

In the complex negotiations associated with recovering or extinguishing reinsurance obligations, parties must also understand and take into account the changing political, social and economic climates in Latin America. Some of the many problems encountered are currency controls in Venezuela, recalcitrant reinsurers in Argentina and the lack of personal knowledge of aging accounts. Collection and commutation work in this region of the world constantly challenges all practitioners, but it is not impossible.

## A cultural divide

Insurers around the world, especially those in the United Kingdom, have not historically been eager to pursue claims in Latin America where the language, time differences and culture are extremely different from their own. To be fair to Latin American reinsurers, they are not always given the same

Additionally, many Latin American companies were placed on books of business that developed significant losses, such as the Stetzel Thomson, POSA and GESB Pools. In some instances the Latin American reinsurers regard these Pools as fraudulent and unenforceable.

## Learn the lingo

While Latin American tactics may seem vexatious or dilatory at the outset, it is a cultural and economic reality of these companies. For example, some companies in Latin America basically shut down during certain months of the year because key employees are away on holiday, sometimes for up to two months. Similarly, it is important to learn the work schedules of certain liquidators in South America, who often only work once every two weeks, and whose only form of communication outside the country may be via a pay phone in their lunch room. There

are a few countries, Argentina being one, where payment from certain reinsurers will be nearly impossible. After all, how can insurers expect reinsurers to pay their share of claims when the country itself has defaulted on its national debt? Staying abreast of political and economic activity in these countries such as referendums in Venezuela, and a shift to a

# La vida Latina

Collection and commutation work in Latin America presents unique challenges - but the battle is worth pursuing, says **David Presley** of Bazil McNulty.

opportunity as reinsurers in other parts of the world to settle claims in a timely fashion. In fact, many of the claims may have been languishing for decades as insurers have been unwilling, unable and/or uninterested in pursuing claims from their reinsurers in Latin America. This has led to an unwillingness by Latin American reinsurers to deal with some London Market cedants who have now chosen to enter into a scheme of arrangement. These reinsurers are weary to undertake discussions with an insurer who only now decides to include them in commutation discussions after years of delay. In fact, an ex-reinsurance manager of a major Venezuelan reinsurance company stated that, routinely, demand packages were received from insurers attempting to collect debt and were promptly "thrown in the bin."

At this point, you could be forgiven for thinking that this is a crazy thing to do – and ultimately not a proper way of doing business in a reinsurance field that implies a duty of utmost good faith. But let us not forget, many claims that an insurer may have against a Latin American reinsurer are likely time sensitive and deal with treaties written in the 1980s or earlier.

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leftist leader in Uruguay, are just a couple of examples of events that can change commutation strategy. In Venezuela for example, an understanding of currency controls and the time it takes for the Bolivar to be exchanged into US dollars is important information to know. This is especially true when the reinsurer is claiming no money can be taken out of the company because of these controls. Additionally, as time passes it

becomes more and more difficult to substantiate claims as the insurer's documentation from old business is sparse and the reinsurer in Latin America has likely changed ownership, personnel and location numerous times in the last decade alone. It is no doubt difficult for a reinsurance manager who may have only been working for a limited duration, to explain to his superiors why they should pay an arguably stale claim that was written-off decades ago.

## Reinsurers in Latin America are not going to take your word as proof they were signatories in a pool, or that they have yet to commute this business, unless you have prior credibility or connections with the company

### A potentially risky business

One emerging issue in Latin America involves individuals or corporations pursuing the collection of purchased or assigned debt. Purchasing or attempting to collect debt in certain countries such as Uruguay is very risky because the courts there have relieved reinsurers from paying debt which has been assigned. It could be extremely problematic if other countries in Latin America follow Uruguay's lead especially since claims against these reinsurers are increasing as solvent schemes become more popular. This is a reminder to not only consider the direction of the reinsurance market in this region, but also the importance of bringing a claim as soon as possible. Time is of the essence in any attempt to secure payment of outstanding balances.

Collections in Latin America can also be slow going at first, but knowing the right people for the job can help. It is equally important to have a firm representing you with connections in the country or preferably with the company you are pursuing. Various companies in Venezuela for example, often want no part in commutation discussions arising out of business written in the early 1980s. Before negotiations can commence, it may become necessary to request that one of the individuals who signed the original contract verify a book of business is valid. Reinsurers in Latin America are not going to take your word as proof they were signatories in a pool, or that they have yet to commute this

business, unless you have prior credibility or connections with the company. A reinsurer is not being unreasonable in requesting further assurances when a party is demanding losses be paid on a book of business that has long been forgotten or mistakenly written-off.

Lastly, if litigation or arbitration is necessary, it is important to choose a law firm that will not be too quick to sue these reinsurers. While initiating legal proceedings can be useful to bring both parties to the negotiating table, a valid judgment against a reinsurer that is unable to pay is not worth the paper it is printed on. While negotiation and/or mediation is preferable, there is a fine line between choosing negotiation over arbitration. If necessary, you must be willing to commence legal proceedings to protect your interests, especially if time bar is an issue. Please move forward with caution, however, as larger reinsurers have the capital to defend regardless if their defense is valid.

### Persistence pays

In the end, persistence is important when pursuing these claims against Latin American reinsurers. Do not be surprised, however, if you are asked to send two or three demand packages to the same person and possibly, even the same week. This can be a lesson in patience as Latin American reinsurers may promise board meetings which never materialise, depart for vacations that seem to last forever, and you may end up dealing with CEOs who suddenly no longer speak English after months of negotiating in English. If you remain persistent, however, it will become abundantly clear that the standard avoidance tactics will be unfruitful. Dilatory tactics by these reinsurers are successful if the claimant is not equally resourceful. While an American reinsurer may find that hiring an attorney and engaging in litigation is the best way to defend a claim, the South Americans can achieve the same result through less expensive means of avoidance by claiming ignorance, time bar, or failure to understand the language (although their English may be quite good when the situation is reversed and it is the insurer who owes them money).

The discussion above highlights just a few of the issues and factors to consider before engaging in commutation or collection efforts with Latin American reinsurers. For all the reasons above, these reinsurers will in all likelihood not promptly remit payment because you have hired a well known law firm, or because you have ten large boxes full of documentation in support of your claim. Knowing when and how to present your claim is important. Initiating litigation at the outset is generally not the best tactic and for the most part, should be an option of last resort. Not one strategy in particular can be employed in all instances, but one thing is for sure, the Latin American reinsurers will be ready with their own brand of negotiating.