

International Alert

Willis

February 2005 – New Reinsurance Rules Impact Multinationals in Brazil

New and stricter rules established by the government-run reinsurance monopoly in Brazil could impact the global arrangements of multinationals in Brazil. New policies on cession of risks abroad were issued by the *IRB-Brasil Resseguros SA*, effective January 1, 2005.

It has long been (and remains) IRB's prerogative to use reinsurers of its choice to place risks that exceed its reinsurance treaty capacity. However, multinationals with large operations in Brazil play a reinsurance role in the excess cession of their local risks abroad via their global insurance program carriers or their own captives.

This reinsurance role has been important in several cases:

- Companies with exposures in Brazil that the local market and the IRB has not been prepared to accept/underwrite
- Companies with values at risk of over USD 200 million for an individual plant in the case of property damage and business interruption
- Companies with risks that exceed IRB's automatic reinsurance treaty capacity for other individual lines of coverage

Under the new rules for the facultative cessions from the IRB to reinsurance companies and captives, the IRB will only cede to reinsurers/captives, including global programs, that satisfy minimum standards.

It is not clear at this point what options are available if a reinsurer does not meet the guidelines. It may be possible to present assurances to the IRB to get them to accept the use of such reinsurers, but the nature of these assurances is uncertain.

In cases where captives and global programs involved in reinsuring the excess risk of local

companies do not for any reason comply with the new rules, we recommend consideration of the following tactics:

- Use a company that complies with the new set of rules to front the captive and/or the global reinsurance facility
- Have the company and parent company sign a letter accepting a simultaneous claims payment clause, allowing the IRB to pay claims only after it has received a money order from the captive/reinsurer
- Agree on a different reinsurance structure exclusively for the Brazilian company
- Contact a broker with experience in Brazil and abroad, as the new rules entitle the IRB to use reinsurance brokers in placing of risks abroad

It is important to note that the IRB board has the right to decide the destiny of the cessions abroad and that each case has to be treated individually.

For programs with any reinsurance cession in any way outside of the IRB, it is important to start program renewals at least 90 days in advance. This will allow time for any planning and negotiations that may be necessary.



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Excerpts from the New IRB Policy

Art. 1. Only those reinsurers who satisfy the criteria and guidelines set forth in these Standards may do business with IRB-Brasil Resseguros SA.

§1. IRB-Brasil Resseguros SA will maintain a continually updated register of reinsurers, including their rating classification, the information specified in these standards and any other items approved by the Security Analysis Committee.

§2. The provisions of 1 shall be complied with not later than January 1, 2005.

Art. 2. Only those reinsurers who satisfy the following requirements may receive retrocessions from IRB-Brasil Resseguros SA:

- I. Minimum rating in accordance with a classification made by one of the risk classification companies, as indicated in the following table:

S&P	Moody's	AM Best
AAA	Aaa 1 Aaa 2 Aaa 3	A ++ A +
AA + AA AA -	Aa 1 Aa 2 Aa 3	A A -
A + A A -	A 1 A 2 A 3	B ++ B +

- II. Minimum capital of USD 100 million dollars.

- III. Positive evaluation of the Security Committee, on the basis of the bid submitted by the appropriate sector, as regards of the ability to pay and meet obligations within the periods of time established.

At the option of the Board, assurances by the corresponding holding company or parent company to guarantee the operations of their subsidiaries may be accepted.

Art. 3. Alterations in the rating of active reinsurers and other relevant items of information shall be communicated to the Board by the Security Committee for the appropriate measures to be taken and, should the case require, suspend the list of securities accepted.

Art. 4. Risk placing will be transacted with reinsurers who satisfy the requirements set forth herein, the criteria of specialization, historical relationship with IRB-Brasil Resseguros SA, spreading of risks, cost and other technical criteria indicated by the Security Committee and approved by the Board of IRB-Brasil Resseguros SA being observed.

§1. A reinsurer, even one appearing in the list of securities accepted, that has any outstanding financial obligation in respect of IRB-Brasil Resseguros SA, shall not, at the option of the Board, be considered for the purpose of new placements until the obligation occasioning the restriction has been settled.

§2. Preference shall be given to reinsurers who have offices in Brazil.

Art. 5. IRB-Brasil Resseguros SA shall be entitled to make use of intervening reinsurance brokers for the placing of risks abroad.

Art. 6. The legal consultants of IRB-Brasil Resseguros SA shall examine the models of documents relating to operations of risk placing abroad, with a view to verifying whether they are in accordance with prevailing legislation and adequately safeguard the interests of IRB-Brasil Resseguros SA.

The Board shall take steps to ensure that copies of the documents that formalize operations are delivered to IRB-Brasil Resseguros SA not later than 180 days after the entry into effect of coverage.

Art. 7. Retrocession contracts shall adequately reflect the obligations assumed by the retrocessionaires with respect to IRB-Brasil Resseguros SA, and shall include the following compulsory clauses:

- I. "Follow the fortune" clause, in accordance with which the retrocessionaire shall follow the fortune of IRB-Brasil Resseguros SA in all occurrences arising out of placing operations.
- II. "Claim cooperation" clause, which shall govern cooperation between IRB-Brasil Resseguros SA and the retrocessionaire.
- III. "Applicable legislation and forum" clause, providing that any disagreement arising out of the contracts shall be examined in the light of Brazilian legislation and jurisdiction and by the courts of Brazil, without prejudice to the realization of arbitration proceedings, which shall be conducted under the same conditions.