

CLARIFICATION NOTE FOR GUIDELINES ON THE CONDUCT AND ROLES OF LABUAN INSURANCE AND TAKAFUL BROKERS

1.0 Preamble

- (i) This Clarification Note is issued to clarify on the regulatory expectation relating to contract certainty principles under the *Guidelines on the Conduct and Roles of Labuan Insurance and Takaful Brokers* (the Guidelines) issued on 31 October 2016.
- (ii) As key intermediaries within the insurance value chain, Labuan insurance brokers and Labuan takaful brokers (collectively referred to as Labuan insurance brokers) are expected to rigorously enhance their current broking practices by embedding the relevant contract certainty principles provided under the *Guidelines on Contract Certainty Principles of General Reinsurance Arrangements* (CCPs) dated 18 December 2023.
- (iii) The issuance of this Clarification Note is also intended to complement the ongoing efforts of Labuan International Insurance Association (LIIA) in developing more granular market guidance for the industry. In this regard, Labuan insurance brokers are expected to contribute to and support LIIA's market-driven initiatives in promoting contract certainty within Labuan IBFC.
- (iv) The application of this Clarification Note is to be achieved through the minimum requirements of the Clarification Note and be complemented by the recommended best practices:
 - (a) The minimum requirements under paragraph 2.0 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 Clarification Note to ensure cohesiveness in their collective application; and
 - (b) The best practices as elaborated under paragraphs 3.0 to 6.0 are broad guidance on the applications of contract certainty principles commonly observed in international markets. Although these best practices are not made mandatory, Labuan insurance brokers are highly encouraged to adopt them to achieve contract certainty as required under the Guidelines. The nature and extent of measures to be effected should be proportionate to the nature of business operations as well as circumstances.

2.0 Internal Policy

Excerpt of the Guidelines

Paragraph 8.0

“The establishment and implementation of policies and procedures on the fair treatment of clients shall form an integral part of insurance broking business culture. This includes the requirements for insurance brokers with regard to the timing, delivery, and content of information provided to clients at point of service...”

Minimum Requirements

- (i) The internal policies and procedures as stated under paragraph 8.0 of the Guidelines had incorporated some fundamental contract certainty principles with regard to the timing, delivery and content of information to be provided by Labuan insurance brokers to clients.
- (ii) In this regard, Labuan insurance brokers are required to improve their existing policies and procedures by incorporating relevant contract certainty principles and best practice application as stipulated under the CCPs as part of their broking practices.

3.0 Contract Documentation

Excerpt of the Guidelines

Paragraph 12.2

“The Labuan insurance broker must verify these documents as soon as they are received to ensure that they conform to the insurance placement terms and conditions as agreed earlier...”

Best Practice Application

- (i) The documents specified under paragraph 12.2 which refer to the contract documentation for evidence of coverage should provide the information on, but not limited to:
 - (a) premium/consideration;
 - (b) risk(s) reinsured;
 - (c) period of cover;
 - (d) contract currency;
 - (e) payment terms (e.g. instalment, lumpsum, etc.);
 - (f) any exclusions to terms of coverage;

- (g) any standard clauses that are to be relied upon or incorporated by reference into the contract documentation; and
 - (h) governing law and jurisdiction.
- (ii) When verifying documents to ensure conformance to the agreed insurance placement terms and conditions as required under paragraph 12.2, Labuan insurance brokers should ensure that all terms are clearly specified including any conditions or subjectivities attached to the risk written to avoid uncertainty. For instance, a subjectivity may include:
- (a) action that needs to occur and the person assuming the responsibility;
 - (b) deadline by which the condition should be met, if any;
 - (c) terms to apply until the condition is met; and
 - (d) consequences of not meeting the subjectivity.

4.0 Contractual Changes

Excerpt of the Guidelines

Paragraph 14.3

“Labuan reinsurance brokers shall provide the clients all information pertaining to the reinsurance arrangement, and any changes thereafter must be advised at the earliest opportunity.”

Best Practice Application

- (i) Aside from advising the clients on any contractual changes at the earliest opportunity as provided under paragraph 14.3, Labuan insurance brokers should ensure that:
 - (a) any changes made to the contract documentation are certain and properly recorded with effective date of change clearly identified;
 - (b) there is mutual agreement between the contracting parties on the changes; and
 - (c) the contract documentation is provided to the clients as soon as practicable and in an expeditious manner including through technological means.

5.0 Placement with Multiple Reinsurers

Excerpt of the Guidelines

Paragraph 14.6

“Where reinsurance is placed with different reinsurers at different terms, the placement slip shall be carefully worded to prevent any arguments alleging misrepresentation at a later date. The client must be informed in writing about the terms agreed with each set of reinsurers by the Labuan reinsurance brokers.”

Best Practice Application

- (i) In managing multiple reinsurance placement, Labuan insurance brokers should exercise extra vigilance to avoid any circumstances that could lead to contract certainty being compromised. For example, a situation that may result in post-inception over-placing.
- (ii) In communicating the final agreement of reinsurer’s participation in the contract, Labuan insurance brokers may use endorsements and signed slips, in addition to email correspondence and confirmation letter.

6.0 Contract Certainty Performance Expectation

Excerpt of the Guidelines

Paragraph 7.5

“A Labuan insurance broker shall have adequate systems and processes in place to ensure proper supervision of its broking activities.”

Best Practice Application

- (i) While Labuan insurance brokers may leverage on their existing system and process controls to demonstrate the achievement of contract certainty, other means such as through verification against a checklist can also be considered.
- (ii) The methodology used for demonstrating contract certainty performance should be consistent.
- (iii) In situation where Labuan insurance brokers face challenges in achieving contract certainty, this should be documented including the areas of weakness identified as well as actions taken to rectify and reduce the occurrence of such situation.