

of local reinsurers and local offices of admitted reinsurers, placing a premium on intellectual capital," he said.

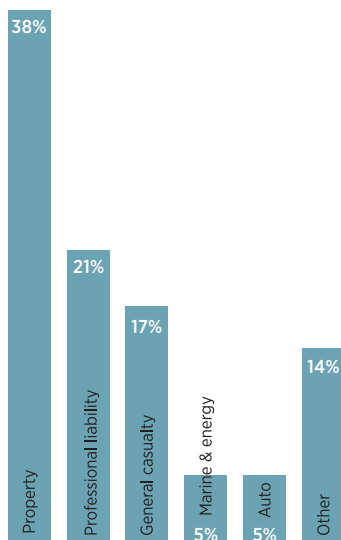
"We intend to overcome this challenge by keeping our existing high-quality professionals; further developing our training programme for young Brazilians with potential; getting technical support from our other Latin American offices (Buenos Aires and Bogota); and using Alterra's worldwide resources."

He added: "Also, with the increase in new entrants to the market, there will naturally be more competition for business. We believe, however, that our team's deep knowledge of the local market and long-standing relationships with cedants gives Alterra a significant competitive advantage that will enable us to optimise our underwriting portfolio, while continuing to apply our strict global underwriting standards." ■

Alterra Capital

Breakdown by line of business (Q3 YTD 2011)

SOURCE: ALTERRA CAPITAL



INSIGHT REINSURANCE

REINSURANCE CONTRACTS: THE DEVIL IS IN THE DETAIL

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For many years, it was not uncommon, in the context of the Latin American facultative reinsurance market, for 'slips' to be agreed by underwriters with the full wording 'to be agreed'. Days, weeks, months and years passed and the full wording was never finalised. Years later, disputes are not uncommon as to what terms the parties to the reinsurance contract had actually agreed. Contract Certainty in the London market now means (for new policies) that these market practices have been stamped out.

However, the perennial problem of incompatible clauses being written into these contracts remains. The most notable example in Latin American facultative reinsurance contracts is the inclusion of a follow the settlements clause (often as part of a full reinsurance clause) or a follow the fortunes clause in the same contract as a claims control or claims co-operation clause. The effect of the follow the settlements clause is that reinsurers agree to follow the reinsured's settlements (provided they fall within the reinsurance as a matter of law and the reinsured has taken proper and business-like steps to settle the claim). By contrast, the claims control clause means that reinsurers have the right to take over conduct of the underlying claim against the reinsured and no settlement can be reached by the reinsured without reinsurers' consent. As such, a follow clause and a claims control clause simply cannot co-habit in the same reinsurance agreement.

A further problem is that the

parties often pay insufficient attention to what the governing law of the reinsurance contract should be. Many of the facultative wordings agreed by the London market have been developed based on clauses used for many years, taking into account English law principles. Where the governing law of the reinsurance contract is not English law, caution needs to be exercised to ensure that the terms agreed between the parties are valid and effective under the governing law chosen by the parties.

A similar issue arises when the reinsurance contract provides that compliance with an all-important clause such as a claims control clause shall be a condition precedent to reinsurers' liability. If the contract is not governed by English law, the local governing law may not recognise conditions precedent to liability. This is in fact the case in many Latin American countries. In this context, the claims control clause may be rendered ineffective and reinsurers may not be able to escape liability for a claim if the claims control clause is breached.

Reinsureds and reinsurers need to ensure that they fully understand the implications of the governing law – the law they have chosen may not give full effect to the terms included in the reinsurance contract. ■

This article was co-authored by Michelle George, also a partner in the insurance and reinsurance practice in the London office of Chadbourne & Parke