Market Bulletin

LLOYD'S

One Lime Street London EC3M 7HA

FROM:	Director, Worldwide Markets
LOCATION:	G12
EXTENSION:	5998
DATE:	17 September 2003
REFERENCE:	Y3144
SUBJECT:	AUSTRALIA: TERRORISM INSURANCE ACT 2003 ("ATIA")
SUBJECT AREA(S):	Provision of updated information on the impact of ATIA on the Lloyd's Market. In particular, further details on the operation of the Pool and the obligations attaching to those syndicates who opt in to the scheme.
ATTACHMENTS:	1. Appendix 1 – Australian version of the Reinsurance Contract – Lloyd's version to be issued later 2. Appendix 2 - Opt in / Opt out letter 3. Appendix 3 - Annual retention explanation 4. Annexe A – specimen reporting form (xl file) 5. Annexe B – specimen annual retention calculation (xl file)
ACTION POINTS:	1. Syndicates to notify Lloyd's by 26th September whether they wish to opt in to the ARPC arrangement **2.** Market participants to decide whether they wish to attend the Old Library Presentation on 24th September
DEADLINE:	

1. Purpose and scope of Bulletin

The purpose of this Bulletin is to detail a syndicate's obligations under the Terrorism Insurance Scheme, which is operated by the Australian Reinsurance Pool Corporation (ARPC). Previous communication to the market has been via Market Bulletin Y2945, issued on 17 December 2002, a presentation in the Old Library on 12 May 2003, Market Bulletin Y3081, issued on 26 June 2003 and Market Bulletin Y3126, issued on 28 August 2003.

A further Old Library presentation has been scheduled for Wednesday, 24th September at 4pm. Space is limited and if you are interested in attending this presentation please contact Adam Glabay on (0207) 327 5615 or via email at **australian.terrorism@lloyds.com**

2. Executive Summary

2.1. Reinsurance of an insurer's terrorism exposures

- The Terrorism Insurance Act (ATIA) negates any exclusion of cover for terrorism where a loss or liability covered by the policy qualifies as an eligible insurance loss;
- A new statutory authority, the ARPC has been set up to provide reinsurance cover for "eligible terrorism losses";
- ARPC is ultimately backed by a Commonwealth Government guarantee;
- It is a matter for each insurer as to whether it chooses to reinsure with ARPC, or to rely on its own arrangements;
- Reinsurance with ARPC is subject to a retention;
- ARPC has the power to cap the amount recoverable in the event of "eligible terrorism losses" and therefore scale back the amount payable by an insurer, by means of what is known as a "reduction percentage";
- Syndicates must, on an annual basis, choose whether they wish to opt-in to the Scheme;
- Those syndicates who choose to opt-in to the Scheme must:
    - do so via a "standard" reinsurance contract;
    - comply with special reporting and premium payment obligations;
    - maintain an annual retention.
- Unlike US TRIA, there are no requirements to provide specific notices to insureds.

3. The ARPC & Lloyd's

3.1. Reinsurance Contract

The ARPC has developed a standard form contract to be used by cedants who elect to reinsure to the pool. This standard form contract is already starting to be used by the ARPC for insurers in the Australian market.

The ARPC requires the same standard form contract to be used by each Lloyd's syndicate, and the contract wording has been reviewed by Lloyd's legal advisers and is currently undergoing further scrutiny by the LMA and the LMA's own legal advisers. Unfortunately this legal review process has not yet been finalised and the market is advised that any amendments to the standard form reinsurance contract requested by Lloyd's and/or the LMA will need to be negotiated with the ARPC's legal team.

We therefore regret that it is not currently possible to provide the finalised contract wording. However we do expect that this will be available in the next few days and as soon as the finalised contract is to hand, this will be immediately sent out under cover of a further bulletin.

In the meantime we are providing, at appendix 1, the contract currently in use in Australia. It is not anticipated that the version finally agreed for Lloyd's will differ materially from this.

3.2. Syndicates' ability to opt into or out of the Scheme

Syndicates have the option to opt into or out of the reinsurance arrangement with the ARPC. To exercise their option, syndicates need to advise Worldwide Markets, in writing, of their decision by **no later than Friday, 26th September**. A pro-forma letter to be completed by syndicates is attached at Appendix 2 to this Bulletin and should be returned electronically to australian.terrorism@lloyds.com. **This letter is to be completed by all syndicates regardless of whether they decide to opt in or out of the Scheme**.

In the first instance, the exercised option will be irrevocable for the period 1 October to 31 December, and thereafter a syndicate will bind itself for the period 1 January – 31 December annually.

A list of those syndicates choosing to opt into the reinsurance arrangement with the ARPC will be attached as an annex to the Lloyd's reinsurance contract.

3.3. Reduction Percentage

The reduction percentage is a mechanism through which the Commonwealth Government can manage its exposure. Ultimately, the Commonwealth Government is providing an unlimited guarantee to the ARPC so that it can meet its reinsurance obligations.

If the Minister announces a 'declared terrorist incident', he may also declare a reduction percentage. The Minister is required to specify a reduction percentage if the Minister considers that, in the absence of that percentage, the total amounts paid or payable by the Commonwealth under its guarantee (including amounts not related to the act or acts specified in the declaration) would be more than A$10bn.

If a reduction percentage is declared, then the amount payable by an insurer in respect of any claim arising from the declared terrorist incident is reduced accordingly.

This effectively means that the reduction would be borne by insureds and not borne by insurers.

In the event of a loss exceeding the A$10m per event maximum, syndicates who decided not to opt into the reinsurance arrangement with the ARPC will not be able to take advantage of the reduction percentage. Therefore, they will still be required to pay out 100% of the claim.

3.4. <u>'Opt-in' obligations</u>

3.4.1 Annual Retention

This will operate at syndicate level, and will be the maximum amount that each syndicate will need to contribute to "eligible terrorism losses" during a Retention Period.

A syndicate choosing to opt into the Scheme will need to maintain an annual retention. The annual retention is based on the lesser of A$1 million or 4% of the Fire/Industrial Special Risks (ISR) premium; however, if the total retentions of all insurers affected by a 'declared terrorist incident' exceed A$10million, then there is a pro rata reduction in the relevant insurer's retention (the 'reduction percentage'). The total of all retentions cannot exceed A$10 million.

To reduce the administrative burden on syndicates, Lloyd's Worldwide Markets (WWM), in consultation with the LMA, has negotiated with the ARPC a central mechanism for the calculation of a syndicate's annual retention. In order to calculate the Fire/ISR Premium, it has been determined that the Lloyd's risk codes F & PD most closely match the Fire/ISR categories. These F & PD risk codes have been approved by the ARPC as the basis by which Lloyd's syndicates' retentions should be calculated. However, it should be noted that a syndicate writing 'eligible insurance contract' business, but which does not underwrite any F & PD risk coded business (e.g. a liability syndicate) will not be able to operate with a nil retention. After negotiations, the ARPC have agreed the mechanism, detailed in Appendix 3, for determining the annual retention for such syndicates.

In the event of a declared terrorist incident, the retention amount to apply to syndicates will be that in place at the time of the event and not the retention that would have been applicable when the risk attached.

A syndicate can still reinsure its retention elsewhere if it wishes to do so.

Contemporaneously with the issue of this Bulletin, Syndicates will be sent, via their Compliance Officers, a separate letter advising them of their retention for the period 1 October 2003 to 30 June 2004, which will assist a syndicate in determining whether they wish to opt into or out of the reinsurance arrangement with the ARPC. For the sake of completeness, WWM will be contacting all syndicates writing business in the 2003 year of account, even though it is appreciated, by virtue of the business they write, some will not be affected by ATIA.

3.4.2 Reporting

Syndicates choosing to opt into the reinsurance arrangement with the ARPC will be required to submit quarterly returns to the ARPC in the format outlined in Annexe A. Syndicates will be required to report on the actual physical location of the risk as opposed to, for example, the business or mailing address of the insured.

The ARPC accept that there have been difficulties in producing a definitive list of postcodes and subsequently allocating those postcodes into their respective tiers. If the postcode is not shown to be in Tier A or Tier B, then it should automatically be included within Tier C.

Quarterly returns do not need to show a syndicate's general liability business. The ARPC believe that only a small proportion of general liability business is ever likely to respond in the event of a 'declared terrorist incident'.

The ARPC requires that the quarterly returns are submitted to them within 30 days of the end of each quarter. Therefore, the quarterly return for the period 1 October to 31 December 2003 is required to be submitted by Lloyd's Australia no later than 30 January. In order to ensure that this time frame is met, a syndicate needs to ensure that the return is submitted, electronically, to Lloyd's Australia, with a copy to WWM, via australian.terrorism@lloyds.com, by the 20th day after the end of each quarter. Nil returns must also be submitted. The syndicate returns will then be collated for onward submission to the ARPC.

These provisions equally apply to coverholder business as to open market business therefore, syndicates will need to have the necessary systems and management controls in place to ensure that their quarterly returns incorporate coverholder business. Individual syndicates must determine what information they require themselves and how best this can be obtained (either via the Lead, the Lloyd's Broker or the coverholder itself if there is a pre-existing reporting relationship). Lloyd's Australia will correspond separately with coverholders briefing them on this point, but the primary obligation remains with those syndicates that have opted into the Scheme.

It should be noted, that in addition to the quarterly reporting, the ARPC have advised that they will also require an annual return. ARPC have indicated that this annual return may well require a break down of risks by sum insured and post code and split between material damage and business interruption.

The ARPC's views on this point have only emerged very recently and appear to represent an additional reporting obligation which had not previously been announced. Lloyd's will seek to minimise the administrative burden involved through negotiation and lobbying in Australia.

3.4.3 Payment of Premium

The quarterly returns will detail the reinsurance premium payable by a syndicate to the ARPC. Premiums are to be paid to the ARPC within 30 days of the end of each quarter. As a consequence, the premium payable to the ARPC for the quarter ended 31 December 2003 will be due on 30 January 2004.

The reinsurance premium payable is to be based on premiums written by the insurer.

From the returns submitted by syndicates, WWM will arrange, via Lloyd's Central Accounting, for the relevant reinsurance premium payable by each syndicate to be transferred to the ARPC. Therefore, there is no need for a syndicate to arrange their own individual payments to the ARPC. In order to ensure that the reinsurance premium is payable to the ARPC within 30 days of the end of each quarter, Lloyd's Central Accounting will require instructions from WWM within 5 working days of the deadline. Syndicates should, therefore, ensure that the quarterly returns are submitted no later than the 20th day after the end of each quarter, as detailed above.

Syndicates should note that, unless they wish to involve a broker in the process, they will be responsible for processing their quarterly outward reinsurance premiums as 'non-cash' entries under the LORS system.

Xchanging Ins-sure Services have established LORS code P1503 for the ARPC.

4. Pricing and Notification to Insureds

The Australian Terrorism Insurance Act (ATIA) does not intend or require insurers to offer an insured the opportunity to purchase terrorism cover. The principle effect of ATIA would be, in the event of a 'declared terrorist incident' to negate any terrorism exclusion that exists in policies that are considered 'eligible insurance contracts'. Therefore, the premium can be based on the normal terms and conditions of the policy. If a syndicate chooses to pass its reinsurance costs (together with the cost of the reinsurance retention and any additional administrative costs of compliance) to the insured then such costs would not need to be shown separately to the insured, but could just form part of the overall premium.

As mentioned in Market Bulletin Y3081, dated 26th June 2003, because ATIA operates automatically, there is no need to change policy wordings since the terrorist cover depends upon the terms of cover and the deductibles and limits already included in the policy. However, underwriters may wish to provide their insureds with general information on ATIA and its application to their policy. The LMA is currently considering a suitable NMA clause which could be used for this purpose.

5. Further information

The Terrorism Insurance Act 2003 and its Regulations can be obtained using the following links:

Terrorism Insurance Act 2003:
http://scaleplus.law.gov.au/html/pasteact/3/3598/pdf/0432003.pdf

Terrorism Insurance Regulations 2003:
http://scaleplus.law.gov.au/html/pastereg/3/1800/pdf/2003No162.pdf

A website for the ARPC can be obtained using the following link:

http://www.arpc.treasury.gov.au

Questions that have previously been raised by the Market have been compiled into a Frequently Asked Questions document and are available via the following link:

http://www.lloyds.com/index.asp?itemid=2431 – please scroll down to the 'Other Useful Information section'

Please note: that the Frequently Asked Questions list is not an exhaustive list and is provided as 'general' advice and should not be used as a substitute for individual legal advice."

If you have any queries about the above please contact any of the following:

Lloyd's Worldwide Markets:

Market Services Desk: Tel: 020 7327 6677
Email: market.services@lloyds.com

Maxine Hooper Tel: 020 7327 6291
Email: maxine.j.hooper@lloyds.com

Andrew Smith Tel: 020 7327 5349
Email: andrew.d.smith@lloyds.com

Fax: 020 7327 5255

Lloyd's General Representative in Australia:

Keith Stern Tel: 00 61 2 9223 1433
Fax: 00 612 9223 1466
Email: kstern@bigpond.com

Lloyd's Market Association:

Martin Roberts Tel: 020 7327 8370
Email: martin.roberts@lloyds.com

We have sent this bulletin to active underwriters and the compliance officers of Lloyd's brokers and managing agents and for information to market associations.

Julian James
Director
Worldwide Markets

APPENDIX 1

<u>REINSURANCE CONTRACT</u>

THE REINSURANCE CONTRACT IS STILL SUBJECT TO LEGAL REVIEW AND WILL BE RELEASED UNDER COVER OF A FURTHER BULLETIN AS SOON AS POSSIBLE

What follows is an example currently in use in Australia is attached for information.

AUSTRALIAN REINSURANCE POOL CORPORATION
ABN 74 807 136 872

REINSURANCE AGREEMENT FOR TERRORISM RISKS

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REINSURANCE AGREEMENT FOR TERRORISM RISKS

This Reinsurance Agreement, which shall include the Schedule attached hereto (hereinafter called the Schedule), is made between the Company named 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.

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1. Reinsurance Period

(a) This Agreement shall commence on the date stated in Item 2 of the Schedule (*Commencement Date*) and continue until it is terminated in accordance with Clause 1(b) or 1(c) (the *Reinsurance Period*).

(b) The Corporation may terminate this Agreement by giving 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*).

(c) The Reinsured may terminate this Agreement by giving the Corporation 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 Corporation's right of inspection (clause 14) and claims obligations both survive the termination of this Agreement.

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2. Class of Business Covered

(a) This Agreement shall apply only to **eligible insurance contracts** which incept during the *Reinsurance Period*.

(b) In the event that it is determined that the Reinsured incurs a liability under a contract of insurance solely because of section 8 of the *Terrorism Insurance Act* 2003 (Cth) the 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**.

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3. Exclusions

(a) This Agreement does not cover any loss or liability incurred by the 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 2(a) of this Agreement,

in which case, the 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.

4. Indemnity

The Corporation shall indemnify the Reinsured for that part of its *ultimate net loss* which exceeds the *Reinsured's Retention*.

5. Reinsured's Retention

(a) A *Reinsured's Retention*, calculated in accordance with clause 5(b), shall apply in respect of all **declared terrorist incidents** which happen during the same *Retention Period.*

(b) The *Reinsured's Retention* shall be fixed for each *Retention Period* and shall be an amount equal to the lesser of:

(i) $1 million; or
(ii) either of the following which is appropriate to the circumstances of the Reinsured:

A. 4% of the amount calculated as follows:

The Reinsured's Gross Fire/ISR 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 disclosed in the Reinsured's returns to APRA for the 12 months ending 30 June prior to each Retention Period). The calculation of this amount and documents verifying the calculation must be notified to the Corporation by 30 September each year.

OR

B. If the Reinsured does not submit returns to APRA, or, being a newly formed entity has not submitted a return to APRA for the 12 months ending 30 June prior to the relevant Retention Period, the figures used for this calculation will be an appropriate equivalent to that described in clause 5(b)(ii)A as determined by the Corporation in its discretion. For the purpose of calculating the amount pursuant to this clause 5(b)(ii)B, the Reinsured must supply to the Corporation by 30 August each year audited financial information and/or other documents required by the Corporation. The Corporation shall notify the Reinsured of the calculation of this amount by 30 September each year.

(c) The *Reinsured's Retention* may be borne by the Reinsured or wholly or partly reinsured elsewhere at the Reinsured's discretion.

(d) If, however, the sum of the *Reinsured'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 amount of the *Reinsured's Retention* in respect of that **declared terrorist incident** shall be adjusted on the following basis:

(i) the Corporation will determine the *Reinsured'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 *Reinsured's Proportion*);

(ii) the *Reinsured's Retention* shall be an amount equal to the *Reinsured'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 during the *Reinsurance Period* commencing on 1 July 2004;

(iii) 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 *Reinsured's Retention*.

6. Ultimate Net Loss

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 *Reinsured's Retention*. For the avoidance of doubt, if a declaration under section 6 of the *Terrorism Insurance Act* 2003 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

(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).

7. Salvages

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.

8. Premium

The premium payable by the 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**.

9. Definition of Premium Income

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.

10. Remittance of Premium and Provision of Information to the Corporation

(a) Within thirty (30) days of the end of each quarter during the *Reinsurance Period* the 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** which incepted on or after 1 October 2003 and which are processed 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 10(a) is due by 30 January 2004.

(b) Within thirty (30) days of the end of each *Retention Period* the 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.

11. Currency and Rates

(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.

12. Notification of Claims

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' 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.

13. Claims Settlements

(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.

14. Inspection

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.

15. Acts In Force

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 4 of this Agreement will cover any such increase in the Reinsured's liability.

16. Alterations

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*.

17. Legal Interpretation

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.

18. Dispute Resolution

(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 18(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.

(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.

19. Claims Management

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

20. GST and Taxes

20.1 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.

20.2 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 20, 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.

20.3 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 20.2, the Reinsured is not entitled to any additional amount under this clause 20 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 Reinsured represents that any Entitlement notified to the Corporation is accurate and correct.

20.4 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 good faith negotiate an appropriate amendments to this Agreement.

20.5 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.

21. Notices

(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.

22. Confidentiality

The Corporation shall keep confidential any documents and information it obtained during an inspection carried out pursuant to clause 14 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

(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.

23. Definitions and Interpretation

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.

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

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

AGREEMENT NO:

1) Name of Reinsured (Preamble):

2) Date of Commencement (Clause 1):

3) Reinsured's Retention for the initial Retention Period* (Clause 5(b)):

(*The Reinsured's Retention for each subsequent Retention Period shall be fixed in accordance with clause 5(b)).

4) Premium (Clauses 8 and 16):

Class of Insurance	**Initial rate (from 1 October 2003)**
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.

5) Cash Losses (Clause 13(b)):

6) Notices (Clause 21):

The Corporation:

Address:

Attention**:**

Facsimile**:**

The Reinsured:

Address**:**

Attention**:**

Facsimile**:**

Signed in

this day of 20

for and on behalf of

and on behalf of the **Australian Reinsurance Pool Corporation** ABN 74 807 136 872

APPENDIX 2

OPT IN/OPT OUT LETTER

Letter to be addressed to Andrew Smith, Senior Manager,
Lloyd's Worldwide Markets

Dear Sir,

Australian Reinsurance Pool Corporation Reinsurance Arrangement
1 October 2003 to 31 December 2003

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

I understand that the Australian Terrorism Insurance Act 2003 provides that: "A terrorism exclusion in an 'eligible insurance contract' has no effect in relation to a loss or liability to the extent to which the loss or liability is an eligible terrorism loss" *Section 8(1)*.

In order to provide cost-effective reinsurance coverage for this risk, the Australian Government has established the Terrorism Insurance Scheme (the Scheme), operated by the Australian Reinsurance Pool Corporation - ARPC. Ultimately the Scheme is backed by the Australian Government of the Commonwealth.

All syndicates are eligible to cede reinsurance business falling within the scope of the Australian Terrorism Insurance Act 2003.

Where a syndicate believes that they can benefit from their own reinsurance arrangements rather than those provided by the Scheme, it may choose not to enter into a reinsurance arrangement with the ARPC.

Any decision is binding for the period 1 October 2003 – 31 December 2003 and a decision to stay out of the Scheme means that the syndicate concerned gives up the right to benefit from reinsurance from the Scheme in relation to a 'declared terrorist incident' occurring during this period.

I understand this and confirm that syndicate *[insert name and number of syndicate]* does not wish/does wish[⋆] to benefit from the reinsurance arrangement with the ARPC for the period 1 October 2003 – 31 December 2003. I understand that this decision is irrevocable for this period.

[⋆] Delete as appropriate

Future 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 and number of syndicate]*

cc: Lloyd's Australia Ltd, Suite Q, Level 12, 55 Hunter Street, Sydney, NSW 2000, Australia - Fax number: 00 612 9223 1466

APPENDIX 3

ANNUAL RETENTION

A syndicate choosing to opt into the Scheme will need to maintain an annual retention. The annual retention is based on the lesser of A$1 million or 4% of the Fire/Industrial Special Risks (ISR) premium; however, if the total retentions of all insurers affected by a 'declared terrorist incident' exceed A$10million, then there is a pro rata reduction in the relevant insurer's retention (the 'reduction percentage'). The total of all retentions cannot exceed A$10 million.

Since Lloyd's risk coding structure does not exactly match the definition of Fire/ISR, it has been agreed by the ARPC that Lloyd's can use risk codes F & PD as the basis for each syndicate's retention calculation. However, the ARPC will not accept nil retentions from syndicates writing Australian business qualifying as 'eligible insurance contracts'. The mechanism, outlined below, has been devised, and agreed by the ARPC, for such instances.

The first retention calculation for syndicates is based on business signed at Xchanging Ins-sure Services during the period 1 July 2002 to 30 June 2003 and will apply in respect of 'declared terrorist incidents' which happen during the Retention Period 1 October 2003 to 30 June 2004. ARPC has requested that the retention for each syndicate be rounded up to the nearest A$1,000.

Future Retention Periods will be for each period of 12 consecutive calendar months commencing 1 July 2004. Retentions are to be adjusted by 1 July each year and the ARPC have agreed that each syndicate's retention, going forward, will be based on business signed at Xchanging Ins-sure Services during the period 1 January to 31 December of the preceding year. As a result, the retention is to be calculated centrally and syndicates will be advised of the new retention, applicable on the 1 July each year, by 15 May and the retention figures will be submitted to the ARPC by 31 May.

The retention for Lloyd's syndicates is to be calculated as follows:

Syndicates writing F & PD business

As there are currently no syndicates reaching a retention level of A$1m, each syndicate's retention will be calculated as 4% of the sum of the premium attaching to F & PD business signed at Xchanging Ins-sure Services during the preceding relevant calculation period.

It is understood that the majority of the market do not include Fire Service Levies (FSL) within their gross premium figures presented to Xchanging Ins-sure Services. As a result, the first retention calculation has been calculated on the basis that the figures provided by Xchanging Ins-sure Services already exclude FSL. However, in order to ensure that Lloyd's is able more accurately to calculate a syndicate's retention in future years, new procedures for signing Australian risks through Xchanging Ins-sure Services need to be introduced and they are discussed below.

Syndicates not writing F & PD business

Market Bulletin Y3126, dated 28 August 2003 advised of those Lloyd's risk codes which were within the scope of ATIA. For the purposes of the retention, certain of these risk codes have been used on the basis that the majority of the business written under these codes falls within the scope of ATIA. The risk codes concerned are: AO, AP, CA, DC, EF, F, FA, FR, GS, JB, LE, NA, NC, P, PB, PC, PD, PL, PN, UA and UC.

The retention mechanism will be as follows:

- Sum of the Australian premium for eligible risk codes, as detailed above, for each syndicate
- A syndicate's share of the total Lloyd's business written under the eligible risk codes
- A syndicate's market share percentage will then be multiplied against the total F & PD figure to provide a syndicate's retention value

Annexe B provides an example of how the Retention will work in practice.

Syndicates in first year of operation

Where a syndicate is writing Australian business for the first time and therefore does not have past business by which to determine their retention, a syndicate's business plan will be used.

Recording of Fire Service Levies on documentation presented to Xchanging Ins-sure Services

In Australia, the cost of maintaining fire brigades is generally funded substantially by Fire Brigade Charges assessed on premiums written by State of risk location. In the case of overseas underwriters authorised to carry on business in Australia as general insurers, the Australian broker is either responsible for or, as a practical matter, collects and pays the charges. Underwriters fund the payment of the Fire Brigade Charges by adding Fire Services Levies (FSL) to premiums charged to insureds, at rates recommended by the Insurance Council of Australia and which are set out within the Australian procedures manual, which is available via the following link http://www.lloyds.com/index.asp?itemid=2431

The Central Taxes System (CTS) is to be used to record FSL information. The CTS is described in Market Bulletin Y2594, dated 8 August 2001.

Lloyd's brokers are to ensure that all Australian risks incepting on or after 1 January 2004 are processed through Xchanging Ins-sure Services correctly recording FSL details.

Further information will be provided on the new signing procedures later in the year but please note that -

- The LPAN should show the gross premium, inclusive of FSL.
- The FSL should then be broken out as a deduction on the LPAN.
- One overall figure for FSL will be acceptable, there is no need to break out FSL by State.
- Where no FSL is applicable the Lloyd's broker needs to make reference to such on the slip.

Annexe A

AUSTRALIAN REINSURANCE POOL CORPORATION
ABN 74 807 138 872

Premium Return for Quarter Ended
…………………………………

			Australian Capital Territory	New South Wales	Northern Territory	Queensland	South Australia	Tasmania	Victoria	Western Australia	TOTALS
Commercial Property:											
Tier A	Sum Insured										
	Subject Premium*										
	Total Reinsurance Premium Due	12%									
Tier B	Sum Insured										
	Subject Premium*										
	Total Reinsurance Premium Due	4%									
Tier C	Sum Insured										
	Subject Premium*										
	Total Reinsurance Premium Due	2%									
TOTAL											
Business Interruption:											
Tier A	Sum Insured										
	Subject Premium*										
	Total Reinsurance Premium Due	12%									
Tier B	Sum Insured										
	Subject Premium*										
	Total Reinsurance Premium Due	4%									
Tier C	Sum Insured										
	Subject Premium*										
	Total Reinsurance Premium Due	2%									
TOTAL											
OVERALL BUSINESS:											
Tier A	Sum Insured										
	Subject Premium*										
	Total Reinsurance Premium Due	12%									
Tier B	Sum Insured										
	Subject Premium*										
	Total Reinsurance Premium Due	4%									
Tier C	Sum Insured										
	Subject Premium*										
	Total Reinsurance Premium Due	2%									
GRAND TOTAL: ALL TIERS											
	Sum Insured										
	Subject Premium*										
	Total Reinsurance Premium Due										

* The subject premium figure is premium payable before charges i.e. exclusive of FSL, GST and Stamp Duty

Annexe B

Terrorism Insurance Act Risk Codes for Retention Calculation Purposes

Syndicate No.	AO	AP	CA	DC	EF	F	FA	FR	GS	JB	LE	NA
ABC	0.00	0.00	3,000.00	4,000.00	0.00	6,000.00	7,000.00	8,000.00	9,000.00	10,000.00	0.00	0.00
DEF	20,000.00	21,000.00	22,000.00	0.00	0.00	0.00	26,300.00	27,800.00	28,125.00	0.00	30,560.00	0.00
GHI	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
JKL	0.00	0.00	0.00	0.00	0.00	50,250.00	0.00	0.00	0.00	0.00	0.00	0.00
MNO	0.00	0.00	5,000.00	0.00	20,000.00	0.00	30,000.00	0.00	0.00	0.00	0.00	0.00
PQR	0.00	0.00	0.00	0.00	6,000.00	23,000.00	0.00	0.00	0.00	0.00	0.00	0.00
STU	0.00	0.00	0.00	0.00	0.00	0.00	25,000.00	19,000.00	19,000.00	18,000.00	0.00	0.00
VVW	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	85,000.00
XYZ	0.00	0.00	7,000.00	0.00	40,000.00	0.00	8,000.00	25,000.00	15,000.00	17,000.00	0.00	0.00
Risk Code Total	20,000.00	21,000.00	37,000.00	4,000.00	66,000.00	79,250.00	96,300.00	79,800.00	71,125.00	45,000.00	30,560.00	85,000.00

Syndicate No.	NC	P	PB	PC	PD	PL	PN	PU	UA	UC	Total Syndicate Amount	Market Share
ABC	0.00	14,000.00	15,000.00	0.00	0.00	0.00	0.00	16,000.00	0.00	0.00	92,000.00	0.08
DEF	0.00	33,000.00	34,000.00	0.00	36,000.00	0.00	0.00	0.00	0.00	0.00	278,785.00	0.26
GHI	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
JKL	0.00	25,000.00	10,000.00	15,000.00	40,250.00	0.00	0.00	0.00	0.00	0.00	140,500.00	0.13
MNO	0.00	25,000.00	0.00	0.00	35,000.00	0.00	0.00	0.00	0.00	0.00	115,000.00	0.11
PQR	0.00	17,000.00	18,000.00	1,000.00	8,000.00	0.00	0.00	0.00	0.00	0.00	73,000.00	0.07
STU	0.00	0.00	0.00	4,000.00	0.00	0.00	0.00	0.00	0.00	0.00	85,000.00	0.08
VVW	105,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	190,000.00	0.17
XYZ	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	112,000.00	0.10
Risk Code Total	105,000.00	114,000.00	77,000.00	20,000.00	119,250.00	0.00	0.00	16,000.00	0.00	0.00	**1,086,285.00**	

Retention Calculation for F & PD syndicates

Syndicate No.	F	PD	Total Syndicate Amount	4% Retention	Retention for non F & PD syndicates
ABC	6,000.00	0.00	6,000.00	240.00	
DEF	0.00	36,000.00	36,000.00	1,440.00	
GHI	0.00	0.00	0.00	0.00	0.00
JKL	50,250.00	40,250.00	90,500.00	3,620.00	
MNO	0.00	35,000.00	35,000.00	1,400.00	
PQR	23,000.00	8,000.00	31,000.00	1,240.00	
STU	0.00	0.00	0.00	0.00	621.29
VVW	0.00	0.00	0.00	0.00	1,388.77
XYZ	0.00	0.00	0.00	0.00	818.64
Risk Code Total	79,250.00	119,250.00	198,500.00	7,940.00	2,828.71

Syndicate's Retention (Rounded to nearest A$1,000)

Syndicate No.	Retention	
ABC	1,000.00	
DEF	2,000.00	
GHI	Nil	[No business written is within the scope of ATIA]
JKL	4,000.00	
MNO	2,000.00	
PQR	2,000.00	
STU	1,000.00	
VVW	2,000.00	
XYZ	1,000.00	