

EUROZONE: SETTLEMENT OF PREMIUM AND CLAIMS

POINTS TO BEAR IN MIND IF A EUROZONE COUNTRY "EXITS" THE EURO AND ESTABLISHES A NEW CURRENCY

This note sets out various considerations relevant to one or more "Eurozone" countries re-denominating its currency from the Euro to a new currency.

The points below relate to the settlement of premium and claims where

- (i) an insurance contract is underwritten in Lloyd's or the London company market;
- (ii) the insurance contract is denominated in Euro;
- (iii) the insured business, organisation or person is domiciled or resident in a territory within the "Eurozone"; and
- (iv) that territory enacts a law to "exit" the Eurozone and create a new national currency (referred to below as the "re-denomination law") or this is in prospect.

This note does not deal with risks relating to the exposure of syndicate trust funds to a crisis caused by one or more countries exiting the Euro. The note is not an attempt at a close analysis (legal or otherwise) but a list of points to consider relating to the processing of insurance business.

(Reference to a "contract of insurance" includes a contract of reinsurance unless the context provides otherwise.)

PREMIUM

- ***Where premium has not been paid by the insured:*** if the Country in which the insured is resident "exits" the Euro and creates a new currency, this would not necessarily be an event which in itself terminates or frustrates an insurance contract. However, for contracts at risk, the carrier/London broker may nevertheless consider amending such contracts to include a "continuity clause", to prevent arguments on this point, and a "re-denomination clause" to deal with premium payment in a new currency if the Country in question exits the Euro (example clauses have been circulated to the LMA Lawyers' Forum and Wordings Group for comment).
- ***Where premium has not been paid by the insured by the due date:*** the carrier may have a right to terminate the contract (for example, if the contract contains a premium payment term which is breached). The carrier should clarify the position with the insured through the London and local broker and may wish to renegotiate the currency of payment or premium payment terms to continue cover as an alternative to issuing a notice of termination.
- ***Where the premium has been paid to the local broker but has not been remitted to London:***
 - QUESTION: has "risk transfer" been agreed by the carrier with the local broker (i.e. "cascaded")? If yes, then the carrier is unlikely to be able to terminate the contract for non payment of premium (if late). The re-denomination law is likely to be relevant. There may be a conflict between this law and the insurance contract (e.g. if the applicable law of the contract is English and/or the contract was underwritten in London).

- QUESTION: Is there a local law or regulation which states that payment to the intermediary satisfies the insured's premium payment obligation for the class of insurance in question? This position would need to be investigated before use of any clause allowing termination for non payment of premium. There may be a conflict of laws if the contract is expressed to be subject to English law and/or was underwritten in London.

In these cases, the carrier may be at risk in relation to premium held by the local broker, both in terms of the content and application of the re-denomination law and in terms of the solvency of the local bank holding the funds. The carrier via the London broker needs to clarify with the producing broker what arrangements will be made for settlement.

Where the terms of business are "non risk transfer" (the local broker is the insured's agent for handling premium), the failure by the local broker to transmit premium in accordance with premium payment terms may give rise to a right to terminate the contract. Again, the opportunity may be taken to re-negotiate the currency of settlement and payment terms.

- **Where premium has been paid to the London broker:** this should be paid to the carrier in accordance with the premium payment terms (or as otherwise agreed).
- **Marine premium:** where the contract of insurance is for marine business, the London broker may be liable to pay the premium whether or not it has been received from the insured in accordance with section 53 of the Marine Insurance Act 1906 (unless otherwise agreed). This position would need to be reviewed before any step is taken to terminate the contract for non payment of premium.

CLAIMS

- **Where the carrier has not yet paid an agreed claim:** where a Eurozone country has enacted a re-denomination law, before the claim is paid, the carrier through the London and local broker should (i) confirm the currency of payment - the re-denomination law may have implications regarding a payment in Euro to a resident insured; and (ii) confirm the party to whom remittance is to be made and obtain appropriate releases - there may be a particular solvency risks relating to a local bank.
- **Where the claim has been paid to the London broker:** if there is a risk transfer TOBA in place, this would not constitute payment to the insured unless otherwise agreed. If there is a non risk transfer TOBA in place, this may constitute a valid payment to the insured but it is recommended that steps above are taken.
- **Where the claim has been paid to the local broker:**
 - If risk transfer has been granted to the local broker ("cascaded"), then this may not constitute payment to the insured.
 - Where a local law or regulation provides that a claim is only paid when actually received by the insured, there may be a conflict between the local law or regulation and the insurance contract, if the latter is subject to English law or underwritten in London.

In these cases, the claims monies may be held at the carrier's risk potentially in a bank where the solvency position is uncertain; and the funds may be subject to the re-denomination law, e.g. the locally-held balance may be converted to the new currency.

In these circumstances, the position needs to be investigated by the carrier and London broker and monies at risk ascertained.

- **Marine claims:** the carrier is directly responsible to the insured for claims and return premiums, unless otherwise agreed, if the contract is underwritten subject to English law and section 53 of the Marine Insurance Act 1906. This means that the carrier is at risk in respect of claims monies held in transit by intermediaries, including claims monies held locally (the terms of the re-denomination law and solvency of local banks holding the funds would therefore again be critical).
- **Direct settlement to insureds:** this is an option and would reduce the risks where material claims are being paid, for example, of monies being trapped, re-denominate or caught in the hands of an insolvent party in the distribution chain.

In all these circumstances, careful consideration needs to be given to claims settlement and release documents.

COVERHOLDERS

- Funds held by a local coverholder would normally be held as agent of the carrier and at the carrier's risk. These may be subject to the re-denomination law (e.g. converted to the new currency) and local solvency risks.

SETTLEMENT IN LONDON

- Lloyd's and Xchanging have extensive experience of introducing new settlement currencies into the market settlement process; Lloyd's also provides its currency conversion service (which supports Xchanging settlements) where central settlement counterparties do not have bank accounts for a given currency.

MODEL CLAUSES

- Examples of a "contract continuity clause" and "re-denomination clause" have been circulated to the LMA Wordings Group and Lawyers' Forum, and IUA and LIIBA, for comment.

OTHER MATTERS

Other complex issues could arise, for example: where there is facultative reinsurance, whether the cover remains back-to-back with the original insurance in terms of currency; questions which may arise in respect of a loss payee, where the insured resides in the "exit" territory but the loss payee resides in a different territory.

ADVICE

- Managing agents and brokers will be keeping Euro-denominated insurance contracts relating to Eurozone territories under review to monitor outstanding premium, outstanding claims, and premium and claims monies in transit; and the materiality of this business to their firms and principals. The points made above are general observations and are made to assist in the assessment of risk in this area. Where appropriate, legal or other professional advice would need to be sought in relation to particular contracts and transactions.

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