Contract Certainty Seminars – 10th, 19th 24th and 31st Oct 2014

Participant Submissions with Answers

<u>(Questions have been reproduced as received)</u>

<u>When entering into the contract</u>

1) If a client refuses to adopt contract certain recommendations and they are not regulated by Singapore, are the brokers accountable? What happens if the reinsurers are also not regulated by Singapore?

Ans: If the client does not accept contract certain recommendations, then this is their prerogative. The broker has a potential errors and omissions scenario whether they are based inside or outside Singapore and they would need to be very clear with their advice. The lack of contract certainty within a contract does not prevent the contract taking place. It will increase the potential for a dispute to arise and increase the operational risk exposure to the parties to the contract (including the intermediary) Generally we would expect Singaporean reinsurers to write contracts subject to them being contract certain, however there may be exceptional reasons as to why this is not possible.

2) My concern on the Contract Certainty is, we are dealing with cedants from overseas. Our clients in some of the countries are slower in their documentation so we do not receive the final terms within a month. During the time of binding, if the terms are confirmed and if there is no "to be advised", is it considered as contract certain? Usually we will receive the final terms after a month or two with some changes. Is it alright to issue an Endorsement?

Ans: If at the time of binding, you have the information required by your contract certainty checklist and there are no items to be advised, then you are contract certain at inception. Assuming the necessary documentation is completed in 30 days i.e slip is signed by the reinsurer then you are contract certain.

If the contract is subsequently amended i.e final terms are produced and both parties agree, then the contract is amended by endorsement.

3) When the broker sent us the offer with the final terms, basically, can we assume that the wording is approved and signed by the cedants. Can confirmed if we can adopt this approach if this meets the requirement.

Ans: The broker is the agent of the reinsured and it is reasonable to assume that the information he provides is authorised by his client. The only time you must have a signature from the client is if the reinsured is Singapore regulated

After entering the Contract

4) In a scenario where both reinsured and reinsurer are not regulated by Singapore, the reinsurer signs and backdates their signing prior to inception date and the reinsured accepts, but refuses to pass an endorsement to amend the period, can the broker accept the amended period without endorsement?

Ans: In the above scenario, it would appear that at the time of binding both parties were in agreement and that the contract was certain at the time of binding. If the reinsurer amends the contract period by signing and dating the amendment, then the documentation from the reinsurer does not need endorsing. If the broker has not already produced the binding insurance document (BID), then it will be produced with the revised inception date. If the BID has been produced it will require an addendum.

5) I will like to clarify from the CCWG panel the issue whether the 30 days period is applicable for overseas contracts or only for Singapore contracts. Further, it will be good if the CCWG panel can clarify how they are enforcing the initiative against brokers.

Ans: For contract certainty counting, both reinsurer and reinsured must have a document signed by both parties within 30 days if the reinsured is MAS regulated.

This practice should apply to all contracts but for contract certainty counting only those contracts involving a Singapore reinsured will be deemed to have failed contract certainty if this process is not completed.

If there is a Singapore reinsured, then this practice also applies to a Singapore reinsurance broker and a Singapore reinsurer if they are involved in the contract.

6) Would like to reconfirm if the Documentation Completed before expiry of 30 days from the later of Inception Date or Date of Binding Cover is applicable for both SIF and OIF or just SIF business only ?

Ans: It applies to all reinsurance business, however only SIF business requires the signature of both counterparties to achieve contract certainty. SIF business, however is not the correct terminology as a Singapore cedant might wish to reinsure a non-Singapore domiciled risk and this must also be signed by both parties to the contract.

Contract Administration

7) In a situation where we have received a slip from a Singapore-based Reinsured Company and we noticed that certain segments of the Contract Administration (i.e. Basis of Agreement, Basis of Claims Agreement, Claims Agreement Parties, Claims Administration) are missing, what should we do? To clarify, firstly, we are not the lead broker and secondly, the markets may not Lloyd's.

Ans: Contract Administration is not part of the contract and solely relates to how it will be administered normally between the broker and the reinsurer. In several instances, the checklist items begin with the words "Where applicable" and in most cases in Singapore when a subscription market is not being used the checklist item is not applicable and can be marked accordingly.

As a result the segment would not need to be on the slip.

8) We have been asked to clarify -- "Are (re)insurers required to **physically document/file in every single facultative placement, a checklist** of the risk placed?"

Ans: This is a recommendation, otherwise you will require a methodology whereby you can adequately demonstrate you adhered to the definition and principles.

9) **Counter-signing the Fac cert** - In our operational procedure, once we have bound a risk, we would normally send a Certificate (or a Facultative Binder) to confirm the risk placed, which outline the risk details, terms and conditions agreed upon. We will then email the hard copy to our cedant (ie the insurer).

Questions -
a) would an email from the cedant confirming the Cert to be in order but not having them to 'electronically sign", acceptable and deem to be in compliance if they were returned within the 30-day timeline of acknowledgment ?
b) Or does the CC Committee still require the cedant to sign on the hardcopy and either email soft copy or mail back within the "30-day" timeline as being in "compliance" ?

Ans: Assuming the reinsured is a Singapore cedant, the certificate, being the documentation, must be signed by the cedant and returned to you within the 30 day period. The signature can be electronic but it must be on the document itself. An email electronically signed attaching the document would not be meet requirements for contract certainty.

10) As a reinsurer, my team's main focus is on treaty programs in Asia, below are some of the main questions related to contract certainty list which we encountered:

1. Placing information is always not referenced/attached in placement slip, i.e. only estimated GNPI and sometimes maximum retention is written in the slip; there is no reference to information pack nor email, could we write those information(i.e. email date/info pack version number) down on the slip? Or is there any other way to solve this problem?

Ans: It is important that the information which reinsurers use to assess a risk is readily identifiable. This information is often at the centre of a dispute and therefore it should be accurately identified and an email date is strongly recommended

2. Expert fees collection and loss adjusters' expenses clauses are not included in slip most of the time and we are of the impression that this is more for facultative business. How could we deal with this issue?

Ans: Expert fees and loss adjusters expenses do not feature in treaty slips and consequently you may wish to adapt your checklist or mark these items not applicable.

3. Subjectivities are normally included in the quotation/written line email from us to brokers. However, most of the brokers would not specifically confirm those subjectivities in their sign line email unless there is any breach. For example, if subjectivity is 'no new or newly reported loss until binding'; broker will only respond to that if there is a new loss. If there is no loss, broker will just send in the sign line email without addressing our subjectivities. Can we as reinsurer assuming subjectivities are met if brokers remain silent in the sign line email?

Ans: Subjectivities must be fully claused for contract certainty, and they should be included on the slip.

In the circumstances "no new or newly reported loss until binding" you should be clear on the consequences. Are you intending to requote or is it your intention that no cover be given? What happens if the risk incepts and subsequently you discover a loss had occurred between the quotation and the date of binding?

If the broker does not have the subjectivity removed, it will continue throughout the contract. If a claim does subsequently appear, the reinsurer is likely to check that the subjectivity has been met.

Contract Certainty Checklist

11) Given that the Contract Certainty Checklist is not fixed, companies in Singapore can choose to alter or have various versions of the checklist depending on client classification or class of business. What would be the contract certainty criteria that MAS would be regulating companies on?

Ans: The contract certainty checklist is not fixed enabling companies to adapt the checklist for their own internal processes. The MAS does not regulate contract certainty, per se. However, the MAS Guidelines on Risk management Practice for Insurance Business require entities regulated by MAS to ensure that the reinsurance arrangements they put in place are contract certain. We believe that MAS would ask you to justify why items on the recommended checklist were not included on the adapted checklist.

Risk Details-Wordings and all Clauses

12) Could you please provide some more commentary around what is acceptable in respect of confirmation of policy wordings at inception. For Fac contracts often a client will not issue a policy number until after the policy has incepted, so we cannot advise the policy number to the market at time of inception.

Again in respect of Fac, we will bind cover and send the slip out to be signed. The market may then include subjectivities on the slip that they did not advise at the quoting stage. By the time the slip has been received the policy has already incepted, so the subjectivities need to be advised to the client and then either agreed or removed. Does this mean that the contract is not contract certain at time of binding?

Ans: All facultative contracts must refer to an underlying wording at inception, which could be an expiring policy in respect of renewals, or the cedants standard fire policy with its reference. (These documents normally have a reference which reflects the version and the year it was issued). Alternatively a wording can be attached.

It is uncommon for reinsurers to quote and then apply subjectivities. It is more likely that a reinsurer has provided a non-binding indication. This is not an offer.

It is probable that the reinsured offers to purchase reinsurance based on the non-binding indication and the reinsurer counter offers with subjectivities. Only when the reinsured has accepted the subjectivities do you have a contract. As a result the contract is not certain and it could be argued that you did not have a contract until the subjectivities were accepted.

The subjectivities must be fully claused for contract certainty.

13) Some companies have the practice of adding the phrase "This shall supercede the English Law in the Institute Clauses" if the Law and Jurisdiction is other than English law as stated in Institute clauses
If we have the full policy wording but not the reference no, will that satisfy the requirement of Original Policy reference?

Ans: As long as you have a robust method of identifying the underlying wording you will be contract certain.

14) Contract Certainty requires us to highlight any scribbling or added wording to the contract by underwriter.
However, we have brokers commenting that some of those are some minor amendments which they are of the view that they do not have to go back to underwriter to address it and felt that it is unnecessary for us to highlight it to client.

Ans: The broker is negotiating the contract on behalf of their client, the reinsured. Brokers use their professional judgement in what should be communicated to their client. Failure to communicate reinsurers terms and conditions can lead to professional indemnity claims

15) Most of our risk accounts (complex multi-layers and multi-client) need more than 30 days to process and we have difficulties trying to meet this dateline.

Ans: It is accepted that not all contracts will achieve contract certainty. Multi-layer contracts are notorious for not being bound until the last minute. However these are the contracts that are most likely to be the subject of litigation due to their complexity and therefore the principles of contract certainty are paramount.

Reporting

16) How do we maintain the confidentiality of the Contract Certainty between all parties involved?

Ans: Each party reports individually on their performance. It is feasible that one party reports a contract as certain when the counterparty does not.

The reporting into the portal is confidential and only the portal managers (Singapore College of Insurance) and MAS have access to the individual company's contract certainty figures. Only each individual company will know how they reported a contract and consequently only they can reveal this information.

17) Reporting initial failures may not be accurate, as there are many failures that get passes after the underwriters challenged the failure reasons. Some may also be corrected almost immediately, but will still be reported as initial fail. Perhaps, we can consider allowing a certain number of days to allow underwriters to challenge the failure and to report as a pass if the challenge is successful or the failure is corrected within the timeframe.

Ans: The reporting system achieves this. A contract that incepts in January does not get reported on until March. Even if the initial March report to the portal is incorrect, it can constantly be corrected until 31st March. Individual companies can manage their own internal processes accordingly.

18) Should term sheets or reinsurance slips be reported for contract certainty count?

Is it correct to report both term sheets (or reinsurance slips) and treaty for the contract certainty count since treaty will supersedes the term sheet upon the expiry of the term sheet? Is this considered double counting?

Ans: In order to achieve contract certainty, you must be contract certain at inception and documentation completed within 30 days. It is probable that your term sheet makes you contract certain at inception assuming it fulfils your checklist requirements. The treaty documentation must be completed within 30 days. If this is achieved you have one contract certain risk. You should not count the same risk twice.

19) Kindly advise if the following submission is correct for a reinsurance contract which fulfills all the terms in the Contract Certainty Checklist but fail to complete the signatures within 30 days from the binding date.

No of Contracts for which Contract Certainty was achieved on or before the later of inception date or date of binding cover		No of Contracts for which Documentation was completed before expiry of 30 days from the later of inception date or date of binding cover	
Yes	No	Yes	No
	0		0

Ans: The above example should reflect 1 in the Yes column for contracts that are certain at inception and 1 in the No column for contracts that were not documented in 30 days.

NB: If you put No for a contract that was not certain at inception, then you must put No for documentation within 30 days even if you completed the documentation within the period.

20) Should addendums be reported for contract certainty count?

Ans: No addendums are not counted for contract certainty.