

Reinsurance Subjectivities in Singapore

(Fully Claused Subjectivities)

The most common reason for a reinsurance contract to fail contract certainty in Singapore, at this time, is the failure to fully clause subjectivities.

There are subjectivities that:

- must be complied with or resolved before the contract becomes binding;
- apply both before and after inception, compliance with which is a condition of all or part of the coverage, and
- apply after the formation of the contract as conditions of continued coverage.

A subjectivity should set out:

- the condition/action that needs to occur, by whom and to what standard;
- the timescale, if any, within which the condition is to be met;
- the terms which are to apply until the condition is met; and
- the consequences which are to follow if the condition is not met.

The following wordings are examples of fully cloused subjectivities and they can be adapted to achieve the underwriter's intention.

Notes

- *Subjectivities can always be extended or amended. This should be done by endorsement for contract certainty. However as long as the subjectivity is fully cloused at inception, it is not counted for contract certainty thereafter.*
- *Subjectivities that provide the reinsurer with the ability to amend terms are worded so that these can be negotiated over a period (in the examples given (30) days). The cedant does not necessarily need to accept the first offer, but negotiations must be completed within 30 days.*
- *The terms **contract**, can be substituted for policy, and **reinsured** for cedant, depending on the wording in the original reinsurance policy/contract.*
- *Avoid subjectivities that duplicate conditions and warranties in the original policies, unless you have doubts about the local law and jurisdiction*

1. Subject to no known or reported losses prior inception

It is a pre-condition of this policy that no losses are reported or discovered prior to the inception of this policy. In the event a loss has occurred prior to the inception of this policy, whether the loss is discovered prior to or after inception, the policy will be cancelled ab initio.

Or

It is a pre-condition of this policy that no losses are reported or discovered prior to the inception of this policy. In the event a loss has occurred prior to the inception of this policy, whether the loss is discovered prior to or after inception, reinsurers reserve the right to modify their terms and conditions to the cedant who will have 30 days from the receipt of the original revised offer to agree terms. In the event the revised terms are not accepted, the policy will be cancelled at pro rata the original terms.

Reinsurers are required to notify the cedant of their intention to amend the original terms (or not) within 30 days of the original advice, otherwise the pre- condition will be deemed to be waived.

2. Subject to no further deterioration in loss record prior inception

This can be a difficult subjectivity to clause and should only be used if there is a loss frequency.

It is a pre-condition of this policy that this policy will be cancelled ab initio if the expiring incurred loss ratio (net earned premium: paid +outstanding losses) *or whatever premium:claims statistics referenced in the submission* exceeds 85% at the inception of this policy

Or

It is a pre-condition of this policy that reinsures reserve the right to modify their terms and conditions of this policy if the expiring incurred loss ratio (net earned premium: paid +outstanding losses) *or whatever premium:claims statistics referenced in the submission* exceeds 85%. In the event the expiring loss ratio exceeds 85% reinsurers reserve the right to modify their terms and conditions to the cedant who will have 30 days from the receipt of the original revised offer to agree terms. In the event the revised terms are not accepted, the policy will be cancelled at pro rata the original terms.

Reinsurers are required to notify the cedant of their intention to amend the original terms (or not) within 30 days of the receiving the expiring loss statistics at inception, otherwise the pre- condition will be deemed to be waived.

3. Original wording to be received in 30 days

The reinsured will provide a copy of the original wording to the reinsurer by midnight 31st January 2015, local standard time at the cedants address.

In the event the wording is not received by the due date, the policy will be cancelled ab initio.

Or

The reinsured will provide a copy of the original wording to the reinsurer by midnight 31st January 2015, local standard time at the cedant's address.

In the event the wording is not received by the due date, the policy will be cancelled pro rata for the period 1st January 2015 to 31st January 2015.

4. Original wording to be received and agreed by reinsurers in 30 days

The reinsured will provide a copy of the original wording to the reinsurer by midnight 31st January 2015, local standard time at the cedants address.

In the event the wording is not received by the due date, the policy will be cancelled ab initio.

In the event that reinsures do not agree the wording provided as being an accurate reflection of the cover described in the original terms and conditions of the offer document, they reserve the right to modify the terms and conditions of the reinsurance policy. The cedant will have 30 days from the receipt of the original revised offer to agree terms. In the event the revised terms are not accepted, the policy will be cancelled at pro rata the original terms.

Reinsurers are required to notify the cedant of their intention to amend the original terms (or not) within 30 days of receipt of the original policy otherwise the original policy will be deemed to have been agreed.

5. Subject to Survey*

The reinsured shall provide the reinsurer with a survey report on (insert property address) such report ("the survey") to be prepared by (insert name of surveyor(s)). The Survey shall be provided by (insert time and time zone) on (insert date) ("the Survey Deadline").

Between inception and 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 Insurer 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 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 the reinsured's address as shown in the contract such notice expiring no earlier than the Survey Deadline.

In the event of termination under the 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 be entitled to the full 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.

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