REINSURANCE FORM THE PERSPECTIVE OF PROPERTY INSURANCE CONTRACT

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Abstract

The most significant means by which insurance markets operate to spread risks beyond like risk pools is reinsurance.

The reinsurance operation has the advantage that the original insured can increase his financial capacity in order to cover the risks that he cannot bear alone. The risks are therefore spread and the danger of insolvency or of decreasing the financial capacities either disappears or is reduced.

The reinsurance involves a new insurance, carried out by a new policy, for the same original insured risk, for the purpose of compensating the insured persons for the previously concluded insurances. Both contracts exist at the same time.

By reinsurance the reinsurer receives reinsurance premiums, in return for which it contributes, according to the obligations assumed, to bearing the indemnities that the reinsured pays on the occurrence of the risk subject to reinsurance; the reinsured cedes reinsurance premiums, in return for which the reinsurer contributes, according to the obligations assumed, to bearing the indemnities that the reinsured pays on the occurrence of the risk subject to reinsurance.

The reinsurance does not terminate the insurer's obligations and does not establish any legal relationship between the insured and the reinsurer.

This paper offers an introduction to key features of reinsurance, and some of the sources of complexity in the legal issues that arise

Keywords: *reinsurance, property, risk, aggregate, insurance, retrocession, treaty, proportional, facultative.*

1. The concept of reinsurance

The practice of reinsurance is as old as insurance insurance itself.

Under the English law, the earliest definition of insurance belongs to Lord Mansfield[1] and is found in *Delver v Barnes*, a case law in which the Court of King's Bench[2] was asked to decide whether the defendant, an insurance broker, entered into a reinsurance contract.

On that occasion, Lord Mansfield indicated the fact that the reinsurance is a new insurance, effected by a new policy on the same initial insured risk, for the purpose of indemnifying the insured persons for the previously concluded insurances; both policies exist at the same time [3].

Other more modern definitions have described the reinsurance operation as follows: a contract whereby an insurer brings a third person to insure him against loss of liability due to an original insurance[4]; the reinsurance is the contractual liability insurance which involves the payment of claims arising under direct insurance or reinsurance contracts[5]; reinsurance includes those contractual arrangements through which an insurance company transfers to another company all the risks or only a part of the risk that it underwrites to that insurer[6].

In the national doctrine, reinsurance is defined as the contract by which the reinsurer, in proportion to the premiums received and the risks taken over from the reinsured, bears part of the insurance indemnity owed by the reinsured in case of occurrence of the sinister[7].

Art. 2240 para. 1 of the Civil Code of 2009 provides that the reinsurance is the operation of insurance of an insurer, as insured, by another insurer, as reinsurer.

Art. 2240 para. 2 of the Civil Code of 2009 provides that by reinsurance, the insurer receives reinsurance premiums, in return for which he

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[1] According to Wikipedia: William Murray, 1st Earl of Mansfield, (2 March 1705 – 20 March 1793) was a British barrister, politician and judge noted for his reform of English law.

[2] The Court of King's Bench (or "Court of Queen's Bench", during the reign of a female monarch), formally known as The Court of the King Before the King Himself, was an English court of common law in the English legal system. Created in the late 12th to early 13th century from the *curia regis*, initially following the monarch on his travels, the King's Bench finally joined the Court of Common Pleas and Exchequer of Pleas in Westminster Hall in 1318, making its last travels in 1421.

[3] "This contract, although it much resembles yet does not fully amount to a reassurance, which consists to a new assurance effected by a new policy on the same risk which was before insured in order to indemnify the underwriters from their previous subscriptions: and both polices are to be in existence at the same time."

[4] Graydon S. Staring, "*Law of Reinsurance"* (New York:Clark Boardman Callaghan, 1993), p 1-2

[5] Robert Carter Leslie Lucas & Nigel Rlph, "*Reinsurance 4 th Ed"*. (Great Britain: Reactions Publishing Group, 2000), p 5

[6] Aviva Abramovsky, *"Reinsurance: The Silent Regulator?"* (2008-9) 15 Conn. Ins. L.J. 345: Reinsurance agreements "likely lead to the institutionalization of systems beyond and not necessarily congruent with many of the expectations and avowed puposes of some regulatory activities"

[7] I. Sferdian, "*Dreptul asigurărilor",* Editura C.H. Beck, București, 2007, p. 26

contributes, according to the obligations taken, to bearing the indemnities that the reinsurer pays when bringing the risk that was the subject of reinsurance. The reinsured cedes reinsurance premiums, in exchange for which the reinsurer contributes, according to the obligations assumed, to bearing the indemnities that the reinsured pays on the occurrence of the event that was the subject of reinsurance." "Reinsurance does not understand the obligations of the insurer and does not establish any legal relationship between the insured and the reinsurer" (Art. 2240 paragraph 3 of the Civil Code of 2009).

Therefore, the insurance relationship takes place between the direct or initial insurer, which is a ceding company, and the reinsurer. There is no relationship between the original insured and the reinsurer. Thus, the loss suffered by a ceding company is spread to multiple companies, and so being more movable.

In fact, reinsurance is the insurance of the insurers, which is the most commonly used definition in the subject-matter.

The reinsured is the insurer of the original contract (the direct insurer or the ceding company that accepts the risk from his insured), but that cedes part of the risk to the insurer of another insurance or reinsurance company.

The two parties of the reinsurance contract are: the reinsured (or direct insured) and the reinsurer, who accepts the reinsurance from a direct insurer.

2. Purpose and reinsurance functions

To protect the direct insurer against the damages caused by the same event is the main role of the reinsurance

In the doctrine[8], other reinsurance objectives have also been identified, such as:

"Reinsurance permits the insurer to give cover which, because of the magnitude of the possible liability involved, could, might otherwise, be uninsurable by a single insurer without significant threat to both balance and solvency.

Reinsurance enables an insurer to maintain a certain stability in results from year to year and to operate without fear of unanticipated conincidence of expensive claims, which may arbitrarily and against the odds fall upon one office.

Last but not least, by operating across national boundaries, reinsurance may help to distribute amongst nations the domestic impact of large-scale and unexpected events, such as natural disasters, explosions and alike"

By reinsurance, different insurers are protected against the losses caused by the occurrence of high risks, which would jeopardize their very solvency.

By spreading larger losses over a longer period of time, a procedure analyzed by the conclusion of contracts for protection against catastrophic events, a certain degree of stability of the rate of possible damages can be ensured.

The French doctrine[9] also indicates the fact that reinsurance helps increasing the financial capacity of the insurer, giving him the possibility to receive more risks. In this way, the spread of the contract occurs, i.e., its splitting up to several insurers.

At the same time, the reinsurance increases the insurer's flexibility, as well as its ability to underwrite more risks. Therefore, by ceding all the risks, a ceding company may withdraw itself from a business category or geographical area, for a certain period of time[10].

The reinsurance can also cover risks faced by the reinsured which do not arise under insurance contracts but under, for example, bonds.

Catastrophe bonds[11] are bond issued to the capital market by a body established for purpose (a Special Puspose Entity- SPE) whos affairs are managed by a trustee

In recent years, concerns over capacity, the impact of catastrophic losses, and the short term nature of most reinsurance contracts have led to the adoption of other mechanisms. New form of reinsurance contracts have been developed. The earliest class was "financial reinsurance", which in some of its forms is closer to a banking transaction than a reinsurance arrangement and amounts to little more than a loan of premium and its return of investment income exceeded losses[12].

3. The insurance and the reinsurance contract. Similarities and differences.

Despite some noticeable differences over time in the definition of the reinsurance operation by the doctrine, the elements of the reinsurance operation remain the same.

First of all, reinsurance is a contract distinct from the original insurance contract.

The reinsurance contract, as a separate agreement, will also take the form of an insurance contract.

The purpose of the reinsurance contract is not necessarily to cover the entire initial obligation. However, coverage by reinsurance may not be larger than the original, initial one.

[8] John S. Butler, *"Reinsurance law"*, looseleaf (London: Thomson Reuters Ltd., 2009), p. 10003

[9] H. Louberege, "Economie et finance de l assurance et de la reassurance", Paris, Dalloz, 1981, p.188 et seq.

[10] L. Văcărel, Fl. Bercea, "*Asigurări și reasigurări"*, Editura Expert, București, 2007, p. 455

[11] Discuseed in the presentation by David Greenwald to the Reinsurance Working Party of the International Association of Insurnace Law (AIDA) in Lisbon in May 2011, available at http://www.aida.org.uk/workpart_reinsurance_nextmeeting.asp.

[12] Rob Merkin, Jenny Steele, *"Insurance and the law of obligations"*, Oxford University Press, 2013, p156

The reinsurance contract must cover the same risks as the original contract.

The initial insurance and the reinsurance contract must coexist[13].

Many of the principles and practices that apply to insurance generally also apply to reinsurance.

The rules that apply to the interpretation and application of the insurance contracts also apply to the reinsurance contracts.

However, from some perspectives, reinsurance contracts differ from the insurance ones.

First of all, an insurer contracts with individuals, corporations or organizations whose businesses are not generally that of insurance, while the reinsurance contracts are concluded between at least two insurance companies, the contracting parties being always legal persons[14], without involving the insured in the relation between them.

The reinsurance contract does not represent a transfer of the rights and liabilities already existing under the direct insurance contract of all or some of these rights/liabilities.

As distinct from the insurance contract, within the reinsurance contract, the insurer is involved in covering the claims only if there is a payment obligation, as specified in the contract.

Another aspect is that the insurer is indirectly interested in the losses suffered by the original insured person. He covers, in part, only the amounts paid by his insured.

Thus, in reinsurance practice, most of the contracts provide partial compensation, a fraction of these losses being borne by the insured himself.

Another difference is that, while not all insurance contracts are subject to the principle of compensation or indemnity (except for life, accident and sickness insurance policies), the reinsurance contracts are indemnity contracts, the former being limited to payments made by the reinsured, under the conditions it has underwritten.

Also, the insurance contract takes the form of a policy, while, depending on the type of reinsurance, the reinsurance contract takes different forms and very rarely the reinsurance appears in the form of a reinsurance policy (for example, facultative fire reinsurance).

Another distinction refers to the fact that, while direct insurance are, mainly, of an internal kind, with the exception of maritime and aviation insurance, reinsurance is, by its nature, an activity of international kind.

The insurance contract is an insurance contract for the situation of damages occurrence, unlike the reinsurance contract that isn't always of compensation, indemnity nature, it can cover risks faced by the reinsured which do not arise under insurance contracts but under bonds.

As the liability belongs to the insurer under the insurance contract, the reinsurance is a liability of civil, contractual nature and not of conflictual nature.

For the insured, the liability has no direct effect because it is not a third-party liability insurance. Therefore, between the initial insured and the reinsurer, the conclusion of the reinsurance contract does not generate legal relations. However, because the insurer is secured by the reinsurance contract in respect of its obligation towards the insured, this guarantee mechanism indirectly benefits the insured.

To the reinsurance contract, the capacity of third party is held by the insured, the person who is responsible for the damage, but also the beneficiary of the initial insurance.

4. Retroceding or retrocession.

The reinsurer, in his turn, in order to keep his covering capacity, proceeds to the conclusion of other ceding contracts of a part of the reinsurance accepted by him.

This operation is called retroceding or retrocession. The parties of this contract are the retrocedent (the ceding company) and the retrocessionaire (the reinsurer).

In Romanian law, within art. 2241 of the Civil Code of 2009 it is indicated that "by the retrocession operation, the reinsurer may, in its turn, cede a part of the accepted risk."

5. Reinsurance characteristics

Reinsurance may be *unilateral* or *reciprocal*.

Reinsurance is unilateral in the event that one of the contracting parties takes over a part of the risks assumed by the other party under the reinsurance contract.

When by the same contract or by different contracts, each party cedes or takes over a part of the risks assumed under insurance and reinsurance contracts, the reinsurance is reciprocal[15].

The reinsurance contract has the following characteristics: it is a consensual, synallagmatic, onerous, random, with successive execution and pre-formulated standard contract. As the parties of the reinsurance contract are from different countries, a peculiarity of this contract is the element of extraneity[16].

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[13] John S. Butler, op. cit., p. 10138

[14] See Fr. Deak, *"Tratat de drept civil. Contracte speciale",* Editura Universul Juridic, București, 2007, p 471 et seq.

[15] Fr. Deak, *Tratat de drept civil. Contracte speciale,* Ediția a III a, actualizată și comentată, Editura Universul juridic, București, 2001, p.472

[16] I. Sferdian. op. cit., 2013, p.22

The reinsurance contract exists concurrently with the insurance contract, it is conditional on it, but it also has a distinct character[17].

Since reinsurance contracts are concluded at international level, the principles of good faith/fair presentation of the risk have a very important role.

The reinsured is under the duty to disclose material facts to the reinsurers before the contract is concluded.

Two of such jurisprudence examples are revealed in doctrine[18]: In *Wise Underwriting Agency Ltd v Grupo Nacional Provincial SA*, the original insurance policy was in Spanish and when the reinsurance risk was presented, the Spanish word "watc" was translated as "clock" into English. The Rolex watches were to be carried from Miami to Cancun. The loss occurred when a quantity of goods was stolen from a container parked outside the assured s warehouse premises in Cancun. The reinsurers rejected the claim on the score of material misrepresentation of the subject matter insured, which was accepted by the court. The presentation of the subject matter insured as clock was a material fact, given that watches and in particular brands such Rolex are regarded by underwriters as attractive targets for thieves, being portable, high value and easily disposable. The reinsurers nevertheless had to pay to the reinsured in this case as they were held to have breach the duty of good faith/.

In *Aneco Reinsurnace Underwriting LTD (In Liquidation) v Johnson & Higgings Ltd*, the reinsurnace agreement was in the facultative obligatory form. When obtaining the retrocession cover for the reinsurance contract, the broker did not disclose the true nature of the reinsurnace. This was a material fact in a retrocession contrcat which was in the excess of loss form."

Most often, reinsurance contracts are concluded in written form.

The terms of the reinsurance contract refer to the following elements: the name of the parties of the reinsurance contract, their office and exact address, the type of the contract, the risks covered, the extent of the liability as value and per territory, omissions and errors, the date of entry into force of the contract, the duration of the contract, the cases of force majeure, the level and the payment method of the insurance premium and premium reserves, the damages due to interruption, the retention of the ceding company, the fee, the brokerage, the accounting reconciliation, the reserve fund, the payment method of compensations, the excluded risks, the settlement of disputes between the parties of the contract[19].

If disputes arise between the parties of the reinsurance contract, they may be settled amicably (agreement, conciliation or arbitration), and if this is not possible, there shall be used the litigation procedure in court.

6. Reinsurance methods

6.1. Preliminary specifications.

An insurer may transfer the risk to another insurer proportionally or non-proportionally.

Proportionally and non-proportionally reinsurance contracts may be in form of facultative, obligatory or facultative obligatory.

Mainly, two basic methods are used in international reinsurance operations: the facultative method and the obligatory or contractual method (treaty reinsurance).

The facultative-obligatory method is also identified in the doctrine, a method also called the insurance pool method.

Reinsurance involes international transactions. For instance, a Romanian insurer may insure a local risk and reinsure the risk in London. It may be the case that the insurer insures 100% of the risk and then transfers the whole risk to the reinsurers in London. This arrangement is named as "fronting", as the insurer is acting as a front for the reinsurers.

6.2. Forms of reinsurance

Reinsurance may take two forms[20]: (i) proportional reinsurance and (ii) non-proportional reinsurance.

Proportional reinsurance

In the case of proportional reinsurance, the liability of the contracting parties is determined in proportion to the insured amount.

It is the first form of reinsurance, but which continues to be used, due to the low volume of work carried out for its management, while being simple and convenient.

In their turn, proportional reinsurance contracts have two versions, namely: the "quota share-treaty" and the "surplus treaty".

The "quota-share" reinsurance consists in the fact that, of the maximum limit of the insured amount provided by the contract, the participation of the reinsured is established at a fixed percentage share, and the reinsurer takes over a part of this amount, also as a fixed percentage share.

It is mentionable the fact that the reinsurer will be able to take over a fixed share of all liabilities assumed by the insured, under an obligatory reinsurance contract.

This fixed share refers both to the amount of the premiums received and to the amount of the claims registered by the reinsured.

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[17] I. Dogaru (coord), *"Drept civil. Contracte speciale"*, Editura all Beck, p.896

[18] Ozlem Gurses, *"Marine Insurance Law"*, sec edition, Routledge Taylor & Francis Group, 2017, p. 328

[19] I. Sferdian, op.cit.,2007, p.27

[20] I. Sferdian, "Asigurări, Privire specială asupra contractului de asigurare din perspectiva Codului civil", Editura C.h. Beck, București, 2013, p. 24

The reinsured and the reinsurer may participate with fixed shares of the insured amount for the risks that they expressly accept, in case of facultative reinsurance.

The main disadvantage of the quota-share insurance is that, even if the reinsured could bear all the risks on his own, he has the obligation to cede them all.

"Surplus" reinsurance is the most common form of reinsurance.

Thereby, the reinsurer takes over a part of the risk, for a certain limit of the insured amount for which the reinsured is liable for. The part taken over is called "retention" or 'line".

The reinsurer will pay the premiums and will bear the losses in proportion to the surplus of the insured amount.

It should also be specified the fact that there can be subject to reinsurance only those contracts where the insured sums exceed the level of "retention"

"Surplus" reinsurance is in the detriment of the insurers who have to take over high values risks, therefore less profitable.

Also, both for the reinsurers and the ceding company, the management of the contract is complex and the expenses are higher.

Non-proportional reinsurance

Unlike proportional reinsurance, the non-proportional reinsurance shares results[21].

According to this form of reinsurance, the reinsurer is bound to cover only some damages that exceed a certain value limit established by the reinsured.

In non-proportional reinsurance, the premium is much lower, not proportionate to the commitments taken over by the parties of the contract.

This fact means that the probability of occurrence of large claims (which are borne by the reinsurer) is much lower than the probability of occurrence of small claims, which are totally borne by the reinsured.

There are two forms of non-proportional reinsurance contracts: "excess of loss" reinsurance contracts, and "loss ratio" or "stop loss" reinsurance contracts.

In case of "*excess of loss*" reinsurance, the liability of the insured is limited to a certain ceiling for each individual loss, but the reinsurers are liable only for the part of the loss that exceeds this ceiling.

As it avoids the negative consequences of the plurality of risks, this form of reinsurance is frequently used in international practice.

6.3. Methods of reinsurance

The facultative method. The facultative method is the oldest form of reinsurance to be used[22].

This method allows the companies to reinsure themselves for a specific risk, a specific contract or a group of contracts.

If facultative reinsurance is proportional, the contract transfers a single risk to the reinsurer. For instance, if the mobile offshore drilling unit is worth £ 1 m and if the policy is valued, upon total loss of the subject matter insured the insurer indemnifies the assured for £ 1 m. Assuming that the reinsurer took over 50% of the risk insured, the reinsured may then claim half of the loss form the reinsurer[23].

Facultative insurance is the reinsurance of an individual risk or an individual contract, where the reinsurer has the right or the faculty to accept or reject the risk[24].

Therefore, in the case of the facultative method, the reinsurer does not have the obligation to conclude the contract under the conditions proposed by the reinsured. The ceding insurer and the reinsurer agree to the terms and conditions of each individual contract.

Consequently, a reinsurer has the opportunity to exercise its own underwriting and analysis in relation to each individual risk offered for reinsurance.

The method is facultative for both the reinsured and the reinsurer.

The former is free to select the risk categories, and the latter may accept them or not.

Facultative reinsurance contracts have the greatest effect on the cost of covering some unusual or low incidence risks[25]. Thus, although the administrative costs of facultative reinsurance are high, this type of reinsurance is indicated in some cases, such as low incidence risks or high loss risk, situations when the risk is considered inappropriate for a treaty reinsurance[26].

Contractual (obligatory) method or treaty reinsurance.

If the risk transferred is not a single risk but the insurance and the reinsurance cover a large number of risks, reinsurance appears in the form of a treaty.

Treaty reinsurance is that form of the reinsurance contract involving the conclusion of a reinsurance agreement with a foreign insurer, regarding the reinsurance of multiple insurance contracts, including even contracts that have not yet been underwritten by the insurer.

This form of reinsurance may be regarded as a master agreement form, a continuous relationship between the cedent and the reinsurer covering the portions or (insurance) classes of business of the original insurer for a long period of time[27], a framework facility under which risks falling within its scope may be ceded to the reinsurers.

[21] I. Sferdian, op.cit., 2013, p 26
[22] John S. Butler, op. cit., p. 10017
[23] Ozlem Gurses, *"Marine Insurance Law"*, sec. edition, Routledge Taylor & Francis Group, 2017, p. 326
[24] Richard C. Manson & James E. Pfeifer II, *"A Closer Look at Facultative Reinsurance*", 31 *Tort & Ins. L.J*. 641 1995-1996, p. 641
[25] Robert Carter, Leslie Lucas & Nigel Ralph, op. cit, p. 88.
[26] Aviva Abramovsky, op. cit., p. 358; Robert Carter, Leslie Lucas & Nigel Ralph, op.cit., p. 90
[27] John S. Butler, op. cit., p. 10031

Treaty reinsurance allows an insurer to reinsure its risks on a collective basis.

A treaty may cover specific accounts (for example marine or motor), specific forms of loss (for example earthquakes), or even the insurer s whole account[28].

Treaty may be proportional or non-proportional.

In a proportional treaty the reinsured cedes to the reinsurers an agreed proportion of all risks accepted. Surplus or quota share treaties are proportional types of treaty.

The most common type of non-proportional treaty is an excess of loss treaty which the reinsurers become liable when reinsured s aggregate losses reach a stated sum.

If the treaty is facultative, the reinsured has discretion to cede a risk and the reinsured has to accept, those risks cover by the treaty.

Therefore, the reinsurer has to accept all the risks (globally) that the reinsured wants to cede.

Thus, neither the ceding company nor the reinsurer can cancel only certain risks (groups of risks) that they can cover.

Moreover, reinsurance treaties are usually renewable on an automatic basis, unless one of the parties wants new renewal terms. This characteristic ("automatic renewal") of the treaties makes them relatively easy to implement and cheaper to operate.

However, certain disadvantages may be found, as the reinsurer actually loses the right to select the individual risks subject to the reinsurance operation.

For this reason, before entering into a treaty reinsurance contract, a prudent reinsurer will want to know as much as possible about the ceding company, including information about its owners, history, financial position, company's experience in management and claims management[29].

The contractual method is the obligatory form of reinsurance.

Facultative-obligatory method. The facultative-obligatory method is defined by the fact that it is facultative for the reinsured, but it is obligatory for the reinsurer.

The choice of reinsurance ceding risks and the establishment of the conditions of the contract are made by the ceding company, the proposed version being obligatory for the reinsurer.

The insurance associations who all contribute to the capital in order to reinsure a part of the risks underwritten by these companies form the insurance pools[30].

Although the reinsurance activity, mainly, takes place on international markets, due to the development of trade, there have not been created conditions for insurances to be also concluded internally in economically developed countries[31].

6.4. The aggregation mechanism of insurance claims

In general terms, aggregation is a term used to describe the mechanism in which several losses are put together for the purpose of analyzing them as a single claim.

The aggregation clause was implemented, first of all, for the protection of the cedent from the financial impact caused by a series of relatively modest losses which, individually, do not exceed the retention in the insurance, but which, as a result of the aggregation, could become sufficiently significant as financial amount.

Secondly, it was intended to avoid the conceptual difficulties with regard to the decision of what is an "event" or an "occurrence".

The amount representing the indemnity is often affected by the aggregation clauses, whose purpose is to group the claims arisen, consequence of several occurrences coming from the same cause (they have the same causality).

Even if this seems to be easy to say, it is not always easy to determine "when" or "if" an occurrence, or a series of occurrences, come from the same cause or not.

The answer will depend on the circumstances of the case as well as on the specific contractual language that has been used.

Often, aggregation clauses provide the definition of what will be considered an event or occurrence.

The concept of "aggregation" is simple when the terms of the contract allow two or more separate losses covered by the contract to be treated as a single loss for deductibility or other purposes, when they are bonded by a single unifying factor of any kind.

By its nature, the so-called unifying factor determines the biggest debate.

In each case, the test depends on how well it is stated the clause defining it.

Where the act or event described in the aggregation clause is widely defined, an insured with thousands of linked claims may be able to make an insurance claim, whereas a narrow aggregation clause would mean that every individual claim fell within the deductible and the insurer or reinsurer pays nothing.

Aggregation applies for the benefit of both parties to the contract[32]:

It is advantageous to the insured or reinsured that he can aggregate in order to show that his loss has exceeded the limit of the retention or excess in the policy.

[28] Rob Merkin, Jenny Steele, *"Insurance and the law of obligations",* Oxford University Press, 2013, p 148
[29] Robert Carter, Leslie Lucas & Nigel Ralph, op.cit., p. 91
[30] I. Sferdian,op.cit., 2013, p.28
[31] V. Ciurel, "Asigurări și reasigurări. Abordări teoretice și practici internaționale", Editura, București, 2000, p.28
[32] http://www.devereuxchambers.co.uk/resources/articles/view/watch-your-words-aggregation-clauses

Conversely, the aggregation clause is advantageous to the insurer or reinsurer bacause he can reply upon the relevant limit of his liability in relation to the aggregation of the various losses. For this reason it will not often be a clause that has to be construed against the insurer (contra proferentum), but will generally be construed neutrally.

Aggregation clauses often provide the definition for what will be considered an event or occurrence for the purposes of the policy. Accordingly, the starting point for any determination of the purpose of the liability should be with reference to the aggregation clause and the definitions contained therein.

Event and occurrence are generally used as interchangeable terms, and there are a number of general principles which govern the meaning of those terms.

These principles include[33]: ”

I. An event or occurrence is a unifying factor that allows a number of individual losses to be aggregated and, therefore, to be treated as arising from single happening;
II. What has occurred must be capable of being described as an event or occurrence. Thus, something specific must have happened that is distinguishable from a general state of affairs. An event of occurrence is also to be distinguished from the cause of an event, as a result even through the cause of an occurrence may be present, until that cause rise to the event there is no occurrence;
III. An event or occurrence is somtheing which has happened and which has given rise to one or more losses;
IV. Where a number of individual loses have been sufferd, it is necessary for those losses to be sufficiently closely connected with each other to be regarded as having resulted from a single event or occurrence. The relevant ”unities” are time, locality, cause and motive;
V. There must be a sufficient causal connection between the individual losses and the event or occurrence from which they are said to result;
VI. (vi) The losses must not be too remote from the aggregating event;
VII. In assessing whether the individual losses can be aggregated as a single event or occurrence, the matter must be approached from the perspective of an informed observer and the assessment is to be made both analytically and as a matter of common sense”.

Conclusions

Reinsurance is a separate and unique industry with many of its own rules, traditions and practices.

Reinsurance permits the insurer to give cover which, because of the magnitude of the possible liability involved, could, might otherwise, be uninsurable by a single insurer without significant threat to both balance and solvency and to maintain a certain stability in financial results from year to year, giving the insurer the possibility to receive more risks, to increase it’s flexibility, as well as its ability to underwrite more risks.

Reinsurance is unilateral in the event that one of the contracting parties takes over a part of the risks assumed by the other party under the reinsurance contract.

When by the same contract or by different contracts, each party cedes or takes over a part of the risks assumed under insurance and reinsurance contracts, the reinsurance is reciprocal.

Reinsurance may take two forms: (i) proportional reinsurance and (ii) non-proportional reinsurance.

Proportionally and non-proportionally reinsurance contracts may be in form of facultative, obligatory or facultative obligatory.

The facultative-obligatory method is also identified in the doctrine, a method also called the insurance pool method.

The amount representing the indemnity is often affected by the aggregation clauses, whose purpose is to group the claims arisen, consequence of several occurrences coming from the same cause (they have the same causality).

When dealing with reinsurance policies, one must be aware and alive to the differences and the special features of reinsurance agreements and the potential for conflict of law issues that may arise in the reinsurance context.

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