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THE REINSURER'S IMPACT ON THE INSURER'S DECISIONS FOLLOWING THE OCCURRENCE OF THE INSURED EVENT

REVIEW SCIENTIFIC PAPER

Summary

The function of the reinsurance contract is to provide coverage for excess risk, namely for losses that exceed the insurer's retention. Following the occurrence of an insured event, the reinsurer indemnifies the sum defined in the reinsurance contract. However, the question arises as to whether the reinsurer may influence the settlement of claims submitted by the insured, either through direct control and influence over such proceedings, or by having the right to be notified of the claim settlement process. Reinsurance contracts may incorporate clauses that define such rights of the reinsurer. One clause concerns cooperation (*Claims Cooperation Clause*), while the other addresses control (*Claims Control Clause*). The claims control clause grants broader authority upon the reinsurer. Practice demonstrates that other similar clauses are also used to specify the reinsurer's rights. This paper examines both the characteristics of these clauses and the Principles of Reinsurance Contract Law, which specifically regulate the relationship between the reinsurer and the insurer (the reinsured) following the occurrence of an insured event.

Keywords: reinsurance, reinsurer, reinsured, risk, retention, insured event, claims cooperation clause, claims control clause.

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I. Introduction

When an insurance company (the insurer) underwrites large risks, it often becomes necessary to enter into reinsurance contract. Such situations arise when the insurer determines that the occurrence of a potential loss, or more precisely, the occurrence of an insured event, may pose a threat to its financial stability. The conclusion of a reinsurance contract establishes a distinct contractual relationship between the insurer, as the reinsured, and the reinsurer, alongside the existing insurance relationship between the insurer and the insured, that is, in addition to the underlying insurance contract. The primary purpose of concluding an insurance contract is to provide insurance coverage against risks threatening the insured, while the objective of entering into a reinsurance contract is to ensure effective protection of the insurer by the reinsurer following the occurrence of an insured event. Consequently, reinsurance is referred to as insurance of the insurer, although this concept should be understood in a broader sense. The insurance contract and the reinsurance contract are independent; they constitute separate contracts. The insurer has obligations under the insurance contract, while the reinsurer has obligations under the reinsurance contract. Should an insured event occur, the insurer indemnifies the sum insured pursuant to the concluded insurance contract, and subsequently, under the reinsurance contract, the insurer, as the reinsured, seeks indemnification from the reinsurer. In practice, however, the situation differs. Many reinsurance contracts contain provisions enabling the reinsurer to influence the settlement of claims under the insurance policy, even during the insurer's claims handling process. Specifically, under such provisions, the insurer must notify the reinsurer of the insured event and may not adopt a final position on indemnification without coordinating with the reinsurer. This may result in delayed payment by the insurer and non-compliance with agreed timeframes, raising questions regarding the compatibility of such conduct with fundamental principles of insurance contract law.[2] However, as noted, for such obligations of the insurer as reinsured to exist, and for the reinsurer to be involved in claims settlement submitted by the insured, certain clauses must be contractually agreed upon, granting the reinsurer varying degrees of authority to intervene in the settlement of a claim arising from an insured event. The nature of the reinsurer's influence on claims settlement depends upon the type of clause negotiated. Two clauses are most commonly used to achieve this purpose. The first is the *Claims cooperation clause*, typically utilized in facultative reinsurance contracts. This clause requires the insurer to involve the reinsurer in settling the portion of the loss that exceeds the insurer's retention, while preserving the insurer's

[2] Marijan Ćurković, Claims Cooperation Clause: Utjecaj reosiguratelja na odnos „osiguratelj–osiguranik" kod rješavanja osiguranog slučaja (June 2, 2025), available at: *https://www.osiguranje.hr/ClanakDetalji.aspx?23319*, accessed on July 19, 2025.

autonomy to independently determine indemnification for the retained portion. The second is the *Claims control clause*. This clause is more restrictive for the insurer, as it prohibits the adoption of a position on indemnification without the reinsurer's prior consent. Moreover, it contradicts insurance contract law provisions that prescribe timeframes within which the insurer must either settle the claim or notify the insured that the claim is unfounded.[3]

II. Reinsurance as protection for the insurance contract

1. Reinsurance in general

Both natural and legal persons are increasingly exposed to numerous risks and pressures, which affect their demands as policyholders upon insurers, and through insurers upon reinsurers. These demands concern improved services from insurers and reinsurers, encompassing both the diversity of insurance offerings and higher standards of insurance coverage. This implies that the insurance sector must be prepared to respond to emerging challenges, as well as to assess its own expectations in conducting business operations. Insurers must continuously evaluate their business strategies.[4] The insurance market demonstrates a degree of inertia, despite mounting pressures from competition stemming from new insurers and reinsurers, as well as growing demands from policyholders. The insurance market cannot afford sluggishness in inevitable changes in its business operations.[5]

The insurer is obligated to reinsure liabilities under the insurance contract exceeding its retention. Retention represents the amount of underwritten risk that the insurer retains in its own coverage and that can be covered with its own funds. The insurer must always retain a portion of the risk in its retention.[6]

Reinsurance operates in a straightforward manner. The reinsured pays a premium to the reinsurer, and in return, the reinsurer covers a portion of the reinsured's liabilities as insurer toward the policyholder. The reinsured and reinsurer freely determine the contract terms, without the need to define provisions specifically protecting the interests of one contracting party, as is the case with insurance contracts, where the interests of the policyholder, as a natural person, are primarily protected.[7]

Two principal forms of reinsurance are distinguished. The first is facultative reinsurance, wherein the reinsurer individually makes a decision regarding the

[3] *Ibidem*.

[4] Robert Stude, "Promjena izgleda rizika u osiguranju/reosiguranju", *Zbornik Pravnog fakulteta u Zagrebu*, Vol. 58, Nos. 1–2/2008, 678.

[5] *Ibid*., 679.

[6] Vladimir Čolović, *Osiguravajuća društva – zakonodavstvo Srbije, pravo EU, uporedno pravo*, Institut za uporedno pravo, Belgrade 2010, 21.

[7] Jasna Pak, *Pravo osiguranja*, Belgrade 2011, 41.

insurance policy for which coverage is to be provided. This form is less flexible, but provides greater protection to the reinsurer. The second is treaty reinsurance, wherein an agreement is reached whereby the reinsurer accepts coverage of a specified type of risks. Under this form, the reinsurer accepts all policies within the designated risk categories. Treaty reinsurance is less flexible, but more efficient from the standpoint of insurance operations in general.[8]

Insurers must frequently underwrite individual risks that exceed their capacity in magnitude, as well as risks where the possibility exists for mass losses, accumulation of losses, and catastrophic losses, situations in which a single insurer cannot fulfill its obligations toward policyholders. However, through the conclusion of reinsurance contracts, insurers increase their capacity, thereby protecting both their solvency and the interests of the insured. Certain large risks exceed the insurer's retention, necessitating additional security in such cases. Conversely, reinsurance enables insurers to homogenize their portfolios, resulting in reduced volatility arising from significant deviations between incurred losses and earned premiums.[9]

Furthermore, the institution of reinsurance itself represents an indirect transfer of a portion of liabilities under the insurance contract without the involvement of the insured. Insurance constitutes a vertical division of risk, which in the relationship between insurer and insured remains unchanged, and may, but need not, terminate with a single reinsurer. It follows that reinsurance represents an indirect or secondary risk distribution from insurance; in other words, insurance of the insurer itself for the portion of liability it cannot cover independently.[10]

Likewise, reinsurance is not merely a legal but also an economic institution, and from an economic perspective, the most significant characteristic of reinsurance is the spatial dispersion of risk, which eliminates or mitigates enormous burdens on insurance funds.[11] The general rule is that the legal-economic relationship between the reinsurer and the insurer is entirely separate from the relationship between the insurer and the insured, notwithstanding that a portion of the risk under the insurance contract is ceded by the reinsurer.[12]

The reinsurance of a large number of insurers enables reinsurers to diversify risk in a manner unattainable by any individual insurer. This is achieved by permitting insurers to underwrite a greater number of large risks, while maintaining consideration for the geographical distribution of risks where feasible, as well as

[8] Reinsurance Uncovered: Spreading Risk and Safeguarding Solvency, available at; *https://accelerant.ai/resources/reinsurance-uncovered-spreading-risk-and-safeguarding-solvency*, accessed on July 15, 2025.

[9] Matea Spajić, "Modeli rizika u neživotnom osiguranju i reosiguranju", *Hrvatski časopis za osiguranje*, No. 2/2019, 172.

[10] Ratko Zelenika, "Relevantna obilježja reosiguranja", *Naše more, Scientific Journal for Sea and Maritime Affairs*, Vol. 43, Nos. 3–4/1996, 119.

[11] *Ibidem.*

[12] *Ibid*., 125.

reducing the effective magnitude of risk exposure. Similarly, reinsurance contributes to modifications in the structure of insurance portfolios.[13]

2. Reinsurance in the legislation of the Republic of Serbia

The Law of Contract and Torts (hereinafter: LCT)[14] does not regulate the institution of reinsurance. On the other hand, the Insurance Law of the Republic of Serbia (hereinafter: Insurance Law)[15] provides that the portion of risk exceeding the insurer's retention shall be transferred to reinsurance, that is, the insurer reinsures the portion of the risk which it would be unable to cover should an insured event occur. The Insurance Law also prescribes an exception pertaining to the possibility of reinsuring the entire risk amount in cases of property insurance against catastrophic risks, such as natural disasters, or insurance against financial losses resulting from adverse weather conditions. The Insurance Law does not address the relationship between the insured and the insurer, nor direct insurance. Likewise, the Insurance Law does not address the relationship between the insured and the reinsurer, i.e. circumstances under which the insured may approach the reinsurer directly for indemnification or payment of the sum insured.[16] Naturally, the function of the Insurance Law as a "status" law is not to regulate reinsurance as a contractual relationship between the reinsurer and the reinsured. Unfortunately, the Republic of Serbia has not enacted legislation governing insurance contract law, and consequently, reinsurance contract law.

III. The relationship between reinsurer and insurer as reinsured

It is essential to distinguish the relationship between the insurer and the reinsurer from that between the insurer and the insured. However, although no legal relationship exists between the policyholder under the underlying insurance contract and the reinsurer. Such relationship is significant for the policyholder's decision, as the policyholder will generally prefer insurance arrangements supported by reinsurance.[17] When the policyholder is aware that the insurer, with whom the

[13] Jean François Outreville, „Introduction to Insurance and Reinsurance", *Social Re-Insurance A New Approach to Sustainable Community Health Financing* (eds. David M. Dror, Alexander Preker), The International Bank for Reconstruction and Development, Washington-Geneva 2002, 12.

[14] The Law of Contract and Torts, *Official Gazette of the SFRY,* Nos. 29/78, 39/85, 45/89, and 57/89; *Official Gazette of the FRY,* No. 31/93; *Official Gazette of SCG,* No. 1/2003 – Constitutional Charter.

[15] Insurance Law, *Official Gazette of the Republic of Serbia,* Nos. 55/2004, 70/2004 – corr., 61/2005, 61/2005 – other law, 85/2005 – other law, 101/2007, 63/2009 – Constitutional Court Decision, 107/2009, 99/2011, 119/2012, 116/2013, and 139/2014 – other law.

[16] Vladimir Čolović, "Reosiguranje kao instrument zaštite osiguravača," *Pravna riječ*, No. 55/2018, 160.

[17] *Ibid.*, 16.

insurance contract has been concluded, will reinsure the subject matter of that contract, the policyholder's protection will be more comprehensive, given that the reinsurer also guarantees the insurer's obligations in the event of an insured event. It must be emphasized that the reinsurer is obligated solely to the insurer, i.e. the reinsured, who has ceded the insurance contract to it. Policyholders of the insurer possess no right to submit claims to the reinsurer, even though the policyholder is the party who will benefit from the reinsurance.[18]

There is a dilemma as to whether a reinsurance contract, from the insurer's perspective, constitutes a contract providing indemnity from the reinsurer or one covering the insurer's (reinsured's) liability. In this regard, the question arises as to whether the insurer (reinsured) pays a premium for potential loss, such that upon occurrence of an insured event, it receives indemnification for that loss, i.e. the sum insured. Certainly, it may be stated that the insurer pays premium to avoid sustaining potential loss; however, by its very nature, the reinsurance contract is concluded upon determining that a potential loss may exceed its retention. This means that the insurer will not face the risk of loss upon all insured events, but only when the amount exceeds its retention. Moreover, this cannot be characterized as an extension of insurance coverage, unless multiple insurers are engaged to cover a single risk or multiple risks within a specified time interval.[19]

For defining the relationship between insurer and reinsurer, it is essential that the reinsurance contract must exist concurrently with the direct insurance contract;[20] it represents, in fact, part of a set of contracts (both contracts) with the same causa. The reinsurance contract may relate to coverage provided under the insurance contract in its entirety, or may cover only a portion of the insurer's liability. The reinsurer is under no obligation to provide broader coverage than that stipulated in the insurance contract. Moreover, the reinsurance must relate to the same risk as the insurance contract.[21]

Finally, while the insurance contract may exist independently, the reinsurance contract cannot.[22] This very point explains the definition of clauses in the reinsurance contract previously mentioned, to which considerable attention will be devoted in the following sections. Namely, if the reinsurance contract cannot exist independently, that is, if it is dependent upon the insurance contract, then the question of the reinsurer's influence on loss settlement must be addressed.

[18] J. F. Outreville, 1.

[19] Larry Schiffer, Reinsurance Matters, available at: *https://www.irmi.com/articles/expert-commentary/reinsurance-matters*, accessed on July 20, 2025.

[20] The term "direct" insurance must be employed to distinguish between these two contracts, given that reinsurance also constitutes insurance.

[21] Nataša Petrović Tomić,. "Reosiguranje – suština, domašaj, značaj", *Anali Pravnog fakulteta u Beogradu,* No. 2/2015, 79.

[22] *Ibid.*, 80.

Thus, the reinsurer assumes the original risk transferred to it by the cedant, that is, the reinsured. However, according to general principles, the reinsurer is obligated to accept in good faith the decisions of the insurer as the reinsured concerning the general terms and conditions of insurance, as well as other elements constituting the underlying insurance. Such decisions may include insurance coverage, settlements between the insurer and the policyholder, negotiations between them, and acceptance of claims submitted by the policyholder or the injured party. Precisely because reinsurers are obligated to accept such decisions, they are liable for payment under the original policy, albeit within the scope of coverage provided under the reinsurance contract. However, the reinsurer is not obligated to accept settlements or admissions of liability falling outside policy provisions.[23]

IV. Claims cooperation clause and Claims control clause in reinsurance contracts

Both the claims cooperation clause and the claims control clause are today common and customary provisions in reinsurance contracts. The distinction between them is as follows. Pursuant to the claims control clause, which governs claims control, the reinsurer may require the reinsured, i.e. the insurer, to transfer liability for settling the claim to the reinsurer. Conversely, pursuant to the claims cooperation clause, the insurer (reinsured) is obligated merely to notify the reinsurer of the claim and to obtain its consent prior to final settlement, i.e. before any settlement or payment of indemnity is made.[24]

In certain cases, according to practice, these clauses required clarification in cases involving multiple insurers on one side, as well as settlements between the insurer and the policyholder. Consequently, these clauses may be defined in greater detail through obligations of both the reinsured and the reinsurer. Specifically, the reinsured would be obligated to notify the reinsurer of all circumstances that may give rise to submission of a claim, and it is advisable in any event to specify the timeframe within which such notice must be given. Furthermore, the reinsured must cooperate with the reinsurer in investigating and assessing any loss or circumstances that may lead to loss. Finally, no settlement may be reached, nor admission of liability made, without the reinsurer's prior approval.[25] Accordingly, these clauses, together with the obligations accompanying their implementation, must be understood as conditions precedent to defining coverage under the reinsurance contract.

[23] James A. Johnson, „Reinsurance – Follow the Settlements, What Practitioners Need to Know About Reinsurance", *The Journal of Insurance & Indemnity Law* 2023, 5.

[24] DLA Piper's Practical Guide for Claims Managers in 2022 – Part 10, available at; *https://www.dlapiper.com/en/insights/publications/practical-guide-for-claims-managers/2022/dla-pipers-practical-guide-for-claims-managers-in-2022-part-10*, accessed on July 16, 2025.

[25] *Ibidem*.

The burden of proof for breach of these clauses rests with the reinsurer. Insurers, that is, reinsureds, must proceed with care when claims are submitted against them, given that any breach of these clauses may result in forfeiture of rights against the reinsurer, even where the reinsurer's liability under the policy can be established. The question arises whether this will apply only when these clauses are defined as conditions precedent to reinsurance coverage, or generally. According to this interpretation, if such a condition is not clearly defined, the reinsured may then seek payment from the reinsurer upon proving its loss under the insured event.

In any event, the reinsured bears the duty to participate jointly with the reinsurer in examining all circumstances that led to the insured event, i.e. damage or loss. This duty is ongoing, such that cooperation is not subject to temporal limitations. When negotiations concerning a claim are conducted, of which reinsurers have been generally notified, they may, nevertheless, submit specific requests for information, to which the reinsured must respond. However, the reinsured's duty need not be absolute, as there are limitations on what the reinsurer may demand. Upon admission of liability or settlement agreements, the reinsured must obtain the reinsurer's approval. However, it must be noted that the reinsured should obtain such approval only in situations involving amounts defined in the reinsurance contract. Where lower amounts are involved, approval is not required.

Reinsurance contracts frequently contain a foreign element when insurers conclude them with reinsurers domiciled abroad. The definition of these clauses is then equally significant. Specifically, the reinsurer will often be subject to foreign law, that is, the law governing the reinsured (insurer), given that contracts are concluded in accordance with the law of the country where the insurer is domiciled. The insurer, on the other hand, is in a completely different position, as it concludes reinsurance contracts in accordance with its "own" law. However, this does not signify that the insurer enjoys complete legal certainty. This applies to legal systems in which reinsurance is not comprehensively regulated, as well as those in which case law in this area is limited. Naturally, this creates uncertainty for the reinsurer as well. Similarly, when foreign case law is consulted, it is not always certain what should be applied in the given situation. Judges or arbitrators, in cases where disputes are resolved through arbitration, are then left to their own devices in interpreting formulations contained in the contract. Certainly, this could be resolved through the definition of uniform rules in the field of reinsurance contract law, the establishment of a unified system and standardized terminology for consistent interpretation of reinsurance contracts. However, such rules do not yet exist at the cross-border level.[26]

[26] Helmut Heiss, „From Contract Certainty to Legal Certainty for Reinsurance Transactions: The Principles of Reinsurance Contract Law (PRICL)", *Scandinavian Studies in Law*, Vol. 64, 2018, 99.

1. The impact of claims cooperation and control clauses, and other similar clauses, on the performance of obligations under the reinsurance contract

Claims control and claims cooperation clauses, which contribute to efficient performance of obligations under reinsurance agreements, are of exceptional significance. On the one hand, the reinsurer will have the right to request the submission of information concerning the insured event, and on the other, will have the right to be consulted regarding the settlement of claims and to approve or disapprove payment. Naturally, this will be particularly relevant in cases involving high loss amounts or where the reinsured portion of the risk is significant. Specifically, if the claim amount exceeds a certain threshold, the reinsurer has the right to assume its settlement. Conversely, the reinsurer's assumption of claims handling signifies that the reinsured will have its support. The reinsurer's assumption of claim handling serves to prevent subsequent disputes between the reinsurer and the reinsured. Such disputes may arise concerning various matters, including coverage, duration of coverage, or policy deadlines etc.[27]

The reinsurance contract is founded on the principle of good faith, but claims cooperation and control clauses, along with others deriving from these two, such as follow the settlements clauses and similar provisions, enable the reinsurer to ascertain the precise scope of risks it assumes under reinsurance coverage. Precisely these clauses permit the reinsurer to rescind the contract if certain risks were not disclosed at the time of reinsurance contract conclusion, as well as to influence the loss adjustment process itself, i.e. the reinsured's conduct following occurrence of the insured event.[28]

If the reinsurer considers that the claims cooperation clause fails to provide adequate protection for both the reinsurer and the reinsured, the reinsurer may require incorporation of a claims control clause into the contract, which must contain elements concerning the reinsured's obligation to notify the reinsurer regarding all matters pertaining to the loss incurred, the reinsurer's right to control all negotiations concerning loss adjustment, which extends to appointment of experts who will assess the loss and determine its amount. Finally, the clause must contain the obligation to provide a declaration confirming compliance with all stated obligations.[29] If the reinsurance contract does not contain a claims cooperation clause, the reinsurer will have no right to demand notification of and consultation concerning the insured event.[30]

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[27] Thiago Moutinho Ramos, *Reinsurance contracts and back to back presumption, A comparative study between English and Norwegian law,* Faculty of law, University of Oslo, Oslo 2013, 46.

[28] Larry Schiffer, Underwriting and Claims Clauses in Reinsurance Agreements, September 1, 2012, available at: *https://www.irmi.com/articles/expert-commentary/underwriting-and-claims-clauses-in-reinsurance-agreement*s, accessed on July 11, 2025.

[29] T. M. Ramos, 47.

[30] *Ibidem.*

When the contract contains both clauses, the question arises whether a conflict may occur between them, or whether the reinsurer may refuse payment, thereby potentially leaving the policyholder uncompensated. According to one view, if both clauses are present in the contract, the reinsurer will be liable only for claims it has approved. Here it is important to mention the follow the settlements clause, which is grounded in the claims cooperation clause, and includes certain of its elements. This clause may also be included in the contract, whose effect may be compromised by the presence of a claims control clause. Specifically, in such circumstances, the reinsurer is not obliged to approve a settlement arranged by the reinsured. However, even if such a settlement is not approved by the reinsurer, it will not, conversely, be entitled to refuse payment of the claim. The principal reason is precisely the presence of the claims cooperation clause, or the follow the settlements clause. Nevertheless, contrary opinions hold that the reinsurer is liable only for settlements it has approved and that the clauses are not contradictory whatsoever.[31]

Thus, one question arising in such circumstances concerns the simultaneous existence of these clauses and the possibility of their mutual nullification. In any event, the burden of proof shifts to the reinsured where the reinsurance contract contains both clauses, as the reinsured, in its capacity as insurer, must prove its liability under the underlying insurance policy. Generally, claims cooperation and claims control clauses impose an obligation of reinsurer consent. However, if for any reason the clause established in the reinsurance contract imposes no consent requirement, then the scope of the follow the settlements clause will not be compromised by the existence of other clauses.[32]

It must be emphasized that the claims control clause grants the reinsurer the right, at any time, to appoint loss adjusters or any other experts to oversee the loss assessment process and claims settlement on its behalf. Should the reinsurer fail to exercise its rights under this clause, and provided the reinsured has delivered all notifications concerning the insured event, it may be concluded that the reinsurer has waived its rights in the settlement process. The reinsured will then bear no liability if it commences negotiations on its own terms after the reinsurer has failed to respond to notifications regarding the loss. The question may arise as to whether the claims control clause grants the reinsurer the right of participation in potential litigation concerning a claim, as well as in other types of disputes.[33]

On the other hand, we reiterate that the claims cooperation clause implies complete cooperation between the reinsurer and the reinsured. Although this clause grants the reinsurer the right to join the defense against claims, it does so at its own

[31] *Ibid.*, 51.

[32] *Ibid.*, 52.

[33] William Sturge, Samantha Zaozirny, Claims Control Clauses – how much control do they give?, available at: *https://www.cpblaw.com/publications/2018/claims-control-clauses-%E2%80%93-how-much-control-do-they-give.pdf*, accessed on July 10, 2025.

expense. Claims cooperation clauses are customarily combined with the follow the settlements clauses, but may be combined with other clauses as well, such as notice clauses. Although they have a broader scope, given that late notification to the reinsurer may prevent the reinsurer from participating in the claims process, in which case it may claim indemnity. The claims cooperation clause contains the most significant obligation concerning complete cooperation in defense against underlying claims. Notice clauses and claims cooperation clauses share numerous similarities, but the claims cooperation clause concerning claims handling may contradict the follow the settlements clause.[34] Moreover, we must distinguish between the follow the case clause and the follow the settlements clause. Specifically, the follow the case clause describes the fundamental relationship between the reinsured and the reinsurer. In applying these clauses, it is essential to reiterate that they rely upon the insurer's good faith in claims settlement.[35]

Furthermore, the claims cooperation clause also appears in underlying insurance contracts. The role of this clause is particularly significant in liability insurance. It serves to protect the insurer, while also preventing special arrangements between the policyholder and the injured party without the insurer's knowledge. Under such contracts, the clause in question relies upon the threat of personal liability to the policyholder to ensure full and active participation in the loss adjustment process. The policyholder must contribute to realization of the insurer's interests by ensuring that all relevant facts pertaining to the insured event are accessible. However, to secure the policyholder's cooperation with the insurer in this sense, the policyholder's economic interest must also be considered.[36] Certainly, the general terms and conditions of insurance must define this clause in detail. The claims cooperation clause in such insurance contracts serves a different function and relates to the obligation of the policyholder or injured party. In any event, it is significant from the standpoint of accurate determination of circumstances and loss amount and liability of both the policyholder and the insurer.

2. Principles of Reinsurance Contract law

In this section, we will present selected provisions of the Principles of Reinsurance Contract Law from 2019 (hereinafter: the Principles)[37] that regulate matters

[34] Louis Torch, „An Examination of Reinsurers' Associations in Underlying Claims: The Iron Fist in the V on Fist in the Velvet Glove?" *The University of New Hampshire Law Review*, Vol. 3, No. 2/2005, 341–342.

[35] *Ibidem*.

[36] Nicholas J. Giles, „Rethinking the cooperation clause in standard liability insurance contracts", *University of Pennsylvania Law Review*, Vol. 161, No. 2/2013, 594.

[37] The Principles were published following approval by the UNIDROIT Governing Council at its 98th session held in May 2019. Simultaneously, the Governing Council recommended continuation of the project in the 2020–2022 Work Program to cover additional topics deemed relevant to this instrument.

concerning the relationship between the reinsurer and the reinsured. These provisions are based on rules defining clauses in the reinsurance contract, as previously discussed. A group of professors from universities in Zurich, Vienna, and Frankfurt initiated the project to draft the Principles with the aim of publishing and explaining customs and existing principles of reinsurance contract law.[38] This initiative, the Project Group on the Principles of Reinsurance Contract Law, defined the Principles in collaboration with the International Institute for the Unification of Private Law (UNIDROIT).[39] The Principles incorporate uniform rules on general contract law, referencing the UNIDROIT Principles of International Commercial Contracts.[40] The content of the Principles reflects a concept of reinsurance contract law that may be extracted as common to most jurisdictions. Finalization of this instrument is expected in 2025.[41] The Principles represent a novel concept for defining contract law.[42] The Principles consist of 27 articles organized into five chapters: 1. General Provisions; 2. Obligations of the Reinsurer and the Reinsured; 3. Rights of the Contracting Parties; 4. Loss Allocation; and 5. Loss Accumulation.[43] Here, we will focus specifically on provisions regulating the relationship between the reinsurer and the reinsured, particularly those concerning obligations related to claims handling.

First and foremost, the reinsured is obligated to notify the reinsurer of anticipated future claims. This enables the reinsurer to develop a financing and reserving plan for losses and to consider whether and to what extent it will monitor the reinsured's claims handling, in accordance with any claims control clause of this process.[44] The reinsured is not obligated to notify the reinsurer of every claim asserting a higher amount, nor of every category of claims that involves a minimal risk of litigation by multiple injured parties. However, the reinsured is obligated

This recommendation was adopted by the General Assembly at its 78th session and reaffirmed at its 81st session in December 2022, based on the Governing Council's advice to maintain the project in UNIDROIT's 2023–2025 Work Program until its completion by the end of 2024, as progress had been delayed during the pandemic when in-person meetings were not feasible. The UNIDROIT Secretariat continued to actively participate in the project; Principles of Reinsurance Contracts: Authorisation to proceed with publication, Governing Council, 105th session, UNIDROIT, Rome, 20–23 May 2025, 2.

[38] Mirjana Glintić, "Ograničenja izbora načela ugovornog prava reosiguranja kao merodavnog prava," *Pravni život*, No. 11/2019, 174.

[39] *Principles of Reinsurance Contract Law (Principles),* Project Group on Principles of Reinsurance Contract Law, International Institute for the Unification of Private Law (UNIDROIT), Zurich, Vienna, Frankfurt am Main 2019.

[40] International Institute for the Unification of Private Law (UNIDROIT), available at: *https://www.unidroit.org/*, accessed on July 22, 2025; Principles, III.

[41] „Principles of Reinsurance Contracts: Authorisation to proceed with publication", Governing Council, 105th session, UNIDROIT, Rome, 20–23 May 2025, 2.

[42] M. Glintić,183.

[43] Slobodan Jovanović, Ozren Uzelac, „Fakultativna međunarodna pravila u oblasti ugovornog prava reosiguranja", *Evropska revija za pravo osiguranja*, No. 1/2021, 40.

[44] Principles, 52; Article 2.4.1.

to notify the reinsurer when there exists a substantial probability that the reinsurer will be obligated to indemnify the claim.[45]

The Principles define the reinsured's obligation to act reasonably and prudently when settling claims that may trigger the reinsurance contract.[46] As previously stated, the nature of reinsurance places the reinsurer in a dependent position relative to the reinsured. Even where the reinsurance contract contains provisions concerning claims handling, granting rights to the reinsurer, the fact remains that the reinsured decides such claims and maintains effective control over them. The reinsured's conduct may be sanctioned only if it is fraudulent, or if the reinsured has committed a gross breach of rules in the claims settlement process.[47] Furthermore, the reinsured is obliged to undertake reasonable efforts to take loss mitigation measures, as well as to seek recovery from third parties whose acts or omissions contributed to the occurrence of the insured event, where the conditions are met.[48]

Pursuant to the Principles, the reinsured is obligated to comply with all limitations stipulated in the reinsurance contract, meaning that claims control and cooperation clauses must be respected. Additionally, the reinsured is obligated to share with the reinsurer information relevant to claims settlement or interpretation of the reinsurance contract. Such information may concern: claim amounts, reserved amounts, claims handling expense amounts, information regarding persons authorized to render decisions in such situations, interpretation of policies and other documents, expert reports, fulfillment of the reinsured's duties in good faith, documents concerning the institution of court proceedings, settlement agreements, and more.[49] Reinsureds must be aware that their decisions will often affect reinsurance coverage. If the reinsured selects one of two or more allocation methods, that increase available reinsurance coverage, this alone does not violate its duties; however, if the selected method is unjustified or proves to have been selected primarily to maximize reinsurance, a breach of duty by the reinsured will arise.[50]

According to the Principles, the reinsurer is entitled to be regularly informed of the reinsured's conduct following the occurrence of the insured event and in cases of expected losses.[51] Where an agreement is reached between the reinsured, as insurer, and its policyholder, where settlement may be concluded, the concept provided in the Principles stipulates that the reinsurer is obligated to accept the settlement concluded by the reinsured. On the other hand, the Principles also provide

[45] Principles, 52–53; S. Jovanović, O. Uzelac, 44.
[46] Principles, Article 2.4.2.
[47] Principles, 54.
[48] Principles, 56.
[49] Principles, 57.
[50] Principles, 57.
[51] Principles, Article 2.4.3.

for the follow the fortunes concept, which defines that the reinsurer will be "bound" by circumstances beyond the reinsured's control.[52] However, two requirements must be satisfied for a settlement. The first concerns the settlement being covered by the underlying insurance contract, and the second concerns its coverage within the scope of reinsurance coverage. Consideration must be given to ensuring the settlement was not concluded as a result of fraudulent conduct by the reinsured or that it did not result from gross negligence. Attention must be paid here to risks the reinsured may face if settlement is not concluded, as well as to the reinsured's conduct, which must be fair and undertaken with all necessary steps. Additionally, under the obligation to follow settlements, the relevant claim is the one recognized by settlement conclusion, and the reinsured does not need to prove that the claim falls within risks covered by the reinsurance.[53]

We have mentioned the follow the fortunes concept. This relates to situations the reinsured cannot control. Specifically, court or arbitral decisions fall outside its control. This applies even where the reinsurer disagrees with the reinsured's defense strategy in proceedings. However, if the reinsured failed to present obvious arguments in its favour (and thereby in favour of the reinsurer), the decision will be deemed rendered under the reinsured's control. The concept then does not apply, and acceptance of the claim by the reinsured will be defined in accordance with the follow the settlements concept. The same applies when a decision is rendered by default. The follow the fortunes concept also applies to substantial changes in exchange rates. If the value of the sum insured to be paid increases due to such changes, the reinsurer's liability also includes the additional costs arising from these changes. The situation is identical in cases of amendments to legislation governing the insurance contract.[54] For instance, if the law does not define an obligation to cover punitive amounts, and this prohibition is later repealed by legislative amendment, such a change extends the reinsured's obligation, and thereby the reinsurer's.[55] The Principles provide that the parties to the reinsurance contract are not required to include these two concepts.[56]

Finally, reference will be made to the Principle provision concerning the reinsured's duty to properly submit a claim for payment to the reinsurer, as well as

[52] This concept is set out in Article 2.4.3 of the Principles and relates to the reinsured and to its "fortunes" or "fate" in situations over which it has no control. In the USA, this term is used, as well as the term *follow-the-settlements*, which we also refer to in this paper. The term is likewise connected with the reinsured's duty of utmost good faith; however, we consider that the term itself cannot be used in our context. See L. Schiffer, "Understanding Reinsurance Terminology – Follow-the-Fortunes", available at: *https://www.irmi.com/articles/expert-commentary/understanding-reinsurance-terminology-follow-the-fortunes*.

[53] Principles, 58.

[54] S. Jovanović, O. Uzelac, 45.

[55] Principles, 60.

[56] Principles, 61.

the reinsurer's duty to indemnify the claim amount in accordance with the reinsurance contract.[57] The parties may freely specify the precise conditions and timing of payment.[58] In addition to the claim, the reinsured must submit appropriate documentation proving the claim is covered. When applying settlement rules, the reinsured is required only to prove that it acted reasonably and in accordance with the contract. The reinsurer bears an obligation to indemnify the claim in good faith as promptly as possible, if there is no dispute regarding the obligation. If the reinsurer and the reinsured do not have an existing, specific agreement in this regard, they may invoke established course of dealing between them or relevant custom or rule in the reinsurance market.[59] In cases of delayed payment of claims, the reinsured is entitled to reasonable and equitable interest applicable from the payment due date.[60]

V. Conclusion

The definition of claims cooperation and control clauses, together with other clauses in reinsurance contracts, serves to protect not only the reinsurer and the reinsured, that is, the reinsurance contract itself, but also the underlying insurance contract and the policyholder, whose indemnification often depends on both the scope of coverage defined in the reinsurance contract and the terms of that agreement. The fact that the reinsurer may be notified of claims handling following the occurrence of the insured event, as well as participate in settlement of such claims, whether involving achievement of agreement or settlement, or proceedings before a court or arbitral tribunal, represents an opportunity for dual control of claims submitted by the policyholder. This does not diminish the rights of the policyholder, nor those of the insurer as reinsured, but rather protects the insurance contractual relationship itself. Certainly, through the definition of these clauses, the reinsurer primarily protects its own interests, but this simultaneously protects the reinsurance relationship and the trust between the reinsurer and the reinsured. Additionally, through the definition of certain specified clauses, the reinsurer is transformed into an active participant in claims settlement.

In the Republic of Serbia, apart from certain provisions of the Insurance Law, reinsurance is not regulated. Certainly, future provisions regulating this institution should incorporate these clauses that clearly define the relationship between the reinsurer and the reinsured. Naturally, the provisions of the Principles should constitute the foundation for defining such rules. Their detailed regulation should be entrusted to general insurance or reinsurance conditions; however, they should certainly be regulated in general terms within statutory legislation.

[57] S. Jovanović, O. Uzelac, 45.
[58] Principles, Article 2.4.4.
[59] Principles, 62.
[60] Principles, 63; S. Jovanović, O. Uzelac, 45.

Literature

Monographs and Articles:

- Giles, N. J., "Rethinking the Cooperation Clause in Standard Liability Insurance Contracts", *University of Pennsylvania Law Review*, Vol. 161, Issue 2/2013, 585–621.
- Glintić, M., "Ograničenja izbora načela ugovornog prava reosiguranja kao merodavnog prava", *Pravni život*, No. 11/2019, 171–185.
- Zelenika, R., "Relevantna obilježja reosiguranja", *Naše more, znanstveni časopis za more i pomorstvo*, Vol. 43, No. 3-4/96, 117–127.
- Jovanović, S., Uzelac, O., "Fakultativna međunarodna pravila u oblasti ugovornog prava reosiguranja", *Evropska revija za pravo osiguranja*, No. 1/2021, 38–54.
- Johnson, J.A., "Reinsurance – Follow the Settlements, What Practitioners Need to Know About Reinsurance", *The Journal of Insurance & Indemnity Law*, October 2023, 5–12.
- Outreville J. F „Introduction to Insurance and Reinsurance", *Social Re-Insurance A New Approach to Sustainable Community Health Financing* (eds. David M. Dror, Alexander Preker), The International Bank for Reconstruction and Development, Washington-Geneva 2002, 1–14
- Pak, J., *Pravo osiguranja* [Insurance Law], Belgrade, 2011.
- Petrović Tomić N., „Reosiguranje – suština, domašaj, značaj", *Anali Pravnog fakulteta u Beogradu,* No. 2/2015, 78–93.
- *Principles of Reinsurance Contract Law (PRICL)*, Project Group on Principles of Reinsurance Contract Law, International Institute for the Unification of Private Law (UNIDROIT), Zurich, Vienna, Frankfurt am Main, 2019.
- Ramos T. M., *Reinsurance contracts and back to back presumption, A comparative study between English and Norwegian law*, Faculty of law, University of Oslo, Oslo 2013, 1–57.
- Spajić, M., "Modeli rizika u neživotnom osiguranju i reosiguranju", *Hrvatski časopis za osiguranje,* No. 2/2019, 159–184.
- Stude, R., "Promjena izgleda rizika u osiguranju/reosiguranju," *Zbornik Pravnog fakulteta u Zagrebu*, Vol. 58, No. 1-2/2008, 673–680.
- Torch L., „An Examination of Reinsurers' Associations in Underlying Claims: The Iron Fist in the V on Fist in the Velvet Glove?" *The University of New Hampshire Law Review*, Vol. 3, No. 2/2005, 331–368.
- Heiss H., „From Contract Certainty to Legal Certainty for Reinsurance Transactions: The Principles of Reinsurance Contract Law (PRICL)", *Scandinavian Studies in Law*, Vol. 64, 2018, 91-114.
- Čolović, V., *Osiguravajuća društva – zakonodavstvo Srbije, pravo EU, uporedno pravo* [Insurance Companies – Serbian Legislation, EU Law, Comparative Law], Institute of Comparative Law, Belgrade 2010.

• Čolović, V.,„Reosiguranje kao instrument zaštite osiguravača", *Pravna riječ*, No. 55/2018, 149–168.

Legislation:

• Law of Contract and Torts, *Official Gazette of SFRY,* Nos. 29/78, 39/85, 45/89, and 57/89; *Official Gazette of FRY,* No. 31/93; *Official Gazette of Serbia and Montenegro,* No. 1/2003 – Constitutional Charter.
• Insurance Act, *Official Gazette of the Republic of Serbia,* Nos. 55/2004, 70/2004 – corr., 61/2005, 61/2005 – other law, 85/2005 – other law, 101/2007, 63/2009 – Constitutional Court decision, 107/2009, 99/2011, 119/2012, 116/2013, and 139/2014 – other law.

Internet Sources:

• "DLA Piper's Practical Guide for Claims Managers in 2022 – Part 10", https://www.dlapiper.com/en/insights/publications/practical-guide-for-claims-managers/2022/dla-pipers-practical-guide-for-claims-managers-in-2022-part-10.
• Ćurković, M., Claims Cooperation Clause: Utjecaj reosiguratelja na odnos 'osiguratelj-osiguranik' kod rješavanja osiguranog slučaja, https://www.osiguranje.hr/ClanakDetalji.aspx?23319.
• Principles of Reinsurance Contracts: Authorisation to Proceed with Publication, Governing Council, 105th Session, UNIDROIT, Rome, May 20–23, 2025; https://www.unidroit.org/wp-content/uploads/2025/04/C.D.-105-8-Principles-of-Reinsurance-Contracts.pdf.
• Reinsurance Uncovered: Spreading Risk and Safeguarding Solvency, https://accelerant.ai/resources/reinsurance-uncovered-spreading-risk-and-safeguarding-solvency/.
• Schiffer, L., Reinsurance Matters, https://www.irmi.com/articles/expert-commentary/reinsurance-matters.
• Schiffer, L., Underwriting and Claims Clauses in Reinsurance Agreements, https://www.irmi.com/articles/expert-commentary/underwriting-and-claims-clauses-in-reinsurance-agreements.
• Sturge, W., Zaozirny, S., Claims Control Clauses – How Much Control Do They Give?, https://www.cpblaw.com/publications/2018/claims-control-clauses-%E2%80%93-how-much-control-do-they-give.pdf.

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