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Mandatory Reinsurance Cessions in Tanzania: Relevancy and Unprecedented Development of Legal Framework

Daudi Momburi¹

<https://orcid.org/0000-0001-9342-1194>

ABSTRACT

It is alleged that, immediately after independence, inadequate local reinsurance capacity has had an effect of fuelling the drains of foreign currency through payment of reinsurance premiums to foreign firms. In solving this problem, the government of Tanzania banned operations of foreign reinsurance brokers in 1974. However, this move was considered unsuitable, hence did not last longer. As such, in 1996, the insurance business was liberalised from state monopoly to allow participation of private insurance and reinsurance companies. As a result, the Tanzania National Reinsurance Corporation (Establishment) Order, 2001 was issued, which, among other things, established the Tanzania Reinsurance Corporation (TAN-RE), and for the first time, introduced mandatory reinsurance cessions. Nevertheless, the introduction of mandatory reinsurance cession was not well received by Tanzania insurers, for it was hotly challenged before the courts. Accordingly, the government opted to settle the matter amicably and issued an Amendment Order (GN No 396 of 2005), which provided for the gradual phasing out of mandatory reinsurance cessions come the year 2014. Unfortunately, ten years after the anticipated phasing-out, the mandatory reinsurance cessions still reign and bite the Tanzania insurers. It is thus, the objective of this paper to establish whether or not phasing out of mandatory reinsurance cessions were a legal oversight that necessitated a swift turn around by the

*Phd - University of KwaZulu-Natal: Durban, Kwazulu-Natal, ZA; Lecturer – The University of Dodoma; email: lellodaudi@gmail.com.

government without taking the Tanzania insurers on board; and whether or not this unprecedented and bizarre legal journey has had an adverse impact in building local reinsurance capacity.

Keywords

Mandatory; Reinsurance; Cessions; Tanzania

1. Introduction

Reinsurance may basically be defined to mean the insurance of the insurers or the effecting of the insurance business as between the insurers.¹ Nonetheless, the basic concepts underlying the functioning of the ordinary insurance also apply as with regard to reinsurance. Normally, under the ordinary insurance, parties involved are: the insurer and the insured, while under reinsurance, parties involved are the reinsurer and the ceding company. Further, under the ordinary insurance business, the insured pays a consideration, which is called the premium and the insurer is the one who receives it. Equally, under reinsurance, the ceding company pays the consideration to the reinsurer, which is commonly referred to as reinsurance cessions (reinsurance premium). Therefore, for the premium and reinsurance cessions, both the insurer and reinsurer undertake to satisfy, and make good to the insured or the ceding company any damage or accident that may occur, according to the terms and conditions of the insurance or reinsurance contract or policy.² In that regard, reinsurance is thus an agreement between two parties, one called ceding company and another called reinsurer.

As a general rule and like any other business, a ceding company is supposed to cede its reinsurance premium to a reinsurer of its choice. As such, one would assume reinsurance business to be a voluntary business between a willing ceding company and a reinsurer. However, in mandatory reinsurance cession, insurers are compelled to cede or transfer part of an insurance company's policy obligations to regional and sub-regional reinsurance firms or to a domestic firm. Therefore, the above said statutory compulsion to local insurers to cede to a national or regional or sub-regional reinsurance firm is what is referred to as mandatory reinsurance cessions.

Accordingly, mandatory reinsurance cessions are of two types: firstly, those which emanate from international obligations, to which Tanzania has signed and ratified. This type of mandatory reinsurance cession is provided for under of sections 79 (1) (a) and (b) of the Insurance Act.³ Under this type, Tanzania

¹ The Insurance Act, Cap 394 (R.E 2002), s 3.

² Hodgin R, *Insurance Law Text and Material*, 2nd Edition (Cavendish Publishing Limited 2002) 1.

³ Cap 394.

insurers are required to cede to the African Reinsurance Corporation (Africa-Re) a minimum of five percent of their reinsurance cessions. Further, Tanzania insurers are equally required to cede a minimum of ten percent of their reinsurance cessions to the Preferential Trade Area Reinsurance Company (ZEP-RE). The second and the last type, are the mandatory reinsurance cessions imposed by domestic laws. As such, the Insurance Act, by virtue of section 84 which is read together with the provisions of the Tanzania National Reinsurance Corporation (Establishment) Order, 2001, introduced mandatory reinsurance cessions, hence compelled Tanzania insurers to cede a given proportion of policy insurance issued to TAN-RE in a manner set out in the aforementioned Establishment Order.

However, this initiative was meant to have short lived, for it was not well received by local insurers. It was vehemently challenged before the High Court, Alliance Insurance Corporation Limited and 9 Others V Commissioner of Insurance and 2 Others, ⁴ but the matter was amicably resolved outside the court and the government issued the Tanzania National Reinsurance Corporation (Establishment) (Amendment) Order, 2005. This Amendment Order, among other things, provided for the gradually phasing-out of the mandatory reinsurance cessions to TAN-RE from the year 2005 to the final year 2014. However, it is worth noting that, issuance of the Amendment Order was not followed by amendment of section 84 of the Insurance Act. As a consequence, in the year 2014, the government, without taking on board the Tanzania insurers, unconventionally extended mandatory reinsurance cessions up to the year 2025.⁵ It was thus, until the year 2022, where mandatory reinsurance was re-introduced by the issuance of the Tanzania National Reinsurance Corporation (Establishment) (Amendment) Order, 2022.⁶ In the above context, it is now 10 years since the mandatory reinsurance cessions were meant to be phased-out. It is thus the objective of this paper to establish whether or not the phasing-out of the mandatory reinsurance cessions were a legal oversight that necessitated the swift turn around by the government without taking on board the Tanzania insurers. Further, it is equally important to establish whether or not the unprecedented and bizarre legal journey of the mandatory reinsurance cessions in Tanzania has had an adverse impact in building the local reinsurance capacity.

2. Mandatory Reinsurance Cessions as Conceived Tool for Building Reinsurance Capacity in Africa

The African reinsurance market has been classified by the United Nations Conference on Trade and Development (UNCTAD) to be that of countries where reinsurance is carried out by agents and branches of foreign reinsurance

⁴ Civil Application No. 33 of 2004 (Unreported).

⁵ Tanzania Reinsurance Company Ltd; "Annual Report: (TANRE 2014) 8.

⁶ GN No. 2 of 2023.

companies.⁷ For that reason, it was necessary to create an environment that takes on board relevant measures aiming to build domestic reinsurance capacity through the continent. It was observed that cross-border reinsurance business affects negatively the insurance industries of African countries from financial performance perspectives.⁸ Therefore, after a thorough consideration, it was agreed that a possibility should be looked at for making institutional arrangements for reinsurance operations at a national and regional level in order to reduce the outflow of foreign exchange.⁹ The institutional arrangement in question, which was meant by this forum, was to establish regional and domestic reinsurance corporations that will gradually compete with foreign reinsurance firms. In that context, African states were duty bound to establish and provide necessary legal, technical, and financial assistance to the contemplated new regional and domestic reinsurance firms, to facilitate their functioning to meet the said set objective.

Following the aforementioned recommendations of the UNCTAD and a feasibility study carried out by the African Development Bank (AfDB), the African Reinsurance Corporation (Africa-Re) was established on 24th February 1976.¹⁰ The Africa-Re was established through an international agreement signed by 36 African states members of the African Union (AU). The establishment of Africa-Re as a regional reinsurance corporation was foreseen as a step forward towards reducing or mitigating the outflow of foreign exchange through reinsurance premiums from the continent by retaining a substantial proportion of the reinsurance premium generated within the continent.¹¹ Up to the year 2022, Africa-Re Agreement was acceded by 42 states member of the AU.¹² The United Republic of Tanzania acceded the Agreement in 1976 whereas the Republic of Kenya acceded the Agreement in 1977.¹³

Apart from the member states of the AU who represent 33.5% of the shareholding structure, the AfDB holds 8.4% and 32.5% is held by 113 African insurance and reinsurance companies, while the remaining percentage is held by non-regional investors (Allianz SE of Germany, Axa Africa Holding of France and Fair Fax Financial Holding of Canada).¹⁴ Further, out of 113 insurance and reinsurance companies stated above, Tanzania is represented by only two companies namely: the Tanzania Reinsurance Corporation (TAN-RE) and

⁷ United Nations Conference on Trade and Development, 'Reinsurance Policy and Operations in Developing Countries', (UNCTAD 1967)3.

⁸ Woldegebriel MM, 'Assessment of the Reinsurance Business in Developing Countries: A Case of Ethiopia', (LL.M Dissertation, University of South Africa, 2010) 1.

⁹ Ibid.

¹⁰ African Reinsurance Corporation, 'History' (2022), < <https://www.africa-re.com/history>>, (accessed 4 August 2022).

¹¹Ibid.

¹² Africa Reinsurance Corporation, 'Member State', (2022), available at [https://www.africa-re.com/member states](https://www.africa-re.com/member%20states), (accessed 6 August 2022).

¹³ Ibid.

¹⁴ Ibid 1.

National Insurance Corporation (NIC), while Kenya is represented by seven companies which are: Jubilee Insurance of Kenya; Blue Shield Insurance Company, Pioneer Holding (Africa) Limited, Apollo Investments Company Limited, United Insurance Company, Kenya Reinsurance Corporation and First Reinsurance Brokers Limited.¹⁵

Accordingly, as earlier stated, the establishment of Africa-Re was aimed at reducing or mitigating the outflow of foreign exchange from the continent by retaining a substantial proportion of the reinsurance premium generated within the continent. Therefore, member states to the Agreement establishing Africa-Re were duty bound by the terms and conditions of the Agreement to authorise operation of Africa-Re in their domestic market. As such, member states are required to ensure all insurers are offering to place with Africa-Re a minimum of 5% of each of their reinsurance treaties, both present and future.¹⁶ Equally, in a case where a local insurance business is covered by global reinsurance treaties established outside Africa, a member state must ensure all national and foreign establishments engaged in direct insurance in its territory, separate reinsurance treaties for the local risks.¹⁷

In addition, and in the same spirit, in 1960, the Common Market for Eastern and Southern Africa (COMESA) established the Preferential Trade Area (PTA) Reinsurance Company (ZEP-RE), through an agreement concluded in Mbabane Eswatini (formerly Swaziland) on 23rd November. Signatory member states include: Angola, Burundi, Comoros, Democratic Republic of Congo, Djibouti, Kenya, Eritrea, Ethiopia, Lesotho, Madagascar, Mozambique, Rwanda, Somalia, Sudan, Tanzania, Uganda, Zambia and Zimbabwe. Like Africa-Re, the ZEP-RE is also established to foster the regional insurance and reinsurance business. However, specific to this sub-region block, ZEP-RE is also tasked with a duty to promote growth of national and regional underwriting and retention capacity within the sub-region. Further, ZEP-RE is responsible to support sub-regional economic development with the ultimate objective of facilitating and enabling social transformation and regional economic development agenda. In furtherance of these objectives, state members to the Agreement for the establishment of ZEP-RE are duty bound by the terms and conditions of the Agreement to ensure that all domestic insurers are ceding to ZEP-RE a minimum of 10% of their reinsurance premium.¹⁸ Following establishment of Africa-Re and ZEP-RE, domestic legal frameworks of member states to the agreements for establishing these corporations were amended to incorporate mandatory reinsurance cessions emanating from these two multilateral agreements as evidenced by section 65 of the Insurance Act, 1996 which was re-enacted in section 79 (1) of the Insurance Act, 2009 following the revision of the Act in 2009.

¹⁵ Ibid.

¹⁶ Agreement for the Establishment of Africa Reinsurance Corporation Concluded at Yaounde, 1976, Art 27(2).

¹⁷ Ibid, Article 27(3).

¹⁸ The Agreement for the Establishment of the ZEP- RE, 1990, Articles 20 and 21.

Moreover, in the same spirit and in the context of complementing the recommendations of the UNCTAD, Tanzania established national reinsurance corporations and compelled national insurer to cede certain percentage of reinsurance premium compulsorily. The Tanzania Reinsurance Corporation was established (TAN-RE) in 2001 through Government Notice No. 35 of 201. The existence of TAN-RE and mandatory cessions thereto was equally maintained by virtue of section 84 following the enactment of the 2009 Insurance Act. Further, the Government of Tanzania, in cementing its decision on mandatory reinsurance cessions have issued the Tanzania National Reinsurance Corporation (Establishment) (Amendment) Order, 2022,¹⁹ which among other things, requires treaty and policy cessions to be indefinitely at a rate of 20% and 10% respectively.

3. Development of Mandatory Reinsurance Cessions Legal Framework in Tanzania

As above stated, mandatory reinsurance cessions may be classified into two categories: firstly, those emanating from multilateral agreements, hence introduced in the domestic legal system; and those introduced by the domestic legal system. Mandatory reinsurance cessions emanating from multilateral agreements are largely stipulated in detail in the provisions of the treaties establishing Africa-Re and ZEP- RE. In honouring its international obligation, Tanzania incorporated into her domestic laws the requirements of the agreements establishing Africa-Re and ZEP-RE for the first time through section 65 (1) (a) and (b) of the Insurance Act of 1996.²⁰ Further, the above cited provision of the law was maintained following revision of the Insurance Act in 2009.²¹ Section 79 (1) of the Insurance Act, 2009, which provides for the mandatory reinsurance cession to regional and sub-regional insurance bodies states as follows:

79-(1) Every insurer shall be required to offer to place with –

- (a) The African Reinsurance Corporation (Africa Re), a minimum of five percent of its reinsurance cessions, in accordance with article 27 of the agreement established Africa Re, and
- (b) The Preferential Trade Area Reinsurance Company (ZEP-RE) a minimum of ten percent of its reinsurance cessions, in accordance with article 20 and 21 of the agreement establishing ZEP-RE.²²

From the wording of the above quoted provisions of the Insurance Act, Tanzania insurers are duty bound to cede cumulatively 15% of their reinsurance premiums to the regional reinsurance corporations (Africa-Re and ZEP-RE). Since the

¹⁹ Government Notice No. 2 of 2023.

²⁰ Insurance Act No. 18 of 1996.

²¹ The Insurance Act, 2009 Act No. 10 of 2009, s 79 (1) (a) and (b).

²² Ibid.

introduction of this legal position in 1996, Tanzania insurers have neither opposed nor complained about ceding such significant amount of the reinsurance premiums, to corporations which are arguably not national corporations. Accordingly, it is still not certain whether or not ceding 15% of the reinsurance premiums to regional and sub-regional corporations constitute retention of the foreign exchange as contemplated.

It is important to note that, Africa-Re and ZEP-RE are not national corporations and consist of nations (member states), which differ in the volume of their domestic reinsurance business as well as the amount of reinsurance premiums likely to be ceded. For that reason, this situation calls for a need to put in place an equitable and reasonable utilisation plan of resources pulled from the proceedings of the reinsurance premiums ceded. Further, the issue of amount of reinsurance premiums ceded, which ought to remain in the ceding nation may as well be a question which must be better explained and answered by the terms and conditions of agreements establishing Africa-Re and ZEP-RE. In the final analysis, it is a high time to re-consider whether or not mandatory reinsurance cessions emanating from region and sub-region agreements are still viable and serve the intended purpose.

In addition to the above regional and sub-regional mandatory reinsurance cessions requirements, as earlier stated mandatory reinsurance cessions to local reinsurance firm is provided for under provisions of section 84 of the Insurance Act which is read together with the Tanzania National Reinsurance Corporation (Establishment) Order, 2001. Mandatory local cessions were firstly established by the Establishment Order, 2001 and later incorporated in the revised Insurance Act of 2009 under section 84. Paragraph 12 (1) of the Establishment Order requires every local insurer to cede to 'TAN-RE 25% of his liabilities for each policy issued by them; and in addition, 25% of his treaty reinsurance business'.²³

Therefore, on the basis of the sections 79, 84 of the Insurance Act and provisions of GN No. 35, the Tanzania insurers were duty bound to cede cumulatively 40% percent of their reinsurance cessions to Africa Re, ZEP-RE and TAN-RE. This state of affairs, was not well received by the Tanzania insurers who, immediately objected mandatory reinsurance cessions vide Civil Application No. 33 of 2004.²⁴ This application was subsequent to Application No. 16 of 2004, which granted leave to apply for order of *certiorari* and prohibition against the Commissioner of Insurance, Minister for Finance and the Attorney General.²⁵ The grounds for their application was that, the Minister for finance had illegally incorporated TAN-RE acting beyond the time limit set by the law, in the sense that the Order provides that the Tanzania National Reinsurance Corporation is to be incorporated not

²³ Ibid, Paragraph 12.

²⁴ *Alliance Insurance Corporation Limited and 9 Others v Commissioner of Insurance and 2 Others*, Civil Application No. 33 of 2004.

²⁵ *Alliance Insurance Corporation Limited and 9 Others v Commissioner of Insurance and 2 Others*, Misc. Civil Cause No. 16 of 2004.

later than 31st of January 2001, whereas the corporation was incorporated on 8th of November 2001. Secondly, the Commissioner of Insurance acted *ultra vires* by writing impugned letters to the insurance companies demanding them, by setting time limit for them, to begin ceding with TAN-RE, powers which were solely vested in the Minister under paragraph 12(2) of GN No. 35 of 2001 and, lastly the TAN-RE for the purpose of paragraph 7(2) is not a public corporation as defined by Public Corporation (Amendment) Act,²⁶ capable of being established by the President. The application for orders of *certiorari* and prohibition was dismissed by Mihayo J on 25th of September 2004. However, the applicants, aggrieved by the decision of Mihayo J, lodged Civil Appeal No. 58 of 2005 in the Court of Appeal of Tanzania.

It is worth noting that, before the Court of Appeal heard and determined the matter, the parties to the appeal settled the matter out of court and the appeal was accordingly marked withdrawn, followed by the issuance of the National Reinsurance Corporation (Establishment) (Amendment) Order in 2005.²⁷ The reason for withdrawing the appeal and issuance of amendment order was centred on the fact that so much as the implementation of GN No 35 of 2001 had been vigorously resisted by the private insurers, yet, the insurance operations for the year 2004 were conducted without the necessary approval of the office of the commissioner of insurance. This was because, the insurance companies, while filing an application for leave to apply for orders of *Certiorari* and prohibition, sought and obtained a temporary injunction against the Commissioner of Insurance to enforce compliance with the registration provisions.²⁸

This made the insurance companies to operate for the year 2004 without a licence, but also it is claimed to have caused the nation an irreparable financial loss.²⁹ Thus the Minister for Finance, on 16th of March 2005, appointed a special committee comprising members with relevant and required expertise to study the dispute and advise the Government accordingly. The Committee acting as a fact finding and advisory body to the Minister, observed that the private insurers objected to the compulsory reinsurance cessions for the reasons that it would create unnecessary administrative overheads, it would lead to delay in processing and settlement of claims and it would add cost to insurers and ultimately to the insured public. For as much as the above reasons show the truth, the Committee, apart from other things, recommended that the compulsory reinsurance cessions be regarded as a short term support measure for TAN-RE, be gradually phased in and later be phased out. The Committee also recommended that the shareholding structure of TAN-RE should be reviewed to

²⁶ Cap 257.

²⁷ Government Notice No.396 of 2005.

²⁸ Alliance Insurance Corporation (n31).

²⁹ Insurance Supervisory Department, 'Summary Report by Special Task Force to Study the Dispute between ISD and Ten Defaulting Insurance Companies' (ISD 2005).1

increase the percentage of the Tanzania insurers so as to give them a sense of ownership and commitment to TAN-RE.³⁰

As a result of the job-well-done by the Committee, the Tanzania National Reinsurance Corporation (Establishment) Order, 2004 was amended by Tanzania National Reinsurance Corporation (Establishment) (Amendment) Order, 2005 which by the provision of paragraph 2 thereof, increases the percentage of registered insurance companies by 10% in the shareholding structure of TAN-RE to be 20%. Also, the Order provides for gradual phasing in of the mandatory reinsurance cessions to the maximum of 20% and later gradual phasing out to eventual elimination.

Paragraph 3 of the Amended Established Order (GN No.396 of 2005), which amended paragraph 12 of the principal Establishment Order (GN No. 35 of 2001) states that:

3(1) Every insurer shall, with effect from the 1st October 2005, reinsure with the company and in relation to all policy cessions cede to TAN-RE ten percent of its liabilities.

(2) Every insurer shall, on or after the commencement of this order, reinsure with the company and in relation to mandatory cessions on all policy and treaty cessions cede to TAN RE:

- i. In the year 2006, ten percent;
- ii. In the year 2007, fifteen percent;
- iii. In the next five years from the year 2008 up to and including year 2012, twenty percent;
- iv. In the year 2013, fifteen percent; and
- v. (e) In the year 2014, ten percent, and thereafter mandatory cessions shall cease'.³¹

Unconventionally, prior to the realisation of phasing-out of mandatory reinsurance cessions, which was contemplated to be in the year 2014, the Insurance Act was amended by Act No 10 of 2009 and introduced section 84, which maintained the original position of the principal Establishment Order (GN No.35 of 2001) and abandoned the later position, which was introduced by paragraph 3 of the National Reinsurance Corporation (Establishment) (Amendment) Order, 2005 (GN No. 396 of 2005). It is important to appreciate that, the amendment of principal Establishment Order (GN No. 35 of 2001) was a part of deal that paved a way for the amicable resolution of legal dispute between the government and Tanzania insurers in the years 2001 to 2004. Equally, It is important to understand that, on the basis of the said Amendment (GN No 396), Tanzania insurers abandoned Civil Appeal No. 58 of 2005, which was lodged in

³⁰ Ibid.

³¹ Government Notice No 396 of 2005.

the Court of Appeal of Tanzania. Therefore, this state of affairs leaves a lot to be desired whether or not the government has had intention to honour its commitment earlier made with the Tanzania insurers. Further, one cannot avoid conclusion that the government legally tricked Tanzania insurers and the mandatory reinsurance cessions to the TANRE was never phased-out as contemplated by law. Accordingly, in exposing and cementing its earlier fishy intentions, in the year 2022, the government issued the Tanzania National Reinsurance Corporation (Establishment) (Amendment) Order, 2022³², which solidified the treaty and policy cessions to be indefinite at a rate of 20% and 10% respectively.

4. Digesting the Relevance of Mandatory Reinsurance Cessions

For the period between the year 2014 and 2021, TAN-RE recorded a continued steady increase of the gross premiums written (GPW) since 2015.³³ For instance, in 2014, TAN-RE recorded GPW of TZS 73.572 billion, whereas in 2015, it collected GPW of a tune of 73.057 and ultimately it collected GPW about 74.90 billion, 78.94 billion, and 111.52 billion for the years 2016, 2017 and 2018 respectively.³⁴ Further, for the period between 2020 and 2021, TAN-RE recorded an increase of 7.6% of underwriting profit from TZS 8.2 billion in the year 2020 to TZS 8.9 billion in the year 2021.³⁵ Therefore, one cannot avoid a conclusion that, the mandatory reinsurance cession has positively impacted the functioning of TAN-RE.

Accordingly, on maintaining local mandatory reinsurance cessions, the reinsurance environment has witnessed the Tanzania reinsurance market open up to other reinsurance operators. Until this paper was submitted for publication, Tanzania reinsurance market had two local registered reinsurance companies. These companies are: Tanzania Reinsurance Corporation Limited (TAN-RE), and Grand Reinsurance Company Limited.³⁶ In addition to these two local reinsurance companies, there are also five registered reinsurance brokers, which are: Afro Asian Reinsurance Brokers (T) Limited; Aris; Mic Reinsurance Brokers Limited; Tapex Reinsurance Brokers Limited; and Willman Reinsurance Broker Limited.³⁷ It is worth noting that, reinsurance as a business is also carried out by

³² Government Notice No. 2 of 2023.

³³ Tanzania Insurance Regulatory Authority, 'Annual Insurance Market Performance Report' (TIRA, 2018). 27.

³⁴ Ibid.

³⁵ Tanzania Insurance Regulatory Authority, 'Annual Insurance Market Performance Report' (TIRA, 2022) 43.

³⁶ Tanzania Insurance Regulatory Authority, 'Registered Reinsurance Companies', (2022) <<https://www.tira.go.tz/licensed-entities/local-reinsurance-companies>> (accessed on 22nd of September, 2022).

³⁷ Tanzania Insurance Regulatory Authority, 'Registered Reinsurance Brokers' <<https://www.tira.go.tz/licensed-entities/local-reinsurance-brokers>> (accessed on 22nd of September, 2022).

both reinsurance companies, which are commonly referred to as direct writers and reinsurance brokers who normally receive reinsurance business through reinsurance intermediaries. Therefore, one can also not dispute that Tanzania reinsured capacity has satisfactorily increased.

As a general rule, despite the countries foreseeing building their reinsurance capacity within the premises of the market forces, yet, special initiative must be put in place to build their local capacity. This is evident and it is now a regional if not a global trend that countries, which had previously abandoned mandatory reinsurance cessions practice and subject their national reinsurance corporations in the market forces, have re-introduced mandatory reinsurance cessions. For instance in Kenya, the Insurance Act,³⁸ categorically re-introduces mandatory reinsurance cessions in section 145 and further introduces offence and penalty for non-compliance with mandatory reinsurance cessions.³⁹ It is important to appreciate that, the Kenya's National Reinsurance Corporation was established in 1970 and upon its establishment, all insurance companies in that country were compelled to cede 25% of the policy cessions and 25% of treaty cessions to Kenya Reinsurance Corporation (Kenya-Re). This situation enabled the Kenya-Re to underwrite premium business to the tune of Kshs. 3.9 billion, this being the highest premium resulting to a net profit of Kshs. 116 million in the year 1995.⁴⁰ Despite the overwhelming achievements the corporation had registered, the mandatory cession faced serious objection and resistance from the Insurance Companies and Association of the Kenya Insurers and, as a consequence, the mandatory reinsurance cessions ceased in the year 2000 after it had gone through gradual reduction of 5% from 1995.

Besides, the local mandatory reinsurance cessions, national insurers are also compelled to cede compulsorily to regional and sub-regional reinsurance corporations. These regional and sub-regional corporations have been established by multinational treaties, which Tanzania is a state party and has ratified, yet it leaves a lot to be desired whether or not the terms and conditions of these multilateral treaties are still relevant and Tanzania stands to benefit from reinsurance premiums written in these regional and sub-regional reinsurance corporations and how the investment of collected reinsurance premium are utilised to build local reinsurance capacity. It is important to appreciate that mandatory reinsurance cessions were introduced to build local reinsurance capacity and to prevent the drainage of foreign currency. On the other hand, a total of fifteen percent of all the reinsurance premium in the country are ceded to regional and sub-regional reinsurance corporations (Africa-Re and ZEP-RE) which are outside Tanzania. In other words, this is a drain of foreign currency by operation of international treaties.

³⁸ Cap 487 RE. 2020.

³⁹ Ibid, section 149.

⁴⁰ Kenya Re, 'Investment and Finance Department (2022)', <<http://www.kenyare.co.ke/financeinv.php>> (accessed on 20 September, 2022)

5. Conclusion

As it was earlier stated, mandatory reinsurance cessions have had an effect of steadily improving performance of TAN-RE and gradually increasing the gross premiums written. Therefore, the mandatory reinsurance cessions have positively impacted the reinsurance market and has significantly built local reinsurance capacity through TAN-RE. The decision made earlier to amend the principal Establishment Order to accommodate the phasing-out of mandatory reinsurance cessions, although did not materialise, that was a legal oversight. Notwithstanding, due to the pressure earlier on exerted by the Tanzania insurers, maintaining mandatory reinsurance cession was a decision made for the best interest of the nation as a whole, but also for the local reinsurance market. Borrowing a leaf from our neighbour Kenya, it is clear that having succumbed pressure exerted from their local insurers for more than three decades, they have now come back to their senses and made a swift turn around to embrace mandatory reinsurance cessions. Under these circumstances, it justifies to conclude that mandatory reinsurance cessions are still critical to emerging reinsurance markets.

It is worth noting that, the rationale behind mandatory cessions were meant to mitigate if not to contain the drainage of foreign currency in terms of reinsurance premiums. Now, it is still an issue to ponder whether or not mandatory cessions to regional and sub-regional reinsurance corporations (Africa-Re and ZEP-RE) still serve the same purpose. It is important to appreciate that, these organisations (Africa-Re and ZEP-RE), although they are regionally and sub-regionally owned. Therefore, a lot is still desired on how those huge portions of reinsurance premiums are utilised in furtherance member states' objectives. The question remaining is whether or not ceding compulsorily to these regional and sub-regional reinsurance corporations serves as drain of foreign currencies by operation of international instruments or it is for the furtherance of the fundamental objective of building the Africa's reinsurance capacity or reinsurance capacity of individual member states.

References

- African Reinsurance Corporation, 'History' (2022), < <https://www.africa-re.com/history>>, (accessed 4 August 2022).
- Banks E, *Alternative Risk Transfer*, (John Wiley and Sons Ltd, 2002).
- Chibuikwe UU, and Chikeleze B E, 'The Issue of Compulsory Legal Cessions' *Palgrave Macmillan Journals* (Vol 26 No. 3, 2001) 490-504.
- Deelstra G and Plantin G, *Risk Theory and Reinsurance* (Springer-Verlag, 2014).
- Eldelmen C and Burns A, *The Laws of Reinsurance*, 2nd Edition (Oxford University Press, 2013).

- Golding CE, *The Law and Practice of Reinsurance*, 4th Edn (Buckley Press Publishers, 1965).
- Hodgin R, *Insurance Law Text and Material*, 2nd Edition (Cavendish Publishing Limited, 2002).
- International Association of Insurance Supervisor, 'Reinsurance' (IAIS, 2017).
- Kenya Re, Investment and Finance Department, (2022) <<http://www.kenyare.co.ke/financeinv.php>>. (accessed 20 September 2022).
- Kiragu SM, 'Assessment of Challenges Facing Insurance Companies in Building Competitive Advantage in Kenya: A Survey of Insurance Firms', *Journal of Social Science and Entrepreneurship* (Vol. 1 No. 1, 2014) 1-23.
- Lounie JJ, 'The balance of Payment Implication of Reinsurance of Emerging Countries' (Vol 1 No.1, 1973).
- National Association of Insurance Commissioners, 'Reinsurance' (:2022), <<https://content.naic.org/cipr-topics/reinsurance>>, (accessed on 15th of November, 2022).
- Outrevile JF, 'Reinsurance in Developing Countries', *Journal of Reinsurance* (Vol. 2 No.3, 1995) 42-51.
- Tanzania Insurance Regulatory Authority, 'Annual Insurance Market Performance Report' (TIRA, 2018).
- Tanzania Insurance Regulatory Authority, 'Annual Insurance Market Performance Report, (TIRA, 2022).
- United Nations Conference on Trade and Development, 'Trade and Development Aspects of Insurance Services and Regulatory Frameworks' (UNCTAD, 2007).
- United Nations Conference on Trade and Development, 'Reinsurance Policy and Operations in Developing Countries' (UNCTAD 1967) 3-15.
- United Republic of Tanzania, Insurance Supervisory Department: 'Summary Report by Special Task Force to Study the Dispute between ISD and Ten Defaulting Insurance Companies' (ISD, 2005).
- Vaughan EJ and Vaughan T, *Fundamental of Risk and Insurance*, (10th Edition) (Danvers, John Wiley and Sons, Inc, 2008).
- Woldegebriel M M, 'Assessment of the Reinsurance Business in Developing Countries: A Case of Ethiopia' (LL.M Dissertation, University of South Africa, 2010).