

# **REINSURERS GUIDELINES FOR ADVANCE & PROJECTED PAYMENTS**

These guidelines are to be read in conjunction with the LMA Memorandum of Understanding for Advance and Projected Payments and are written to assist reinsurance claims adjusters in responding to these types of payment requests, whether specifically called for under the reinsurance contracts or not. Prior to agreeing Advance / Projected Payments to a Reinsured, Reinsurers should familiarise themselves with the following:

## **1. DEFINITIONS**

Reinsurers should understand the difference between the following:

- a. **Advance Payment** shall mean a payment, requested directly by the Reinsured, on the immediate happening of a catastrophe to assist the Reinsured with their cashflow to make initial claims settlements and / or initial claims related expense payments that the Reinsured expects to pay in the near future and which would be covered by the Reinsurance;
- b. **Projected Payment** shall mean a payment, requested directly by the Reinsured, after the happening of a catastrophe and at a time after the Reinsured has started to pay claims /claims related expenses and is able to demonstrate to the satisfaction of Reinsurers the payments it is likely to make to its policyholders in the future and which would be covered by the Reinsurance;

## **2. CONSIDERATIONS**

When reviewing the request for an Advance or Projected Payment, the Reinsurer must take the following into account:

### **A. SOURCE OF REQUEST**

All requests should be from the Reinsured only, unless specifically agreed otherwise.

### **B. CREDIT RISK**

Both Advance and Projected Payments are agreed in good faith by Reinsurers to facilitate the Reinsured's ability to pay the underlying claims in a timely manner. However, Reinsurers need to be aware there is a credit risk attached with such payments and therefore consideration should be made of the following:

- Who will the payment be made to, and what entities will hold the funds from the time payment is made until they are no longer considered advanced / projected;
- Financial stability of all stakeholders that will hold the funds e.g. Reinsured, broker, financial institutions, including credit rating and potential exposures to the catastrophe at issue and others;
- What law governs the relationships among Reinsurers, Reinsured and brokers / intermediaries, and what law governs funds held by each of them;

- Carefully consider the amount of any advanced / projected payment to be agreed, particularly in light of Catastrophe and Claim Issues below.
- The provision of the Reinsured's Catastrophe Loss Bordereau is imperative, to demonstrate the full utilisation of advance / projected funds, i.e. the point at which the credit risk ceases

### **C. CATASTROPHE ISSUES**

- Consider public information on overall losses: insured and uninsured
- Consider industry information, such as PCS publications and Modelled Estimates on ground up loss estimates
- Consider the projections of Reinsured's estimated share of ground up loss for projected payment requests
- Consider internal model outputs for particular Reinsured's Advance Payment requests. Does it correlate with their own advised best estimate / modelled outputs?

### **D. CLAIM ISSUES**

- Amount requested in relation to treaty limits and layers
- Amounts outstanding & paid to date by Reinsured (for projected payments only)
- Payment Pattern: Actual weekly payments by the Reinsured and actuarial projections for payments into the future (for projected payments only)
- Amount requested in relation to anticipated weekly payments by Reinsured (for projected payments only)
- Ensure any relevant Reinstatement Premium documentation has been processed and presented by the broker

### **E. LMA MEMORANDUM OF UNDERSTANDING**

Reinsurers must familiarise themselves with the full wording of the memorandum of Understanding so everyone can communicate with brokers and Reinsureds in accordance with its terms.

## **3. AGREEMENT OF ADVANCE / PROJECTED PAYMENTS**

- Reinsurers should only use the agreed 'Model Wording for Reinsurers,' detailed at the end of the Memorandum of Understanding, when final agreement is made on any claims file.
- All Advanced / Projected payments can be agreed under the Lloyd's 2010 Claims scheme as a 'complex' claim.
- Communicate any agreed Advanced / Projected payments to all participating Lloyd's Syndicates via a Key Event Protocol (KEP).

## MEMORANDUM OF UNDERSTANDING FOR ADVANCE/PROJECTED PAYMENTS

1. Notwithstanding anything to the contrary in the Reinsurance, in the event of a catastrophe that is likely to result in a claim hereunder, the Reinsured may request either an Advance Payment and/or a Projected Payment in excess of the retention to be made by Reinsurers on the terms set out in this Memorandum of Understanding.
2. For the purposes of this Memorandum of Understanding, the following definitions shall apply:
  - a. **Advance Payment** shall mean a payment, requested directly by the Reinsured, on the immediate happening of a catastrophe to assist the Reinsured with their cashflow to make initial claims settlements and/or initial claims related expense payments that the Reinsured expects to pay in the near future and which would be covered by the Reinsurance;
  - b. **Projected Payment** shall mean a payment, requested directly by the Reinsured, after the happening of a catastrophe and at a time after the Reinsured has started to pay claims/claims related expenses and is able to demonstrate to the satisfaction of Reinsurers the payments it is likely to make to its policyholders in the future and which would be covered by the Reinsurance;
  - c. **Catastrophe Loss Bordereaux** shall mean a bordereaux that provides full details of the Reinsured's exposure and/or policies and which shall include but not be limited to:
    - i. Underlying policy/claim information
      1. Claim number/policy number;
      2. Line of business;
      3. Date of loss;
      4. Sums insured in the policy;
      5. Numbers of policies issued;
      6. Geographic/zip code information for each policy that is (or may be) affected by the catastrophe;
      7. 100% ground up loss figures;
    - ii. Reinsured's loss data:
      1. Payments to date (both indemnity and expenses, including loss adjuster and legal fees);
      2. Current case reserves (both indemnity and expenses, including loss adjuster and legal fees);
      3. IBNR (both indemnity and expenses, including loss adjuster and legal fees);
      4. Allocation of loss across reinsurances (net loss, facultative and treaty cessions);
  - d. **Reinsurance** shall mean the policy of reinsurance between the Reinsurer and the Reinsured, to which this Memorandum of Understanding shall apply.
3. In making a request for such Advance Payment/Projected Payment, the Reinsured shall provide a request in writing summarising the basis and rationale for its request, and the Reinsured shall further use its best endeavours to provide the following information to Reinsurers:
  - a. For an Advance Payment:
    - i. The Reinsured's aggregate exposures/limits in respect of such catastrophe;

- ii. Any actuarial model or other estimation of loss and/or work carried out by Reinsured in estimating its loss;
    - iii. Details of any other applicable reinsurance purchased by the Reinsured that may inure to Reinsurers' benefit; and
    - iv. Any further information as may reasonably be requested by Reinsurers;
  - b. For a Projected Payment, all of the information above requested in respect of an Advance Payment, and in addition:
    - i. Catastrophe Loss Bordereaux;
    - ii. The Reinsured's projected payment patterns; and
    - iii. Any further information as may reasonably be requested by Reinsurers;
- 4. On receipt of this information, the Reinsurer shall assess such information and at its sole discretion may make an Advance Payment or a Projected Payment.
- 5. In exchange for any Advance Payment or Projected Payment by Reinsurers, the Reinsured agrees that it will provide full information to Reinsurers on a monthly basis, including but not limited to:
  - a. Updated Catastrophe Loss Bordereaux;
  - b. Updated projected payment pattern information;
  - c. Updated actuarial models or other estimation of loss and/or work carried out by the Reinsured in estimating their loss;
  - d. Any further information as may reasonably be requested by Reinsurers;
- 6. Further, in accepting either an Advance Payment or a Projected Payment, the Reinsured agrees as follows:
  - a. Any sums paid by Reinsurers shall remain the sole property of Reinsurers;
  - b. The Reinsured will, preferably, hold such sums in a separate bank account (and in any event shall ensure that such sums are not mixed with the ordinary funds of the Reinsured);
  - c. The Reinsured shall use such sums solely to make payments to its policyholders in respect of specific and identifiable losses and/or legitimate claims expenses, which are covered by the original policy and the Reinsurance;
  - d. The Reinsured shall use such sums solely in respect of the catastrophe for which an Advance Payment or Projected Payment is requested, and not for any other purpose, including any other claims or losses or other catastrophes;
  - e. Any interest accruing on any sums paid by Reinsurers, less bank charges and fees, shall belong to Reinsurers;
  - f. The Reinsurer shall be entitled to set off as against any sums that may be due and payable under the Reinsurance, the amount of any Advance Payment or Projected Payment paid to the Reinsured under this Memorandum of Understanding;
  - g. To return, if requested by Reinsurer, any sums paid hereunder which remain unused, within 48 hours of such request; and
  - h. If any surplus remains in the account three months after the conclusion of the claim, such surplus shall be immediately reimbursed to the Reinsurer.
- 7. In the event that the Reinsured has created a separate bank account for any Advance Payment and/or Projected Payment, the Reinsured agrees that it will provide Reinsurers with monthly account statements showing:
  - a. All payments into and out of the nominated account.
  - b. Any interest accrued hereon;
  - c. Nothing in this Memorandum of Understanding shall affect in any way the Reinsured's obligation to comply with all other provisions of the Reinsurance

8. Any payment made hereunder shall not be interpreted or construed as a waiver by Reinsurers of any of their rights, defenses and remedies under the Reinsurance, including the validity of any claims made or the validity of the Reinsurance. No Advance Payment or Projected Payment shall be construed as an *ex gratia* payment under the Reinsurance.
9. This Memorandum of Understanding shall be governed by the same law, and be subject to the same dispute resolution provisions, as the Reinsurance. The Reinsured agrees that in the event that Reinsurers have to enforce their rights hereunder, Reinsurers shall be entitled to seek specific performance of and that damages would not be an adequate remedy.

**Model Wording for Reinsurers to use when agreeing Advance Payments and/or Project Payments**

Reinsurers agree to make, and the Reinsured agrees to accept, on the terms set out in the Memorandum of Understanding for Advance/Projected Payments, a **[Advance Payment/Projected Payment - delete as applicable]** in the sum of **[ ]**, which sum shall remain the property of Reinsurers and shall be used by the Reinsured solely to make payments of valid claims and/or claims related expenses that would be covered under the Reinsurance.