

CONTRACT CERTAINTY CODE OF PRACTICE - GUIDELINES

These guidelines have been created to assist ABIR and BIRBA members achieve and monitor contract certainty. They are not rules which members must follow and nor do they embody the only way of achieving contract certainty.

It is hoped that there will be a high level of compliance with this Code of Practice at the July 1 2008 renewals with over 90% of contracts written in Bermuda meeting the following definition of contract certainty at 1 January 2009. Given the Bermuda market's excellent record to date this target should be achievable. Each member company will be responsible for assessing contract certainty compliance and reporting these findings on a confidential basis to their respective Market Association. This information will be collated and aggregated annually in order to determine the percentage level of compliance and the results will be circulated to ABIR and BIRBA members before being announced to the wider Bermuda market. No individual company data will be released.

DEFINITIONS

Binding: Binding can be in the form of a signed line, offered by the broker, which the (re)insurer has the choice to take up or in the form of a firm order given by the broker in response to the (re)insurer's offer of commitment. For the avoidance of doubt, any offer or quotation shall be considered a binding commitment, unless it clearly states that it is a "non-binding indication".

Contract Certainty is achieved by the full and final agreement of all terms and conditions between the (re)insurer and (re)insured at the time of binding. This will be evidenced by a binder, cover note or similar which reflects all terms and conditions and which is agreed by the (re)insurer. The final committed capacity must be clearly identified.

Contract Documentation contains all the agreed terms of the contract and details of the (re)insurers' participations. The agreed terms may be included by reference to either contract specific or standard/model material. An example of contract documentation includes an insurance policy, schedule of cover, signed contract wording or a complete slip.

Proposed Contract is the document which contains the offer. A proposed contract may take the form of a slip, quotation or proposal but the form will be determined by market protocol.

Terms are the contractual provisions of the contract. The agreed terms may be included by reference to either contract specific or standard/model material.

BEFORE ENTERING INTO THE CONTRACT

1. It is expected that the broker will provide the (re)insurer with all necessary risk and contractual information in order to enable the agreement of all terms. The contractual information within the submission must be complete, whether as a combination of wordings and/or clauses in full text or by reference to contract specific or standard/model material.
2. At the heart of contract certainty is the requirement for all terms to have been agreed at the time of binding, with the terms themselves being clear and unambiguous. The key therefore is to ensure that the proposed contract meets the definition of contract certainty at the time an offer is made.
3. The terms may be expressed in full or by way of reference to contract specific or standard/model materials. If a contract is dependent on another contract (i.e.) “*As Original*” then the contract will be certain provided the other contract is included or clearly identified.
4. Any subjectivity, be it one that must be complied with or resolved before the contract is entered into, or one that applies both before and after the inception date of the contract, compliance with which is a condition of coverage, must be clearly specified. For example, a subjectivity should:
 - a. Identify the action that needs to occur and the person assuming the responsibility;
 - b. The deadline by which the condition should be met;
 - c. The terms to apply until the condition is met; and
 - d. The implications of not meeting the subjectivity.

AFTER ENTERING INTO THE CONTRACT

1. Contract documentation should be issued promptly. Members are encouraged to issue evidence of cover within 30 days from the later of:
 - a. The inception date of the contract;
 - b. The date on which the parties formally commit to the contract; or
 - c. Where there is more than one participating (re)insurer, the date on which the final (re)insurer enters into the contract.
2. Any changes must be made by documented mutual agreement which clearly identifies the effective date of change.

DEMONSTRATION OF PERFORMANCE

1. ABIR and BIRBA members must each be able to demonstrate that:
 - a. The proposed contract met the definition of contract certainty at the time the contract was entered into;
 - b. Agreement of all terms was achieved before the inception of the contract; and
 - c. Contract documentation was issued promptly.
2. Measuring compliance with the Code of Practice can be demonstrated in a number of ways, or a combination thereof:
 - a. Testing against a checklist;
 - b. Sample or file audits; and/or

- c. Internal systems controls.
3. For illustrative and guidance purposes, a template checklist is attached at Appendix One. In practice, the content of a checklist will be determined by market protocol consequently questions will be tailored to the specific circumstances.
 4. Provided the sample of contracts is statistically credible, then sample testing is a reliable method of measuring compliance.
 5. ABIR and BIRBA members may already have in place internal controls that ensure that the principles of contract certainty as defined above are met. For example, a contract certainty check box on an internal system which must be completed for every contract.

WHERE THE CONTRACT HAS NOT MET THE PRINCIPLES

1. ABIR and BIRBA members each have a responsibility to resolve exceptions to the Code of Practice as soon as is practicable.
2. If a contract is not contract certain at the time the contract is entered into or if contract documentation has not been provided promptly then every effort should be made to do so as soon as possible thereafter.

APPENDIX ONE: CHECKLIST CONTENT

The following sample questions may be used by a member in developing a checklist.

- Are all the parties to the contract clearly identified?
- Is the period and scope of cover clearly expressed?
- Is the business covered clearly identified?
- Are all exclusions listed?
- Are the sums insured and/or limits clearly expressed?
- Does the contract contain or reference the specific wordings and/or clauses?
- Where a wording is dependant on another wording (i.e. "As Expiring") is the other contract included or clearly identified?
- Is the premium or rate clearly expressed?
- Are any payment terms clearly expressed?
- Is the brokerage and any other deductions from premium clearly expressed?
- Are the triggers for cancellation clear?
- Does the contract specify reporting requirements?
- Are the currencies for any monetary amounts clearly identified?
- Does the contract attend to the issue of funding loss reserves from ceded reinsurance?
- Are all conditions or subjectivities of the contract clearly expressed?

- Are provisions for the notification of claims clearly expressed?
- Does the contract define the applicable law and jurisdiction and method of dispute resolution (where applicable)?
- Is it clear that all amendments to the contract must be agreed by both parties and formally documented by way of endorsement?
- Can it be confirmed that there are no remaining terms to be agreed or terms that are ambiguous?

This document is provided for information purposes only and is not intended to be binding. ABIR and BIRBA accept no responsibility whatsoever for liability as a result of any reliance placed on it. Furthermore, non-compliance with any matter contained in the document shall not invalidate or call into question any contract or agreement nor shall failure to comply with these guidelines create any right to action or claims in any third party. This document does not affect the legal relationships between the parties to (re)insurance contracts.