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The RAPA Education Initiative would like to thank the following members for their efforts and contributions to the Treaty Clause Checklist:

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**Use of this Treaty Checklist**

This checklist is intended as a guideline for the review of new client prepared treaties and it is up to the user to determine the best use of the information.

The checklist is not intended to fit every situation, but rather, as a starting point.

The Reinsurance Treaty Fundamentals document may also be used for guidance which is located on the RAPA website at <https://reinsadmin.org/initiatives> under the Education Initiative at Reinsurance Treaty Fundamentals



**RAPA Treaty Clause Checklist**

**(2020)**

|  |  |
| --- | --- |
| **Ceding Company:**  |  |
| **Reinsuring Company:**  |  |
| **Treaty Name / Treaty ID:** |  |
| **Effective Date:**  |  |

|  | Articles/Provisions | Reinsurer's Treaty Clause Checklist(Include Article/Section/Page Reference) | Comments/Reinsurer's Requirements | Next Steps(What to do if Article/Provision is not included or does not meet Reinsurer's requirements) | Treaty Fundamentals Cross Reference |
| --- | --- | --- | --- | --- | --- |
|  | **Preamble** |  | Agreement is solely between the Parties |  | Not Specifically Covered |
| 1.1 Parties to the Agreement |  |  |  |  |
| 1.2 Entire Agreement |  | The Agreement and Exhibits constitute the entire agreement between the parties regarding the business reinsured; this supercedes any and all prior representations, warranties, Agreements or understandings between the parties pertaining to the subject matter of this Agreement. |  |  |
|  | Definitions |  | Treaties may have a definition article or definitions are interspersed throughout the treatyConfirm definitions are correct and used consistently. |  | Not Specifically Covered |
|  | Automatic and Facultative-Obligatory Reinsurance |  | Specify set criteria that must qualify for automatic reinsurance  |  | Module 2 - Reinsurance Coverage |
| 3.1 Jumbo Limit  |  | The maximum total amount of coverage that may be in force, applied for and to be replaced with all insurance companies on an individual life and still qualify for automatic coverage.  |  | Module 5 - Jumbo Limits |
|  | Facultative Reinsurance |  | Specify the offer expiry date/duration. |  | Module 2 - Reinsurance Coverage |
|  | Commencement of Liability |  |  |  |  |
|  |  | Specify whether back dating is allowed and duration. |  | Not Specifically Covered |
|  |  | Subject to Ceding Company’s conditional receipt/temporary insurance agreement/limited insurance agreement provisions for automatic reinsurance. |  | Not Specifically Covered |
|  |  | Occurs when the Reinsurer accepts coverage for Fac policies. |  | Module 2 – Reinsurance Coverage |
|  | Reinsured Risk Amount |  | Specify if YRT or Coinsurance. Specify if Excess or First Dollar QSInclude a definition of the Net Amount at Risk for the product being reinsured |  | Module 1 – Reinsurance Methods |
|  | Premium Payment |  | Premium Rates/Factors; Premium Reporting, etc. |  | Module 10 – Reinsurance Premiums |
|  | Funds Withheld or Coinsurance Funds Withheld |  | In this type of reinsurance, assets which would normally be transferred to the reinsurer are held by the Ceding Company in order to reduce potential credit risk or to retain control over investments |  | Module 1 – Reinsurance Methods |
|  | Reporting |  | Require billing, accounting summary, inforce, reserves reports, etc. within a specified period. Consider putting this in a Schedule & include list of reports & timing of submissions  |  | Not Specifically Covered |
| 9.1 Delayed payment interest |  | Each party reserves the right to charge interest on undisputed overdue balances, calculated at a specified rate |  |  |
|  | Late Reporting |  | Late Reported Polices Late Reported Terminations  |  | Module 8 - Reductions, Terminations, and Reinstatements  |
|  | Reductions, Terminations and Changes |  | Consider adding Reinstatement terms |  | Module 8 - Reductions, Terminations, and Reinstatements |
|  | Exchanges of Plan (was Conversions, Exchanges, and Replacements) |  |  |  | Module 9 - Conversions, Replacements, and Continuations |
|  | Claims |  | Include relevant timeframes for reporting of notices and payment requests. Include criteria for claims payment, notice, & consultation. Consider having an Extra-Contractual Obligations article & Misstatement of Age or Sex article |  | Not Specifically Covered  |
|  | Credit for Reinsurance  |  | The parties intend that Ceding Company will receive statutory reserve credit in its state of domicile for reinsurance provided under the Agreement. The parties agree to use reasonable efforts to ensure that such reserve credit will remain available to the Ceding Company. |  | Not Specifically Covered |
|  | Retention Limit Changes |  | Include handling of Retention Increases & Decreases |  | Module 11 – Recaptures, covered limit changes and increases but decreases is not specifically covered. |
|  | Recapture |  | Need time period and conditions under which recaptures can happen.Facultative business and policies on Waiver of Premium are usually excluded from Recapture. |  | Module 11- Recaptures |
|  | General Provisions |  |  |  |  |
| 17.1 Currency |  | The currency for reporting and payments are generally the same. |  |  |
| 17.2 Dividends |  |  |  |  |
| 17.3 Minimum Cession |  | The smallest cession amount that the Reinsurer will accept. The minimum size is set to avoid the administrative expenses associated with small cessions. |  | Module 4 - Automatic Binding Limits |
| 17.4 Trivial Amounts |  | When the net amount at risk falls below a specified amount (trivial amount), the policy can be recaptured or terminated for coverage. |  | Module 8 - Reductions, Terminations, and Reinstatements |
| 17.5 Inspection of Records |  | Either party should have the right to inspect records relating to the policies being reinsured under the treaty. |  |  |
| 17.6 Governing Law |  |  |  |  |
| 17.7 Compliance |  |  |  |  |
| 17.8 OFAC Compliance (Office of Foreign Asset Control  |  | Parties to use best efforts to comply with all laws, regulations and orders applicable to the Reinsured Policies as they pertain to the sanction laws administered by the US Treasury Dep't. Office of Foreign Assets Control. Party becoming aware of a reinsurance transaction in violation to notify the other party, and both make effort to take corrective action. Such reinsurance transactions are null and void. |  |  |
| 17.9 Severability |  | Determination that any provision of the Agreement is invalid or unenforceable will not affect or impair the validity or enforceability of any other provisions of the Agreement. |  |  |
| 17.10 Assignment |  | Generally, requires prior written consent  |  |  |
| 17.11 Offset  |  | Undisputed amounts may be offset against balances owing.  |  |  |
| 17.12 Non-waiver |  | A waiver by either party of any violation, or default by the other party in its adherence to any term of this Agreement, will not constitute a waiver of any other or subsequent violation or default. |  |  |
| 17.13 Policy Loans |  |  |  |  |
| 17.14 Cash Surrender Values |  |  |  |  |
|  | Taxes  |  |  |  |  |
| 18.1 Premium Tax |  |  |  | Module 10 – Reinsurance Premiums |
| 18.2 DAC Tax Election |  | Note – This regulation only requires sharing of information, not agreement of amounts reported |  |  |
| 18.3 Federal Excise Tax |  | Applicable to those Reinsurers who are not United States taxpayers or are not domiciled in jurisdictions that have a tax treaty with the United States.  |  |  |
| 18.4 Foreign Account Tax Compliance Act (FATCA) – if requested |  | Only where Reinsurer is a non-US entity and cannot say with certainty that no US lives are being retroceded. |  |  |
|  | Good Faith19.1 Representations and Warranties |  | The Company represents and warrants that to the best of its knowledge it has disclosed all information which is material to the risks being assumed.  |  | Not Specifically Covered  |
|  | Insolvency |  | Should allow for recapture upon the insolvency of either party. . |  | Not Specifically Covered |
|  | Errors and Omissions |  | Limited to Administration errors & omissions. |  | Module 12 |
|  |  Dispute Resolution |  | Allows for an informal process for parties to resolve disputes relating to the agreement.  |  | Not Specifically Covered |
|  | Arbitration |  | Choice of Law and Submission to Jurisdiction vs. Arbitration  |  | Not Specifically Covered |
| 23.1 Survival of Provision |  | Arbitration survives termination of the agreement. |  |  |
|  | Confidentiality |  | Should address sharing data with non-affiliates. Consider having some approved language to use. |  | Not specifically Covered |
|  |  Notice |  | Not always included and could be part of Termination of Agreement |  | Not Specifically Covered |
|  | Effective Date, Duration and Termination of Agreement (or Duration of Agreement) |  | Should include timing of notice to terminate |  | Not Specifically Covered |
|  | Execution27.1 Counterparts  |  | Appropriate approvals are needed and execution by authorized personnel. Consider including optional ways of signing such as transmission by email, via facsimile or electronic signatures. |  | Not Specifically Covered |
|  | Schedules and/or Exhibits  |  |  |  |  |
| 28.1 Retention Limits  |  |  |  | Module 3 - Retention Limits |
| 28.2 Automatic Acceptance Limits  |  |  |  | Module 4 - Automatic Binding Limits |
| 28.3 Underwriting Guidelines |  |  |  |  |
| 28.4 Rates and Terms for Specific Products |  |  |  |  |

**Other Possible Articles**

1. Data Protection
2. Special Termination – likely based on “Risk Trigger Events” (e.g. RBC triggering event). Might be included with “Recapture” article as a sub-section.