



Special Termination

1. It is understood and agreed that should either party to this Agreement:
 - (a) fail to meet the minimum capital requirements of any Canadian or other regulatory authority having jurisdiction over such party; or
 - (b) go into liquidation or have a receiver appointed; or
 - (c) cease writing new or renewal business under the direction or order of a Canadian or other appropriate regulatory authority; or
 - (d) enter any arrangement which results in a change in the persons that legally or factually controlled such party at the time this Agreement became effective (for the purposes of this paragraph (d), the term “person” means a natural person, body corporate, trust, partnership, fund, unincorporated association or organization, government or any agency thereof, or a personal representative); or
 - (e) in the case of the Company only, effect a reduction in the net retained share of the business reinsured hereunder without the prior written consent of the Reinsurer;the party which is subject to any of the forgoing shall immediately notify the other party.
2. Acting upon actual or constructive notice that an event described in paragraph 1 has occurred, the other party shall have the right to terminate this Agreement by registered letter, facsimile transmission or any other means of communication that provides a permanent record of such communication, stating therein the date and time of termination, which shall be not less than 30 days following delivery of such notice.
3.
 - (a) With regard to that part of this Agreement which is reinsured on a proportional basis (if any), such notice of termination may, at the option of the party giving notice, include termination of the business in force at the date of termination against return of the unearned premiums less applicable commission thereto.
 - (b) With regard to that part of this Agreement which is reinsured on a non-proportional basis (if any), any premium due shall be calculated by the Company within 40 days of the date of termination, and, if not earned in full or in part by reinstatement provisions, shall be based upon the applicable subject premium income of the Company up to the date of termination or pro rata of the annual minimum premium, whichever is greater.
4. If the performance of the whole or any part of this Agreement is prohibited or rendered impossible legally or factually (including, without limitation, as a result of any law or regulation which is or shall be in force in any country or territory) or, if any law or regulation shall prevent, directly or indirectly, the remittance of all or any part of the balance of payments due to or from either party, the party affected shall inform the other party immediately, and either party may terminate this Agreement in accordance with paragraph 2 above.

Notes to accompany Special Termination Clause:

1. Paragraph 1 (a) and (c) – The use of “Canadian or other appropriate regulatory authorities” is more appropriate to a market (Canada) in which not all treaty participants may answer to Canadian regulators. RRC notes that the phrase “any regulatory authority” may be so broad as to include regulators of inappropriate or irrelevant foreign jurisdictions.
2. Paragraph 1 (a) to (d) – The word “or” has been added after each sub-section’ making it clear that any one condition will be sufficient to invoke special termination.
3. Paragraph 2: The specific communication option “telegram” has been deleted.
4. Paragraph 2 stipulates that termination “shall not be less than 30 days following delivery of notice.” RRC has noted the frequent use of concluding words to the effect, “but subject to the expiration date of this Agreement.” Inasmuch as the party asking for termination is unlikely to seek an extension of cover, these concluding words have been rejected by RRC as unnecessary.
5. Paragraph 3 (a) and (b) – Although one is unlikely to encounter a treaty that is both proportional and non proportional, RRC has chosen to publish a wording that can be applied to either type of Agreement.
6. Paragraph 3 (b) – The wording of this sub-section is unchanged from that of RRC Bulletin 24, dated October 2005. However, RRC has noted the occasional use of wordings which fail to recognize how reinstatement provisions may effect the calculation of earned premiums. This RRC recommended wording includes the phrase “if not earned in total or in part by reinstatement provisions” in order to ensure that post-loss premium adjustments, if any, adhere to treaty intent and to market practice. (See the separate note, “Effect of Reinstatement Provisions on the Adjustment of Special Termination Premiums” below.)
7. Paragraph 3 (b) – RRC has noted the occasional use of wordings which contradict the method of calculating earned premiums set out elsewhere in the Agreement. This RRC recommended wording includes the phrase “applicable subject premium income of the Company up to the date of termination or pro rata of the annual minimum premium, whichever is greater” in order to ensure that premium adjustments, albeit pro rated, adhere to treaty intent and to market practice.
8. Paragraph 4: The performance of the Agreement has been qualified by the words “of the whole or any part” for the sake of clarity.

Special Note:

Effect of Reinstatement Provisions on the Adjustment of Special Termination Premiums

Many excess of loss reinsurance treaties include a provision for one or more reinstatements. In such cases, both treaty intent and market practice determine how contractual premiums are earned in the event of a loss or losses to the Agreement. Quite simply, in the case of “paid reinstatements” or in the case of “one free reinstatement,” it is recognized that all or part of the treaty’s limit of liability must be reinstated if consumed by a loss and that a corresponding portion of the agreed treaty premium is deemed to be fully earned. Even if the contract provides a single free reinstatement, as is the case with homeowner property policies and many commercial property policies, the agreed reinsurance premium is fully earned, or in the case of a partial loss, is earned to the proportion that the loss bears to the treaty limit of liability.

Should one party to the agreement invoke the special termination provision after a treaty loss has triggered the reinstatement premium provision, then pro rata adjustment of premiums as set out in Paragraph 3, sub-section (b) will apply only to those reinstated premiums and to the portion of originally agreed premiums, if any, that have not been exhausted. Should there be no reinstatement provision, or should there be no loss to invoke the reinstatement provisions, then Paragraph 3, sub-section (b) addresses the pro rated calculation of premium with equal thoroughness. Further elaboration is unnecessary and, as RRC has observed, erroneous or, at best, counterproductive.