and documents as specifically relate to the business covered under this Agreement. Such right of inspection shall continue as long as either party remains under any liability to the other arising out of this Agreement.

## 16. Acts In Force

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If the liability of the Reinsured under an **eligible insurance contract** increases solely because of an amendment to the *Terrorism Insurance Act 2003* (Cth) the indemnity provided by clause 5 of this Agreement will cover any such increase in the Reinsured's liability.

## 17. Alterations

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The Corporation may adjust the rates specified in Item 4 of the Schedule and otherwise amend this Agreement at any time by giving the Reinsured not less than three (3) months notice in writing of the amendments which it proposes to make. The amendments shall come into force at the date and time specified in the written notice given to the Reinsured pursuant to this clause (the *effective date*). The Agreement as amended, shall only apply to **eligible insurance contracts** that incept on or after the *effective date*.

## 18. Legal Interpretation

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This Agreement will be governed by and construed in accordance with the laws of New South Wales for the time being in force and the parties submit to the non-exclusive jurisdiction of the court of New South Wales in respect of all matters arising out of this Agreement and waives any right they may have to object to an action being brought in these courts, to claim that an action has been brought in an inconvenient forum, or to claim that these courts do not have jurisdiction.

## 19. Dispute Resolution

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- (a) The parties undertake to use all reasonable efforts in good faith to resolve any dispute which arises between them in connection with this Agreement, including, if possible, agreeing on a process to resolve the dispute (whether by mediation, arbitration, alternative dispute resolution or otherwise).
- (b) Notwithstanding clause 19(a) a party may commence legal proceedings in respect of a dispute PROVIDED THAT if the parties agree to refer a dispute for resolution by an agreed process, neither party will oppose any application for a stay of any legal proceedings in respect of that dispute pending the completion of that agreed process.

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- (c) Until a dispute is resolved, whether by agreement between the parties or by a Court order, the parties are obliged to continue to perform their obligations under this Agreement.

## 20. Claims Management

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It is expressly contemplated that the Reinsured will manage claims under **eligible insurance contracts** arising out of **declared terrorist incidents**.

## 21. GST and Taxes

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### 21.1 Definitions and interpretation

"GST" and other terms in this clause have the meaning ascribed to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (as amended from time to time) or any replacement or other relevant legislation and regulations.

### 21.2 Payments

Any amount shown as payable under this Agreement does not include GST and, where applicable, will be calculated with reference to the GST-exclusive premiums payable to the Reinsured by its insureds. In addition to any amount shown as payable, wherever the supplier (whether the Corporation or the Reinsured) ("Supplier"), or the representative of the GST group to which the Supplier belongs, is liable for GST in relation to any supply made by or through the Supplier under or in connection with this Agreement, the Supplier shall, subject to the other provisions of this clause 21, be entitled to receive from the other party an additional amount equal to that GST at the same time as any other consideration is to be first provided for the supply.

### 21.3 Claims

- (a) The *ultimate net loss* will be reduced by the amount of any decreasing adjustment under the GST legislation to which the Reinsured is entitled on settlement of claims to its insureds or on recoveries from any third parties, and any input tax credit to which the Reinsured is entitled for any acquisition relating to, or for the purpose of, settlement of a claim.
- (b) Notwithstanding clause 21.2, the Reinsured is not entitled to any additional amount under this clause 21 in relation to any supply on which GST is payable directly or indirectly as a result of or in relation to the Reinsured's failure to disclose, or accurately disclose, to the Corporation its entitlement to an input tax credit for the premium.
- (c) The Reinsured must, as soon as practicable after entering into this Agreement, notify the Corporation of the extent to which the Reinsured is entitled to input tax credits (expressed as a percentage) in relation to acquisitions it makes from the Corporation under this Agreement ("**Entitlement**"). The Reinsured must notify the Corporation as soon as practicable of any change in the Entitlement. The

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Reinsured represents that any Entitlement notified to the Corporation is accurate and correct.

#### **21.4 Changes in Legislation**

If the effect of the GST as stated above is changed as a result of any new amendment, enactment, interpretation or application of any law, the parties hereto must as soon as possible and in the utmost of good faith negotiate an appropriate amendment to this Agreement.

#### **21.5 Taxes**

The Reinsured may deduct any non-resident withholding taxes from moneys remitted to the Corporation as required by the local law of a country of residence of the Reinsured.

### **22. Notices**

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- (a) Any notice or other communication which may be given, served or made under or in connection with this Agreement:
  - (i) Must be in writing and addressed or faxed as shown in paragraph (b) below;
  - (ii) Is sufficient if executed by the party giving, serving or making the notice or on its behalf by any attorney, director, secretary, other duly authorised officer or solicitor of such party; and
  - (iii) Will be deemed to be served, given or made:
    - (A) (in the case of prepaid post) on the fifth day after the date of posting;
    - (B) (in the case of facsimile) on receipt of a transmission report confirming successful transmission; and
    - (C) (in the case of delivery by hand) on delivery.
- (b) The address and facsimile (if any) of each party is specified in Item 6 of the Schedule.

### **23. Confidentiality**

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The Corporation shall keep confidential any documents and information it obtained during an inspection carried out pursuant to clause 15 of this Agreement except to the extent:

- (a) required by law;
- (b) the Corporation determines, acting reasonably, that disclosure is required in the ordinary course of its business and such disclosure is made under terms that restrict further disclosure to the extent necessary to protect the interests of the Reinsured; or

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- (c) that the information or documents are or become available in the public domain without breach by the Corporation of its confidentiality obligations under this clause or at law.

Nothing in this clause shall operate to prevent the Corporation from complying with its obligations under this Agreement and under statute, including without limitation its reporting and audit obligations. Further, nothing in this clause shall operate to prevent the Corporation from disclosing such information or documents to its professional advisers for the purpose of obtaining professional advice.

## 24. Definitions

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Terms in this Agreement which are **bolded** have the same meaning as in the *Terrorism Insurance Act 2003* (Cth).

Terms which are *italicised* are defined in this Agreement.

The terms listed below have the following meaning –

*"Agent of the Reinsured"* means the Lloyd's general representative of underwriters in Australia.

*"Syndicate"* means an underwriting member or a group of underwriting members of Lloyd's conducting insurance business at Lloyd's through the agency of a management agent and to which a particular syndicate number is assigned by the Council of Lloyd's for each year of account.

Dates and times specified in this Agreement shall be determined by reference to the date and time in Sydney, Australia.

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**SCHEDULE ATTACHING TO AND FORMING PART OF THE REINSURANCE AGREEMENT FOR TERRORISM RISKS**

**AGREEMENT NO:**

1) Name of Reinsured (Preamble):

Each underwriting member of Lloyd's who is a member of a *Syndicate* set out in Attachment A or which is notified under clause 1.

2) Date of Commencement (Clause 2):

1 October 2003

3) Reinsured's Retention (Clause 6(b)):

In respect of those *Syndicates* set out in Attachment A and for the Retention Period from the Date of Commencement to 30 June 2004, the amount set out against the *Syndicate* number and in all other cases as determined under clause 6.

4) Premium (Clauses 9 and 17):

<b>Class of Insurance</b>	<b>Initial rate (from 1 October 2003)</b>
Eligible Property**	
- Tier A property	12% of premium income
- Tier B property	4% of premium income
- Tier C property	2% of premium income
Business Interruption	
- Tier A property	12% of premium income
- Tier B property	4% of premium income
- Tier C property	2% of premium income
Public Liability	-

(\*\* Postcodes allocated to Tiers A, B and C shall be determined by the Corporation. The Postcode Lists for Tiers A, B and C shall be published by the Corporation from time to time and posted on the Corporation's website.





## APPENDIX 2

John Darkin  
Regional Executive  
Worldwide Markets  
Lloyd's  
One Lime Street  
London  
EC3M 7HA

Dear Sir

Australian Reinsurance Pool Corporation Reinsurance Arrangement  
1 January 2005 to 31 December 2005

I am writing on behalf of syndicate *[insert name, number and year of account of syndicate]*.

I understand that -

1. The Australian Terrorism Insurance Act 2003 renders terrorism exclusion clauses in eligible insurance contracts ineffective in relation to loss or liabilities arising from a declared terrorism incident.
2. In order to provide cost-effective reinsurance cover for eligible terrorism losses, the Australian Government has established a Terrorism Insurance Scheme (*the Scheme*). The Scheme is operated by the Australian Reinsurance Pool Corporation (*ARPC*). *ARPC* is a statutory authority providing reinsurance cover for losses arising from a declared terrorist incident. Ultimately the Scheme is backed by the Australian Government.
3. All syndicates are eligible to reinsure the risk of eligible terrorism losses with *ARPC*. However, it is not compulsory and it is a matter for the managing agent of the relevant syndicate to decide whether or not to do so. A syndicate may for instance chose to rely on its own commercial reinsurance arrangements rather than those provided by the Scheme.
4. A decision to reinsure eligible terrorism losses through *ARPC* will be binding for the period 1 January 2005 – 31 December 2005. A decision not to reinsure such losses through *ARPC* will mean that the syndicate concerned gives up the right to benefit from the reinsurance provided by the Scheme in relation to a declared terrorist incident occurring during this period.
5. A copy of *ARPC*'s standard form of reinsurance agreement for Lloyd's syndicates (*the ARPC Reinsurance Agreement*) is attached at Appendix 1 to this Market Bulletin.

Please delete one of the following statements:

- i.) [I confirm that syndicate *[insert name, number and year of account of syndicate]* wishes to benefit from the reinsurance arrangement with ARPC for the period 1 January 2005 – 31 December 2005 and I hereby authorise Keith Stern, Lloyd's Underwriters' General Representative in Australia, to sign the ARPC Reinsurance Agreement for and on behalf of the members of the syndicate. I understand that this decision is binding for the above-mentioned period.]
- ii.) [I confirm that syndicate *[insert name, number and year of account of syndicate]* does not wish to reinsure eligible terrorism losses through ARPC. I understand that this decision is irrevocable for the period 1 January 2005 – 31 December 2005.]

Enquiries relating to our syndicate's adherence to its obligations under the Australian Terrorism Insurance Act 2003 should be directed to *[insert contact name]*.

Yours faithfully

For and on behalf of syndicate *[insert name, number and year of account of syndicate]*

cc: Keith Stern, Lloyd's Australia Ltd, Suite 2, Level 21, Angel Place, 123 Pitt Street,  
Sydney, NSW 2000, Australia  
Fax number: 00 612 9223 1466  
E-mail: Keith\_Stern@bigpond.com