



The Brazilian Reinsurance Market

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Economic Background

- Population estimate in 2012 (IBGE) - 194 million.
- Current - 6th Largest economy; forecast of 4th by 2030.
- Growth in 2012 - 1% of GDP (7.5% in 2010).
- Industrial output fell by 2.9% in 2012.
- Inflation in 2012 - 5.8%.

- Current forecast of growth in 2013 - 3.7% (Fitch).
- Inflation forecast for 2013 - 6.15% (target 4.5% - tolerance 6.5%).

- Services sector - over 50% of GDP.
- Manufacturing Industry - 13% of GDP.

Economic Background

- Government Plan of Accelerated Growth (PAC) – Infrastructure - highways, railways, ports, airports, public transport, natural gas, hydro and other - US\$ 548bn by 2014.
- Beyond 2014 - US\$ 363bn.

- Infra-structure - US\$ 90bn.
- Sub-salt - US\$ 170bn.
- Petrobras - 2012-2016 - US\$ 236bn.

- 2014 FIFA – US\$ 90bn increase in GDP and US\$ 17bn in infrastructure.
- Rio 2016 Olympics – US\$ 15bn direct and US\$ 45bn indirect investments.

Economic Background – Infrastructure Projects

- Petrochemical Refinery – Comperj Pole - approx. US\$ 8.4bn.
- Oil Refinery – Rnest ‘Refinery of the Northeast’ - approx. US\$ 20bn.
- Hydro Plants – Santo Antonio, Jirau and Belo Monte.
- Nuclear Plant – Angra 3.
- Stadiums, airport and highways improvements – World Cup 2014 and Olympics 2016.

Reinsurance Reforms - Overview

- Old Decree Law No. 73 of 1966 – IRB (the Brazilian Reinsurance Institute) monopoly of all reinsurance and retrocession in Brazil.
- 1999 – IRB’s privatisation failed.
- Old IRB regime – Jurisdiction, Follow the Fortunes and Claims Cooperation Clauses were all mandatory.
- New regime – 2008 - IRB no longer a reinsurance regulatory body and became one of “local” reinsurers.

Complementary Law No. 126 and Regulations

- The opening of the market officially occurred on 17 April 2008, after 120 days from the issuance of the main regulation no. 168.
- Reinsurers may register as “local”, “admitted” or “occasional” reinsurers.
- Around 100 reinsurers authorised by Susep (2012). 12 are “local”. 30 and Lloyd’s are “admitted”. Remainder are “occasional”.
- Each class of registration requires different levels of capital and allows access to varying percentages of ceded risks.

Susep – Approval Process

- 6-12 months for local, 3-12 months for admitted, and 3-6 months for occasional.
- Notarised translation of all foreign documents.
- Statements and forms signed by representatives.
- Certificates of good standing and solvency from foreign regulatory authorities.
- Business plan including minimum capital, net worth and proof of escrow account.
- Updated rating certificate.

	Local	Admitted	Occasional
Capital and Reserves	Capital: R\$60million (approx. US\$34 m) Additional Variable local claims reserves.	Net worth: US\$100 million Escrow Account: US\$5 million (all lines); US\$1 million (life) Variable claims reserves. Minimum rating: Baa3/BBB-	Net worth: US\$150 million Rating: Baa2/BBB No claims reserves. No tax haven.
Local representation	Local Brazilian Corporation.	Local representative office.	Service Agent.
Supervisory requirements	SUSEP supervision and internal reporting controls.	Annual reports of good standing, solvency, financial statements and rating certificate.	Annual reports of good standing, solvency, financial statements and rating certificate.
Cession Limits	40% Mandatory Cession Rights, and retention of 50% of premium. Reinsurance and Retrocession - Intra-group limit of 20%	Retrocession - Intra-group limit of 20%	Limit of 10% of cessions, but 25% for oil risks / bond government obligations.

Market Share

- 2012 – Local, 66% -v- Admitted and Occasional, 34%.
- Between 2008 and 2010 – IRB-Brasil Re's share decreased from 85% to 25% over the three year period.
 - But in 2011, back to about 40%. And in 2012, perhaps close to 50%.
- IRB-Brasil Re – 50% Banco do Brasil, 21% Bradesco, 15% Itau-Unibanco and 14% others.

Market Share

- 2011
 - Direct Insurance Premium - US\$ 56bn.
 - Non-Life Market - US\$ 27bn.
 - Reinsurance Premium - US\$ 3.1bn.
- 2012
 - Direct Insurance Premium - about US\$ 66bn.
 - Reinsurance Premium - SUSEP changed basis of calculation.

Market Share

- 31 August 2012 - “Agência Brasileira Gestora de Fundos e Garantias (ABGF) SA” (“Segurobras”)
 - To act when public bodies cannot obtain re/insurance coverage in the open market for large projects. Surety, credit and engineering insurance. Distortion of competition.
- 23 January 2013 - Brazil's National Privatization Council - capital increase of between 2% and 15% for IRB-Brasil Re.
 - BNDES hired PWC to audit IRB within 180 days. Share issuance between 3 and 5 years after IRB becomes a private company.

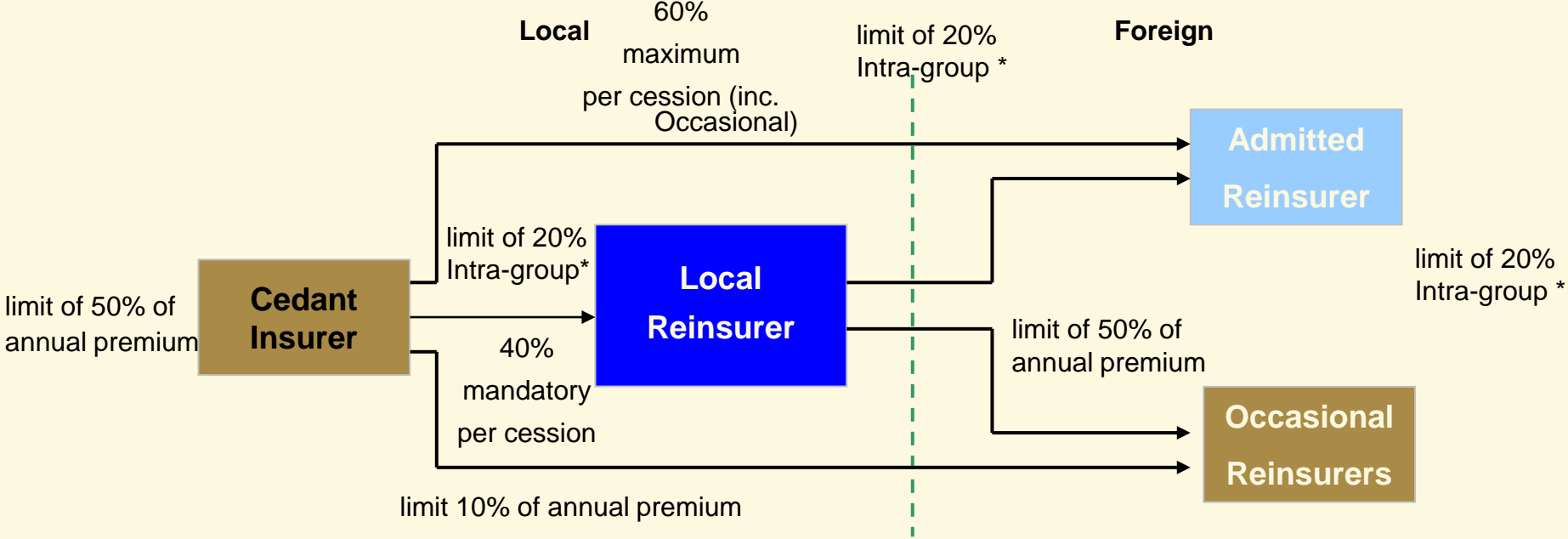
Local Reinsurers - Cessions

- Prior to Reg. 225 of 2010 – 40% preferential offer to local reinsurers per cession (right of first refusal only). Local reinsurers had to match terms or decline (best terms prevailing).
- Reg. 225 of 2010 – 40% mandatory cession to local reinsurers. Local reinsurers need not match terms and can quote higher rates (terms from local reinsurers will always prevail).
- Reg. CNSP 241 of 2011 – relaxation of 40% mandatory cession, where local reinsurers have refused a risk (or silent) “*regardless of prices and conditions*” offered by them.
 - Allows cession to non-registered reinsurers.

Intra-Group Restrictions (Reg. 232)

- Prior to Reg. 232 of 2011 – Cedants could reinsure freely with their intra-group reinsurers.
- Reg. 232 of 2011 – Maximum of 20% cession to intra-group companies by insurers and local reinsurers.
- 20% not clearly defined.
- A partial relaxation of the original restriction on intra-group cessions.

Premium Cession: Limits



* And limit of cession of 50% of annual premium.
 (not apply to Surety Bonds, Agricultural and Export Credit)

CADE – Competition Commission Investigations – March 2012

- Breach of reinsurance regulations – e.g. triangulation of cessions among insurers and reinsurers of different economic groups.
- Allegations of abuse by reinsurers in negotiating certain provisions of reinsurance agreements with direct insurers, e.g. claims control provisions and fronting arrangements.
- IMF’s Report of December 2012 - “Brazil: Detailed Assessment of Observance of Insurance Core Principles...”
 - January 2013 – Joint Statement of American Insurance Association (AIA), Association of Bermuda Insurers & Reinsurers (ABIR)... - “...*Brazil’s mandatory reinsurance cessions regulations which are protectionist measures ...hinder market access, economic growth, and the healthy spread of risk...*”.

Mandatory Clauses

- Intermediary Clause: reinsurance must establish whether the broker may receive premiums and pay indemnity.
 - Clause cannot limit the direct relationship between cedants and reinsurers.
- Claims Control or Claims Cooperation: no longer mandatory.

Reinsurance Disputes - Brazil

- No specialist judiciary.
- No condition precedent.
- Rescission rarely available.
- Misrepresentation, non-disclosure, breach of claims notification and control/cooperation – usually damages.

Reinsurance Disputes - Brazil

- Almost no reinsurance law court precedents.
- Possible indirect application of CDC.
- No reinsurance arbitration culture.
- Unsettled arbitration case law.

Foreign Reinsurance Arbitration

- JIRAU Case - São Paulo State Court of Appeal - injunction against insurer engaging in arbitration in England; heavy daily fines.
 - Arbitration clauses in consumer contracts - clauses in bold typeface and insurers express secondary consent.
- 29 June 2012 - the Brazilian Superior Tribunal of Justice (STJ) overruling the São Paulo State Court.
 - Issues of the existence, validity and effect of arbitration clauses decided by the arbitrators.
 - But did not order dismissal of concurrent proceedings in São Paulo State Court.

Foreign Reinsurance Arbitration

- CADE – Report n° 08012.005526/2010-39, 14.03.2012:

“...the obligation of international arbitrations being carried out is of questionable legality, as they are strictly controlled by reinsurers, in breach of... expressly protected rights of Brazilian insureds, causing...distortion of prices...”

“This...has brought about the issuance of prison orders abroad against directors of Brazilian insurance companies who may decide to commence proceedings in the Brazilian Courts...”

Foreign Reinsurance Arbitration

- Public Announcement of 27 September 2012 by the ‘Brazilian Institute’ of Insurance Law:

“In view of [CADE’s Report], it is important to adopt a rule... as follows:...

The disputes resulting from insurance and reinsurance contracts shall be subject to the exclusive jurisdiction of the Brazilian courts...

§ 2º Arbitrations shall be carried out in Brazil, subject to...Brazilian law”.

Jurisdiction and Arbitration Clauses

- Complementary Law No. 126 – silent.
- Art. 38 of Res. 168

“Reinsurance contracts covering risks located in Brazilian territory must include a clause for submission of disputes to Brazilian law and jurisdiction, except for arbitration clauses, which shall observe the legislation in force”.

Brazilian or English Arbitration

- BAA, Art. 10

“It shall be included, compulsorily, in the arbitral agreement: ... IV - the place in which the arbitral award shall be delivered.”

- BAA, Art. 34 – Sole Paragraph:

“...a foreign arbitral award is one that which has been delivered outside the national territory.”

English Arbitration

LCIA Recommended Arbitration Clause

- *“Any dispute ... shall be referred to and finally resolved by arbitration under the LCIA Rules....*
- *The number of arbitrators shall be [three].*
- *The seat, or legal place, of arbitration shall be [London].*
- *The language to be used in the arbitral proceedings shall be [English].*
- *The governing law of the contract shall be the substantive law of [Brazil]”.*

English Arbitration

- The “*back to back presumption*” where reinsurance governed by English law.
- Reinsurance warranties construed in accordance with the law applicable to the original policy.
- *Vesta v Butcher [1989]* and *Groupama v Catatumbo [2000]*.
- *Wasa International v Lexington [2009]* – House of Lords - not “*an inflexible rule of law*”.

The Brazilian Reinsurance Market - Summary

- The privatisation of the IRB is a long-overdue reform which may signal the relaxation of protectionist measures such as 40% mandatory cession to local reinsurers and maximum of 20% intra-group cessions (see slides 11, 12 and 13).
- But, there are local interests which will support the continuation of a limited reinsurance “open market”.
- If the Brazilian economy grows at the predicted rates in future, there is a potential for enormous growth in the local reinsurance market.

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