

FROM: Director, Worldwide Markets
LOCATION: G12
EXTENSION: 5998
DATE: 26 September 2003
REFERENCE: Y3150
SUBJECT: AUSTRALIA: TERRORISM INSURANCE ACT 2003 ("ATIA")
SUBJECT AREA(S): Provision of updated information on amendments to the Regulations and further information on the ARPC obligations.
ATTACHMENTS:

1. Appendix 1 – Amended Regulations
2. Appendix 2 – Lloyd's version of the Reinsurance Contract
3. Appendix 3 – Opt in/Opt out letter
4. Annexe A – Revised Quarterly Reporting Return

ACTION POINTS: **Underwriters and Brokers to note**
DEADLINE: **Immediate**

1. Purpose and scope of Bulletin

The purpose of this bulletin is to provide a further update on developments regarding the Terrorism Insurance Act 2003. Previous communication to the market has been via Market Bulletin Y2954, issued on 17 December 2002, a presentation in the Old Library on 12 May 2003, Market Bulletins Y3081, Y3126 and Y3144, issued on 26 June 2003, 28 August 2003 and 17 September 2003 respectively and a presentation in the Old Library on 24 September 2003.

2. Terrorism Insurance Regulations 2003

The Governor-General of the Commonwealth of Australia gazetted yesterday (25 September 2003) the Terrorism Insurance Amendment Regulations 2003 (No. 1). The amendments set out in Schedule 1 have immediate effect and impact Items 8, 20, 23 and 26 of Schedule 1 of the Terrorism Insurance Regulations 2003. These being that:

- Private sector insurance of certain state local government bodies are now within the scope of the Act.
- Cash in transit policies are now excluded.
- The exclusion relating to a contract of aviation insurance, being an aviation liability indemnity contract has been modified.
- Trailers and prime movers used in the mining or construction industries, which aren't ordinarily registered for travel by road are now within the scope of the Act.

In addition, Schedule 2 of the amendment Regulations advise that, with effect from 16 October 2003, Item 7 of Schedule 1 of the Terrorism Insurance Regulations 2003 is to be omitted from the exclusions.

A compilation of the Terrorism Insurance Regulations 2003 (as amended) can be obtained by accessing the weblink provided in the further information section below.

3. ARPC & Lloyd's

3.1. Reinsurance Contract

Market Bulletin Y3144, issued on 17 September 2003 provided a copy of the Reinsurance Contract that was to be used by the Australian domestic insurance market. The Bulletin explained that the ARPC required that the same form of contract was to be used by each Lloyd's syndicate opting into the ARPC Terrorism Insurance Scheme, and at the time of that Market Bulletin the contract wording was still undergoing legal review.

We attached at Appendix 2 to this Bulletin, the Lloyd's version of the Reinsurance Contract, which has been approved by the ARPC (subject to possible minor non-material amendments).

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 3 to this Bulletin and should be returned electronically to australian.terrorism@lloyds.com. A word version of this letter can be obtained by contacting Maxine Hooper, whose contact details are shown below. **This letter is to be completed by all syndicates regardless of whether they decide to opt into or out of the Scheme.**

Please note: Lloyd’s Australia, on behalf of the Market, and the ARPC will be signing the Lloyd’s Reinsurance Contract at 3.30pm (Australian time) on Tuesday, 30 September. At this time a schedule of those syndicates who have chosen to opt into the reinsurance arrangement with the ARPC will be attached to the Reinsurance Contract, along with their respective retention amounts. Any opt-in letters that are received after this signing can be appended to the Reinsurance Contract, but there will be a gap in the coverage offered by the ARPC, as this will only commence from the date that the ARPC accept these as appended to the Schedule.

3.3. Reduction Percentage

Please note: Market Bulletin Y3144, issued on 17 September 2003 showed an error in the information given on the reduction percentage. The last paragraph should have read as follows:

“In the event of a loss exceeding the **A\$10bn** 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. ‘Opt-in’ Obligations

3.4.1. *Reporting*

Market Bulletin Y3144, issued on 17 September 2003 provided a copy of the quarterly return that would need to be submitted by those syndicates choosing to opt into the reinsurance arrangement with the ARPC. The ARPC have made a slight amendment to the Lloyd’s return, to ensure that it conforms with the return to be submitted by the domestic market. The amendment is that they have included a row relating to Goods & Services Tax (GST). However, from a Lloyd’s perspective, the reinsurance premium payable to the ARPC will not be subject to GST as Lloyd’s underwriters are not making a supply connected with Australia, therefore returns should show ‘nil’ with respect to GST.

3.4.2. *Payment of Premium*

A question was raised at the Old Library presentation and related to which Tier offshore risks should be placed. It has been confirmed that such risks should be placed in Tier C.

4. **Further information**

The Terrorism Insurance Act 2003 and its amended 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 (as amended)

<http://scaleplus.law.gov.au/html/pastereg/3/1800/pdf/TerrorismInsurance2003.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 61 2 9223 1466
 Email: kstern@bigpond.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



Terrorism Insurance Amendment Regulations 2003 (No. 1)¹

Statutory Rules 2003 No. 244²

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Terrorism Insurance Act 2003*.

Dated 24 September 2003

P. M. JEFFERY
Governor-General

By His Excellency's Command

NICK MINCHIN
Minister for Finance and Administration
for the Treasurer

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1 Name of Regulations

These Regulations are the *Terrorism Insurance Amendment Regulations 2003 (No. 1)*.

2 Commencement

These Regulations commence as follows:

- (a) on gazettal — regulations 1 to 3 and Schedule 1;
- (b) on 16 October 2003 — Schedule 2.

3 Amendment of *Terrorism Insurance Regulations 2003*

Schedules 1 and 2 amend the *Terrorism Insurance Regulations 2003*.

Schedule 1 Amendments commencing on gazettal

(regulation 3)

[1] Schedule 1, paragraph 8 (e)

substitute

- (e) a public authority of a State, or an instrumentality or agency of the Crown in right of a State, other than:
- (i) a body by which the Crown carries on a business; or
 - (ii) a local governing body established by or under a law of a State, other than a body whose sole or principal function is to provide a particular service, such as the supply of electricity or water; or

[2] Schedule 1, item 20

after

contract of insurance for goods

insert

(including any form of legal tender)

[3] Schedule 1, paragraph 23 (b)

omit

, whether or not the indemnity is provided by the Commonwealth or by another person

[4] Schedule 1, item 26

substitute

- 26 A contract of insurance (whether or not the cover is limited or restricted) for loss of, damage to or liability arising in connection with any of the following:
- (a) prime movers (other than prime movers, used in mining or construction activities, that would not ordinarily be registered to travel by road);
 - (b) trailers (other than trailers, used in mining or construction activities, that would not ordinarily be registered to travel by road);
 - (c) rail and tram rolling stock.

Schedule 2 Amendment commencing on 16 October 2003

(regulation 3)

[1] Schedule 1, item 7

omit

Notes

1. These Regulations amend Statutory Rules 2003 No. 162.
2. Notified in the *Commonwealth of Australia Gazette* on 25 September 2003.

Terrorism Insurance Amendment Regulations 2003 (No. 1) 2003 No. 244

EXPLANATORY STATEMENT

STATUTORY RULES 2003 No. 244

Issued by authority of the Treasurer

Terrorism Insurance Act 2003

Terrorism Insurance Amendment Regulations 2003 (No. 1)

The *Terrorism Insurance Act 2003* (the Act) sets up the framework for the Government's terrorism insurance scheme.

Section 43 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 7 of the Act specifies that a contract is not an eligible insurance contract to the extent to which it is prescribed by regulations. The *Terrorism Insurance Regulations 2003* (the Principal Regulations) list the various forms of insurance contracts that are not eligible insurance contracts.

The purpose of the amendment Regulations is to amend the list of insurance contracts that are not eligible for the purposes of the Act. In particular, the amendments ensure that the following insurance contracts are within the coverage of the terrorism insurance scheme:

- insurance contracts that provide cover to local government;
- insurance contracts entered into in the course of Territory insurance;
- aviation indemnity policies provided by parties (e.g. insurers) other than the Commonwealth;
- insurance contracts that provide cover for trailers and prime movers used in mining and construction, and not normally registrable for use on road;

and that insurance contracts for cash in transit are treated the same as contracts for goods in transit.

Local Government Property

Item 8(e) of Schedule 1 of the Principal Regulations was intended to exclude contracts of insurance that provide cover to State governments, except to the extent the State is carrying on a business. Legal advice confirmed that the drafting of Item 8(e) also excluded contracts of insurance that provide cover to a local council.

The policy intent has always been that local government property would be covered by the terrorism insurance scheme.

The substitute for Item 8(e) ensures that local government property will be covered by the scheme. The description of 'local governing body' is consistent with the definition of the term in the *Local Government (Financial Assistance) Act 1995*.

Territory Insurance

Section 7(3) of the Terrorism Insurance Act states that "a contract of insurance is not an eligible insurance contract if it is made in the course of State insurance not extending beyond the limits of the State concerned". This provision is necessary due to the Constitutional limitation on the Commonwealth's ability to make laws relating to State insurance.

Item 7 of Schedule 1 of the Principal Regulations provided that a contract of insurance entered into in the course of State insurance or Territory insurance, is not an eligible insurance contract.

The effect, inadvertently, has been to exclude from the scheme's coverage all insurance contracts issued by the Territory Insurance Office (TIO). The TIO is a general insurance company owned by the Northern Territory Government, and operating commercially in competition with other general insurers.

There is no Constitutional limitation on the Commonwealth's powers to make laws regarding Territory insurance. Thus Item 7 of the Principal Regulations went further than the exclusion of State insurance in the Act, and beyond the Constitutional need to exclude State insurance.

The TIO is the only Territory insurance provider. Because of the potential damage to the organisation's competitiveness of not being able to issue 'eligible insurance contracts', the Regulations have been amended such that Territory insurance contracts are eligible.

This has been achieved by deleting Item 7 of Schedule 1. Section 7(3) of the Terrorism Insurance Act will continue to exclude State insurance from coverage, consistent with the Constitution.

The Territory Insurance Office requested this amendment. They also asked for a period of adjustment to allow them time to reinsure their eligible insurance contracts with the Australian Reinsurance Pool Corporation. This need for time to put in place reinsurance arrangements explains the delayed commencement date for Schedule 2 of the Amendment Regulations.

Aviation indemnities provided by entities other than the Commonwealth

Following the events of September 11, 2001 in the US, the Australian Government provided certain indemnities to airlines and airports to enable them to remain operative in the wake of the withdrawal of terrorism risk cover by commercial insurers. In order to avoid duplicating this indemnity cover, Item 23(b) of Schedule 1 of the Principal Regulations was intended to exclude from coverage under the terrorism insurance scheme liabilities that are indemnified by the Commonwealth under these separate arrangements.

As drafted, however, Item 23(b) had the potential to exclude from the terrorism insurance scheme liability contracts that are commercially underwritten.

This arose because Item 23(b) of the Principal Regulations excluded an aviation liability indemnity contract within the meaning of subregulation 31(2) of the *Insurance Contracts Regulations 1985*, whether or not the indemnity is provided by the Commonwealth or by another person. Referring to contracts issued by parties other than the Commonwealth goes beyond the description contained in the Insurance Contracts Regulations, which refers to indemnities provided by the Commonwealth.

The Terrorism Insurance Amendment Regulations address this issue by removing the words "whether or not the indemnity is provided by the Commonwealth or by another person" in Item 23(b) of the Regulations. The effect will be that liability contracts held by the owner /operator of a building at an airport will be eligible insurance contracts, except if the Commonwealth provides the indemnity.

Trailers and Prime Movers not normally registered for use on road

Item 18 of the Principal Regulations excludes from the definition of eligible insurance contracts, insurance contracts for motor vehicles, other than moveable machinery or equipment, used in mining or construction activities, that would not ordinarily be registered to travel by road. The exception for moveable machinery or equipment used in mining or construction activities was considered necessary to avoid excluding vehicle-type items that are not designed really to move on roads.

Item 26 of Schedule 1 of the Principal Regulations excluded contracts of insurance for loss of, damage to or liability arising in connection with prime movers, trailers, and rail and tram rolling stock.

The Insurance Council of Australia recently indicated that there is mining and construction equipment which may not constitute a motor vehicle, in that it is not capable of being self propelled, but would constitute a trailer and therefore be excluded by Item 26.

The amended Item 26 ensures consistency of treatment of vehicle-type items that are used in mining or construction activities, but not designed really to move on roads.

Cash in transit

Item 20 of Schedule 1 of the Principal Regulations excluded contracts of insurance for goods in transit from the scheme's coverage. As the insurance industry also issues separate policies for 'cash in transit', there was a risk that the interpretation of the word 'goods' in Item 20 would not extend to legal tender.

The amended Item 20 ensures that insurance contracts for legal tender that is in transit are treated the same, for the purposes of the Act, as insurance for other goods in transit.

Commencement

Regulations 1 to 3 and Schedule 1 of the Terrorism Insurance Amendment Regulations commenced on Gazettal. Schedule 2 will commence on 16 October 2003.

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AUSTRALIAN REINSURANCE POOL CORPORATION
ABN 74 807 136 872

REINSURANCE AGREEMENT FOR TERRORISM RISKS

Lloyd's Version

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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 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

- (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

- (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

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

- (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

- (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

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

6. Reinsured's Retention

- (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 a 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 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

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
- (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

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

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

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

- (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.

- (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

- (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

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.

14. 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.

15. 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.

16. 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 5 of this Agreement will cover any such increase in the Reinsured's liability.

17. 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*.

18. 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.

19. 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 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.
- (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

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

21. GST and Taxes

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 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

- (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

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
- (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

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 Lloyd's Australia Ltd (ABN 49 000 862 291).

"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.

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):

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):

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 14(b)):

Unless otherwise agreed, \$500,000 for each *Syndicate*.

6) Notices (Clause 22):

The Corporation:

Address:

Attention:

Facsimile:

The Reinsured: c/- Lloyd's Australia Limited

Address: Suite Q, Level 12, 55 Hunter Street, Sydney

Attention: Keith Stern

Facsimile: +61 2 9223 1466

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.

Signed at Sydney on day of September
2003 of each Reinsured by its attorney Keith
Edmund Stern under his Power of Attorney
dated 1 January 2000

**Attachment A to Reinsurance
Agreement for Terrorism Risks dated September 2003**

<i>Syndicate Number</i>	<i>Syndicate's Retention</i>
	Clause 6

Letter to be addressed to Andrew Smith, Senior Manager,
Lloyd's World Wide 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.

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

* Delete as appropriate

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

AUSTRALIAN REINSURANCE POOL CORPORATION
ABN 74 807 138 872

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

GRAND TOTAL: ALL TIERS

Sum Insured	
Subject Premium*	
GST	Nil
Total Reinsurance Premium Due	

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