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Impacts of One-Party Financial Distress to Reinsurance Contract Concluded Between the Ceding Company And The Reinsurer

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Abstract

The reinsurance contract is similar to an insurance contract, but it differs in that it guarantees the risk to which the ceding company (the insurer) is exposed to the risk when it enters into a contract with the insured. This obliges the implementation of all legal rules that apply to regular insurance contracts, the most essential of which are related to reinsurer obligations, which often only include the reinsurer and the ceding company, without the involvement of any other parties. Due to the subjectivity and independence of the reinsurance agreement from the original insurance agreement between the insurer and the insured, it is believed to be a guarantee for the reinsurer's performance of its indemnification obligation in addition to facilitating the method for fulfilling these mandatory responsibilities. These financial rights represent the ceding company's financial rights towards the reinsurer. In addition to the payment of the ceding firm's administrative costs, these duties also include a deposit left with the ceding company and a commission paid for the reinsured policies. Judicial applications have stipulated the obligations on the reinsurer before the insured under the insurance contract (the subject-matter of the reinsurance contract), despite the fact that the latter is foreign to the reinsurance contract, contrary to what the legislation generally says and what is confirmed by jurisprudence in most cases. These judicial applications were based on the provisions of the reinsurance policy that create a kind of indirect relationship between the insured under the insurance contract (the subject-matter of the reinsurance contract) and the reinsurer. This relationship occurs when the ceding company faces financial distress or liquidation, as expressed by Jordan's legislator as the cut-through clause, which means that the reinsurer's relationship with the insured under the insurance contract becomes the subject-matter of the reinsurance contract rather than the ceding company's liquidator. This study dealt with the issue in terms of the impacts of the financial

distress of one of the parties to the reinsurance contract on their obligations towards each other and towards the insured under the insurance contract (the subject-matter of the reinsurance contract). As the legislative purpose in this regard was not clear, the researcher tried to shed light on it and find practical and legal solutions.

Preamble

The activity of people has increased, and their properties have increased in diverse forms and types, which has led to an increase in the dangers that threaten these properties. Therefore, it was necessary for people to search for means to protect them from the effects of these dangers. People have found that insurance is the best way to mitigate the effects of these risks. Therefore, insurance has become an essential element of the stability of the social and economic lives of the individual and the state.(1)

In reality, the insurance system has three stages: direct insurance, which is represented by the agreement between the insured and the direct insurer to protect against the risks they both share out of concern for their repercussions. The reinsurance phase specified in the contract between the direct insurer and the reinsurer to provide indemnity for losses incurred by the insured. The third stage is represented by what is known as the (repeated cession), as the reinsurer performs its obligation for the consequences of the risks ceded by the direct insurer (2).

On the other hand, and in view of the risks and imbalances that the insurance company may be exposed to, which result from the differences in probabilistic accounts between theoretical accounts and practical reality, insurance companies seek many means that achieve consistency and balance between risks, and the most important of these means is reinsurance, which is based on sharing the obligation for the insured risk and its consequences between the insurance company , which is described as the ceding company, and which is described as the direct insurer, and the specialized company, which is the reinsurer, which is described as the reinsurer. This process is carried out according to a contract under which the ceding company is obligated to take upon itself the obligation to cover part of the value of the risk insurance, and the remaining part of this value is ceded to the reinsurer in order to take on the obligation to cover it in return for a portion of the insurance premium. This sharing process is known as the cession process, and the part that the direct insurer retains for his account from the value of the risk insurance is also known as the retention. As a result, each of the parties to this contract bears part of the loss resulting from the occurrence of accidents related to the ceded according to the estimate or percentage outlined in the

[1] Ibrahim Abd Rabbo, Principles of Insurance, Al-Dar Al-Jami’yah, Alexandria, 2006, p. 28. And Jalal Muhammad, The Insurance: A Comparative Study, Dar Al-Nahda Al-Arabiya, Cairo, 1994, p. 67. And Ibrahim Ali, The Insurance and its Applications to Life Insurance and Reinsurance, Al-Dar Al-Jami’yah, 2003, p. 35

2 Bahaa Bahij Shukri, Reinsurance, Dar Al-Thaqafa for Publishing & Distributing, Amman, second edition, (revised edition) 2011, p. 15.

contract's conditions... Hence, the main purpose of the insurance company ceding its business or a percentage of its business to reinsurance companies is to maintain the integrity of its financial position and fulfill its contractual obligations towards the insured in the event that claims of indemnity are made .(3) Thus, the importance of reinsurance is evident from the fact that it enhances the financial capabilities of the insurance company and its size, thus ensuring the stability and development of the insurance sector (4). Accordingly, the reinsurance contract (5) is an insurance contract between companies in which the insured under the insurance contract (the subject-matter of the reinsurance contract) has nothing to do with it, and there is no need to obtain the consent of the insured in this regard, because it is a technical business from the core of the insurance company's specialization, which it performs in the manner it deems appropriate for it (6).

In light of this, the reinsurance contract can be defined as a legally binding agreement between the reinsurer and the insurer that requires the reinsurer to compensate the insurer and in the manner agreed upon for what the reinsurer pays to the insured when the risk (the subject-matter of the insurance contract) is realized in exchange for a financial indemnity that the insurer and the reinsurer have agreed upon, whether this contract is concluded as a policy or agreement 7) The Jordanian legislator did not keep away from regulating the insurance contract in the legislation related to the insurance business, due to his keenness to ensure that the insurance companies fulfill their obligations in the face of the insured, as this contract was regulated in the Insurance Regulatory Act No. 12 of 2021 Act No. 12 of 2021 (8) and its regulations and instructions.(9)

3 In the same subject, see: Mukhtar Mahmoud, Principles of Insurance between Theoretical Aspects and Mathematical Foundations, Dar Al-Nahda Al-Arabiya for Printing and Publishing, Beirut, p. 31. As well as, see : Harbi Erekat and Said Akl, Insurance and Risk Management : Theoretical and Practical, Dar Wael for Publishing and Distribution, Amman, 2008, p. 102. Likewise, see: Suleiman Thunayan, Insurance, and its provisions, Dar Ibn Hazm for printing, publishing and distribution, Beirut, 2003, p. 86.

4 Bahaa Bahij Shukri, ibid, p. 25

5 There is no doubt that the reinsurance contract, whether done in the form of a policy or in the form of an agreement, is subject to the provisions of the general rules of the contract and it does not differ fundamentally from the primary insurance contract. For more details about the elements of the reinsurance contract: see: Baha Bahij Shukri, ibid, p. 35. Harbi Erekat and Saeed Akl, ibid, p. 105. Ghazi Abu Orabi, Rulings of Insurance: A Comparative Study, Dar Wael for Publishing and Distribution, Amman, 2011, p. 131.

6 This was confirmed by the Jordanian Court of Cassation as a jurist in its judgment No. 640 of 2022 issued on June 6, 2022, as stated in the grounds for this judgment, and whereas we find that the trial court has concluded that the contract between the two parties is an insurance contract based on the evidence presented in the lawsuit and that the defendant insured two return planes of the appellant under an insurance policy and subsequently reinsured the two planes with Wells in London, Therefore, the impacts of the insurance contract extend to the reinsurance contract, and the insurance company is not considered an intermediary but rather the insured company. In the same context, see the legal judgment of the Court of Cassation No. 8450/2019 (the Public Jury).

7 In the same subject, see: Baha Bahij Shukri, ibid, p. 35.

8 Issued in the Official Gazette No. 5718 dated 16/05/2021 on page 1753.

9 Regulation of the minimum capital of the insurance company and reinsurance company and its amendments No. 73 of 2005 issued in the Official Gazette No. 4732 dated 11/30/2005 page No. 5002, as well as the instructions for opening an insurance company branch inside and outside the Kingdom No. 6 of 2005 issued in the Official Gazette No. 4726 dated 01/11/2005 page No. 4554, as well as instructions for reinsurance standards No. 4 of 2002 issued by the Board of Directors of the Insurance Authority published in the Official Gazette No. 4581 dated 16/01/2003, page No. 235, as well as instructions for licensing a foreign insurance company not operating in the Kingdom and Monitoring its Business No. 2 of 2008 issued in the Official Gazette No. 4912 dated 06/16/2008 page No. 2493

The reinsurer has a number of administrative duties towards the ceding company in addition to its duty to compensate, starting with leaving a deposit with the ceding company to guarantee performance of its obligations. Additionally, the reinsurer is required to pay a commission on the policies it has reinsured. On the other hand, the reinsurer is required to pay a portion of the profits it made from reinsurance operations, in addition to its obligation to pay the ceding company's administrative expenses in accordance with the reinsurance contract (10).

Furthermore, given that both the ceding firm and the reinsurer are merchants; both parties face a risk of financial difficulty, which has an impact on both the rights and obligations of the reinsurance contract parties towards one another as well as the insured's rights under the reinsurance contract with the ceding firm and the insurance contract (the reinsurance contract's subject). Therefore, the study's significance lies primarily in the question of how financial difficulty impacts both the reinsurer and the ceding company. The decision to accept the deposit by the ceding firm was also influenced by this financial hardship. Alternatively, depending on whether the distress is related to the reinsurer or the ceding company, this instance of distress spreads its consequences to include a different set of the reinsurer's obligations, whether administrative or those relating to its commitment to settle damages (indemnity) .(11)

In view of the aforementioned, the research problem is restricted to describing the effects of one party's financial distress on the other party's and the insured's rights under the insurance contract (the subject-matter of the reinsurance contract). The researcher separated the research in order to address this issue as follows:

THE FIRST TOPIC: EFFECTS OF FINANCIAL DIFFICULTY AMONG REINSURERS.

THE SECOND TOPIC: EFFECTS OF THE FINANCIAL DIFFICULTY OF CEDING COMPANY.

The first topic:

Effects of financial difficulty among reinsurers

Two categories of obligations under the reinsurance contract must be met by the reinsurer. The first is the financial category, which is the settlement of losses resulting from the insured risk (indemnity), which is represented by the reinsurer paying its share of the indemnity for the reinsured risk. This obligation is at the expense of the reinsurer due to the linkage of the reinsurance contract to

10 The researcher referred to these financial obligations under the name "administrative obligations" to distinguish them from the financial obligations related to compensation, and on the other hand, given that these financial obligations come from the administrative work on which the reinsurance contract is based, part of which is considered a guarantee that the reinsurer will fulfill its obligations to compensate for the reinsured risk.

11 Anwar Sultan, The Summary in the General Theory of Obligation, Provisions of Obligation, Mansha'at Al-Ma'aref, Alexandria, 1965. p. 75, as well as Amer al-Kiswani, Rulings of Obligation, Dar Al-Thaqafa for Publishing and Distribution, Amman, 2008. p. 92

the primary insurance policy and the legal principles that must be adhered to, which is an indication of the principle of the common destiny of the reinsurance and the insurance companies, in addition to the reinsurance contract's compensatory concept. The obligation of the reinsurer to the ceding company is also based on this premise ().12

The second set of commitments, referred to as administrative commitments, comprises of the following four distinct commitments: deposit payments required to ensure the ceding business will satisfy its indemnity obligations; the obligation to pay a commission on policies that have been reinsured; the obligation to pay a portion of the profits the reinsurer has made from the reinsurance processes; and, finally, the obligation to pay the administrative costs that the insurance company bears. These obligations differ from the indemnity obligation, which requires the occurrence of the catastrophe that is the subject-matter of the insurance contract, and these obligations are based on the contract reached between the ceding company (insurer) and the reinsurer .(13)
To discuss the results of the reinsurer's financial distress regarding its obligations in the reinsurance contract, the researcher will divide this topic into two themes as follows:

The first theme: The impact of the financial distress of the reinsurer on its indemnity obligations

The second theme: the effect of the reinsurer's financial crisis on its administrative responsibilities.

The first theme:

The impact of the financial distress of the reinsurer on its Indemnity Obligations

According to the idea of the principle of indemnity in the insurance system, the relationship between the reinsurer and the insurance company is classified as a compensatory relationship. Just as a direct insurance contract is defined as a (contract of indemnity) that requires the indemnification of the insured sum following the occurrence of the accident associated to the insured risk to the same financial position that he had before its occurrence, neither more nor less, The reinsurance contract is no different. It is a contract of indemnity that aims to

12 Regarding the legal foundations and jurisprudential opinions for the obligation of the reinsurer to indemnity, kindly see: Abdel-Wadood Yahya, The Brief in the Reinsurance Contract, Dar Al-Nahda Al-Arabiya, Cairo, p. 94 and the pages that follow, and see: Abdel-Wadood Yahya, The Reinsurance, The Modern Cairo Library, Cairo, 1963, p. 90 and the pages that follow , and see: Adnan Ahmed Wali, The Reinsurance Contract, Comparative Legal Study, Al-Maaref Press, Baghdad, 1982, p.35 and the pages that follow . and see : Muhammad Hossam Lotfi, General provisions for the insurance contract, a comparative study between the Egyptian and French laws, 1990, without publisher and without publishing capital, p. 81 and the pages that follow . And see: Ahmed Sharaf al-Din, Provisions of Insurance, A Comparative Study in Law and Comparative Judiciary, Dar al-Kitab al-Hadith, 1991, p. 63 and the pages that follow. And see: Ghazi Abu Orabi, ibid, p. 132
13 Anwar Sultan, ibid, p. 63.

compensate the direct insurer after the occurrence of accidents related to the risks covered by the agreement or by the facultative reinsurance policy to the same financial position that it was in before its occurrence, to the extent necessary to mitigate the risk that was ceded. (14)

The reinsurance contract imposes a significant obligation on the reinsurer, requiring it to fulfill an indemnity obligation to the ceding company in the event of the insured risk, which is directly connected to the insurance agreement made between the subject of the reinsurance contract (the insured under the insurance contract) and the ceding company under the reinsurance agreement. By paying its portion of the indemnity for the reinsured risk, the reinsurer business is fulfilling one of its most important obligations to the ceding company.(15)

The reason for imposing this obligation at the expense of the reinsurer is because the reinsurance contract is linked to the primary insurance policy and because of the legal principles that should be considered. This is an indication of the principle of the common destiny of the reinsurer and the insured company, in addition to the compensatory principle, which governs the reinsurance contract and serves as the basis for the obligation of the reinsurer to the ceding company. (16)

In order to fulfill this commitment, the reinsurer must reimburse the ceding company for any costs it incurred as a result of the disaster covered by the main insurance policy, and this obligation is due to the legal principles on which the primary insurance contract is based and which are followed by the reinsurance agreement with the same legal terms and principles. This confirms the legal nature of the reinsurance contract, which is one of the regular types of insurance that is focused on insurance against damages. However, the indemnity obligation of the reinsurer is governed by a set of principles, especially in the form of facultative reinsurance, which the reinsurer can evade, as is the case in the payment of indemnity made by the insurer without being liable under the insurance policy to make this payment; it is a donation from the ceding company that does not oblige the reinsurer, in contrast to the payment of indemnification that is based on the settlement or conciliation, which is an admission of its obligation for such indemnification, and thus imposes the obligation at the expenses of the reinsurer (17)The obligation of the reinsurer to indemnify for the insured risk varies according

14 Bahaa Bahij Shukri, ibid, p. 57
15 Abdel-Wadood Yahya, The Summary in the Insurance Contract, ibid, p. 94,
16 Abdel-Wadud Yahya, The Summary in the Insurance Contract, ibid, p. 95
17 Although the reinsurance contract and the direct insurance contract have a common compensatory principle/ status, there are two issues in which the two contracts differ in the application of this principle: the issue of the life reinsurance, and the commission of profits in reinsurance in general. The direct life insurance contract does not have a compensatory status, as the loss under this contract is an assumed loss and not an actual financial loss, and that the direct insurer is hereby obligated to pay the full amount of insurance to the beneficiary regardless of whether this beneficiary has incurred an actual financial loss as a result of the death of the insured person or not. As for the life reinsurance contract, it is a compensatory contract between the direct insurer and the reinsurer, because the direct insurer's payment of the sum insured for these contracts constitutes an actual financial loss for him. See: Baha Bahij Shukri, ibid., p. 58.
As for the issue of the profit commission in reinsurance, reinsurance contracts include conditions that require the reinsurer to make payment to the direct insurer as a Ceding Commission at a certain ratio, and the reinsurer make a payment to the direct insurer also as a profit commission if the agreement yields a profit. However, this commission violates the compensatory status of the reinsurance contract,

to the type and nature of the reinsurance contract, which may stipulate that each of the parties to the reinsurance contract bears a pre-agreed ratio of the risk, or that it doubles the amount of risk that the insured is holding. In another way, rather than at the time of contracting, the obligation of the reinsurer is established based on the risk's value at the time the disaster is realized. Finally, the amount of the ceding company's annual loss may be used to determine the reinsurer's obligation.(18)

No matter how substantial or detailed the reinsurer's responsibilities for indemnification are, those liabilities are necessarily influenced by its financial status. In fact, the ceding company that is entitled to obtain indemnity from the reinsurer which faces financial distress, is exposed to a real risk represented in the dispute of the creditors of the reinsurer with the insured parties in the insurance contract which is the subject-matter of the reinsurance contract, especially since the creditors of the financially distressed reinsurer are necessarily all direct insured with it, because the reinsurer does not deal with insured persons, but always with insurance companies that provide insurance services to the insured and it reinsures against the risks insured by reinsurance companies19.()

Although any of the parties to a reinsurance contract faces financial distress, like other contracts, it gives the other party the right to rescind the contract, due to the inability of the financially troubled party to perform its contractual obligations after its financial distress. (20)

However, the deposit that the reinsurer makes with the ceding business is essential to the reinsurance contract because it guarantees that the ceding company will be able to recover the reinsurer's share of the indemnity in proportion to the deposit's value. So, although though it's called a deposit, it actually acts as a guarantee, preserving the ceding company's ability to recover the compensation obligation from the reinsurer. Therefore, the provisions of the contract of pledge may be applied to it, allowing the ceding company to retain it until the payment of the debt represented by the share of the compensation value owed by the financially distressed reinsurer, if the deposit is equal to that share, which is unlikely, the ceding company is not exposed to any risk when the reinsurer faces financial distress. However, if the deposit is lower than the indemnity value that must be paid to the ceding company, its is exposed to the risk of the contention of

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because the realized profit is the result of increasing the share of the reinsurer exclusively from the insurance premiums over the reinsurer's share of the realized losses.

Since the principle of indemnification requires the reinsurer to compensate the direct insurer with the amount of the loss he sustains, neither more nor less, then the direct insurer, by receiving the profits commission, will have received an amount that exceeds the loss incurred during the entitlement period of profits commission, and this is inconsistent with the Indemnity principle in the insurance system. See: Baha Bahij Shukri, ibid, p. 59.

The majority of Sharia Control Boards adopted the fatwas that prohibit insurance companies from receiving these commissions, as they represent an illegal profit. See: Baha Bahij Shukri, ibid, p. 58. For more details, see: Ahmed Salem Melhem, Islamic cooperative insurance and its applications in the Islamic Insurance Company, Jordan, (without publisher), 2002, p. 104.

18 Tawfiq Faraj Al-Sadda, Security (Insurance) in Lebanese Law, Mansha'at Al-Maaref, Alexandria, 1994, pp. 248-249.

19 Jalal Al-Adawi, Provisions of Obligation: A Comparative Study in the Egyptian and Lebanese Laws, Al-Dar Al-Jami'iyah, Cairo, 1992, p. 113.

20Tawfiq Faraj Al-Sadda, ibid, p. 249

creditors in debt collection of the difference between the deposit's value and the indemnity value.(21)

Practically, and by virtue of the nature of the dealing arising from the reinsurance contract, the ceding company, during the validity of the reinsurance contract, opens a current account in the name of its reinsurer, in which all transactions exchanged between them are recorded, such as the premiums due to the reinsurer, and the indemnity obligations that it is liable to pay, in addition to the value of the deposit. When the reinsurer faces financial distress, this account is closed, and a balance is made for this account. The ceding company incurs no loss of (risk of distress) if the two sides of the credit and debit account between it and the reinsurer are equal. However, the ceding company must submit it to the Insurance Company's Debt Restructuring Committee if there is a right for the reinsurer,22 () or its liquidator (23) or if it is in liquidation in line with the real situation of the ceding company, the ceding company returns the difference to the reinsurer's bankruptcy if the result makes the reinsurer a debtor, and here it is exposed to the contention of creditors of the rest of creditors of the reinsurer.(24)

The second theme: the effect of the reinsurer's financial crisis on its administrative responsibilities.

As was already mentioned, to ensure that the ceding company honors its indemnification duty, the reinsurer is obligated to leave a deposit with it. The ceding company's administrative costs, a commission on the reinsured policies, and a share of the reinsurance process profits must also be covered by the reinsurer 25)

Similar to how the reinsurer's financial distress affects its indemnity obligations, this distress has an effect on the reinsurer's administrative obligations by making it impossible for it to fulfill those obligations in the future if they were delayed or completed in stages after the conclusion of the reinsurance contract. In the event of its financial distress, the debt restructuring committee, or liquidator, as the case may be, shall replace and act on behalf of the reinsurer. As it is known, one of the most important duties of the debt restructuring committee or the liquidation agent is to preserve the rights of the company that faces a financial distress by making an inventory, calculating its debts, reclaiming its rights, and following the appropriate legal and judicial actions, and without placing additional obligations on the reinsurer that faces financial distress. Furthermore, it is prohibited from paying the debts of the reinsurer that faces a financial distress until all of them have been enumerated, distributed, or paid. Considering the legal laws

21Tawfiq Faraj Al-Sadda, ibid, p. 249-250
22 It is a committee formed by the Board of Directors of the Central Bank to complete the restructuring of debts incurred by the insurance company in accordance with the text of Article 48 of the Insurance Regulatory Act No. 12 of 2021.
23 See Article 56 of the Insurance Regulatory Act No. 12 of 2021.
24 Abdel-Wadood Yahya, Reinsurance, ibid, p. 127.
25 Raouf Halim, Reinsurance and its Practical Applications, Arab Insurance Union, (without date) and without capital of publication, p. 123. See also : Abd al-Rahman al-Halahsheh, Brief Explanation of the Jordanian Civil Law, Impacts of the Personal Right: Provisions of Obligation, Dar Wa'il for Publishing and Distribution, Amman, 2010, p. 79

regarding privilege rights, organizational structure, and preferred and ordinary debt. (26)

The reinsurance contract may be terminated by the ceding company in the case of the reinsurer's financial distress, as according to the general rules. It is also entitled to withhold money and bonds deposited with it as a guarantee until the reinsurer fulfills its rights. Here, neither the debt restructuring committee, nor the liquidator has the right to request money and bonds back, as the debt restructuring committee or the liquidator has the right to request a set-off between the rights and obligations of the reinsurer that the ceding company agreed upon or accepted. This is based on the established principle in the issues of financial insolvency distress of insurance companies, which states that in the event that there is a current account between two parties, one of whom has declared its insolvency or financial distress, it is possible to set-off between the credit and debit items of this current account (27)

Due to this, a set-off occurs between the amount the reinsurer is owed for the account of the ceding firm and the amount the insured company has on hand in the form of deposits for the reinsurance company. Due to a connection between the two debts, this set-off is not hindered by the financial difficulties of the reinsurer or the ceding company, and thus the ceding company advances over all other creditors in relation to the deposit because the ceding company has an preferential right because of the mortgage on the deposit. (28)

The ceding company is entitled to possession of reinsurer's mortgaged property, which is represented in the movables, and which represent the risk reserve that it accepted. All movables that have been deposited with the ceding company and for which the reinsurer has transferred possession and ownership are subject to this right. As a result, the ceding company has the right to use these funds to pay the insured's indemnity obligations under the reinsurance contract. Even though there is no doubt as to the reinsurance company's ownership of them in the event that the ceding company is not in financial distress, given that the reinsurance agreement grants the ceding company the right of mortgage, neither the committee for restructuring the reinsurance company nor its liquidator have the right to claim these funds. (29)

The second topic

Effects of Financial difficulty in a Ceding Company

The ceding company engages in a bilateral relationship; it deals with the insured under the insurance contract, which is the subject-matter of the reinsurance contract, on the one hand, and it deals with the reinsurer on the other

26 This is in pursuance of the law Article 49 of the Insurance Regulatory Act No. 12 of 2021 and Article 61 of the same law.
27 . Abdul-Wadud Yahya, Reinsurance, ibid, pp. 127-128.
28. Tawfiq Faraj Al-Sadda, ibid, p. 249
29Abdel-Wadood Yahya, Reinsurance, ibid, p. 128

hand. Thus, it is referred to as the (insurer) in the first case, and it is referred to as (insured) in the second case. This makes its financial distress more impactful on all parties. In its relationship with the insured, its bankruptcy or distress entitles the insured to enforce the seizure of all its movable and immovable property and assets, whether they are of the properties of the ceding company or the reinsurers', because they will either be registered under its name or pledged to it. Therefore, the creditors (the insured) in this case will share the debtor's money (the ceding company) as rivals .(30) As for the relationship of ceding company with the reinsurer, it is important to distinguish between the reinsurer's obligations to the financially distressed ceding company and its rights towards the financially distressed insurance company In order to address this, the researcher . 31) separates this subject into the following two themes:

The first theme: Financial difficulty of the ceding company's commitments to the reinsurer.

The second theme: financial difficulty of the ceding company's rights towards the reinsurer.

The first theme

Financial difficulty of the ceding company's commitments to the reinsurer

The value of the reinsurance premiums, the value of the deposit the reinsurer leaves with the ceding business, and the values of movable items as previously described are all considered creditors of the reinsurer in its connection with the ceding company. However, based on the facts of the situation, the restructuring committee of the ceding company debt or its liquidation agent can withhold these properties by virtue of a reinsurance contract until the closure if debit or credit account between the two parties, and to declare the party in whose the value is more balanced in the favor of its account.(32)

The reinsurer has a privilege right over the value of the deposit because it doesn't become a part of the ceding company's assets until it's considered as part of the general guarantee of its creditors, in accordance with the basic principles regulating a contract of pledge and deposit (the insured). Because these values are registered in the ceding company's name, the restructuring committee and liquidation agent might refuse to give the reinsurer the values of movable property and keep them for the benefit of the insured. Thus, the reinsurer and the ceding company have the same degree for this type of money and the reinsurance

30 Yousef Al-Tai and others, Department of Insurance and Risks, Dar Al-Yazuri for Publishing and Distribution, Amman, 2011. P. 126
31 Abdul Rahman Al-Hallasheh, ibid, p. 84. See also : Amer Al-Kiswani, ibid, p. 96
32 Muhammad Rafiq, Risk Management and Insurance: Theoretical and Practical Perspective, Amman, Dar Zahran for Publishing, 1998. p. 166

company does not have the right of privilege from these properties. Rather, its value is divided by rivals .(33)

Regarding the termination of the reinsurance contract in the event that the ceding company faces financial distress, it is important to keep in mind that, even though reinsurance agreements typically do not contain a clause granting the reinsurer the right to terminate, the significance of the reinsurance contract becomes apparent when issues arise after the ceding company faces financial distress and is unable to compensate the insured. Due to the fact that the reinsurer will be responsible for paying the indemnity for the reinsured risks even though the ceding company has not upheld its contractual obligations for those risks, it's essential that the reinsurer has the authority to end the reinsurance agreement with a ceding firm that is experiencing financial difficulties and failed to fulfill its obligations to the reinsurer as a result of such difficulties.(34)

One position is that the financial difficulty of the ceding firm has no influence on its duties to the reinsurer, however there are conflicting opinions in the jurisprudence over whether or not to provide the reinsurer the ability to terminate. Therefore, if the request for termination clashes with the concept of reinsurance, the reinsurer may not be authorized to make it. However, the reinsurer may request termination or an argument or plea for non-implementation up to the amount of premiums owed to it prior to the ceding business's distress if the creditors of the ceding firm attempt to pursue their rights against the reinsurer. It may also ask for a set-off between the obligations incurred as a result of the distressed state of the ceding company and the debts resulting from the agreement with the ceding company. Giving the reinsurer the opportunity to cancel the agreement commencing on the date of the ceding company's distress is justified by the fact that the reinsurer will not be collecting premiums from the bankrupt insurer for the balance of the term of the contract. (35).

While some lawyers contend that the reinsurance contract's liability cap is exceeded by the ailing ceding company's financial woes because the reinsurance contract's remaining term requires the reinsurance company to pay for the insured risks, the reinsurance contract's remaining term is what the reinsurance company is still required to pay for. In return, it will not get the rest of the premiums corresponding to these obligations due to the financial distress of the ceding company. Additionally, the reinsurer won't have any privileges over the values that the financially distressed ceding company deposited with the latter and which later became part of its property and entered into the general security of its creditors without the reinsurance company having any privileges over them. Rather, its value is divided by the creditors and the insured.

In order to get rid of this dilemma, the reinsurer must stipulate for itself in

33 Yousif Al-Tai, ibid, p. 127
34 Ziyad Ramadan, Principles of Insurance: A Study of the Reality of Insurance in Jordan, Amman, (without publisher), 1983 p. 108.
35. See in the same subject: Tawfiq Faraj Al-Sadda, ibid, and the opinions contained therein, p.p (251-252)

the reinsurance agreement the right to terminate, or at least determine the period during which its liability remains in place, provided that it is matched by its right to obtain all the installments due in full without applying to it the principle of reduction that applies to the rights of the creditors of the ceding company when it faces financial distress, for the period from the time the ceding company’s distress until the end of the reinsurer guarantee. The rationale behind this is that it is impossible to imagine the reinsurer guarantee remaining in place while also reducing its right to receive the full amount of corresponding premiums.(36)

By comparing the two previous opinions, the researcher favors the second opinion that went to give the reinsurer the right to rescind the contract, because the reinsurance contract is a binding contract for two sides, and one of the basic provisions of this contract is the right of rescission granted to each of its parties in the event of the other party’s refusal or inability to implement its corresponding obligation. Along with the right to withholding and the right to argue against non-implementation, which are both additional rights given by the legislator to the contracting parties to encourage each of them to implement rather than being substitutes for the right of rescission. considering that they are legitimate means to protect implementation. However, in the event that any of them faces financial distress, there is no practical benefit from using these two rights because of lack of feasibility of the inability of implementation.

The second theme

Financial difficulty of the ceding company's rights towards the reinsurer

Since the insurer is considered insurer in the relationship with the insured, and insured in relation to the reinsurer, then any financial distress the insurer faces, will prevent the insured from obtaining the full compensation agreed upon or estimated by a court ruling, as they are the owners of the reinsured risk, this has an impact on the limits of the reinsurer's liability to those insured. Therefore, talking about the insured's rights under the main insurance contract is necessary when discussing the rights of the ceding firm facing financial difficulties against the reinsurer, which is the subject-matter of the reinsurance contract, towards the ceding company that faces financial distress, and the extension of these right that may result in an obligation of the reinsurer that has no legal relationship with them.(37)

In an attempt to determine this responsibility, the jurisprudence was divided into several directions, some of them held that the reinsurer is obligated to compensate the insured with the same amount as the obligation of the ceding company for compensation of the insured, even if the obligation of the reinsurer

36. See in the same sense: Abdul-Wadud Yahya, Reinsurance, ibid, and the opinions contained therein, p. 128-129

37 In the same sense, see Adnan Ahmed Wali, previous reference, p. 39

towards the ceding company exceeds the latter's obligation to the insured, i.e., by the reinsurer reducing its share in compensation for the insured risk based on preventing the ceding company from being unreasonably enriched at the reinsurer's expense. (38). In addition to the shared/common destiny of the reinsurer and the ceding company within the confines of the reinsurance contract, and the compensatory concept, as follows:

1. According to the common destiny principle, the reinsurer cannot suffer more damage than the ceding company did. As a result, the sum that the reinsurer is required to pay shall be equal to the sum that the ceding company is required to pay.
2. Based on the compensatory principle: the reinsurance contract is considered as an insurance contract from damages that results in a logical consequence, which is the application of the principle to it. Except for the extent of the harm done to the ceding company's financial liability, the reinsurer shall not be obligated by the guarantee. Given this, it is evident that the reinsurer's payment of an amount more than what it paid to the ceding business violates the compensating principle and enriches the ceding firm without justification. (39)

While the dominant trend in jurisprudence sees that the reinsurer is fully obligated to pay what it must pay under the agreement, due to the mandatory power of the reinsurance contract for its two parties, and because the contract is the law of contractions " , and regardless of what the ceding company pays to the insured. This is due to the reinsurer's obligations only extending to it and the ceding firm; they have nothing to do with the insured group. Those who hold this view add that the common destiny principle that governs the relationship of the ceding company and the reinsurer is that the obligation of the reinsurer is determined according to what the ceding company should have paid to the insured, and not according to what was actually paid to the insured. Whereas, the reinsurer has pledged under the reinsurance contract to pay its share in the compensation debt that the ceding company is obligated to the insured. As a result, it must fulfill the pledge it made, which gave the ceding company a right over the debt. Only a portion of the ceding company's debts must be paid in the event of financial crisis. Any reduction of its obligations to the insured or beneficiaries is neither imaginable nor acceptable. (40)

Because the amount the reinsurer was originally required to pay and not what was ultimately paid to the ceding company matters, relying on the principle of common destiny between the ceding company and the reinsurer necessitates that it pay the full amount that it was contractually obligated to in the reinsurance agreement. Additionally, the reinsurer's acquisition of a ratio of its rights before the ceding company is not justified by the insured people' acquisition of a ratio of their rights before the ceding company. Therefore it is not acceptable for the reinsurance company to reduce its debts at the expense of the insured. Therefore , the

38. In the same sense, see Ahmed Sharaf Al-Din, previous reference and the opinions contained therein, p. 67
39 Muhammad Hossam Lutfi, ibid, and the opinions contained therein, p. 78.
40 In the same subject, see Tawfiq Faraj Al-Sada, ibid, p. 254 .

reinsurance company must pays what it owes in full after deducting what it owes of the reinsurance premiums on behalf of the ceding company (41).

As a result, the reinsurance company is required to fully fulfill its obligations in this situation because, according to the terms of the reinsurance agreement, the reinsurer is required to bear a portion of the debt that the ceding company owes to the insured. As for what is actually paid to the insured, it results from the distribution process, which takes place at a later stage, and the reinsurance company has nothing to do with it (42) . As long as the ceding company fulfills its obligation to pay the full reinsurance premiums, the reinsurer is obligated to implement its obligation towards the ceding company, by paying its full share in the disaster compensation despite the ceding company's financial distress (43).

In the same context, some believe that this trend will result in the benefit of the insured or the beneficiaries whose policies have not been reinsured from the reinsurance amount. It is not possible to say that there is a legal document that justifies the rival of these beneficiaries with the rest of the insured in respect of whom the insurance was reinsured. Especially in the case of reinsurance exceeding a limit of catastrophes, which includes only some of the insured) (44).

The researcher considers the preference of the second opinion, given that the reinsurer falls under the obligations of what was agreed upon in the reinsurance contract, without looking at the amount of compensation that the ceding company actually paid, especially since the reinsurance contract and the primary insurance contract are governed by the principle of good faith in implementation, which prevents the reinsurer from argumentation against the financially distressed ceding company in order to reduce the amount of its obligation.

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41. In the same sense, see Muhammad Hossam Lutfi, ibid, p. 79.
42 . Abdel-Wadood Yahya, Reinsurance, ibid, p. 130.
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Conclusion

This study dealt with the impact of the financial distress of each of the two parties to the reinsurance contract on the rights and obligations arising from the contract, as well as the impact of this distress on the rights of the insured, which is one of the most crucial and challenging issues in the reinsurance contract. In particular, the problematic issue involving the extent of the reinsurer's relationship with the ceding company on the one hand and the inadequate attention paid to the laws governing reinsurance contracts on the other.

The researcher specifically examines the rules pertaining to contractor distress and their effects on the reinsurer's duties and the ceding company's rights. The researcher came across the following conclusions and advice:

First: findings

1. The reinsurer is subject to a number of obligations that were initially rights granted to the ceding company, as the ceding company has the right to terminate the reinsurance agreement if the reinsurer is unable to provide the guarantee due to its financial distress. The obligations of the reinsurer under the insurance contract are affected if the reinsurer company experiences financial difficulty or goes bankrupt.
2. There are instances that establish a direct relationship between the ceding company and the reinsurer, where the reinsurer's duty to the ceding company results in direct compensation for the insured catastrophe. This relationship is similar to the portfolio transfer theory, which gives the ceding company more guarantees in the indemnity for insured catastrophes, so the ceding company and the reinsurer are obligated to the insured, especially in the case of a catastrophe.
3. Although the Insurance Regulatory Act No. 12 of 2021 regulates some aspects of the reinsurance contract, it lacks of explaining of the impact of the financial distress of one of the parties to the reinsurance contract on its obligations in the reinsurance contract and the measures that are taken in this case.
4. The Jordanian legislator, in the Insurance Regulatory Act No. 12 of 2021, nor to the regulations and instructions attached to it, did not impose insurance companies to be subject to the deception of the Insolvency Law No. 21 of 2018, Where the text of Article 3 expressly excluded insurance companies from being subject to the insolvency law.

5. The Jordanian legislator is satisfied with the Insurance Regulatory Act No. 12 of 2021 in the event that the insurance company and the reinsurance company fail to restructure themselves to the extent that guarantees the practice of their activities and when they fail to reach that, they are compulsorily liquidated.

Second: recommendations

Based on the findings of the study, the researcher recommends the following:

1. The researcher recommends that the Jordanian legislator replaces the instructions of reinsurance standards No. (4) of 2002 with a special law regulating reinsurance standards, which gives it legislative power other than what is the case now in light of the instructions that are constantly subject to amendment.
2. Interfering in the regulation of the reinsurance contract to determine the obligations and rights of the reinsurance contract parties in a clear manner and away from ambiguity and deficiency, indicating the basic conditions of this contract, which were produced by the practical reality of this contract, especially when one of the parties to the reinsurance contract faces financial distress, including:

First: The stipulation of the obligatory condition of cession and acceptance in facultative and treaty reinsurance contracts, which is understood as sharing the risk between the two parties to the reinsurance contract according to its insurance under the insurance contract subject to the cession process, so that the ceding company does not have the right to choose, and the reinsurance company does not have the freedom to refuse.

Second: The requirement that the two parties to the reinsurance contract synchronize their obligations and bind themselves to them, so that once the ceding company's responsibility has been established, either through its approval or as a result of a court judgment obtained to the highest degree. In front of the insured, the reinsurer's obligation is implicitly established and correlated with that of the ceding firm. The date the reinsurer filed a lawsuit against the ceding company to get its indemnity will be used to determine this.

Third: If the ceding company demands it and the compensation exceeds a particular amount, the condition requiring quick payment of compensation obliges the reinsurance company to do so, regardless of whether it was a creditor of the ceding company at the time of the claim or a debtor to it.

To protect the insured from the financial distress of the ceding company, the researcher recommends including the cut-through clause in the amendments to the reinsurance standards instructions No. (4) of 2002. This clause gives the insured to recourse to the reinsurer to resolve the ceding company's distress and/or its liquidation, while also allowing the reinsurer to retain its arguments against the ceding company.

In order to establish the contractual balance between the two parties to the reinsurance contract, the researcher recommends taking the amendments that are made to the instructions of reinsurance standards No. (4) of 2002 with the principle of relative and non-relative expiration of the reinsurance contract, through which the responsibility of the reinsurer is determined to compensate for the risks assigned to him.

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