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# The Arbitration Clause In Insurance & Reinsurance

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Recourse to alternative dispute resolution is expected to progress in terms of insurance and reinsurance contracts. In the field of reinsurance, a contract by which the direct insurer discharges a reinsurer of a portion of the insured risks, the arbitration is already used to resolve almost all the reinsured-reinsurer disputes. An agreement by which the parties to a contract undertake to submit to arbitration disputes arising in connection with the contract, the arbitration clause, is present in most reinsurance contracts. If these procedures are less frequent in insurance, the profession now promotes mediation and publishes rules to resolve between insurance companies any disputes related to an insurance contract.

The internationalization of the profession and the birth of new insurance products also lead insurers to turn to arbitration, which offers both a speed of resolution of disputes, the competence of the arbitrators and confidentiality in terms that the dispute remains a private matter. This recourse to arbitration requires certain precautions of use, in particular in the drafting of the arbitration agreement, the respect of the models of arbitration clause and the appointment of the arbitrators.

**The Arbitration Clause**

The business of insurance/reinsurance is international. The actors are often of different nationalities. The very purpose of the arrangement may be in a third country. This profusion of applicable laws/jurisdictions has resulted in the establishment of arbitration clauses to overcome this difficulty.

The arbitration clause may be defined as the agreement by which several persons agree in advance to resolve the possible conflict which could oppose them in the arbitration procedure, instead of the state jurisdictions. Therefore, the arbitral authority does not have jurisdiction by a delegation of the state or by an international institution, but from the agreement of the parties.

Accordingly, the arbitration clause is intrinsically linked to the reinsurance treaty that the reinsurance industry has created a number of specialized centers such as for example the Insurance and Reinsurance Arbitration Society (ARIAS) and French Reinsurance and Insurance Arbitration Center (CEFAREA).

Those organizations provide standard arbitration clauses to facilitate and improve conflict management. In practice, essential provisions must be included. The clause must specify the number of arbitrators, the criteria to be used to designate the arbitrators and the method of their appointment. It should also be clarified whether the arbitral tribunal shall rule in law or in an amicable composition. The parties may also provide the conditions for appealing the arbitration award. In addition, the arbitration clause must provide for the language used and the place where the arbitral tribunal will take its seat. These provisions are indicative. But the more precise the clause, the more easier its applicability will be.

**The Arbitration Venue**

The venue of the arbitration is significant as it will normally determine the law of the procedure which the arbitration adopts as well as the involvement/ intervention, as appropriate, which the courts exercising jurisdiction over the seat, will have.

In other words, the procedural law determines to what extent the local courts will be involved in the process, for instance, *inter-alia*, any formalities to be complied with, the extent to which the arbitration agreement excludes court jurisdiction, how much autonomy and discretion the parties have in choosing the arbitral procedure, what support the court will give to the arbitration;, whether the decision of the arbitral tribunal can be appealed, and what timescales will apply, enforceability of the award etc.

The value of the local court's involvement in the arbitration depends on the speed and quality of the courts in that particular jurisdiction.

**The Governing Law**

The governing law of the agreement, defines, and regulates the rights, duties, and powers of parties, and determines how the dispositions of the agreement will be interpreted.

In other terms, the substantive law is the law governing the subject and merits of the dispute. It is sometimes described as the 'applicable law', 'governing law' or 'law of the contract'. In most jurisdictions, the parties are free to choose the law that will apply. An arbitration clause will generally set out its governing law at the outset, and the parties' right to do so is enshrined in various international conventions and institutional rules.

**Conclusion**

To conclude, the management of conflicts by reinsurance is distinguished by its originality, its precision and its legal heterogeneity.

The purpose pursued in the management of conflicts by reinsurance is to maintain relations of trust between the ceding company and the reinsurer. All the merit of reinsurance lies in the pursuit of this end, without the intervention of a judicial authority and preserving the legal security of mutual commitments.

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