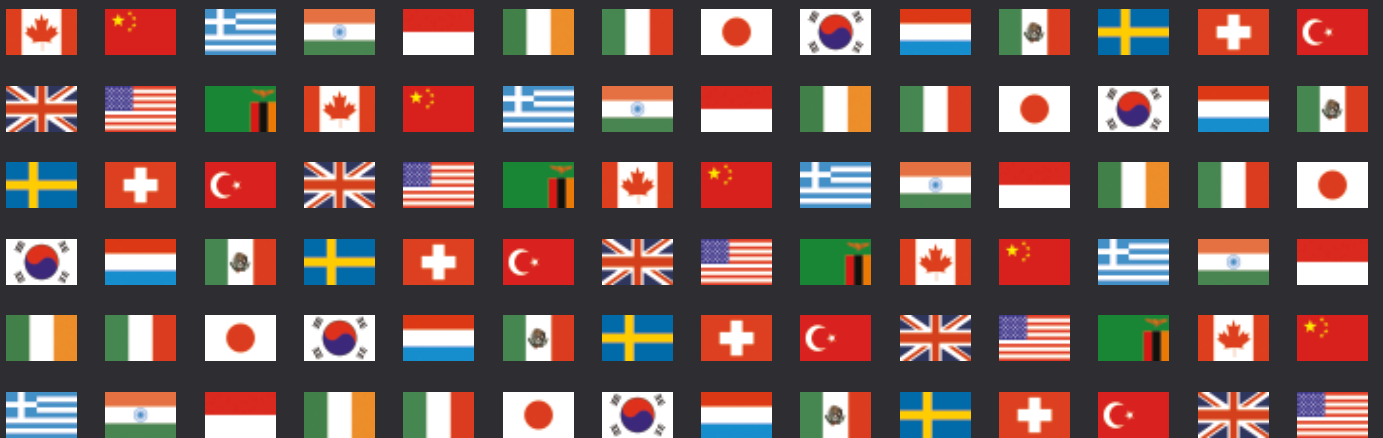


Insurance & Reinsurance 2019

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Insurance & Reinsurance 2019

Contributing editors**William D Torchiana, Mark F Rosenberg
and Marion Leydier**

Sullivan & Cromwell LLP

Lexology Getting The Deal Through is delighted to publish the twelfth edition of *Insurance & Reinsurance*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Mexico and Sweden.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, William D Torchiana, Mark F Rosenberg and Marion Leydier, of Sullivan & Cromwell LLP, for their continued assistance with this volume.



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Contents

Introduction	3	Japan	84
William D Torchiana, Mark F Rosenberg and Marion Leydier Sullivan & Cromwell LLP		Keitaro Oshimo Nagashima Ohno & Tsunematsu	
GDPR	8	Korea	90
Alessandro P Giorgetti Studio Legale Giorgetti		Myung Soo Lee, Young Ho Kang and Hwang Lim Jang Yoon & Yang LLC	
Canada	11	Luxembourg	104
John L Walker, Sean G Sorensen, Alana V Scotchmer, Roisin Hutchinson and Albana Musta Walker Sorensen LLP		Chantal Keereman and Armel Waisse Bonn & Schmitt	
China	20	Mexico	115
Elsie Shi, George Hualiang Yu, Elizabeth Lan Lan, John Bolin and Celia Luan Jincheng Tongda & Neal		Luis Felipe García Trejo, Salvador Enrique Urbano Tejada and Rodrigo Fernández Guerra Fletes DAC Beachcroft SC	
Greece	32	Sweden	122
Anastasia Makri Zepos & Yannopoulos		Per Sundin, Lars Ulrichs and Sigrid Törnsten Hammarskiöld & Co	
India	40	Switzerland	130
Neeraj Tuli and Celia Jenkins Tuli & Co		Lukas Morscher and Leo Rusterholz Lenz & Staehelin	
Indonesia	52	Turkey	140
Susandarini Susandarini & Partners		Çağlar Coşkunsu and Burak Çavuş Çavuş & Coşkunsu Law Firm	
Ireland	63	United Kingdom	148
Sharon Daly, Darren Maher, April McClements and Gráinne Callanan Matheson		James C Scoville, Clare Swirski and Benjamin Lyon Debevoise & Plimpton LLP	
Italy	75	United States	158
Alessandro P Giorgetti Studio Legale Giorgetti		William D Torchiana, Mark F Rosenberg and Marion Leydier Sullivan & Cromwell LLP	
		Zambia	170
		Michael Mundashi and Chibuye Chola Mulenga Mundashi Kasonde Legal Practitioners	

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REGULATION

Regulatory agencies

- 1 | Identify the regulatory agencies responsible for regulating insurance and reinsurance companies.

The Bank of Greece is responsible for the supervision of private insurance and reinsurance companies in Greece through the Department of Private Insurance Supervision. It is responsible for carrying out the prudential supervision of insurance and reinsurance companies lawfully operating in Greece and of insurance intermediaries.

Formation and licensing

- 2 | What are the requirements for formation and licensing of new insurance and reinsurance companies?

To provide insurance or reinsurance services in Greece a company must meet a series of criteria set forth in Law No. 4364/2016, which implemented the Solvency II Directive (the Insurance Regulation Act). Among others, it must maintain its registered seat in Greece, operate in the form of a *société anonyme* and have as its exclusive object the provision of insurance activities. The company must evidence that it meets the statutory capital requirements, governance requirements, including any qualifications pertaining to officers and directors, and it must generally comply with all applicable regulatory requirements.

An insurance undertaking may be authorised under its operation licence to conduct either life or non-life insurance activities. By way of exception, insurers authorised on or before 1 January 1981 may retain a single licence for both life and non-life. Finally, a licence to undertake insurance activities in a specific business line allows the insurance company to additionally undertake reinsurance undertakings in the respective business line.

In the reinsurance sector, the requirement of a single licence does not apply and therefore reinsurers can be licensed for both life and non-life reinsurance.

Other licences, authorisations and qualifications

- 3 | What licences, authorisations or qualifications are required for insurance and reinsurance companies to conduct business?

Other than the operation licence from the Bank of Greece, there are no additional licences and authorisations for the conduct of insurance. Under the EU passport regime, EU insurance and reinsurance companies are entitled to carry out the respective activities in Greece through a branch or under the freedom of services regime.

Insurance companies incorporated in non-EU (third) countries, which intend to offer insurance services in Greece, must, in principle, obtain a licence to establish a branch from the Bank of Greece, on the condition of reciprocity.

Officers and directors

- 4 | What are the minimum qualification requirements for officers and directors of insurance and reinsurance companies?

All officers and directors of insurance and reinsurance companies, and all persons effectively running the undertaking or having key functions must at all times:

- possess adequate professional qualifications, knowledge and experience, to ensure sound and prudent management (professionally fit); and
- be of good reputation and integrity (proper).

Reliability is usually evidenced by recent criminal records and non-bankruptcy certificates (or other equivalent documents) on the basis of which it can be ascertained that said individuals have not been sentenced for certain crimes (including embezzlement, usury, fraud, extortion, smuggling, bribery and money laundering) and have not been declared bankrupt.

Furthermore, the board of a Greek insurance company must comprise in its majority Greek or other EU member state citizens.

Capital and surplus requirements

- 5 | What are the capital and surplus requirements for insurance and reinsurance companies?

Insurance and reinsurance companies must comply with the solvency capital requirements of the Insurance Regulation Act aiming to guarantee that they are in a position to meet any obligations arising from the conduct of business.

Companies must calculate their solvency capital requirement on the assumption that they will carry out business as a going concern. They must also take into account all quantifiable risks (that they are exposed to), cover existing business and business to be written in the following 12 months, and correspond to the value-at-risk of the basic own funds of an insurance or reinsurance undertaking subject to a confidence level of 99.5 per cent over a one-year period.

As to minimum capital requirements, the Insurance Regulation Act introduces the following minimum thresholds (depending on the type of licence):

- €2.5 million for non-life insurers, including captive insurance undertakings (unless such companies insure risks in classes 10 to 15. in which case the minimum capital requirement amounts to €3.7 million);
- €3.7 million for life insurers, including captive insurance undertakings;
- €3.6 million for reinsurance companies (with the exception of captive reinsurers for which the amount is limited to €1.2 million); and
- €6.2 million for insurance undertakings with a single licence for both life and non-life authorised on or before 1 January 1981.

The minimum capital requirement shall neither fall below 25 per cent nor exceed 45 per cent of the respective solvency capital requirement, including any capital add-on imposed by the Bank of Greece. Minimum capital requirements must be measured and reported to the Bank of Greece at least quarterly.

Reserves

6 | What are the requirements with respect to reserves maintained by insurance and reinsurance companies?

Insurance and reinsurance companies are under the obligation to form and maintain reserves on a continuous basis, and also calculate the amount of such reserves in a prudent, reliable and objective manner (taking into consideration all relevant financial market and risk underwriting information).

Product regulation

7 | What are the regulatory requirements with respect to insurance products offered for sale? Are some products regulated by multiple agencies?

The general and special terms of insurance policies and reinsurance agreements are neither subject to any prior notification or regulatory approval nor must they be communicated to any regulator on a systematic basis. On request by the regulator, insurers may have to disclose applicable premiums as part of general price control systems.

Regulatory examinations

8 | What are the frequency, types and scope of financial, market conduct or other periodic examinations of insurance and reinsurance companies?

The supervision carried out by the Bank of Greece is based on an investigative and risk-based approach and depends, in particular, on the nature, complexity and volume of the risks undertaken by each company. Its scope is mainly prudential in nature. Among others, the Bank of Greece may carry out on-site and off-site inspections, request any information, and have full access to the books and records of the supervised entities. It generally retains great discretion with respect to the frequency and types of regulatory examinations that it may carry out.

Investments

9 | What are the rules on the kinds and amounts of investments that insurance and reinsurance companies may make?

The Insurance Regulation Act follows the prudent person principle, according to which companies are free to decide how they invest their assets, provided that the interests of insureds are adequately safeguarded. The relevant risks must be properly identified, measured and controlled, and all assets must be invested in a manner that ensures security, quality, liquidity and profitability. Assets covering technical provisions must, in addition, be invested in a manner appropriate to cover the nature and duration of the insurance liabilities. Investment decisions are not subject to any kind of limitation or prior approval, or systematic notification requirements.

Change of control

10 | What are the regulatory requirements on a change of control of insurance and reinsurance companies? Are officers, directors and controlling persons of the acquirer subject to background investigations?

A prior notification to the Bank of Greece must be filed by a party that intends to acquire, directly or indirectly, a holding as result of which the party would reach or exceed 10, 20, 33.3 or 50 per cent of voting rights or share capital, or would acquire control directly or indirectly. In terms of process, the Bank of Greece has in principle 60 business days to assess the intended acquisition. It may only oppose the proposed acquisition if there are reasonable grounds on the basis of criteria such as:

- the reputation of the proposed acquirer;
- the reputation and experience of any person who will direct the insurance or reinsurance company as a result of the proposed acquisition;
- the financial soundness of the proposed acquirer;
- whether the insurance undertaking will be able, and continue, to comply with the prudential requirements in particular, whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision and effectively exchange information with the Bank of Greece; or
- whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

If the Bank of Greece does not oppose the proposed acquisition within the assessment period in writing, the acquisition shall be deemed approved. The Bank of Greece may neither impose conditions as to the amount of the participation acquired nor can it carry out a full financial assessment on the basis of market conditions. However, it may impose an obligation to the target company to convert their shares in registered shares with voting rights for purposes of facilitating the supervision of all natural persons with beneficial interests in insurance and reinsurance companies.

In the case of non-compliance with the above obligation, the exercise of the voting rights attached to the holding is rendered ineffective by operation of law. The Bank of Greece also has the power to impose monetary fines up to 10 per cent of the value of the shares transferred without its approval or prohibit participation in the management of the targeted company.

Financing of an acquisition

11 | What are the requirements and restrictions regarding financing of the acquisition of an insurance or reinsurance company?

Other than the general prudential requirement that the acquirer must be financially sound, no additional requirements or restrictions apply in respect of financing such acquisition.

Minority interest

12 | What are the regulatory requirements and restrictions on investors acquiring a minority interest in an insurance or reinsurance company?

To the extent the acquisition of a minority interest amounts to a qualified holding (exceeds 10 per cent of the share capital or votes), the acquisition triggers a notification obligation to the Bank of Greece and is subject to regulatory approval. There are no special regulatory requirements

or restrictions for acquisitions of participations falling below the above threshold.

Foreign ownership

13 | What are the regulatory requirements and restrictions concerning the investment in an insurance or reinsurance company by foreign citizens, companies or governments?

In general, foreign citizens, companies or governments are free to invest in insurance or reinsurance companies in Greece under the same rules that apply for Greek and EU investors. Where, however, an acquisition by a foreign investor triggers a notification obligation to the Bank of Greece and is subject to regulatory approval, the Bank of Greece has discretion to prolong the period during which it can require additional information for an additional 30 business days.

Group supervision and capital requirements

14 | What is the supervisory framework for groups of companies containing an insurer or reinsurer in a holding company system? What are the enterprise risk assessment and reporting requirements for an insurer or reinsurer and its holding company? What holding company or group capital requirements exist in addition to individual legal entity capital requirements for insurers and reinsurers?

The Insurance Regulation Act includes detailed provisions for group supervision following closely Directive 2009/138/EC. These rules apply to group level insurance or reinsurance companies subordinated to another insurance, reinsurance, insurance holding or mixed financial holding company, having its registered seat in the EU or a third country. Among others, group supervision comprises the following:

- the group must report to the Bank of Greece any significant risk concentration at least on an annual basis (supervision of risk concentration);
- the group must report to the Bank of Greece any significant intra-group transactions by insurance and reinsurance undertakings within the group, including those performed with a natural person with close links to an undertaking, at least on an annual basis; furthermore, very significant intra-group transactions must be reported to the competent regulator as soon as practicable (supervision of intra-group transactions); and
- the Bank of Greece ensures that appropriate governance systems (including risk assessment, internal audit and reporting systems) are in place within all companies of the group that are subject to group supervision (supervision of the system of governance).

In addition, the Insurance Regulation Act includes special provisions pertaining to the solvency of the group. These provisions introduce a system of capital and surplus requirements that are calculated at group level.

Reinsurance agreements

15 | What are the regulatory requirements with respect to reinsurance agreements between insurance and reinsurance companies domiciled in your jurisdiction?

Under Greek law, there are no specific regulatory requirements for reinsurance agreements, which are generally viewed as commercial arrangements subject to the contractual freedom of the parties and the provisions of general contract law. The prevailing view is that reinsurance should be considered as a form of non-life insurance. Thus, provisions of Law No. 2496/1997 (the Insurance Contract Act) also apply on reinsurance agreements by analogy to the extent compatible with the

operation of a reinsurance agreement, or directly to the extent that the parties expressly subject themselves to such rules.

Ceded reinsurance and retention of risk

16 | What requirements and restrictions govern the amount of ceded reinsurance and retention of risk by insurers?

There are no statutory restrictions as to the amount of ceded reinsurance and retention of risk by insurance companies; therefore, an insurer may in principle cede even 100 per cent of the risk to a reinsurer.

Collateral

17 | What are the collateral requirements for reinsurers in a reinsurance transaction?

There are no statutory collateral requirements for reinsurers conducting reinsurance transactions.

Credit for reinsurance

18 | What are the regulatory requirements for cedents to obtain credit for reinsurance on their financial statements?

For purposes of calculating technical reserves, the value of recoverables and claims from reinsurance contracts with reinsurers that are not licensed in accordance with Directive 2009/138/EC or are located in a third country whose solvency regime is not deemed equivalent with that of the Directive, is considered to be nil unless reinsurers have a high credit rating or they have provided adequate guarantees or commitments or the collateral or pledges are located within the European Union.

Insolvent and financially troubled companies

19 | What laws govern insolvent or financially troubled insurance and reinsurance companies?

The Insurance Regulation Act includes specific provisions for insolvent or financially troubled insurance companies. In principle, an insurance company may not be declared bankrupt but instead may be subject to a special winding-up regime. In brief, the Bank of Greece issues a decision revoking the operation licence of the insurance company, which is followed by a stage of insurance liquidation. Thirty days following the revocation of the licence, all policies that the latter has issued are terminated by operation of law.

Winding-up of insurance companies constitutes a formal process, which is additionally governed by the provisions of the Greek Bankruptcy Code, the Greek Corporate Act and the Greek Code of Civil Procedure (GCCP). The Bank of Greece appoints a special insurance liquidator, who has a wide range of authorities (including, indicatively, the power to dispose assets and to enter into loans) for the purpose of carrying out the winding-up process. The product of the liquidation of the company is evenly distributed to all eligible beneficiaries.

In addition, the Insurance Regulation Act provides the Bank of Greece with authority to adopt appropriate reorganisation measures that could be considered as a pre-bankruptcy stage. These measures include the placement of the insurance company under special administration, the imposition of an obligation on the insurance company to effect a share capital increase, the mandatory transfer of insurance portfolios, the suspension of due and non-due payments to policyholders and beneficiaries for a certain period, and the reduction of insurance claims.

For reinsurance companies, the general rules of the Greek Bankruptcy Code will apply.

Claim priority in insolvency

20 | What is the priority of claims (insurance and otherwise) against an insurance or reinsurance company in an insolvency proceeding?

The priority of claims against an insurance company in a winding-up scenario is as follows:

- all expenses arising out of the winding-up procedure (including insurance liquidator's fees) take absolute priority over the assets of the insurance business under liquidation;
- further to payment of all expenses arising out of the winding-up procedure, the following categories of claims take priority:
 - claims by employees arising from employment contracts and employment relationships;
 - tax claims of the Greek state;
 - claims of social security funds; and
 - claims on assets of the company that are subject to in rem rights; and
- all insurance claims from life, non-life and motor liabilities take precedence over any other claims against the insurance business.

The provisions of the Greek Bankruptcy Code and GCCP in respect of priority of claims also apply in insolvency proceedings involving insurance and reinsurance companies, to the extent they are not in conflict with the above.

Intermediaries

21 | What are the licensing requirements for intermediaries representing insurance and reinsurance companies?

Intermediaries having the capacity to represent insurance and reinsurance undertakings are insurance and reinsurance agents and tied insurance intermediaries who must be registered with the local professional chamber. They must possess adequate professional qualifications, knowledge and experience, and they must be in good standing for the conduct of this profession. To be qualified, they must submit documentation such as an intermediary's certificate of professional qualification, good standing certificates, tax clearance and criminal record certificates, and professional indemnity mandatory insurance. Third-party administrators and claims adjusters do not require authorisation, unless they act as intermediaries. Licensed insurance consultants and brokers do not represent insurance and reinsurance companies.

INSURANCE CLAIMS AND COVERAGE

Third-party actions

22 | Can a third party bring a direct action against an insurer for coverage?

Pursuant to the Insurance Contract Act, a third party may bring a direct action against an insurer only for mandatory liability insurance and up to the defined statutory amount for which the insurance is mandatory. A typical example is the claim of a third party suffering damage from the use of motor vehicles. If the claims from the insurance policy are assigned to a third party (subject to the rules for a valid assignment), the assignee may also bring a direct claim against the insurer.

Late notice of claim

23 | Can an insurer deny coverage based on late notice of claim without demonstrating prejudice?

The policyholder has a duty to notify the insurer within eight days about the occurrence of the insured risk and provide all necessary information

and data relevant to the circumstances. The policyholder cannot claim lack of knowledge of the occurrence of the risk if this is because of its gross negligence.

The breach of this duty does not, however, result in a right of the insurer to deny coverage for late notice of claim. Only for non-life insurance, the insurer may seek restitution of any damage suffered because of such late notice, when this is attributed to the fault of the policyholder (ie, negligence or wilful misconduct). It is accepted that the right of the insurer to seek restitution may be available even before the lapse of the eight-day period, provided that the insurer can prove that the policyholder was aware of the occurrence of the risk, the damage and the causal link between them, and did not notify the insurer because of negligence or wilful misconduct. Deviations from these provisions of the Insurance Contract Act are accepted for large risks and reinsurance.

Wrongful denial of claim

24 | Is an insurer subject to extra-contractual exposure for wrongful denial of a claim?

The insurer's wrongful and unjustified denial of a claim may, under conditions, substantiate a claim in tort, in which case the insurer may be requested to pay damages (including interest and legal expenses). However, the mere delay or non-payment of the insurance compensation does not per se amount to tort unless the denial of the insurer is found to contradict bonos mores or to be intentional. In the case of tort, moral damages may be adjudicated by the court.

Defence of claim

25 | What triggers a liability insurer's duty to defend a claim?

As a general rule, liability insurance provides that the insurer undertakes to pay compensation for justified third-party claims, thus releasing the policyholder of its liability towards the third-party claimant, and also to defend the policyholder in the conduct of relevant proceedings against unjustified claims. Under common practice, the terms, conditions and circumstances under which the insurer has a duty to defend a claim are defined in the insurance policy.

Indemnity policies

26 | For indemnity policies, what triggers the insurer's payment obligations?

According to the Insurance Contract Act, the insurer must pay the insurance indemnity without undue delay on the occurrence of the insurance risk and notification from the policyholder. If the assessment of the loss and of the insurance indemnity requires a longer period, the insurer is still under obligation to pay any uncontested amount. Deviations are accepted for large risks, where the parties may freely decide the terms under which payment obligations are triggered.

Incontestability

27 | Is there a period beyond which a life insurer cannot contest coverage based on misrepresentation in the application?

If the misrepresentation is intentional, the insurer may terminate the policy with immediate effect within one month as of knowledge thereof. The misrepresentation must refer to a material fact or circumstance, such as the age of the insured. If the misrepresentation is made because of negligence or without default, insurance coverage is valid and not subject to right of the insurer to terminate. In any case, the policyholder shall be entitled only to the surrender value of the policy.

Punitive damages

28 | Are punitive damages insurable?

Although punitive damages are not permitted under Greek law, it should be accepted that insurers would be free to agree on the insurance of punitive damages. However, this is uncommon in practice.

Excess insurer obligations

29 | What is the obligation of an excess insurer to 'drop down and defend', and pay a claim, if the primary insurer is insolvent or its coverage is otherwise unavailable without full exhaustion of primary limits?

There is no specific rule of the Insurance Contract Act on such obligation of an excess insurer. This is a matter regulated by agreement of the parties within the insurance policy. Therefore, if the prime insurer is insolvent or coverage is unavailable, this does not entail automatic obligation of the excess insurer to drop down and pay a claim.

Self-insurance default

30 | What is an insurer's obligation if the policy provides that the insured has a self-insured retention or deductible and is insolvent and unable to pay it?

If a retention of risk or deductible has been agreed, the insurer is obliged to pay any amount in excess of the agreed retention or deductible, and this may not be altered by the insolvency of the insurer. However, such retention or deductible may not be agreed for mandatory third-party liability insurance.

Claim priority

31 | What is the order of priority for payment when there are multiple claims under the same policy?

For mandatory liability insurance, the Insurance Contract Act provides that in the case of multiple claims, each party shall be indemnified in proportion to his or her claims. If the insurance indemnification paid to a third party exceeds this proportion, the insurer is released from an obligation for any amount exceeding the insured sum, unless the insurer made the above payment while aware of the existence of these other claims. The remaining claimants shall, however, have a claim against the indemnified third party for the refund of the sums received in excess of the allotted proportion.

In the absence of an explicit statutory provision for other types of insurance, multiple claims of the policyholder shall be satisfied in the order of their notification to the insurer, while third-party claims will be treated proportionally.

Allocation of payment

32 | How are payments allocated among multiple policies triggered by the same claim?

Multiple insurance contracts are valid up to the total value of the insured loss. In the absence of agreement between the parties to the contrary, the insurers are severally liable up to the insured sum stipulated in their contracts. It can be agreed (and often this is the case) that in the event of non-disclosure of other insurance policies with the same cover existing at the time of the conclusion of the policy, the insurance compensation will be limited to the extent not covered by the previous policy. If the policyholder or the insured intentionally fail to disclose this, the insurer is entitled to terminate the policy with immediate effect within one month after he or she acquired knowledge of the further contract or contracts. If the insured risk occurs within this period, the insurer

shall be released from any obligation to pay the insurance compensation and, in addition, the policyholder shall be liable for any loss suffered by the insurer.

Disgorgement or restitution

33 | Are disgorgement or restitution claims insurable losses?

Although in principle the parties are free to conclude insurance contracts covering disgorgement or restitution claims, this is uncommon in practice. In the case of pollution insurance, the insurance cover often includes restitution of the natural environment from the occurrence of the insured risk.

Definition of occurrence

34 | How do courts determine whether a single event resulting in multiple injuries or claims constitutes more than one occurrence under an insurance policy?

There is no reported jurisprudence of Greek courts determining when a single event, resulting in multiple injuries or claims, constitutes more than one occurrence under an insurance policy. This is typically a matter of agreement of the parties within the insurance policy. In the absence of any special agreement, courts will apply the general principle of reasonable causality between the event and the occurrence of the multiple claims on an ad hoc basis.

Rescission based on misstatements

35 | Under what circumstances can misstatements in the application be the basis for rescission?

The policyholder must disclose to the insurer all information or circumstances that are objectively material for the assessment of risk by the insurer.

If any misstatements in the application are intentional, the insurer is entitled to terminate the policy with immediate effect within one month of becoming aware of the misstatement. If the insured risk occurs within this period, the insurer shall be released from the obligation to pay. In addition, the policyholder shall be liable for any loss suffered by the insurer. In the case of life insurance contracts, the policyholder shall be entitled only to the surrender value of the policy.

If the misstatements are owing to negligence of the policyholder, the insurer may either terminate the contract or propose its variation, within one month of being aware of the misstatement. If the proposal of the insurer is not accepted by the policyholder within one month of its receipt, the contract is considered terminated, effective within 15 days of its receipt by the policyholder or after one month of the receipt of the insurer's proposal for variation. If the insured risk occurs prior to the variation of the insurance contract or before the effective date of termination, the insurance compensation shall be reduced in proportion to the difference between the premium payable (following the variation) and the premium payable, should no breach of the duty to disclose have occurred. The above provisions on misstatements owing to negligence do not apply to life and health insurance.

Finally, if the misstatements are not attributed to a party's fault, the insurer may either terminate the contract or propose its variation, within one month after he or she became aware of the misstatement. If the proposal of the insurer is not accepted by the policyholder within one month of its receipt, the contract shall be considered terminated, effective within 15 days of its receipt by the policyholder or within one month of the receipt of the insurer's proposal for variation.

REINSURANCE DISPUTES AND ARBITRATION

Reinsurance disputes

- 36 | Are formal reinsurance disputes common, or do insurers and reinsurers tend to prefer business solutions for their disputes without formal proceedings?

Reinsurance disputes are uncommon in Greece. Insurers and reinsurers would tend to either settle a dispute out of court or through arbitration proceedings, which are often not held in Greece or are not governed by Greek law.

Common dispute issues

- 37 | What are the most common issues that arise in reinsurance disputes?

The most common issues arising in reinsurance disputes are the triggering event of the obligations of the reinsurer, the extent of its obligations and the evaluation of damages. The very limited Greek jurisprudence recognises standard contractual clauses such as the follow-the-fortune or follow-the-settlement clause, the claims control clause, the cut-through clause and others that have been developed by English case law.

Arbitration awards

- 38 | Do reinsurance arbitration awards typically include the reasoning for the decision?

Pursuant to the GCCP, arbitral awards must include, inter alia, the reasoning on which the decision is based, unless the parties agree otherwise.

Power of arbitrators

- 39 | What powers do reinsurance arbitrators have over non-parties to the arbitration agreement?

Arbitral tribunals and arbitrators do not, in principle, have any power over non-parties to the arbitration agreement. Arbitrators cannot order, revise or otherwise revoke injunctive relief measures. However, they may request the support of the local court in the taking of evidence, which may result, to a certain extent, in the compelling of non-parties to provide testimony or to produce documents.

Appeal of arbitration awards

- 40 | Can parties to reinsurance arbitrations seek to vacate, modify or confirm arbitration awards through the judicial system? What level of deference does the judiciary give to arbitral awards?

Parties to the arbitration agreement as well as any third party having lawful interest may file an appeal for annulment of the arbitral award within three months of the date of the service of the award (on penalty of inadmissibility) before the local court of appeals. The annulment of an award, in whole or in part, may, in accordance with the GCCP, be declared for the following reasons:

- the nullity of the arbitration clause;
- the issuance of the award after lapse of the effect of the arbitration clause;
- the appointment of arbitrators was made in breach of the arbitration clause;
- the award was issued in excess of the ambit of the arbitration clause or the law;

- a party was not properly notified to participate in breach of principle of equality;
- the award was neither issued with required majority nor in writing or bearing signatures;
- the award did not include the de minimis elements required by law (including arbitration clause, the reasoning, the tenor of the decision);
- the award violates public policy or bonos mores; or
- the award is not understandable or includes contradictory provisions.

Parties to the arbitration agreement may also request correction or interpretation of an award. Parties may also agree in writing to allow appeal against the award, but they must determine in advance the conditions, deadlines and the process for its filing and hearing. An arbitral award generally has the same effect of *res judicata* (both substantive and procedural) with a court judgment and also constitutes an enforceable title under Greek law.

REINSURANCE PRINCIPLES AND PRACTICES

Obligation to follow cedent

- 41 | Does a reinsurer have an obligation to follow its cedent's underwriting fortunes and claims payments or settlements in the absence of an express contractual provision? Where such an obligation exists, what is the scope of the obligation, and what defences are available to a reinsurer?

There is no statutory obligation on the reinsurer to follow its cedent's underwriting fortunes, or the claim payments or settlements. However, both in theory and in the limited Greek jurisprudence, this is generally accepted as a well-established principle of the treatment of reinsurance agreements and would be taken into primary consideration in the absence of an explicit contractual clause. Possible defences of the reinsurer would be that the claims paid or settled by the reinsured were not covered by the ambit of the reinsurance agreement, or that the cedent did not act prudently or in the utmost good faith.

Good faith

- 42 | Is a duty of utmost good faith implied in reinsurance agreements? If so, please describe that duty in comparison to the duty of good faith applicable to other commercial agreements.

Although there is no specific statutory provision for good faith in reinsurance agreements, it is supported mainly in theory that there is a duty of utmost good faith that must be inherent in both insurance and reinsurance agreements. This was also accepted by a court decision in Greece in the context of marina insurance (pre-contractual disclosures, notice of claim).

Facultative reinsurance and treaty reinsurance

- 43 | Is there a different set of laws for facultative reinsurance and treaty reinsurance?

Except for their different business rationale and operation, facultative and treaty reinsurance are not subject to different sets of rules.

Third-party action

- 44 | Can a policyholder or non-signatory to a reinsurance agreement bring a direct action against a reinsurer for coverage?

Greek law applies the privity of contract principle, according to which a contract confers rights and obligations only on the contracting parties. Therefore, non-signatories to a reinsurance agreement (such as the policyholder or the insured) are not entitled to and cannot directly seek insurance proceeds, or demand on their own direct reinsurance payments. The most significant exception to this rule arises where the reinsurance agreement includes a cut-through or similar provision that gives the right of the policyholder to recourse directly to the reinsurer or in the case of insurer insolvency by permitting funds to pass directly to the policyholder, rather than to the estate of the insolvent reinsured.

Furthermore, the GCCP provides that if a debtor fails to enforce his or her rights against third parties to the detriment of any creditor, the creditor may, under specific conditions, take legal action in court to enforce the debtor's rights.

Insolvent insurer

- 45 | What is the obligation of a reinsurer to pay a policyholder's claim where the insurer is insolvent and cannot pay?

The insolvency of the insurer does not trigger the obligation of the reinsurer to pay directly to the policyholder. Typically, in the event of insolvency of the insurer, the reinsurance proceeds are paid to the insolvency administrator for the benefit of all policyholders, whereas reinsurance agreements usually contain similar insolvency clauses. This rule may be derogated where the reinsurance agreement includes a cut-through or similar provision that, in essence, alters the reinsurer's obligations in the case of insurer insolvency by permitting funds to pass directly to the insured, rather than to the estate of the insolvent reinsured.

Notice and information

- 46 | What type of notice and information must a cedent typically provide its reinsurer with respect to an underlying claim? If the cedent fails to provide timely or sufficient notice, what remedies are available to a reinsurer and how does the language of a reinsurance contract affect the availability of such remedies?

There are no specific rules on notice and information. However, given that reinsurance is generally deemed to constitute a form of non-life insurance, it should be accepted that notice must be given without undue delay in a manner similar to that applicable to insurance policies. Therefore, the issue of notice and information should be specifically regulated in the reinsurance agreement.

Allocation of underlying claim payments or settlements

- 47 | Where an underlying loss or claim provides for payment under multiple underlying reinsured policies, how does the reinsured allocate its claims or settlement payments among those policies? Do the reinsured's allocations to the underlying policies have to be mirrored in its allocations to the applicable reinsurance agreements?

There are no specific provisions on the allocation of underlying claim payments. This is a matter to be regulated by the reinsurance agreement. In practice, reinsurance agreements provide for either an allocation pro rata to the reinsured amounts or for layers among the claims in the sense that the reinsured must first exhaust the first policy before going to the subsequent reinsurance.

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Review

- 48 | What type of review does the governing law afford reinsurers with respect to a cedent's claims handling, and settlement and allocation decisions?

Greek law does not provide specific rights to reinsurers with respect to a reinsured insurer claim handling, settlement or allocation decisions. Industry practice and customs show that, typically, reinsurance agreements would include a clause allowing the reinsurer to have a rather extended right of access and audit to the records and accounts of the insurer and its handlings.

Reimbursement of commutation payments

- 49 | What type of obligation does a reinsurer have to reimburse a cedent for commutation payments made to the cedent's policyholders? Must a reinsurer indemnify its cedent for 'incurred but not reported' claims?

The insurer must reimburse a cedent insurer for any payments made in accordance with the follow-the-settlement principle, provided that the insurer exercises the necessary due diligence in making these payments. As regards incurred but not reported claims, there is no duty to reimburse the cedent, unless this is explicitly provided in the reinsurance agreement.

Extra-contractual obligations (ECOs)

- 50 | What is the obligation of a reinsurer to reimburse a cedent for ECOs?

There are no specific rules on ECOs and therefore this is subject to agreement between the parties in the reinsurance agreement. Normally, ECOs are expressly excluded from reimbursement.

UPDATE AND TRENDS

Emerging trends

- 51 | Are there any emerging trends or hot topics in insurance and reinsurance regulation in your jurisdiction?

In the past year, the recent wave of the General Data Protection Regulation (GDPR)-related activity and the intense preparation of the Greek insurance market to comply with the GDPR requirements continued. The end of 2018 was marked with the transposition into

Greek law of the long-awaited Insurance Distribution Directive. Although the Greek insurance market was closely monitoring the developments in anticipation of the new legal framework, the entry of the new law into effect – which increases transparency across distribution and enhances the level of protection of consumers – is having a wide impact on the insurance market and is the current focus of discussions across all insurance distributors.

* *The author would like to recognise the contribution of Takis Kakouris who co-wrote this chapter during his time at Zepos & Yannopoulos.*

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