

# MEETING OF THE AIDA REINSURANCE WORKING PARTY

Hotel Gellert, Budapest  
26 November 2008

## PRESENT

Colin Croly (Chairman); John Arpel; Alexandra Atzeel; Szabocs Banhidi; Torben Bondrop; Peter Budai; Reinhard Dallmayr; Raia Faby; Flora Forago-Szabo; Andreas Freytag; Lars Gerspacher; Michael Gill; Peter Harka; Jan Heuvels; Joanne Jolly; Jerome Kullmann; Michael Mendelowitz; Robert Merkin; Peter Naschitz; Kyriaki Noussia; Veronika Papp; Claudio Ramos; Micael Rosenmejer; Andreas Schwepke; Peggy Sharon; Ilona Sisak

## APOLOGIES

Christian Boukaert; Lorenzo Capotosti; Claudia Foellmer; Hermann Geiger; Michelle George; Tim Griffiths; Richard Kennedy; Lars Molgaard; Katherine Posner; Stefan Speyer

## INTRODUCTION

The Chairman Colin Croly opened the meeting and welcomed those attending. Colin explained that the Working Party was founded in 1994 after the World Congress in Sydney, and that its objectives are to exchange information about reinsurance law and to study the development of reinsurance in different jurisdictions.

## LIMITATION PERIODS

Peggy Sharon gave an overview of the forthcoming Report on Limitation of Actions. She noted that the purpose of limitation periods is to draw a balance between the interests of the claimant and the defendant. The general limitation period for contract and tort varies as between jurisdictions from three to twenty years. In some jurisdictions the expiry of the limitation period extinguishes the claim, in others the limitation period is simply a procedural defence. The limitation period in contracts is normally the date on which the cause of action accrues, although in many jurisdictions time does not run in the case of fraud or mistake, and admission of liability may suspend the running of time. In some jurisdictions the parties can vary the period by agreement.

Some countries have shorter periods for direct insurance claims. As far as reinsurance is concerned, there are no specific rules other than in Serbia (five years, marine and aviation only) and Italy (two years). When the limitation period starts to run in reinsurance depends upon whether reinsurance is regarded as one of indemnity for the reinsured or a further policy on the original subject matter. Possible triggers are: payment by the reinsured; when the liability of the reinsured is established by judgment, settlement or award (the most common view); or when the insured event occurs (the simultaneous view).

Unresolved problems are raised by a cut-through clause. It is unclear whether it amounts to an assignment of rights or simply a new right for the assured. The limitation period depends upon this. This generated an interesting discussion as to the legality and effects of a cut-through clause in different jurisdictions. There was also discussion of limitation periods in treaties, where there are different limits and triggers of cover, and of the question of whether a reinsurer can be estopped from relying upon a limitation period by reason of the continuing negotiations between the parties, possibly by reference to the good faith principle.

## CLAIMS NOTIFICATION CLAUSES

Reinhard Dallmayr gave a presentation on the rules relating to the making of claims under German law. There is no code affecting reinsurance, as this is excluded from the insurance code and it is uncertain whether the insurance code applies to reinsurance by analogy. The presentation included discussion of the obligation to notify in different forms of contract and the consequences of late notification. Rob Merkin then spoke about the position in England and the US, and Michael Gill explained how the matter was dealt with in Australia.

## REPORTS

Report 1, *What is Reinsurance*, is being updated. A new questionnaire has gone out and 6 responses have been received so far. Others are being chased.

Report 2, *Proper Law*, is being updated and a new questionnaire will go out shortly.

Report 3, *Follow the Settlements*, is being updated and a new questionnaire will go out shortly.

Report 4, *Aggregations* is published

Report 5, *Custom and Practice*, is published

Report 6, *Cut-Through and Transfer*, is published

Report 7, *Intermediaries* – the questionnaire has been issued and twelve responses have been received. More are awaited

Report 8, *Limitation*, will be available soon

Report 9, *Insolvency* – the questionnaire has been issued and some responses have been received. More are awaited

Some of the reports are being translated into Spanish by Mapfre.

## WORKING PARTY MEMBERSHIP FEE

It was suggested at the last meeting that a membership fee of €100 should be charged, in particular to subsidise the publication of reports. This proposal was agreed.

## NEXT MEETING

Colin invited suggestions for topics for future discussion and reports.

There is a possibility that the next meeting will be in Montevideo in late April 2009. The next meeting of AIDA Europe will be in Zurich on 22 and 23 October 2009, with the Reinsurance Working Party Meeting taking place on the afternoon of 22 October.

