

# Breaking News



## UPDATE ON THE REINSURANCE MARKET

On 21 February 2011 the Argentinean Insurance Regulator (Superintendencia de Seguros de la Nación – [www.ssn.gov.ar](http://www.ssn.gov.ar)) enacted **Resolution 35.615** (already published in the Official Bulletin) modifying the reinsurance regulatory framework. Given the market will have only a few months to adapt to the new regime, it is important to note its effects both on reinsurance companies and reinsurance brokers, as well as what it means for the reinsurance contracts.

Three main Laws are mentioned in this resolution:

**20.091 – Insurance Market (Creation & Operation)**

**12.988 – Non Admitted Insurance Prohibition - Reconfirmation**

**25.246 – Cover-Up & Laundering of Assets Act**

Surprisingly agreements between Argentinean based reinsurers and retrocessionaires based abroad are not discussed in this new regulation.

The regulation is presented by the Argentinean government as an attempt to strengthen its position before The Financial Action Task Force (FATF), an inter-governmental body concerned with money laundering and terrorist financing. The Regulation is also said to be intended to favor the integration of the local insurance and reinsurance market within the Mercosur trade bloc (Argentina, Brazil, Paraguay and Uruguay). At this time, only Brazil has a developed local reinsurance market in which some recent changes have been introduced (1). This may be the model that Argentina is trying to achieve.

### Reinsurance Companies

From 1 September 2011, Argentinean cedants will only be able to enter into reinsurance contracts with reinsurance companies or branches of foreign companies established locally, with capital of at least AR 20 million (i.e., approximately USD 5 million, comprising USD2.5 million in capital plus technical reserves).

Foreign reinsurers that have not set up a branch in Argentina will only be able to underwrite risks when, due to the type of risk to be ceded:

- a) There is no local capacity.
- b) The approval of the Superintendencia is granted under the “discrete insurance operations” exception.

Following a) & b) the foreign reinsurer has to be registered with the Superintendencia.

This one off exception will be granted on a case by case basis, and will require evidence that recourse to the exception for the program in question is justified.

The registration of a foreign reinsurer branch in Argentina will have to comply with the current requirements of the Insurance Activity Act. It should be noted that registration will not be granted to foreign companies that:

- Are domiciled in countries that levy less than 20% corporate tax, where their local regulations establish secrecy on shareholding of corporations, and in those jurisdictions considered tax shelters under Argentinean Law.
- Are registered in FATF blacklisted territories.

At present several Reinsurers are registered as Foreign Authorized Reinsurers that can operate in the market without the intervention of a Reinsurance Broker.

[www.ssn.gov.ar/storage/registros/reaseguos/ree.htm](http://www.ssn.gov.ar/storage/registros/reaseguos/ree.htm)

### Reinsurance Brokers

Pursuant to the new regulatory scheme, reinsurance brokers will need to comply with the following:

- Provide evidence of Errors & Omissions insurance cover in a minimum amount, equal to the maximum value between USD 1 million and 10% of the annual brokered premium with a maximum deductible of USD 50,000.
- File an affidavit to the Superintendencia stating that it will comply with the new regulation and that reinsurance contracts will be placed with reinsurance entities operating according to this regulation.
- Argentinean reinsurance brokers must bear the legend "Corredor de Reaseguros" (Reinsurance Broker) in their corporate name and/or business denomination, to make clear that they are different from insurance brokers.
- Brokers will have a 30 day period from inception of the policy to deliver reinsurance slips to cedants, the full contract signed by all reinsurers being due within 6 months.
- Reinsurance contracts cannot be used to grant brokers with power or authority other than that which is necessary and inherent to their duty, as intermediaries, and are not expected to have enhanced fiduciary or underwriting duties to reinsurers.

Reinsurance brokers will need to provide the regulator within 30 days full information about any claim in excess of USD \$100,000 where coverage is denied, or any sanction imposed on branches of foreign insurers by the relevant authority in the country of origin. Failure to comply with these and other requirements may result in the termination of the broker's license.

### Reinsurance Contracts

The new Resolution also imposes public policy requirements to reinsurance contracts. For instance, reinsurance contracts are expected to contain a reference to liquidation. Should a ceding company enter into mandatory or voluntary liquidation proceedings, the contract must provide for the reinsurer paying directly to the liquidator any balance that it may eventually owe, irrespective of whether the ceding company has met its obligations with the insured, or its liquidation status (Cut Through Clause).

Retroactive amendments to reinsurance contracts are forbidden insofar as these may affect the ceding company's reserves. Retroactive rescission, i.e. reverting back to pre-contact status, or termination or conditioning the validity of the policy to whether payment has been made (of premium, one is left to assume) is also prohibited.

In contracts where reinsurance intermediaries are involved, clauses limiting or restricting the direct relationship between the ceding insurer and the reinsurer are not allowed. As previously stated, reinsurance contracts cannot grant brokers with power or authority, other than that necessary and inherent to fulfill their intermediation.

Insurers entering into proportional reinsurance contracts, both on treaty and facultative basis, where a percentage lower than the proportion established under the contract is ceded, must record the additional risk as liabilities.

Resolution 35.615 is unlikely to go unchallenged given the far reaching consequences that its implementation could have. We will update you as matters unfold.

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## HIGHLIGHTS OF THE RESOLUTION

**SUPERINTENDENCIA DE SEGUROS DE LA NACION**

**RESOLUTION 35.615 / 2011**

**DATE: 11-2-2011 / PUBLISHED IN THE OFFICIAL BULLETIN 21-2-2011**

**NEW REINSURANCE RESOLUTION:**

**CHAPTER I - NATIONAL REINSURERS**

**AUTHORIZED ENTITIES**

The following entities will be authorized to perform reinsurance operations:

1. National corporations and cooperatives entities exclusively intended to operate in reinsurance;
2. Branches of foreign reinsurance entities duly established in Argentina;
3. *National corporations and cooperative entities, branches of foreign reinsurance entities established in Argentina, official and combined entities, either national or from provinces and municipalities, authorized to practice direct insurance in Argentina (in the same lines they are already authorized)*

Entities authorized to operate as reinsurers must comply with **Law 20.091**

**OBLIGATIONS**

Within a term of 30 days from starting date, they must submit the reinsurance contracts to their insurers, or otherwise cover notes documenting such transactions. In this latter case, the respective contract shall be submitted within a maximum term of six months from inception, with the acceptance of all the participating reinsurers.

Termination of reinsurance contracts must be informed within 30 days from occurrence by sending the Annex Form and attached copy of documents that prove termination of contract to SUPERINTENDENCIA DE SEGUROS DE LA NACION.

They must also report all claims exceeding USD 100.000, which have been rejected by the reinsurer, within 30 days from occurrence to SUPERINTENDENCIA DE SEGUROS DE LA NACION.

**CHAPTER II - ADECUATION**

Foreign reinsurance entities registered previously to this new resolution (\*), must comply with all the provisions by **September 1<sup>st</sup>, 2011**. From that date onwards reinsurers that are not enrolled in accordance with the resolution will not be capable of performing reinsurance operations within the territory of Argentina.

## CHAPTER III - REINSURANCE INTERMEDIARIES

### REQUIREMENTS

National corporations or local branches of foreign reinsurance brokers will be authorized to operate if they comply with the following requirements:

- Provide insurance evidence by means of a complete copy certified by public notary of the insurance policy covering Errors & Omissions for a minimum amount equal to the maximum value between one million US dollars, (USD 1,000,000) and ten percent (10%) of the net premium form the previous calendar year.

Deductibles exceeding fifty thousand US dollars (USD 50.000) **will not be accepted.**

- Submit affidavit of the broker who undertakes to place reinsurance in the reinsurance companies authorized under the present law.
- In case of national corporations “Corredor de Reaseguros” must be added to the name of the company.
- In case of branches of foreign legal entities, in addition to the listed requirements they must provide an updated certificate issued by competent authority of the applicant’s home country, certifying that they are authorized to operate in reinsurance, indicating inception and expiration dates when they are authorized to operate, as well as the types of risk in which they are empowered to act.
- The applicant’s home country is understood as the country where the headquarters are located and main place of business.
- Upon compliance of all these requirements, the brokers will be enrolled in the register of SUPERINTENDENCIA DE SEGUROS DE LA NACIÓN.

## CHAPTER IV - FOREIGN DOCUMENTS

All documents from a foreign country must be duly legalized according to the Argentine Law- and whenever written in a foreign language that is not Spanish, a translation performed by a Public Translator and certified by the National School of Translators must be provided.

SUPERINTENDENCIA DE SEGUROS DE LA NACION may request other documents or records, if deemed necessary to verify soundness.

## CONTRACTS

The reinsurance contracts must include a clause for the eventual case of disruption or liquidation – either forced or voluntary- of the ceding insurer, establishing the obligation of the reinsurer to pay the balances eventually owed directly to the adjustor/ trustee, regardless of whether such ceding insurer has met its obligations to the insured or of the settlement statement.

### EXCEPTIONS

When due to the magnitude and nature of the risk, the reinsurance operations cannot be covered in the national reinsurance market, SUPERINTENDENCIA DE SEGUROS DE LA NACION, may allow authorized insurance entities within the country to subscribe reinsurance contracts with foreign reinsurers operating from their headquarters.

**The request must be made prior to signing the contract and must be accompanied by evidence justifying the exceptional criteria.**

**This will be authorized by resolution based on a particular case related to certain reinsurance operations properly identified by the petitioner insurer.**

As provided in the previous section, foreign reinsurance entities authorized in the respective country may be empowered to accept reinsurance from their home country, provided that they meet with the following requirements:

- Provide evidence that they are legally constituted and authorized to reinsure risks transferred from abroad, indicating the date that they started operating.
- Provide proof that the law in force in the country of origin allows such entities to comply with commitments arising from reinsurance contracts abroad.
- To prove by external auditor report that net assets are not less than thirty million United States Dollars (USD 30,000,000.-)
- To appoint an attorney with extensive administrative and judicial powers, even to be called to trial, with legal address in the City of Buenos Aires, which will be considered valid for any type of notices and communications.
- Submit the financial statements of the last five years, duly signed in all pages by the previously mentioned attorney or representative, with the respective opinion of the external auditors.

Once that the permission to operate is granted, SUPERINTENDENCIA DE SEGUROS DE LA NACION, shall register the entity as a reinsurer, in the respective registry.

### References:

- (1) **Brazil:** On the 15th December 2010 the National Council of Private Insurance (CNSP) stopped the process of liberalization which had previously started to develop in the **Brazilian Reinsurance market** and published two new resolutions which have already become effective on the 31st January 2011 (No. 224) or will be become effective on the 1st April 2011 (No. 225).

According to resolution 224, reinsurance or retrocession in the country cannot be transferred to companies linked or owned by the same financial conglomerate based abroad. This means that international carriers cannot cede/ retrocede to their parent companies.

According to resolution 24, insurance companies will contract with local reinsurers at least 40 % of each reinsurance cession in automatic treaties or facultative. The "right of first offer" of 40 % will become an obligation to cede at least 40 %.

The resolutions are seen as negative impact on the insurance market.

[Law 20.091](#)

[Law 12.988](#)

[Law 25.246](#)

[Full Resolution 35.615/2011](#)



## About Us

Founded in 1985 the group has developed to become the largest Argentinean Corporate Insurance Broker (Rank No. 4 in the market) with subsidiaries and related activities in the region. Employing, on a group level, more than 70 professionals and dealing with +30 carriers. Makler provides its services to over 500 multinationals and 2,500 leading local companies.

Besides the obligations established by the Insurance Law that regulates our activity, our clients access to the following services:

- ✓ Risk analysis and engineering
- ✓ Risk control
- ✓ Design and administration of a Risk Management Program
- ✓ Risk placement
- ✓ Insurance Audit and Special Reports / Benchmarking
- ✓ Full administration of claims
- ✓ Reinsurance negotiation
- ✓ Contractors Control and Certification
- ✓ Mergers and acquisitions
- ✓ Administration of Regional and International Insurance Programs
- ✓ Employee Benefits Programs
- ✓ Analysis and starting up of own Captives and Rent a Captives
- ✓ Design of Affinity Groups products
- ✓ Administration of Captive or Institutional portfolio
- ✓ Administration of agents and affiliated brokers



## **Controlled Subsidiaries**

### **Makler ROU S.A.**

*Corporate Insurance Broker licensed in Uruguay*

### **XS S.A.**

*Facultative Reinsurance Broker*

### **Ryan & O'Toole**

*Employers Benefits Consultants - Mercosur*

### **Risiko S.A.**

*Loss Control and Engineering Services – Mercosur*