

# MEMORANDUM

ALLENDE & BREA  
ABOGADOS

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**Firm or Company:** All

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## PRIVILEGED AND CONFIDENTIAL

**Reference:** Proposed New Reinsurance Companies Regulation

Dear All,

We have reviewed a proposed new regulation for reinsurance companies. Below you will find a summary of the main points, specially where it is different from the current regulation. There are other proposed changes, which will be analyzed in a more detailed memorandum, at a later date.

Please note that this is just a proposal and there may be some changes if the proposal is finally passed. However, we have heard unofficially that this is a “pet proposal” from the current head of the Insurance Regulator, and he is adamant to pass this regulation as currently drafted, and therefore not open to change. There is talk of forming a commission to try and promote some changes, but from what we have heard, the chance of any part of the draft actually changing is fairly slim.

We have structured this report following the structure of the proposed regulation, and refer to sections of the proposal.

### **1. Entities that may act as local reinsurers**

Section 1 of the proposal states that the following entities may be authorized to act as reinsurers:

- a) Corporations whose sole purpose is to operate in the reinsurance market.
- b) Branches of foreign reinsurance companies.
- c) Corporations that are authorized as insurance companies, in the same branches of the insurance business they operate.

This point does not vary greatly from the current regulations. However, it is the joint play of this section, together with sections 19 and 20 analyzed below that will have the greatest impact on the current reinsurance business.

The effect of the proposed regulations is that in order to conduct reinsurance business in Argentina, foreign reinsurers will have to establish a local branch, which will limit the reinsurance operations that can be conducted from the head office.

## **2. Foreign reinsurers**

Under current regulations, foreign reinsurers can be authorized to issue reinsurance contracts from their jurisdictions of origin as long as they complied with certain requirements and were registered as such by the Insurance Regulator.

This would no longer be possible under the proposed regulations, since foreign reinsurers will have to establish a local branch; with the exception set forth in Section 19.

The proposed regulations set forth in Section 19 that the Insurance Regulator may, for certain discrete reinsurance operations that must be specifically individualized, issue an authorization for a foreign reinsurer to directly issue a reinsurance contract from the company headquarters. This authorization would only be granted, if (from the amount and characteristics of the ceded risks) said discrete reinsurance operations cannot be covered in the local market. The authorization request is to be filed prior to the execution of the reinsurance contract and must be accompanied with all the documents that would justify the exception.

These reinsurance operations will only be authorized if the foreign reinsurer complies with certain requirements set forth in Sections 20 and 21, which are identical to the requirements that are currently in place for the registration of foreign reinsurers.

This drafting is unclear, since it would seem that on the one hand the registration of foreign reinsurers as such is unnecessary, since these will only be able to operate on an exception basis, pursuant to a specific authorization by the Insurance Regulator. However, it would seem from the drafting of these three sections that the Insurance Regulator will still maintain the current registry of foreign reinsurers, with the annual reporting requirements these have. This apparent contradiction will have to be clarified in due course.

## **3. Time frame to enact changes**

Section 4 of the proposed regulation mandates that foreign reinsurers registered and operating under the current regulations will have until July 1, 2011 to adapt to the new regulations. Any reinsurer that has not adapted to new regulations will no longer be able to accept reinsurance contracts from Argentine sources.

This adaptation will basically entail establishing an Argentine Branch of the foreign reinsurer (or establishing a local subsidiary). Attached as Annex I you will find the required by the Office of Companies to establish a local branch.

Additionally, the Insurance Regulator requires the filing of the balance statements of the previous 5 years, file copy of the articles of incorporation and by-laws duly registered in the jurisdiction of origin, identification of board members and other officers, indication of shareholders, shareholders that attended the last two shareholders' meetings, and a minimum

capital (in accordance with current regulations) will have to be assigned to the branch. All foreign documents will have to be duly legalized and have the Hague Apostille affixed (or consular legalization if the Apostille is not available in the jurisdiction). Foreign language documents will then have to be translated by a sworn translator in Argentina.

#### **4. Authorized jurisdictions**

Section 18 of the proposed regulations address matters related to “suspect” jurisdictions, which are not addressed in the current regulations.

*“18. No authorization shall be granted to branches of foreign companies whose head office is located in countries that levy less than 20% Income Tax (or similar tax) or those where their local regulations establish secrecy on shareholding of corporations or in those jurisdictions, territories or Countries with low or no taxation called “tax shelters” and/or countries or territories that are non-cooperative in the framework of the world fight against money laundering and terrorist financing in accordance with the criteria defined by the Financial Action Task Force (FATF).”*

Attached as Annex II hereto you will find a listing that is provided as an annex to the regulation on Income Tax that indicates which countries are considered tax shelters under Argentine law (and therefore would fall under the scope of the prohibition indicated in section 18 above).

Additionally, please note that, in accordance with FATF regulations and requirements the Argentine government, through the *Unidad de Información Financiera* (UIF), has been issuing several resolutions in the past few weeks regarding processes that certain sectors have to comply with in regards to the fight against money laundering and terrorist financing. Some of these resolutions have an impact on the Insurance sector (both with regards to the Insurance Regulator and with individual insurance companies).

#### **5. Reinsurance Brokers**

Under the current regulations, foreign reinsurance companies can conduct business through locally registered reinsurance brokers. These brokers can be national or foreign individuals or corporations.

Under the new proposed regulations, pursuant to section 5, only national corporations or branches of foreign companies can act as reinsurance brokers, therefore limiting the options foreign reinsurance companies have when deciding how to conduct their business. Individuals currently authorized will still be authorized as long as they comply with all other requirements for reinsurance brokers under the proposed regulations.

#### **6. Conclusion**

The proposed changes could have a great impact on the current reinsurance market, especially as regards to foreign reinsurers and the reinsurance contracts that the home offices enter into directly.

However, we highlight that this is, at this time, a proposed draft that presents several drafting problems and questions, and therefore may be changed before it is eventually approved.

Notwithstanding the foregoing it could be useful for foreign reinsurers who wish to establish local branches to start putting together the required documentation, since in our experience this is a lengthy and cumbersome process.

Do not hesitate to contact us should any clarification be required.

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**ANNEX I**

**REGISTRATION OF A BRANCH**

In order to register a branch with the Office of Companies, the Parent must file the following documents:

- (i) Certificate of good standing issued by the appropriate authorities of the jurisdiction where the Company is incorporated or formed, stating that the Company is duly organized, valid, and existing in accordance with the laws of such jurisdiction and that the Company is not subject to a liquidation proceeding or any other proceeding that imposes restrictions on its assets and/or activities;
- (ii) Copy of the Articles of incorporation of the Company (or articles of association or applicable incorporation document, as the case may be) and bylaws (if adopted), and any amendments thereto, which copy should be certified by a Notary Public;
- (iii) Copy of the latest audited financial statements certified by Notary Public as of a date which is not prior to 12 months; and
- (iv) A one day notice published in the Official Gazette announcing the decision to set up a branch.
- (v) Certificates of the company indicating the following: Resolution of the Management deciding to establish a local branch; certificate indicating that the company is not legally forbidden or restricted from performing its corporate purpose or any activities in its place of incorporation; certification of assets owned by the company as of the date of the latest financial statements; certification of the shareholders of the company (or indication that the company is publicly traded and its shares are listed).

Further, remember that the documents described in (iii) and (v) of this memorandum should be (a) executed by an officer duly authorized by the Board of Directors of the Company, and (b) legalized by Notary Public. The above mentioned documents should contain the Apostille stamp as per the 1961 Hague Convention or by the Argentine Consulate in your jurisdiction if the Apostille stamp is not available in your jurisdiction.

Once these documents are executed, notarized and apostilled (or consularized, as applicable), please send us an e-mail with PDF versions of these documents so that we start the translation process in advance, while the documents are mailed to us.

ANNEX II

**PAÍSES DE BAJA O NULA TRIBUTACIÓN. NÓMINA\***

**Art. 21.7\*** - A todos los efectos previstos en la ley y en este reglamento, se consideran países de baja o nula tributación, incluidos, en su caso, dominios, jurisdicciones, territorios, Estados asociados o regímenes tributarios especiales, los siguientes:

1. Anguila (Territorio no autónomo del Reino Unido)
2. Antigua y Barbuda (Estado independiente)
3. Antillas Holandesas (Territorio de Países Bajos)
4. Aruba (Territorio de Países Bajos)
5. Ascensión
6. Comunidad de las Bahamas (Estado independiente)
7. Barbados (Estado independiente)
8. Belice (Estado independiente)
9. Bermudas (Territorio no autónomo del Reino Unido)
10. Brunei Darussalam (Estado independiente)
11. Campione D'Italia
12. Colonia de Gibraltar
13. El Commonwealth de Dominica (Estado asociado)
14. Emiratos Árabes Unidos (Estado independiente)
15. Estado de Bahrein (Estado independiente)
16. Estado Asociado de Granada (Estado independiente)
17. Estado Libre Asociado de Puerto Rico (Estado asociado a los EEUU)
18. Estado de Kuwait (Estado independiente)
19. Estado de Qatar (Estado independiente)
20. Federación de San Cristóbal (Islas Saint Kitts and Nevis: Independientes)
21. Régimen aplicable a las sociedades holding (ley del 31 de julio de 1929) del Gran Ducado de Luxemburgo
22. Groenlandia
23. Guam (Territorio no autónomo de los EEUU)
24. Hong Kong (Territorio de China)
25. Islas Azores
26. Islas del Canal (Guernesey, Jersey, Alderney, Isla de Great Stark, Herm, Little Sark, Brechou, Jethou Lihou)
27. Islas Caimán (Territorio no autónomo del Reino Unido)
28. Isla Christmas
29. Isla de Cocos o Keeling
30. Islas de Cook (Territorio autónomo asociado a Nueva Zelanda)
31. Isla de Man (Territorio del Reino Unido)
32. Isla de Norfolk
33. Islas Turcas e Islas Caicos (Territorio no autónomo del Reino Unido)
34. Islas Pacífico
35. Islas Salomón
36. Isla de San Pedro y Miguelón
37. Isla Qeshm
38. Islas Vírgenes Británicas (Territorio no autónomo del Reino Unido)

39. Islas Vírgenes de Estados Unidos de América
40. Kiribati
41. Labuan
42. Macao
43. Madeira (Territorio de Portugal)
44. Montserrat (Territorio no autónomo del Reino Unido)
45. Eliminado por el D. 115/2003, art. 1, inc. b) (BO: 23/1/2003)
46. Niue
47. Patau
48. Pitcairn
49. Polinesia Francesa (Territorio de Ultramar de Francia)
50. Principado del Valle de Andorra
51. Principado de Liechtenstein (Estado independiente)
52. Principado de Mónaco
53. Régimen aplicable a las sociedades anónimas financieras (regidas por la L. 11073 del 24 de junio de 1948 de la República Oriental del Uruguay)
54. Reino de Tonga (Estado independiente)
55. Reino Hachemita de Jordania
56. Reino de Swazilandia (Estado independiente)
57. República de Albania
58. República de Angola
59. República de Cabo Verde (Estado independiente)
60. República de Chipre (Estado independiente)
61. República de Djibuti (Estado independiente)
62. República Cooperativa de Guyana (Estado independiente)
63. República de Panamá (Estado independiente)
64. República de Trinidad y Tobago
65. República de Liberia (Estado independiente)
66. República de Seychelles (Estado independiente)
67. República de Mauricio
68. República Tunecina
69. República de Maldivas (Estado independiente)
70. República de las Islas Marshall (Estado independiente)
71. República de Nauru (Estado independiente)
72. República Democrática Socialista de Sri Lanka (Estado independiente)
73. República de Vanuatu
74. República de Yemen
75. República de Malta (Estado independiente)
76. Santa Elena
77. Santa Lucía
78. San Vicente y Las Granadinas (Estado independiente)
79. Samoa Americana (Territorio no autónomo de los EEUU)
80. Samoa Occidental
81. Serenísima República de San Marino (Estado independiente)
82. Sultanato de Omán
83. Archipiélago de Svbalbard
84. Tuvalu