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Cyprus

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Regulation

1 Regulatory agencies

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

2003 was a landmark for the insurance industry in Cyprus as it marked the enactment of the new insurance legislation that complies fully with the European Union Directives. The new legislation has brought about marked changes as regards the regulatory framework of the insurance industry and has introduced additional burdens for insurers including stricter solvency requirements.

The Insurance Companies Control Service (ICCS) is responsible for the supervision of the operations of insurance undertakings and the implementation of the Insurance Services and other Related Issues Laws of 2002, as amended, and the Insurance Services and other Related Issues Regulations of 2002, as amended. The said legal framework regulates the way insurance undertakings carry out their business and determines the way supervision is to be exercised.

Within the framework of its powers and responsibilities vested under the applicable legal framework, the ICCS examines applications submitted by undertakings for the issue of their licence as insurers, examines and analyses the insurance undertakings' financial statements in order to establish their solvency and their ability to pay their debts, supervises insurance undertakings' investments in approved assets and, generally, ensures that insurance undertakings operate on sound insurance principles. Moreover, the ICCS examines applications for the registration of insurance intermediaries, namely insurance agents, insurance brokers, insurance sub-agents, insurance advisers and tied-insurance advisers.

All the powers of the relevant legal framework are conferred upon the insurance superintendent, who is assisted by the assistant insurance superintendent, both being public officers appointed by the Council of Ministers in accordance with section 4 of the Insurance Services and other Related Issues Laws of 2002, as amended.

2 Formation and licensing

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

As every other company, an insurance company must be incorporated in accordance with the Companies Law. Following incorporation, it must apply to the insurance superintendent for the acquisition of a licence for exercising insurance business. The application is made on a set form and is accompanied by the prescribed filing fee. Section 21 of the Insurance Services and other Related Issues Laws of 2002, as amended, provides that such licence shall not be issued unless the insurance superintendent is satisfied that:

- the application is validly lodged, is accompanied with all necessary supporting documentation and the prescribed filing fee has been paid;
- the company's paid-up capital is not less than €683,400 for a licence in the general insurance sector, €1,025,160 for a licence in the life insurance sector and €1,708,601 for a licence in the reinsurance sector;
- the company is in possession of a guaranteed capital reserve, which varies according to the insurance sector for which the licence is sought and is reassessed on an annual basis in comparison with the variations of the European Consumer Price Index published by Eurostat;
- submits a three-year business model;
- provides assurances to conduct the insurance business on the basis of sound insurance principles and in a manner that secures the interests of insured persons and does not prejudice moral standards or public order;
- discloses all natural and legal persons holding a direct or indirect participation in the company as well as the extent of such participation;
- the persons participating in the company are competent and suitable to secure the healthy and consistent administration of the company;
- uses a suitable name that does not cause confusion among the consumers;
- the company preserves its central administration and registered office within the Republic of Cyprus;
- the persons managing the company are competent and suitable to secure the suitable administration and accounting practice of the company;
- reinsurance companies and insurance companies that intend to issue life policies or insurance cover for accident and disease risks for more than 12 months must also hire an internal actuarial expert; and
- insurance companies must ensure that they have reinsurance cover or apply for an exemption from this on justifiable grounds.

Other conditions apply for particular types of insurance cover.

3 Other licences, authorisations and qualifications

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

See question 2.

4 Officers and directors

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

According to section 53 of the Insurance Services and other Related Issues Laws of 2002, as amended, executive directors of an insurance company must be resident in Cyprus and must be persons of honesty, with integrity, good reputation, special knowledge and experience in his or her field and good financial status. Persons who have been convicted on grounds of particular criminal offences, such as fraud, or persons who are bankrupt cannot qualify. Similarly, persons who had held the position of a director in an insurance company or other company in a similar sector whose licence was revoked on grounds of serious breach of its obligations, also cannot qualify unless they prove that such breach was not due to their acts or omissions. The Insurance Services and other Related Issues Regulations of 2002, as amended, provide for additional qualifications related to academic titles of the executives of an insurance company.

5 Capital and surplus requirement

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

The company's paid-up capital must be no less than €683,400 for a licence in the general insurance sector, €1,025,160 for a license in the life insurance sector and €1,708,601 for a licence in the reinsurance sector.

6 Reserves

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

Investments kept by insurance companies consist of funds invested for insureds to guarantee the payment of claims, benefits or annuities due.

An insurance company exercising business in the life insurance sector or in the general insurance sector in relation to motor vehicle risks, aviation risks, vessel risks, general risks, credit risks or guarantees risks, must have a guaranteed capital reserve of €5,125,804. An insurance company exercising business in the general insurance sector in relation to accidents (employer's liability or disease cover) and other risks, must have a guaranteed capital reserve of €3,417,202. All the above thresholds are reassessed on an annual basis in comparison with the variations of the European Consumer Price Index published by Eurostat.

According to the Insurance Services and other Related Issues Laws of 2002, as amended, companies are obliged to invest, on a continuous basis, in approved assets to cover their technical reserves and must, within three weeks from the end of each quarter, submit a register of their investments, accompanied by a statement of the estimation of their technical reserves, in a prescribed form. The insurance superintendent is entitled to take any steps necessary for the inspection or verification of the assets invested or for obtaining any particulars necessary to establish that the relevant requirements have been complied with. The minister of finance has issued orders determining the categories of approved investments and the percentage limits that may be invested in each category.

7 Insurance products

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

Not applicable.

8 Change of control

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

Part VIII of the Insurance Services and other Related Issues Laws of 2002, as amended, contains a series of requirements that must be met in order to enable a change of control of insurance and reinsurance companies. Primarily, the process involves the intervention of a court application and publication of the relevant process in the Official Gazette. The eventual decision is reserved to the court, which issues a reasoned order after paying attention to the views of any policy holders or other affected parties and on the basis of the various documentation submitted in support of the court application, including actuarial reports.

According to section 53(4) of the Insurance Services and other Related Issues Laws of 2002, as amended, any future appointment in addition to or in substitution of any officer of an insurance company or any voluntary resignation or termination of services and, in general, any other variation of the executives of an insurance company is disclosed to the insurance superintendent within one month from the occurrence of the relevant event. In the event that the insurance superintendent objects to the appointment of any person, such duly justified decision is communicated to the affected insurance company within one month from the disclosure of the appointment. This decision is subject to administrative review before the minister of finance.

9 Financing of an acquisition

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

Not applicable.

10 Foreign private investment

What are the requirements and restrictions concerning the investment in an insurance or reinsurance company by foreign citizens or companies?

The application for obtaining an insurance licence does not require the possession of a particular citizenship of any member or principal of the insurance company. The general criteria stipulated above apply invariably.

Following the accession of Cyprus in the EU in May 2004, insurance undertakings that are incorporated in any other EU or EEA member state are allowed, after appropriate notification by their respective home supervisory authorities, to provide insurance services in the Republic of Cyprus under the regimes of Freedom of Establishment (FOE) or Freedom of Services (FOS). At present, a number of insurance undertakings are providing insurance services in the Republic of Cyprus through branches, under the regime of FOE.

11 Foreign state investment

What are the requirements and restrictions concerning the investment in an insurance or reinsurance company by foreign governments?

Not applicable.

12 Reinsurance agreements

What are the regulatory requirements with respect to agreements for reinsurance ceded and assumed by insurance and reinsurance companies domiciled in your jurisdiction?

Not applicable.

13 Ceded reinsurance and retention of risk

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

Not applicable.

14 Collateral

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

Not applicable.

15 Insolvent and financially troubled companies

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

Part XI of the Insurance Services and other Related Issues Laws of 2002, as amended, provides a detailed legal regime regulating the liquidation process of insolvent or financially troubled insurance and reinsurance companies. The insurance superintendent can order reforming measures, which may run in parallel to liquidation proceedings.

16 Intermediaries

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

Part XII of the Insurance Services and other Related Issues Laws of 2002, as amended, provides a detailed legal regime regulating the licensing process of intermediary insurance professionals, such as insurance agents, insurance brokers, insurance intermediaries and insurance adviser. In basic terms, such persons must hold a diploma of secondary education and must succeed in special examinations that are organised and conducted by the Ministry of Finance. A training period in a related enterprise is also required.

Insurance claims and coverage**17 Third-party actions**

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

Such a right exists only provided that it is particularly prescribed by law. The only legislative provision that allows for such right is section 16A of the Compulsory Third Party Motor Vehicle Insurance in regard to motor vehicle insurance cover.

18 Late notice of claim

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

The current legislative regime does not provide for any mandatory contractual content in that respect and, accordingly, the matter falls to be decided upon the construction of the insurance policy.

19 Wrongful denial of claim

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

There is no legal basis for an insurer being held liable for wrongful denial of a claim.

20 Defence of claim

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

An insurer has no duty to defend a claim but only an interest to do so because of the insurer's obligation (directly towards the claimant or indirectly through an obligation to cover the tortfeasor) to reimburse any claims arising from an event falling within the scope of an insurance policy.

21 Indemnity policies

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

The insurer's indemnity obligations are triggered by the existence of a court judgment against the insured, who may, in turn, seek cover against the insurer on the basis of the insurance policy.

22 Incontestability period

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

Under applicable law, there is no incontestability period beyond which a life insurer cannot contest coverage based on misrepresentation in the application.

23 Punitive damages

Are punitive damages insurable?

Punitive damages are rather rare in Cyprus jurisprudence and are generally outside the scope of customary insurance policies in any sector.

24 Excess insurer obligations

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?

Cyprus law stipulates certain types of insurance as compulsory insurance and holds the failure to obtain or maintain such insurance as a criminal offence. The most common compulsory insurance covers are third-party motor vehicle insurance and employer's liability insurance. Life or public liability insurance is not compulsory under Cyprus law.

In respect of compulsory insurance cover, the contingency of the primary insurer being insolvent is regulated. For instance, section 17 of the Compulsory Insurance for Third Party Liability arising under Vehicle Use provides that in an event of bankruptcy or liquidation of the insured, the rights against the insurer for cover under the insurance policy are directly assigned ex lege to the claimant. It also provides that any term in the insurance policy that seeks to vary the above provision is null and void.

25 Order of payment

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

Not applicable.

26 Allocation of payment

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

Not applicable.

Reinsurance**27 Reinsurance disputes**

Are formal reinsurance disputes common, or do insurers almost always reach business solutions for their disputes without formal proceedings?

Reinsurance disputes are not common within Cyprus. It is indicative that within the past 10 years there has been no reported case in the Cyprus Supreme Court concerning a dispute on reinsurance matters. This phenomenon may be a result of arbitration clauses within reinsurance agreements or as a result of the wishes of the stakeholders involved to reach amicable settlements without formal proceedings.

28 Common dispute issues

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

As already stated, reinsurance disputes are not common in Cyprus.

29 Arbitration awards

Do reinsurance arbitration awards typically include the reasoning for the decision?

Although Cyprus Arbitration Law (chapter 4) does not provide for the obligation of the arbitrator to provide reasons in support of any arbitration award, this is an obligation that may be inferred from the constitutional principles surrounding fair trial in the adjudication of civil rights, as conferred in article 30 of the Cyprus Constitution and article 6 of the European Convention of Human Rights. Lack of reasoning may constitute a reason for invalidating an arbitral award.

30 Power of arbitrators

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

Cyprus Arbitration Law (chapter 4) does not confer on arbitrators any particular powers over non-parties to the arbitration agreement. In regard to witnesses, their presence can be compelled through the aid of the court, to which any party to the arbitration may apply in accordance with section 17 of chapter 4.

31 Appeal of arbitration awards

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

Cyprus Arbitration Law (chapter 4) provides that the court may invalidate the arbitral award in circumstances where the arbitrator has demonstrated bad conduct, the arbitrator has dealt with the case poorly, the arbitration process was conducted irregularly or the arbitral award was issued irregularly. An arbitral award issued in accordance with an arbitration agreement can be enforced with leave from the court in the same manner as a judicial judgment or order with the same force and, in this event, the arbitration award may be drawn up as a court judgment or order.

Update and trends

In 2009 and on the basis of an initiative of the Ministry of Finance, the Cyprus House of Parliament has approved a new amendment to the Social Insurance Legislation, providing for an increase of contributions to the Social Insurance Fund for employers, employees and self-employed persons as from 1 April 2009 and until 31 December 2013. The increases are as follows: employers, from 6.3 per cent to 6.8 per cent; employees, from 6.3 per cent to 6.8 per cent; and self-employed, from 11.6 per cent to 12.6 per cent.

Reinsurance principles and practices**32 Obligation to follow cedent**

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?

This matter is subject to the construction of the reinsurance agreement and general contract law. No specific provisions apply.

33 Good faith

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.

This matter is subject to the construction of the reinsurance agreement and general contract law. No specific provisions apply.

34 Facultative reinsurance and treaty reinsurance

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

Not applicable.

35 Coverage action

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

This matter is subject to the construction of the reinsurance agreement and general contract law. No specific provisions apply.

36 Insolvent insurer

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

The matter of an insurer's insolvency is dealt with under the Insurance Services and other Related Issues Laws of 2002, as amended. The liquidator of an insurance company can claim against the reinsurer and apply any proceeds collected from such an action to the pool of assets available for distribution to the creditors of the insolvent insurance company. Apart from that, policy holders do not enjoy direct rights against the reinsurers.

37 Notice and information

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?

This matter is subject to the construction of the reinsurance agreement and general contract law. No specific provisions apply.

38 Allocation of underlying claim payments or settlements

In the case of multi-year occurrences, such as pollution, how are underlying claim payments or settlements allocated among policy years covered by multiple reinsurance agreements?

This matter is subject to the construction of the reinsurance agreement and general contract law. No specific provisions apply.

39 Review

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

Not applicable.

40 Reimbursing of commutation payments

What type of obligation does a reinsurer have to reimburse a cedent for commutation payments? Must a reinsurer indemnify its cedent for 'incurred but not reported' claims?

This matter is subject to the construction of the reinsurance agreement and general contract law. No specific provisions apply.



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