

MARKET BULLETIN

REF: Y4149

Title Lloyd's registered as an 'Admitted' Reinsurer in Brazil

Purpose To advise the market of Lloyd's registration as an 'Admitted' reinsurer in Brazil and to explain operational issues related to underwriting reinsurance business emanating from Brazil.

Type Event

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Date 16 April 2008

Deadline With effect from 17 April 2008

Summary

Lloyd's was approved as an 'Admitted' reinsurer by SUSEP¹ (Brazilian regulator) on **16 April 2008**. Lloyd's underwriters will therefore be able to start trading under this new status with effect from 17 April 2008, when the new reinsurance regulations are effective.

Lloyd's has appointed Mr Jorge Hilário Gouvêa Vieira as its first Representative in Brazil. Mr Gouvêa Vieira's office in Rio de Janeiro will serve as an interim Lloyd's Representative Office in Brazil (address and contact details provided on page 4 under the section 'Lloyd's Presence in Brazil').

Background

On 15 January 2007 Brazil enacted Law 126, which liberalised its reinsurance market. The enabling reinsurance regulations, contained in CNSP Resolution No 168 and available on www.lloyds.com/Crystal (Brazil/Reference section), were approved on 17 December 2007. The new reinsurance regulations will be effective from 17 April 2008.

¹ Superintendência de Seguros Privados

In order to carry out reinsurance and retrocession business from 17 April, a reinsurer will need to be classified as a (1) 'Local', (2) 'Admitted', or (3) 'Occasional' (also known as 'Eventual') reinsurer. Lloyd's has been approved as an 'Admitted' reinsurer. This permits Lloyd's to write reinsurance and retrocession business from Brazilian ceding companies on a cross-border basis only.

Reinsurers not securing appropriate classification by 17 April 2008 will still be able to continue to trade with the Brazilian market under the old rules – i.e. CNSP Regulation 164² – until 14 October 2008, as a result of the '180 days grace period' granted to the IRB to adjust to the new regulations. Thereafter, non-registered reinsurers will no longer be allowed by SUSEP to write reinsurance/retrocession of Brazilian cedants.

Lloyd's lobbied the Brazilian authorities (i) to remove the collateral requirements proposed in the draft regulations applying to 'Admitted' reinsurers and (ii) to ensure Lloyd's unique single structure was recognised in those regulations.

SUSEP subsequently withdrew its original collateral proposal in favour of a calibrated collateral requirement whereby only 'Admitted' reinsurers with ratings lower than A- (by Standard & Poor's, Fitch and AM Best) or lower than A3 (by Moody's) will have to provide collateral. SUSEP has also recognised Lloyd's as a single entity for registration purposes. Lloyd's syndicates will therefore be able to write reinsurance business from Brazil as an 'Admitted' reinsurer (on an 'offshore' basis), under Lloyd's single registration and - on the basis of Lloyd's current ratings - without having to post collateral in Brazil.

A. Operational issues

Restrictions on cessions by insurance companies and 'Local' reinsurers

Insurance companies and 'Local' reinsurers respectively may not cede in reinsurance and retrocession more than 50% of total premiums written in each calendar year, except in respect of securities' bonds, export credits, agribusiness and domestic credit insurance³.

The 'right of first refusal' rule

The new reinsurance regulations include a "right of first refusal" rule which operates at a risk level. This means that 'Local' reinsurers have a right of first refusal on the first 60% of any risks ceded by insurance companies before 'Admitted' or 'Occasional' reinsurers can write the risk. This requirement will reduce to 40% after 16 January 2010. Guidance on how this right of first refusal operates is set out below.

A ceding insurance company must formally consult with (i.e. seek a quotation from) one or more 'Local' reinsurers of its choice and offer them 60% (or more) of the business it wishes to cede (40% after 16 January 2010).

The insurance company can include 'Admitted' or 'Occasional' reinsurer(s) in this consultation

² Relevant market bulletin (Ref: Y4065 of 5 October 2007)

³ In respect of these four classes of business 100% cessions will be allowed.

process. However, the insurance company is required to share details of quotations from 'Admitted' or 'Occasional' reinsurers with the 'Local' reinsurers who then may decide whether they wish to underwrite the reinsurance on the same or better terms. It is therefore necessary for the insurance company to obtain quotations from the 'Admitted' or 'Occasional' reinsurers first. In addition, the 'Admitted' or 'Occasional' reinsurers must, either individually or in aggregate, offer to underwrite a minimum of 60% of the insurance business being ceded and the quotations must set out the percentage of the offer represented by each 'Admitted' or 'Occasional' reinsurer.

Once an insurance company has approached 'Local' reinsurers, they are given 5 working days to consider facultative reinsurance placements or 10 working days to consider treaty reinsurance placements and to formalise their acceptance (partial or total) of the offer from the insurance company.

In case of total or partial refusal by the 'Local' reinsurer(s) consulted, the insurance company must offer the portion which has been declined to other 'Local' reinsurers. The insurance company must repeat this process until all 'Local' reinsurers have been offered the opportunity to accept or decline the business in question, in each case giving the 'Local' reinsurer the required 5 or 10 working days to consider the offer. Where a 'Local' reinsurer does not respond after the end of the relevant period, it is deemed to have refused the offer. Once all 'Local' reinsurers have been consulted, the insurance company is free to place the reinsurance with 'Admitted' or 'Occasional' reinsurers.

To summarise, the 'right of first refusal' requirement will be complied with when -

- 'Local' reinsurer(s) have accepted the minimum percentage share of the business required to be offered to 'Local' reinsurers; or
- the insurance company has consulted with all 'Local' reinsurers and the offer has been totally or partially refused; or
- other reinsurers ('Admitted' and/or 'Occasional') have agreed to underwrite the business in question on more favourable terms and conditions, provided that the same conditions and prices have been first submitted to 'Local' reinsurers who have either agreed or declined to write the business on the same or better terms.

Responsibility for documenting compliance with placement regulations in respect of each cession or acceptance falls to insurance companies rather than Lloyd's as 'Admitted' reinsurer. Documents **must** be kept for a period of five years.

B. 'Admitted' Reinsurer status

Trading Status

Lloyd's 'Admitted' reinsurer status will allow reinsurance/retrocession business from Brazilian ceding companies to be written by Lloyd's underwriters on a cross-border basis only. Whereas reinsurance business will be subject to the rule of 'First Refusal' granted to 'Local' reinsurers, retrocession business will not be affected by this rule.

Managing Agents' Operations in Brazil: 'Liaison Offices'

In line with Lloyd's 'Admitted' trading status, managing agents' operations in Brazil - i.e. 'liaison offices' - will be restricted to marketing and promotional activities. Therefore, reinsurance/retrocession business must not be written in the liaison offices.

Any managing agents that are considering establishing operations in Brazil should discuss their plans with Lloyd's in the first instance, to ensure that they will be operating in compliance with the regulations.

Managing agents should contact Matthew Chandler, International Markets and Business Development (Email: matthew.chandler@lloyds.com; Tel: 020 7327 5743).

Binding authorities

Binding authorities are not recognised by Brazilian law. Accordingly, it is not permitted to establish coverholders which will operate in Brazil on behalf of managing agents.

D. Reinsurance / Retrocession Contract Requirements

Placements: Reinsurance business may be transacted either directly with a ceding company or through an approved reinsurance broker.

Clauses: The regulations require that reinsurance wordings on certain subject areas, including, for example, 'Law and Jurisdiction' or 'Arbitration'⁴, **must** be included in the reinsurance and retrocession contracts. Suggested wordings for appropriate model clauses will be available through the 'Crystal' tool on the Lloyd's website (www.lloyds.com) shortly. These model clauses will be entitled:

- Brazilian Insolvency Clause
- Brazilian Intermediary Clause 1
- Brazilian Intermediary Clause 2
- Brazilian Jurisdiction Clause
- Brazilian Arbitration Clause

Please note, however, that although the regulations make clauses mandatory on these subject areas, the wordings that will be provided through Crystal will be purely illustrative and established and distributed for the guidance of underwriters, who are free to agree different terminology, providing they comply with the regulations.

Please find attached as Appendix 1 the relevant articles of the regulations which specify contract requirements, for ease of reference.

Other Related Contract Requirements: Brazilian regulations require that the following items be included / taken into account in the reinsurance/retrocession contracts:

- In contracts concluded through reinsurance brokers, clauses that limit or restrict the ability of cedants and reinsurers to have a direct relationship are not allowed. In addition, it is not possible to confer powers or authorities on such brokers beyond those which are necessary and appropriate to the performance of their duties.

⁴ Reinsurers are free to choose either 'Brazilian L & J', or 'Arbitration'. If Arbitration has been chosen, there is freedom of choice with regard to several aspects, including L & J.

- Reinsurance transactions must be formalised contractually within 180 days of the start of cover.
- Acceptance by the reinsurer(s) at the consultation stage serves as evidence of the contracted coverage.
- The contractual reinsurance clauses may be negotiated and agreed as between the contracting parties; however, there must be provisions on the following areas (some of which are already provided for in the Market Reform Contract) -
 - 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; and
 - 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.
- The cedant has an obligation to furnish documentary evidence of the reinsurance transaction to SUSEP at any time, if required to do so.

Language of Contracts: it is permitted to prepare reinsurance contracts in Portuguese, English or in another foreign language. However, managing agents should be aware that the regulations require that all reinsurance contracts originating from outside Brazil in a language other than Portuguese **must** be “consularised”⁵ and accompanied by a translation into Portuguese prepared by a certified public translator⁶, except where SUSEP agrees otherwise. This requirement applies to all reinsurance contracts that incept after 17 April 2008.

Contact details of certified translators, notaries public and of the Brazilian Consulate General in London can be obtained from the LITA⁷ team (Email: LITA@lloyds.com; Tel: 020 7327 6677).

E. Tax

Lloyd's Tax Department are currently examining the tax consequences of Lloyd's becoming an 'Admitted' reinsurer in Brazil. Any changes will be notified to the Market once this work has been concluded. Until then information on the current tax position in relation to Brazilian reinsurance business can be found on Crystal (www.lloyds.com/Crystal).

F. Lloyd's Presence in Brazil

Amongst other requirements, 'Admitted' reinsurers are required to appoint a local representative and to establish a representative office in Brazil (business should not be transacted in the representative office). Lloyd's position is set out below.

⁵ Consularised = legalised (i.e. authorised by the Brazilian Consulate, which usually requires notarisation first).

⁶ According to legislative requirements followed by the Brazilian Consulate General in London, translations must be carried out by a certified public translator in Brazil (i.e. translations carried out in the UK or other countries are likely to be rejected by the Consulate).

⁷ LITA: Lloyd's International Trading Advice.

Current

Lloyd's Representative : Mr Jorge Hilário Gouvêa Vieira, Lloyd's legal counsel in Brazil, was appointed as Lloyd's Representative in Brazil on 19 February 2008. Mr Gouvêa Vieira has provided strong support to Lloyd's throughout the registration process and will continue to support Lloyd's in Brazil.

Lloyd's Representative Office: As an interim measure, Lloyd's Representative Office in Brazil will be located within Mr Gouvêa Vieira's offices, at the following address:

Av. Rio Branco, No.85, 12o. andar
Rio de Janeiro, RJ
CEP 20040-004
Brazil
Tel: +55 21 3849 4403
E-mail: jhgv@eagv.com.br

Future

In order to take advantage of the potential of the Brazilian market, a local representative with a business development focus will be appointed later in 2008. This individual will be responsible for setting up the new representative office for Lloyd's in Rio de Janeiro and supporting Lloyd's managing agents' interests in Brazil. The market will be provided with an update as appropriate.

G. Reporting Requirements

Managing agents are not required to take any action with regard to regulatory reporting. Lloyd's International Market Access Department will be responsible for this process and shall file an annual return with the regulator on behalf of the market.

H. Status of other Reinsurers/Reinsurance Brokers

Lloyd's is aware that a number of other reinsurers may be seeking 'Local', 'Admitted' or 'Occasional' status from the Brazilian regulators. In addition, a number of brokers may be seeking authorisation to operate as reinsurance brokers in Brazil. Once the official status of other reinsurers and brokers is made available by SUSEP, information will be provided to the Lloyd's International Trading Advice Desk in the Underwriting Room, at least initially - i.e. in the first few months after 17th April.

I. Syndicate Business Forecast (SBF)

Managing agents need to ensure that reinsurance business from Brazil has been included in their Syndicate Business Forecast (SBF) and that approval from the FPD has been received.

Further Information

If you require additional information or wish to discuss this matter in more detail, please contact initially:

Lloyd's International Trading Advice

Lloyd's Desk, Ground Floor, Underwriting Room

Telephone 020 7327 6801

Email LITA@lloyds.com

www.lloyds.com/crystal

Information on Brazil and the local insurance market is available for managing agents on the Lloyd's Worldwide, Market Intelligence section of the Lloyd's website: www.lloyds.com/marketintelligence

Appendix 1

Contract Requirements - Extracted from CNSP Resolution No 168

Article 33

The reinsurance contracts shall include a clause providing that, in the event of cedent's liquidation, the reinsurer's liabilities to the insolvent company persist, limited to the reinsurance amount due under the terms of the reinsurance contract, regardless of the cedent having or not having paid indemnities or benefits to the insureds, participants, beneficiaries or assisted parties.

Article 34

The reinsurers and their retrocessionaires shall not be directly liable to the insured, participant, beneficiary or assisted for the amount assumed in reinsurance and retrocession, being the cedents that issued the contract fully liable for indemnifying them.

Sole paragraph – In the event of cedent's insolvency, liquidation or bankruptcy, the direct payment to the insured, participant, beneficiary or assisted of the part of the indemnification or benefit relative to the reinsurance is allowed, provided the payment of this part has not been effected by the cedent to the insured nor by the reinsurer to the cedent, if:

- I. the contract is a facultative one;
- II. in all other cases, if there is a cut-through clause.

Article 35

In contracts concluded through the intermediary of reinsurance brokers, clauses that limit or restrict the direct relationship by cedents and the reinsurers may not be included, nor will it be possible to confer powers or authorities to such brokers beyond those which are necessary and appropriate to the performance of their duties as independent intermediaries in the contracting of the reinsurance.

Article 36

In the contracts referred to in the previous article, the inclusion of an intermediation clause, which establishes whether or not the broker is authorized to receive reinsurance premiums or collect the amounts of recoveries or benefits, is mandatory.

Sole § If the broker is authorized to receive or collect the amount(s) mentioned in this article, the following procedures shall be observed:

- I – payment of the premium to the broker releases the cedent from any liability for the payment due to the reinsurer; and
- II – payment of the claim to the broker only releases the reinsurer from liability when the payment has actually been received by the cedent.

Article 37

Reinsurance transactions shall be formalized contractually within 180 (one hundred and eighty) days of the start of cover, otherwise, for all intents and purposes, the cover shall not be considered valid as of the start date.

§1 The provisions in the heading of this article do not exempt the cedent from its obligation to furnish documentary evidence to SUSEP of the reinsurance transaction, at any time, if required to do so.

§ 2 Acceptance by the reinsurer(s), in the reinsurance proposal serves as evidence of the

contracted coverage.

§ 3 The contract shall include: date of proposal, date of acceptance and the date of effectiveness of the coverage, specifying the place that will be used as the reference to define the time of the beginning and termination of the contract.

Article 38

Reinsurance contracts providing protection against risk located in Brazil shall include a clause determining that any disputes arising in relation thereto shall be subject to Brazilian law and jurisdiction, with exception of contracts with arbitration clauses which will observe the prevailing legislation.

Article 40

Without prejudice to the clauses mentioned in this Chapter, the contractual reinsurance clauses will be freely established by the contracting parties; however, there shall be provisions establishing:

- I – 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;
- II – the cancellation criteria;
- III – risks covered and excluded; and
- IV – the coverage period, identifying the beginning of the reinsurer's liability and the exact moment on which the losses are covered by the contract.