

GUIDELINES ON CONTRACT CERTAINTY PRINCIPLES OF GENERAL REINSURANCE ARRANGEMENTS

1.0 Introduction

- 1.1 There have been increasing awareness and recognition by the international insurance markets around the world on the importance of having certainty in contract arrangements. As a result, many jurisdictions have embarked on the initiative to develop contract certainty expectation in the forms of code of practice and market guidance to enhance transparency whilst preserving the diversity and competitive position of their markets.
- 1.2 Against this backdrop, it is vital for Labuan insurance industry to embrace contract certainty to reap its associated benefits. This would also enhance the stature of Labuan International Business and Financial Centre (Labuan IBFC) as a modern and conducive marketplace for international reinsurance business dealings.
- 1.3 Contract certainty is important to ensure parties to the reinsurance contract such as cedants, insurance intermediaries and reinsurers understand the terms and conditions of the reinsurance coverage. It also warrants for prompt delivery of documentation evidencing coverage for the cedants.
- 1.4 The benefits of adopting contract certainty are enormous, particularly for large and complex reinsurance contracts. Essentially, it is intended to minimise reinsurance settlement and recoveries disputes which in turn reduce the legal, financial, reputational and operational risks. Although disputes may still arise with contract certainty, this would be confined to a known and agreed reinsurance document between parties to the contract.

2.0 Regulatory Expectations

- 2.1 The issuance of the *Guidelines on Contract Certainty Principles of General Reinsurance Arrangements* (the Guidelines) is a continuation effort to build on the regulatory expectation in relation to reinsurance contracts as specified under paragraph 9.0 of the *Guidelines on General Reinsurance Arrangements and Sound Practices*.
- 2.2 The application of the Guidelines is to be achieved through the minimum requirements of the Guidelines and be complemented by the recommended best practices:
- (i) Minimum requirements must be complied. For completeness, these applications may refer to relevant regulatory requirements of other existing guidelines that have been issued by Labuan FSA, but are included in the Guidelines to ensure cohesiveness in their collective application; and
 - (ii) The best practices are broad guidance on other advanced applications of contract certainty principles commonly observed in international markets. Although these best practices are not made mandatory, Labuan insurance industry is encouraged to adopt them to achieve contract certainty. The nature and extent of measures to be effected should be proportionate to the nature of business operations as well as circumstances.
- 2.3 As the contract certainty initiative observed in other international markets is mostly market-driven, Labuan FSA aspires for the Labuan insurance market association¹ to play an active role in inculcating contract certainty within its insurance communities. In line with the expectations of the Guidelines, Labuan insurance industry may emulate the practice of other international markets in achieving contract certainty taking into account the dynamic and international nature of Labuan insurance business.

¹ This refers to the Labuan International Insurance Association (LIIA).

- 2.4 The Labuan insurance industry is expected to be further guided by the issuance of practice notes or checklists by its association in order to ensure greater understanding on how contract certainty can be effected and achieved.

3.0 Applicability

- 3.1 The Guidelines are applicable to all Labuan insurance licensees under the following categories:

- (i) Labuan (re)insurer licensed under Part VII of the Labuan Financial Services and Securities Act 2010 (LFSSA); and
- (ii) Labuan (re)takaful operator licensed under Part VII of the Labuan Islamic Financial Services and Securities Act 2010 (LIFSSA).

- 3.2 For the purpose of the Guidelines, the term “insurer(s)” refers collectively to all Labuan insurance licensees as specified under paragraphs 3.1(i) and (ii) and should be taken to include reinsurer/retakaful operator/retrocessionaire.

4.0 Legal Provision

- 4.1 Paragraph 7.2 of the Guidelines is issued pursuant to Section 4A of the Labuan Financial Services Authority Act 1996 (LFSAA) for the purpose of clarifying the regulatory expectations on the general reinsurance arrangements to achieve contract certainty.
- 4.2 Any person who fails to comply with the minimum requirements specified under paragraph 7.2 of the Guidelines may be subject to enforcement actions which include a compound and/or an administrative penalty under Section 36B and Section 36G of the LFSAA.

5.0 Effective Date

- 5.1 The Guidelines shall come into effect on **1 January 2025** and would remain effective and applicable unless amended or revoked.

6.0 Definitions

Contract Certainty	Contract certainty is achieved by the complete and final agreement of all terms between the cedant and reinsurer by the time that they enter into the contract, with contract documentation provided promptly thereafter. ²
Terms	Refer to the contractual provisions of the contract. The agreed terms may be included by reference to either contract specific or standard/model materials.
Contract Documentation	Contract documentation contains all the agreed terms of the contract and details of the reinsurers' participations. Examples of contract documentation include reinsurance policy, certificate of reinsurance, signed contract wording or a complete slip.
Reinsurance Arrangement	Reinsurance arrangement covers reinsurance, retakaful and retrocession arrangement.

² The definition of contract certainty is in line with the concept adopted by the UK's Contract Certainty Code of Practice issued in September 2018.

7.0 Internal Policy

- 7.1 Good governance practices are vital to ensure sound and prudent management of the Labuan insurer's business and safeguard the interests of stakeholders. This includes requiring Labuan insurer to have appropriate systems and controls that govern reinsurance and retrocession arrangements.
- 7.2 The Labuan insurer is required to have a written internal policy, which should be approved by the Board³, reflecting the contract certainty principles. The internal policy may be part of other internal policy documents within the company, e.g. underwriting, reinsurance, risk management policy, etc. It should outline the process and procedures to facilitate achieving the effect of contract certainty which would include the following areas:
- (i) The practices adopted based on contract certainty principles for its reinsurance arrangements;
 - (ii) The monitoring mechanism in place to effect item (i)⁴; and
 - (iii) The documentation of deviation from item (i) and actions identified for continuous improvement to contract certainty performance.
- 7.3 The contract certainty principles as provided under best practices in paragraph 8.0 of the Guidelines may be used as a basis to develop the internal policy.

³ For Labuan (re)insurer operating as a branch, any reference made in the Guidelines in relation to the 'board' should refer to the Labuan (re)insurer's regional/head office or an equivalent person, whichever is relevant.

⁴ Examples of how contract certainty can be demonstrated include verification against checklist; sample or file audits; or system or process controls.

8.0 Contract Certainty Principles and Best Practice Application

A. Reinsurance Placement

Principle 1: The reinsurance terms are clearly specified to avoid uncertainty and agreed at the time of binding.

- 8.1 Labuan insurer should ensure that all terms are explicit and do not bring about any ambiguity by the time the offer is made to enter into the contract or the offer is accepted. All terms should be clearly specified, including any conditions or subjectivities.
- 8.2 For example, a subjectivity may include:
- (i) The action that needs to occur and the person assuming the responsibility;
 - (ii) The deadline by which the condition should be met, if any;
 - (iii) The terms to apply until the condition is met; and
 - (iv) The consequences of not meeting the subjectivity.
- 8.3 Labuan insurer should strive to ensure that the contract documentation, including any amendments thereto, is signed with the reinsurer, where appropriate. Notwithstanding this, Labuan insurer may keep record of any other means which demonstrate evidence of acceptance e.g. email confirmation, letter or other message etc. to ensure the contract documentation is legally valid.
- 8.4 A contract documentation may include but not limited to the following:
- (i) The premium/consideration;
 - (ii) The risk(s) reinsured;
 - (iii) The period of cover;
 - (iv) Contract currency;
 - (v) Payment terms (e.g. instalment, lumpsum, etc.);
 - (vi) Any exclusions to terms of coverage;
 - (vii) Any standard clauses that are to be relied upon or incorporated by reference into the contract documentation; and
 - (viii) Governing law and jurisdiction.

Principle 2: The contract documentation is provided promptly to all parties and any changes should be made by documented mutual agreement.

- 8.5 Labuan insurers should ensure that they receive the contract documentation promptly i.e. the earlier between:
- (i) the timeline as specified in any relevant terms of business agreement with clients; or
 - (ii) within 30 calendar days, or other reasonable period which suits the nature, complexity and circumstances of the business operation, measured from the reference date.
- 8.6 The reference date provided under paragraph 8.5(ii) refers to the later of:
- (i) The inception date of the contract; or
 - (ii) The date on which the parties enter into the contract. Where there is more than one participating reinsurer, the date on which the final reinsurer enters into the contract.
- 8.7 Any changes to the contract need to be certain and made by documented mutual agreement which clearly identifies the effective date of change. Documentation in respect of the change should be received by Labuan insurer promptly thereafter.

B. Placement with Multiple Reinsurers

Principle 3: The contract formed should be certain to reflect each reinsurer's final participation and avoid misunderstandings.

- 8.8 Labuan insurers should avoid the practice of post-inception over-placing as such practice could compromise contract certainty principles.
- 8.9 The contract documentation should include an agreed basis on which each reinsurer's final participation will be determined.

C. Performance Expectation

Principle 4: Labuan insurers are expected to demonstrate their achievement of contract certainty and resolve any exceptions without undue delay.

- 8.10 Labuan insurers should be able to demonstrate the following:
- (i) Agreement of all terms was achieved by the time of entering the contract or inception date (whichever is later);
 - (ii) Contract documentation was provided promptly; and
 - (iii) The manner exceptions were identified and resolved and the actions taken to reduce occurrence. Any exception identified should be documented e.g. reasoning, areas of weakness identified and steps to rectify the situation/reduce occurrence.
- 8.11 The methodology for demonstrating performance should be consistent.
- 8.12 If all terms have not been agreed by the time of entering into the contract or if accurate contract documentation has not been provided promptly, then every effort should be made to do so as soon as practicable thereafter.
- 8.13 Labuan insurers may require the reinsurer or its broker to inform them if significant delay beyond the required timescales is expected.
- 8.14 Labuan insurers are encouraged to resolve any legacy backlog of contract documentation.

**Labuan Financial Services Authority
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