

Contract Certainty Principles and Guidance Notes

Scope

This guidance applies to all reinsurance contracts entered into by an MAS- regulated (re)insurer, or arranged through an MAS-regulated intermediary.

Definition

Contract Certainty is achieved by the complete and final agreement of all terms and signed lines between the reinsured and the reinsurer by the time they enter the contract. Contract documentation shall be provided to all parties within 30 days of the inception of the reinsurance contract or the reinsured's order to bind whichever is later.

Contract Certainty Principles	
A. When entering into the contract	<p>The reinsurer and broker (where applicable) must ensure that all terms are clear and unambiguous by the time the offer is made to enter into the contract or the offer is accepted. All terms must be clearly expressed, including any conditions or subjectivities.</p> <p>All evidence of offer and acceptance including file notes of conversations and meetings, written and electronic communications, must be maintained by the reinsurer and broker (where applicable).</p>
B. After entering into the contract (i.e. when the contract is bound and in effect)	<p>The reinsurer and broker (where applicable) should ensure that the contract documentation is sent out to the reinsured within 30 days of the inception of the reinsurance contract or the reinsured's order to bind whichever is later and also where appropriate strive to ensure that it is signed by all parties.</p>
C. Demonstration of performance	<p>Reinsurers and brokers must be able to demonstrate their achievement of principles A and B.</p>
D. In respect of contract changes	<p>Contract changes need to be certain and documented promptly.</p>
Where there is more than one participating reinsurer	
E. When entering into the contract	<p>The contract must include an agreed basis on which each reinsurer's final participation will be determined.</p> <p>The practice of post-inception over-placing compromises Contract Certainty and must be avoided.</p>
F. After entering into the contract (i.e. when the contract is bound and in effect)	<p>The final participation must be provided to the reinsurer promptly.</p>
G. Where the contract has not met the principles	<p>The reinsurer and broker (where applicable) have a responsibility to resolve exceptions to any of the above principles as soon as practicable and without undue delay.</p>

A. When entering into the contract

The reinsurer and broker (where applicable) must ensure that all terms are clear and unambiguous by the time the offer is made to enter into the contract or the offer is accepted. All terms must be clearly expressed, including any conditions or subjectivities.

1. Explanation

The proposed contract is the document which contains the offer and can take many forms. Individual market protocols define these. Examples include: completed presentation templates; proposal forms; slips or other placing documents. Terms are the contractual provisions of the contract, and should be clear and unambiguous.

2. Guidance

One definition of an offer from a legal perspective is:

"... an offer is an expression of willingness to contract made with the intention that it is to become binding on the person making it as soon as it is accepted by the person to whom it was addressed".

The implications for Contract Certainty are that:

- where an offer is being made, for example, via a quotation, the offer should meet the Contract Certainty definition,; or
- where an offer is not being made, the Contract Certainty definition may still be applied but is not a prerequisite at this stage; for example, where a clearly identified non-binding indication is being provided.

The proposed contract or offer may include subjectivities as part of its terms, and these should be clearly expressed. Further guidance on this topic is included as Appendix 1.

All terms should either be expressed in full or unambiguously identified; for example, clauses should be spelt out in full, if not references may be made to widely used clauses as prescribed by internationally recognised market associations and have not been altered by the broker or the reinsurer.

Wherever possible, the reinsured and reinsurer should formally enter into the contract prior to inception. In circumstances where this is not possible, Contract Certainty can still be achieved by applying the Contract Certainty principles. Firms should be able to demonstrate the extent to which contracts are being entered into later than inception, their causes and actions being taken to reduce their frequency.

The contract should clearly identify all parties to the contract. As a minimum this should include the full legal name of the contracting parties and country of domicile of the reinsured. For facultative reinsurance contracts, the details of the underlying direct policyholder should also be provided, as this will affect whether or not the contract is onshore or offshore business.

3. Reinsurer actions

The reinsurer should check that the proposed contract clearly identifies all of the terms by the time it formally commits to the contract.

Where there is more than one participating reinsurer, each reinsurer should satisfy itself that adequate contract checking has been completed.

Where the contract is to provide cover that will commence prior to the contract being entered into, the reinsurer should ensure that:

- this is permissible, having regard to the class of business and all appropriate laws and regulations;
- the scope of coverage for any claims which arise in respect of the period between the start of the reinsurance period and the date on which they enter into the contract, is clear.

When a reinsurer enters into a contract, they should ensure that it is permissible having regard to the appropriate laws and regulations.

Best terms and conditions (BTC) are not contract certain as found by the European Commission on BTC and they are against European Community Commission Law. They could also be in breach of the Competition Act (Chapter 50B_ Singapore 2006 Revised Edition and it also falls foul of the Anti-trust laws in the USA.

4. Broker actions (where a broker is involved)

The broker should provide the necessary risk and contractual information that represents the reinsured's requirements, in order to enable the agreement of all terms.

B. After entering into the contract (i.e. when the contract is bound and in effect)

Contract Certainty is achieved by the complete and final agreement of all terms and signed lines between the reinsured and reinsurer by the time that they enter into the contract. Contract documentation must be provided to all parties (including all signatures) promptly. .

Promptly is defined as:

- within 30 calendar days.

These timescales are measured from the later of the following:

- the inception date of the contract;
- the date on which the reinsured and reinsurer enter into the contract;
- where there is more than one participating reinsurer, the date on which the final reinsurer enters into the contract.

1. Explanation

Contract documentation contains all the agreed terms of the contract between the reinsured and the reinsurer and details of the reinsurers' participations. The contract documentation should be signed by the reinsurer and the reinsured*.

*In respect of a Singapore domiciled reinsured, the contract documentation should be signed by the Singapore reinsured and a copy of the documentation should be provided to the reinsurer. However, if the reinsured is offshore (i.e. non Singapore domiciled reinsured) then the Singapore reinsurer/broker should use best endeavours to obtain the offshore reinsured's signature. Please refer to your respective market associations for further guidance in respect of this requirement.

The reinsurer must provide contract documentation to the reinsured (or their broker, if applicable). Where a broker is not involved, then the reinsurer must provide the contract documentation to the reinsured.

Contract documentation must be sent to the reinsured promptly. The documentation provided must be authorised by the reinsurer.

Where a broker is involved in the preparation or delivery of the contract documentation, sufficient time should be allowed for any associated checking and onward provision of the documentation within the period defined as promptly.

2. Guidance (B.2)

The following are examples of acceptable reinsurance contract documentation:

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- a. Certificate of Reinsurance;
- b. A copy of the complete slip, signed by the reinsurer (and subsequently by the reinsured);
- c. Accompanying contract wording, which would be incorporated in the reinsurance slip signed by the reinsurer or appended or referred to and the accompanying reinsurance slip.
- d. Broker reinsurance document

A broker reinsurance document contains the terms and conditions of the reinsurance contract as well as details of the reinsurer(s). Unless expressly agreed by reinsurer(s), a broker reinsurance document is contract documentation provided by the broker in its capacity as agent of the reinsured and must not be represented as documentation authorized by the reinsurer.

- e. Other broker produced documents

A broker may choose to send other documentation to the reinsured e.g. adding the full text of a clause or wording as defined in the contract. However, unless expressly agreed by the reinsurer(s), the broker is responsible for the accuracy and completeness of such documentation.

Unless expressly authorized by the reinsurer(s), any further documentation provided by the broker, such as the schedule of reinsurer participations, is provided in its capacity as agent of the reinsured and remains the broker's responsibility.

3. Reinsurer actions

Ensure that the type of contract documentation to be provided to the reinsured (or their broker) is clear. Provide contract documentation to the reinsured (or their broker) promptly.

Observe any protocols relating to the checking and onward provision of documentation where a broker, intermediary or service provider is involved.

4. Broker actions

Ensure that the type of contract documentation to be provided to the reinsured/broker is clear. Where responsible, provide contract documentation to the reinsured/broker promptly.

C. Demonstration of performance

Reinsurers and brokers must be able to demonstrate their achievement of principles A and B.

1. Explanation

Reinsurers and brokers are each responsible for, and need to be able to demonstrate, performance of:

- the agreement of all terms by the time of entering the contract;
- the achievement of the above by inception date (whichever is later);
- the prompt provision of contract documentation for which they are responsible;
- how exceptions are identified and resolved and the actions taken to reduce recurrence.

The methodology for demonstrating performance should be consistent and typically based on the following:

- the inception date of the contract;
- the date on which the reinsured and reinsurer enter into the contract;
- for brokers and where there is more than one participating reinsurer, the date on which the final reinsurer enters into the contract.

2. Guidance

Examples of how Contract Certainty can be demonstrated include the following.

Verification against a checklist

A checklist could be applied to each contract and a record kept of whether or not Contract Certainty was achieved. The checklist criteria may need to vary, depending upon client classification or class of business. Hence an organisation may require more than one checklist to cater for specific circumstances.

Sample or File audits

Statistically credible samples of contracts may be reviewed to verify whether or not Contract Certainty was achieved.

System or Process controls

The systems or process controls may vary across different organizations according to the nature of their activities, but they will provide for necessary record and processing to ensure evidence of contract certainty.

Contract certainty should be measured at the time of entering into the contract by the contracting parties. Unless the first aspect of contract certainty is met, the contract should not be considered contract certain even if the documentation is delivered in the appropriate time scale.

In demonstrating their performance, organizations should consider how they identify and resolve exceptions in a timely manner. Due regard in this approach should be given to the implications for the reinsured, and the significance and frequency of such exceptions.

Organisations should satisfy themselves that they have processes in place to meet any other Contract Certainty principles as they apply to their business.

3. Reinsurer consideration

Where the broker sends contract documentation to the reinsured, the reinsurer is not required to establish or record the date of provision.

4. Broker consideration

Where the reinsurer provides the contract documentation directly to the reinsured, or has delegated this role other than to the broker, the broker is not required to establish or record the date of provision.

D. In respect of contract changes

Contract changes need to be certain and documented promptly.

1. Explanation

This means:

- complete and final agreement of the change by the reinsured (or their agent) and reinsurer, by the time that the parties commit to it, while:
- maintaining the certainty of the contract; and
- providing documentation in respect of the change to the reinsured (or their agent) promptly thereafter.

2. Guidance

Changes to the contract can only be made by documented mutual agreement and in accordance with any provisions in the original contract, clearly identifying the effective date of the change. Documented mutual agreement means an endorsement or similar document signed by the reinsurer or a Broker Reinsurance Document, which can be read in conjunction with the original documentation to amend the original contract. The documentation should be completed within 30 days of the change.

Contract Certainty need not be separately demonstrated for any changes to existing contracts.

E, F Where there is more than one participating reinsurer (e.g coinsurance/consortium arrangements, etc)

E. When entering into the contract

The contract must include an agreed basis on which each reinsurer's final participation will be determined.

1. **Explanation** Ensure that the method of calculating reinsurer participations (signed lines) is clearly stated in the contract.

2. Guidance

This is achieved by the inclusion of signing provisions, which result in clearly defined participations throughout the time on risk. Further guidance regarding suitable signing provisions is included in Appendix 2.

3. Reinsurer actions

Ensure that any proposed signing provisions achieve clearly defined participations throughout the time on risk.

Ensure that a suitable several liability clause is present.

4. Broker actions

Propose suitable signing provisions, which reflect any client requirements, for inclusion within the contract.

Complete the placement as soon as practicable and without undue delay.

Include a suitable several liability clause.

The practice of post-inception over-placing compromises Contract Certainty and must be avoided.

5. Guidance

Post-inception over-placing must be avoided in order to achieve clearly defined reinsurer participations throughout the time on risk.

6. Reinsurer actions

Do not seek to enter into a contract which would result in post-inception over-placing taking place.

7. Broker actions

Do not seek to form a contract which would result in post-inception over-placing taking place.

F. After entering into the contract

The final participation must be provided to each reinsurer promptly.

1. Explanation

In relation to this principle, promptly means that:

- a reinsurer's participation on the contract will be made available by inception or upon completion of the risk placement if this occurs post-inception;
- where the reinsurer needs the reinsurer participations to prepare the contract documentation then reinsurer participations should be provided by the broker in sufficient time to allow for this;
- where the contract denotes that contract documentation is to be prepared by the broker, then the reinsurer participations should be provided in sufficient time to allow for reinsurer authorisation of the contract documentation;
- each reinsurer's participation on the contract will be provided within 30 calendar days of either inception or completion of placement, whichever is the later.

2. Guidance

Reinsurer participations are available to reinsurers at the time of placement by writing a line "To Stand".

3. Reinsurer actions

Write "line to stand", or request reinsurer participation from the broker, where there is a requirement to know the exact participation at an early stage.

4. Broker actions

Calculate reinsurer participations by either inception or completion of placement, whichever is the later. Respond to reinsurers' requests for provision of reinsurer participation information.

Provide reinsurer participation information to reinsurers within the specified timescales.

G. Where the contract has not met the principles

The reinsurer and broker (where applicable) have a responsibility to resolve exceptions to any of the above principles as soon as practicable and without undue delay.

If all terms have not been agreed by the time of entering into the contract then every effort should be made to do so as soon as practicable thereafter.

Similarly wherever accurate contract documentation has not been provided promptly, the reinsurer and broker (where applicable) must use their best endeavours to ensure that the contract documentation is issued as soon as possible.

If the delay is likely to be significantly beyond the required timescales then it is the responsibility of the reinsurer or broker (if applicable) to keep the reinsured informed of the position.

The above actions will help prevent the creation of a backlog of contract documentation.

Appendix 1: Subjectivities guidance

Introduction

Principle A requires that “All terms must be clearly expressed, including any conditions or subjectivities.”

In the past, subjectivities have given rise to uncertainty in relation to the contract since the precise terms of the relevant requirement, and the consequences if the requirement was not met, were insufficiently specified by the time of entering into the contract.

The objective of Contract Certainty is to provide clarity for both reinsured and reinsurer on the terms of the reinsurance contract. Sometimes, information that the reinsurer requires is not available and as a result the reinsurer may impose subjectivity on the contract. If subjectivities are included as part of the offer or contract, these should be clearly expressed. This guidance aims to help ensure that a subjectivity is expressed as an unambiguous condition (specifying the responsibilities and timescales for resolution, and any consequences of failure) of the contract.

Guidance

Subjectivities are terms and/or conditions that:

- must be complied with or resolved before the contract is entered into; and/or
- apply both before and after the inception date of the contract, compliance with which is a condition of all or part of the coverage provided; and/or
- apply after the reinsured and reinsurer have entered into the contract as conditions of continued coverage.

In order for a subjectivity to be clear and unambiguous, it should satisfy 4 key requirements:

- 1) the condition/action that needs to be taken, by whom and to what standard;
- 2) the applicable timescale, if any, within which the condition is to be met;
- 3) the terms which are to apply until the condition is met;
- 4) any consequences which follow if the condition is not met.

Subjectivity Example

Below is an illustrative example of a survey subjectivity that addresses the four key requirements of a fully-claused condition. The example is intended for illustrative purposes only, as the particular wording of such a condition will depend entirely on the intentions of the reinsurer on any given contract.

Some conditions may need to be more comprehensive than the illustrative example below.

“Survey Condition”

The Reinsured shall provide to the Reinsurer a property survey report on [insert property address] such report to be prepared by [insert name of surveyor(s)] (“the Survey”). The Survey shall be so provided by [insert time and time zone] on [insert date] (“the Survey Deadline”).

Between inception and the Survey Deadline, cover is provided by the Reinsurer on the terms and conditions specified in the contract to which this condition is attached (“the Contract Terms”).

Where the Survey is not submitted to the Reinsurer by the Survey Deadline, cover shall terminate at the Survey Deadline.

Where the Survey is submitted to the Reinsurer by the Survey Deadline, cover shall continue from the Survey Deadline on the Contract Terms until expiry of the period of the contract unless and until terminated in accordance with the following paragraph.

In the event that the Survey is unsatisfactory to the Reinsurer, the Reinsurer shall have the right, within [] days of its receipt, to terminate the contract by serving not less than [] days’ notice in writing to the reinsured at its address shown in the contract, such notice expiring no earlier than the Survey Deadline.

In the event of termination under this survey condition, the Reinsured shall be entitled to pro rata return of premium for the unexpired period of the contract unless a loss has arisen for which the Reinsured seeks indemnity under this contract in which case the Reinsurers shall remain entitled to the premium specified in the Contract Terms.

To the extent that this survey condition conflicts with any other cancellation, notice and premium provision in the Contract Terms, this survey condition shall prevail.”

Appendix 2: Signing provisions

INTRODUCTION

Principle E requires that “The contract must include an agreed basis on which each reinsurer’s final participation will be determined.”

Signing provisions enable the reinsurer participations for each contract to be clearly determined as required by principle E1. Any subsequent variation requires the documented agreement of the reinsured and all reinsurers whose participations are to be varied.

GUIDANCE

Every contract should include a signing provisions clause. There are two versions of the Model Signing Provisions; one without a disproportionate signing clause, and one that allows disproportionate signing before inception. The broker can select the appropriate version to use in the contract, taking account of the reinsured’s requirements. The model clauses are not mandatory and reinsureds, brokers and reinsurers may make additions, deletions or amendments.

Reinsurer signing instructions

Other than as defined in the model signing provisions the only reinsurer signing instruction that meets the Contract Certainty principles is “line to stand”.

Model Signing Provisions

Without Disproportionate Signing

Signing Provisions

In the event that the written lines hereon exceed 100% of the order, any lines written “To Stand” will be allocated.

However:

- a) in the event that the placement of the order is not completed by the commencement date of the period of insurance, then all lines written by that date will be signed in full;
- b) the signed lines resulting from the application of the above provisions can be varied, before or after the commencement date of the period of insurance, by the documented agreement of the reinsured and all reinsurers whose lines are to be varied. The variation to the contracts will take effect only when all such reinsurers have agreed, with the resulting variation in signed lines commencing from the date set out in that agreement.

With Disproportionate Signing

Signing Provisions

In the event that the written lines hereon exceed 100% of the order, any lines written “To Stand” will be allocated in full and all other lines will be signed down in equal proportions so that the aggregate signed lines are equal to 100% of the order without further agreement of any of the reinsurers.

However:

- a) in the event that the placement of the order is not completed by the commencement date of the period of insurance, then all lines written by that date will be signed in full;
- b) the reinsured may elect for the disproportionate signing of the reinsurers’ lines, without further specific agreement of the reinsurers, providing that any such variation is made prior to the commencement date of the period of insurance, and that lines written “To Stand” can not be varied without the documented agreement of those reinsurers;
- c) the signed lines resulting from the application of the above provisions can be varied, before or after the commencement date of the period of insurance, by the documented agreement of the reinsured and all reinsurers whose lines are to be varied. The variation to the contracts will take effect only when all such reinsurers have agreed, with the resulting variation in signed lines commencing from the date set out in that agreement.

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