

Insurance and reinsurance in the Isle of Man: overview

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Country Q&A | Law stated as at 01-Mar-2020 | Isle of Man

A Q&A guide to insurance and reinsurance in the Isle of Man.

The Q&A gives a high level overview of the market trends and regulatory framework in the insurance and reinsurance market; the definitions for a contract of insurance and a contract of reinsurance; the regulation of insurance and reinsurance contracts; the forms of corporate organisation an insurer can take; and the regulation of insurers and reinsurers, including regulation of the transfer of risk. It also covers: operating restrictions for insurance and reinsurance entities; reinsurance monitoring and disclosure requirements; content requirements for policies and implied terms; insurance and reinsurance claims; remedies; insolvency of insurance and reinsurance providers; taxation; dispute resolution; and proposals for reform. Finally, it provides websites and brief details for the main insurance/reinsurance trade organisations in the Isle of Man.

To compare answers across multiple jurisdictions visit the *Insurance and reinsurance Country Q&A tool*.

This Q&A is part of the global guide to insurance and reinsurance. For a full list of jurisdictional Q&As visit www.practicallaw.com/insurance-guide.

Market trends and regulatory framework

1. What were the main trends in the insurance and reinsurance markets over the last 12 months?

Trends in the insurance and reinsurance markets in the Isle of Man closely follow those in the UK. Among these, a pronounced hardening of markets for commercial lines after years of declining rates has been especially noticeable. Certain lines (including, for example, cyber liability, and directors' and officers' liability coverage) have been particularly affected by rate increases. Among the impacts this has had in the Isle of Man, where the captive sector has always formed an important part of the local insurance industry, has been a renewed interest in the possibilities offered by captives to reduce the overall cost of cover. Also noticeable have been root-and-branch reviews of existing insurance programmes, with a view to benefitting, if possible, from new capacity that has been drawn to the markets by hardening rates and to reducing overall costs of cover through increased deductibles. Separately, initiatives to explore the Isle of Man as a domicile of choice for insurers from the EEA (in particular, Dublin and Luxembourg) wishing to carry on long-term business in the UK on a cross-border basis after a possible hard Brexit have also been a feature of the past 12 months.

2. What is the regulatory framework for insurance/reinsurance activities?

Regulatory framework

The Insurance Act 2008 (Insurance Act) provides the statutory framework within which insurance (including reinsurance) is regulated. This framework contains guidance notes by the regulator, the Isle of Man Financial Services Authority (Authority), and various pieces of secondary legislation, among which the Insurance Regulations 2018 (Insurance Regulations) are the most important regulations of general application.

After a substantial update by the International Association of Insurance Supervisors of their Insurance Core Principles in October 2011, the Isle of Man initiated a comprehensive, multi-year review and update of its insurance regulatory framework. Commencing in 2013, the Authority has provided regular updates on the progress of this project in its Roadmap for Updating the Isle of Man's Regulatory Framework for Insurance Business, the most recent edition of which was published in July 2019 (2019 Roadmap). The Insurance Act has already been amended to include the changes necessary for the purpose of the project and the Insurance Regulations are themselves one of the earlier products of the project.

During the past 12 months, the most notable changes to the Island's insurance regulatory framework arising from the project have been the following:

- Group solvency requirements for life (re)insurers.
- Group-wide supervision for insurance groups, governance and enterprise.
- Risk management requirements for commercial (as opposed to captive) (re)insurers.
- Conduct of business requirements for both life and non-life (re)insurers.

Of the project changes that have not yet been effected, most are expected to come into operation during 2020. These include the following:

- New capital adequacy and solvency (including group solvency) requirements for non-life (re)insurers.
- Governance and enterprise risk management requirement for captives.
- Public disclosure requirements for (re)insurers generally.
- A new regulatory regime for general insurance intermediaries.

Regulatory bodies

The Authority regulates financial services generally, including insurance (which includes reinsurance). In addition to its functions as insurance regulator, the Authority is also responsible for administering and enforcing the Island's anti-money laundering, and combatting the financing of terrorism legislation.

The other regulator that is most often relevant to (re)insurers is the Isle of Man Information Commissioner (Information Commissioner). The Information Commissioner is responsible for administering and enforcing the Data Protection Act 2018, under which the following have been applied in the Isle of Man:

- Regulation (EU) 679/2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation (GDPR)).
- Directive (EU) 2016/680 on the protection of natural persons with regard to the processing of personal data by competent authorities (Data Protection Enforcement Directive).

Regulation of insurance and reinsurance contracts

3. What is a contract of insurance for the purposes of the law and regulation? How does it differ from a contract of reinsurance?

Contract of insurance

A "contract of insurance" is defined under section 54 of the Insurance Act 2008 (as amended) as including any contract the effecting of which constitutes the carrying on of insurance business.

"Insurance" is defined as including assurance and reinsurance. (In practice, from a regulatory perspective, reinsurance, as distinct from insurance, is generally important on its own for the purposes the Insurance Regulations, which in regulation 3(2) specify the various classes of authorised insurance and reinsurance business that are permissible under the Insurance Act.)

"Insurance business" is defined as the business of effecting or carrying out of contracts of insurance, and includes the effecting or carrying out of:

- Contracts for fidelity bonds, performance bonds, administration bonds, bail bonds or customs bonds or similar contracts of guarantee, that are part of a business (and not merely incidental to some other business carried out) in return for the payment of one or more premiums.
- Tontines.
- Capital redemption contracts by a body that carries on other insurance business.
- Contracts to pay annuities on human life.

- Contracts that include provisions of insurance or that include options to enter into contracts of insurance.
- Any prescribed contract in any prescribed circumstances.

Insurable interest

There is no requirement to have an "insurable interest" for life assurance contracts. The Isle of Man Life Assurance (Insurable Interest) Act 2004 provides that an assurance contract is not void or illegal nor is it to be treated as ever having been void or illegal only because the policy holder did not have an insurable interest in the subject of the contract when the contract was entered into.

4. Are all contracts of insurance/reinsurance regulated?

Except where an exemption from regulation is available under section 5(2) of the Insurance Act, a person carrying on or holding himself out as carrying on an insurance (which includes reinsurance) business in or from the Isle of Man requires authorisation (in the case of a local insurer) or permission (in the case of a foreign insurer) from the Authority.

Authorised (re)insurers may only carry on insurance business within the specific classes of insurance business for which they are authorised. Regulation 3(2) of the Insurance Regulations identifies the available classes of insurance and reinsurance business as those listed below (foreign (re)insurers with permission from the Authority to carry on business may only carry on those classes of business for which they have authorisation in their place of authorisation):

- **Long-term.** This includes the following classes:
 - Class 1 – linked long term; and
 - Class 2 – long-term (but excluding classes 1 and 9).
- **General.** This includes the following classes:
 - Class 3 – marine, aviation and transport;
 - Class 4 – property; (excluding classes 3 and 5);
 - Class 5 – motor;
 - Class 6 – pecuniary loss;
 - Class 7 – liability; (excluding classes 3 and 5);
 - Class 8 – credit and suretyship; and

- Class 9 – personnel miscellaneous, including accident, health and disability.
- **Reinsurance.** This includes the following classes:
 - Class 10 – reinsurance of contracts within classes 1 and 2; and
 - Class 11 – reinsurance of contracts within classes 3 to 9.
- **Restricted.** Class 12 – contracts which are either within:
 - classes 1 to 11 and are with related companies or members of a common industry or association; or
 - classes 10 or 11 and are with bodies corporate if the original insured is a body corporate that is a related company.
- **Insurance Special Purpose Vehicles (ISPVs).** The Isle of Man also has a regulatory framework for ISPVs, a specialist class of (re)insurer, to facilitate insurance linked securities and other collateralised (re)insurance transactions between sophisticated parties. The Insurance (Special Purpose Vehicles) Regulations 2015 create a class of insurance business (namely, Class 13) applicable to ISPVs. An expedited authorisation process is in place to meet the tight timing requirements that usually apply to the types of transactions in which ISPVs are expected to be involved.

Corporate structure

5. What form of corporate organisation can insurers take?

Insurers can be incorporated as:

- Companies.
- Protected cell companies.
- Incorporated cell companies.
- Limited partnerships.

Regulation of insurers and reinsurers

6. Are all insurers and reinsurers regulated? Are they all regulated in the same way?

(Re)insurers are regulated in the Isle of Man by the Authority under the Insurance Act. Unless there is an applicable exemption, all (re)insurers carrying on business from a place of business in the Isle of Man must be regulated in the Isle of Man, and are subject to substantially the same regulatory regime (however, the regime provides for different categories of (re)insurer, see [Question 9](#)).

7. Can insurers and reinsurers carry on non-insurance business? Are there any restrictions on their business activities?

An authorised (re)insurer cannot carry on activities in the Isle of Man or elsewhere other than in connection with or for the purpose of its insurance business (*section 16, Insurance Act*).

Foreign (re)insurers authorised by the Authority to carry on business in or from the Isle of Man can only carry on those classes of business for which they have authorisation in their place of authorisation (*see Question 4*).

8. Are there any statutory limits or other restrictions on, or requirements relating to, the transfer of risk by insurance or reinsurance companies?

Generally speaking, decisions as to the transfer of risk are treated as commercial matters for (re)insurers (subject to regulatory requirements of more general application, including, for example, the need to meet regulatory capital requirements on an ongoing basis).

Operating restrictions

Authorisation or licensing

9. Does the entity or person have to be authorised or licensed?

Insurance and reinsurance providers

Insurance business (which includes reinsurance) in or from the Isle of Man cannot be carried on without the appropriate authorisation or permission, unless the relevant entity or person is exempt (*section 5(1), Insurance Act*). See [Question 10](#) for the main exemptions.

There is a distinction between an authorised (re)insurer (which is an Isle of Man entity) and a (re)insurer authorised outside the Isle of Man (which can apply to the Authority under section 22 of the Insurance Act for a permit to carry on insurance or reinsurance business from a place of business in the Isle of Man as a permit holder). The extent to which the Insurance Act (and any secondary legislation and guidance) applies to permit holders is limited, particularly in the case of permit holders that are authorised in the UK or an EU member state.

To apply for authorisation, a prescribed application form and supporting documents must be submitted to the Authority.

To become a permit holder, a (re)insurance company incorporated outside the Isle of Man must apply to the Authority under section 22 of the Insurance Act for a permit to carry on (re)insurance business from a place of business in the Isle of Man.

Insurance and reinsurance intermediaries

General insurance intermediaries. It is prohibited to act as a (re)insurance intermediary in the course of a business carried on in or from the Isle of Man without the necessary registration, unless the relevant entity or person is exempt (*section 24, Insurance Act*). See [Question 10](#) for the main exemptions.

Applications for registration must be made in writing by the applicant to the Authority.

A process of consultation is currently underway in relation to amendments to the regulatory framework for general insurance intermediaries, with a view to introducing a new framework in July 2020.

Long-term business intermediaries. It is prohibited for a person to carry on or hold himself out as carrying on by way of business in or from the Isle of Man a financial services activity without a licence or in breach of licence conditions, unless an exclusion/exemption applies (*section 4, Financial Services Act 2008*). See [Question 10](#) for the main exemptions. This generally applies to intermediaries in respect of insurance policies that include an investment component.

”Financial services activity” includes (among other things) investment business. Regulated activities under this class include:

- Dealing in investments by any person as agent for another person.

- Arranging deals in investments, including:
 - making arrangements for another person (whether as principal or as agent for a third person) to buy, sell, subscribe for or underwrite investments; and
 - making arrangements with a view to a person who participates in the arrangements buying, selling, subscribing for or underwriting investments (whether as principal or as agent for a third person).

”Investment” is defined as including (among other things) long-term insurance. “Long-term insurance” is in turn defined as meaning rights under a contract of insurance of life, annuity, marriage, birth, permanent health, tontines, capital redemption and pension fund management, but does not include pure protection contracts. “Pure protection contract” is defined as a long-term insurance contract in respect of which the following conditions are met:

- The benefits are payable only on death or in respect of incapacity due to injury, sickness or infirmity.
- There is no surrender value, or the consideration consists of a single premium and the surrender value does not exceed that premium.
- There is no provision for its conversion or extension in a manner that will result in its ceasing to meet the previous two conditions.

To apply for a licence, a prescribed application form and supporting documents must be submitted to the Authority.

Other providers of insurance/reinsurance-related activities

A person must not act as an insurance manager in the course of a business carried on in or from the Isle of Man without being registered to do so, subject to any available exemption from the requirement for registration (*section 23(1), Insurance Act*).

Applications for registration are made in writing by the applicant to the Authority.

10. What are the main exemptions or exclusions from authorisation or licensing?

Insurance and reinsurance providers

Exemptions from the requirement to be authorised or to hold a permit are set out in regulation 10 of the Insurance Regulations. Among the exemptions, the one that is most often relevant is that in paragraph (d), which applies to a (re)insurer that is authorised to carry on an insurance business in the UK or any EU member state and does not have a fixed place of business (other than an agency) in the Isle of Man.

Insurance and reinsurance intermediaries

General insurance intermediaries. The following classes of (re)insurance intermediary are exempted from the requirement to register:

- Persons acting as an intermediary only in respect of long-term insurance (who would otherwise be caught by the prohibition in the Financial Services Act, see [Question 9](#)).
- Persons arranging insurance that covers the risk of loss or damage to goods or services provided by the person, if the person's principal business is not that of insurance intermediary.
- An insurance intermediary who:
 - is registered with and regulated by the UK Financial Conduct Authority; and
 - is not ordinarily resident on the Isle of Man.

(Regulation 9, Insurance Intermediaries (General Business) Regulations 1999, as amended.)

A process of consultation is currently underway in relation to amendments to the regulatory framework for general insurance intermediaries, with a view to introducing a new framework in July 2020.

Long-term business intermediaries. The exclusion from the requirement to be licensed under the Financial Services Act that is most often relevant is that in paragraph 2(d) of Schedule 1 to the Regulated Activities Order 2011 (as amended 2013, 2016, 2018 and 2019). It applies to overseas persons (broadly speaking, foreign intermediaries) who are authorised to conduct the regulated activity concerned by an overseas regulator, and either:

- The carrying on of the activity is the direct result of an approach made to the overseas person by or on behalf of an Isle of Man person that has not been solicited by the overseas person, other than by means of an advertisement that is neither:
 - targeted at Isle of Man persons; nor
 - disseminated by a medium which is targeted at Isle of Man persons, or
- The client or potential client in the Isle of Man is either:
 - a licenceholder;
 - a person falling within the exclusion for an Isle of Man authorised insurer, permit holder, insurance manager, exempt insurer or retirement benefits scheme administrator; or
 - a person whose ordinary business activities involve acquiring, holding, managing or disposing of shares or debentures (as principal or agent), for the purposes of their business.

Further exclusions are available in respect of any business carried on (among others) under either:

- An authorisation under section 8 of the Insurance Act.
- A permit issued under section 22 of the Insurance Act;

- Registration as an insurance manager under section 23 of the Insurance Act.
- An exemption from the requirement for authorisation or a permit.

Restrictions on ownership or control

11. Are there any restrictions on the ownership or control of insurance-related entities?

There are no restrictions on the ownership or control of authorised (re)insurers, registered intermediaries or registered insurance managers. However, the Authority (which must be notified of proposed acquisitions of ownership or control in certain circumstances) must be satisfied that (among other things) controllers, directors and certain other prescribed persons are fit and proper persons to hold the positions concerned. However, the Authority does not generally seek to apply fitness and propriety tests to foreign (re)insurers carrying on business in or from the Isle of Man as permit holders.

12. Must owners or controllers be approved by or notified to the relevant authorities before taking, increasing or reducing their control or ownership of the entity?

Insurance/reinsurance providers

If a person proposes to become a controller of an authorised (re)insurer, a registered insurance manager or a registered insurance intermediary, written notice in prescribed form must be served on the Authority at least 28 days before the event, or such other period as the Authority may agree in writing (*section 29(1), Insurance Act*).

”Controller” is defined for a corporate body as including (among others) the following:

- The managing director or chief executive of any holding company of a regulated entity.
- A person in accordance with whose directions or instructions one or more of the directors of a corporate body’s parent entity are accustomed to act, unless the director or directors do so only because the advice is given by that person in a professional capacity.
- A person who (either alone or with any associate or associates) controls 10% or more of the voting power at any general meeting of the corporate body or its parent entity.

If the prescribed period elapses without the Authority directing that the person concerned can become a controller, the person can proceed to become one. As far as the Authority is concerned, the notice period only starts to run since it has received all the information it considers necessary for the purpose of the notice.

Corresponding notice provisions also apply to directors and certain other prescribed persons holding positions of significant influence in an authorised (re)insurer, a registered insurance manager or a registered insurance intermediary.

The Authority must be notified within 14 days of a person ceasing to be a controller or holding a position of significant influence (*section 30, Insurance Act*).

Insurance/reinsurance intermediaries

General insurance intermediaries are subject to the same change of control requirements as authorised insurers (*see above, Insurance/reinsurance providers*).

In relation to long-term business intermediaries regulated as licenceholders under the Financial Services Act, prior consent from the Authority is required where there is (among other things) an acquisition of a controlling interest or any change to an existing controlling interest in the licenceholder that takes that controlling interest from either:

- 50% or less to over 50%.
- 75% or less to over 75%.

The Authority must also be notified (among other things) of any change in an existing controlling interest in a licenceholder not covered by the above. In most cases, notification must precede the transaction.

”Controlling interest” in relation to a licenceholder is defined by reference to the definition of “controller” in section 48(1) of the Financial Services Act. The definition of “controller” here (which is different to the one above under the Insurance Act) includes:

- The managing director or chief executive of any holding company of the licenceholder.
- A person in accordance with whose directions or instructions one or more of the directors of a holding company the licenceholder are accustomed to act, unless they do so only because the advice is given by that person in a professional capacity.
- A person who (either alone or with any associate or associates) controls 15% or more of the voting power at any general meeting of the licenceholder or of another corporate body of which it is a subsidiary.

Other providers of insurance/reinsurance-related activities

Registered insurance managers are subject to the same change of control requirements as authorised (re)insurers (*see above, Insurance/reinsurance providers*).

Ongoing requirements for the authorised or licensed entity

13. What are the key ongoing requirements with which the authorised or licensed entity must comply?

Insurance/ reinsurance providers

Authorised (re)insurers are subject to a variety of ongoing regulatory requirements. These include (among others) an obligation to meet prescribed regulatory reporting, corporate governance, solvency and regulatory capital, and conduct of business requirements set out (among others) in the Insurance Act, the Insurance Regulations and the Corporate Governance Code of Practice for Commercial Insurers (CGC CI) or the Corporate Governance Code of Practice for Regulated Insurance Entities (CGC RIE), as the case may be.

The application of these requirements to permit holders is limited, particularly in the case of permit holders that are authorised in the UK or another EU member state (*see Question 9*).

Insurance/reinsurance intermediaries

General insurance intermediaries are subject to a variety of ongoing regulatory requirements. These include an obligation to have in place a prescribed policy of professional indemnity insurance, and to comply with prescribed regulatory reporting and conduct of business requirements set out (among others) in the Insurance Intermediaries (General Business) Regulations 1999 (as amended).

A process of consultation is currently underway in relation to amendments to the regulatory framework for general insurance intermediaries, with a view to introducing a new framework in July 2020.

Long-term business intermediaries regulated as licenceholders under the Financial Services Act are subject to a variety of ongoing regulatory requirements. These include an obligation to comply with prescribed requirements in relation to governance, systems and controls, and conduct of business set out (among others) in the Financial Services Act and the Financial Services Rule Book 2016 (Rule Book).

Other providers of insurance/reinsurance-related activities

Insurance managers are subject to ongoing regulatory requirements (including, among others, an obligation to prepare audited financial statements annually and to comply with prescribed and corporate governance obligations). These are set out mainly in the Insurance Act and the CGC RIE.

Penalties for non-compliance with legal and regulatory requirements

14. What are the possible consequences of an entity failing to comply with applicable legal and regulatory requirements? What recourse do policyholders have if they have done business with a non-approved entity?

Insurance/reinsurance providers

The Authority has wide powers of supervision and enforcement. Failure by a regulated entity to comply with applicable legal and regulatory requirements can lead to the following:

- Inspection and investigation by the Authority.
- Financial penalties.
- Imprisonment of the entity's officers.
- Injunctions.
- Restitution orders.
- A petition for the winding up of the entity.

(Sections 31 et seq, Insurance Act.)

Policyholders can also refer a complaint to the Financial Services Ombudsman.

Any person who is aggrieved by a decision of the Authority under the Insurance Act can appeal to the Financial Services Tribunal.

The Insurance Act is silent as to the policyholder's recourse if it has done business with a non-authorized entity. Therefore, general common law remedies apply under the laws of contract/tort.

Insurance/reinsurance intermediaries

General insurance intermediaries and long-term business intermediaries that are licenceholders under the Financial Services Act are subject to similar sanctions for non-compliance as authorised (re)insurers (however, sanctions for licenceholders are under the Financial Services Act instead of the Insurance Act).

As regards policyholders doing business with non-regulated intermediaries, the position is substantially the same as the one on the rights of recourse against a (re)insurer that is not authorised (*see above, Insurance/reinsurance providers*).

Also, for any long-term business intermediaries licensed under the Financial Services Act, an agreement made by a person in the course of carrying on a regulated activity contrary to the general prohibition of carrying on regulated activities without a licence (in circumstances where an exclusion or exemption from the requirement for a licence is not available) is unenforceable against the other party (*section 27(1), Financial Services Act*).

However, the other party can recover:

- Any money or other property paid or transferred by that party under the agreement.
- Compensation for any loss sustained by that party as a result of having parted with it.

(Section 27(2), *Financial Services Act*.)

Other providers of insurance/reinsurance-related activities

Registered insurance managers are subject to the same possible sanctions as authorised (re)insurers if they fail to comply with any applicable legal or regulatory requirements. Policyholders doing business with non-regulated insurance managers have the same recourse available to them(*see above, Insurance/reinsurance providers*).

Restrictions on persons to whom services can be marketed or sold

15. Are there any restrictions on the persons to whom insurance/reinsurance services and contracts can be marketed or sold?

(Re)insurance services and contracts can be marketed or sold in the Isle of Man by (re)insurers or intermediaries who are appropriately regulated in the Isle of Man or who avail themselves of an appropriate exclusion or exemption from the requirement to be regulated in the Isle of Man (*see Question 10*).

While contracts of (re)insurance that are not investments for the purpose of the Financial Services Act can usually be marketed or sold in the Isle of Man from outside the Isle of Man without the (re)insurers or intermediaries needing to be regulated in the Isle of Man, marketing or selling contracts of insurance that are investments for the purpose of the Financial Services Act in the Isle of Man from outside the Isle of Man may give rise to a requirement to be regulated in the Isle of Man as a licenceholder under the Financial Services Act (*see Question 9*).

Under the Consumer Protection Act 1991 (as amended) cold calling is illegal in the Isle of Man.

Reinsurance monitoring and disclosure requirements

16. To what extent can/must a reinsurance company monitor the claims, settlements and underwriting of the cedant company?

The extent to which a reinsurer monitors the claims, settlements and underwriting of a cedant is largely a commercial matter, provision for which will usually be made in the applicable reinsurance agreement. There are

no legal or regulatory requirements expressly addressing the monitoring of these matters by a reinsurer. However, requirements of general application (for example, an obligation under paragraph 3.3 of the CGC RIE for a regulated entity to have in place an appropriate and effective system of governance that provides for its sound and prudent management) will have an indirect bearing. The provisions that are common in practice include the following:

- Requiring the cedant to provide regular underwriting information to the reinsurer (including premium income, notified claims and paid claims).
- Granting rights of audit and inspection for the reinsurer.

17. What disclosure/notification obligations does the cedant company have to the reinsurance company?

In addition to any disclosure/notification obligations agreed between the parties, common law obligations will apply. These include the duty to act with the utmost good faith and the duty of disclosure that apply to the cedant company. The cedant must disclose to the reinsurer all facts known or deemed to be known to the cedant which are not known (or deemed to be known) to the reinsurer that are material to the risk (in the sense that a prudent reinsurer would take them into account when deciding whether or not to take the risk and, if so, on what terms it should do so).

Insurance and reinsurance policies

Content requirements and commonly found clauses

18. What are the main general form and content requirements for insurance policies? What are the most commonly found clauses?

Form and content requirements

There are few form and content requirements that apply to insurance contracts under Manx law. These requirements are mainly set out in the Authority's conduct of business requirements and guidance, that is the Insurance (Conduct of Business)(Long Term Business) Code 2018 and the Insurance (Conduct of Business) (Non-Long Term Business) Code 2018) (together, COB Codes)). These requirements include:

- An obligation to design and market products only with such features, charges, fees and risks (to be reflected in the policy terms of the products concerned) as meet the interests, objectives and characteristics of an identified target market.
- An obligation to provide accurate, fair, clear and non-misleading information to prospective policyholders, prior to the purchase of the product concerned, in a prescribed form, and containing prescribed information (a key information document” (KID) or a summary information document (SID), depending on the type of product involved).

Commonly found clauses

Commonly found clauses include the following:

- Identity of the (re)insured.
- Extent of cover.
- Premium.
- Exclusions from cover (including policy excesses).
- Warranties and conditions.
- Data protection.
- Governing law and jurisdiction.
- Dispute resolution.

19. Is facultative or treaty reinsurance more common? What are the most commonly found clauses in reinsurance policies?

Facultative/treaty reinsurance

Both facultative and treaty reinsurance are equally common in the Isle of Man.

Commonly found clauses

Commonly found clauses include the following:

- Premiums.
- Exclusions (where applicable).

- "Follow the fortunes" or "follow the settlements".
- Claims co-operation or claims control.
- Access to and audit of reinsured's records.
- Reporting and provision of information.
- Data protection.
- Governing law and jurisdiction.
- Dispute resolution.

Implied terms

20. Are there any terms that are implied by law or regulation (even if not included in the insurance or reinsurance contract)?

Terms relevant for present purposes that are most often implied to give effect to the principle of utmost good faith, including that the (re)insured must disclose material facts and not make untrue statements at the time of making, renewing or varying the contract, and that the (re)insurer must exercise the rights conferred on it with proper regard for the interests of the (re)insured.

See *Question 21* in relation to certain consumer protection implied terms.

Customer protections

21. How do customer protections in the general law affect insurance contracts? What customer protections are generally included in insurance policies to supplement this?

General law

The general law provides certain protections for consumers, the main ones of which are as follows:

- The Misrepresentation and Unfair Contract Terms Act 1980 (MUCTA) includes provisions relating to misrepresentation, and applies to contract terms or notices that seek to limit or exclude liability for misrepresentation. (It also includes provisions on unfair contract terms. However, they do not apply to insurance contracts.) Under the MUCTA, different controls apply according to the nature of the liability that a supplier wishes to exclude or restrict. Certain types of liability cannot be excluded or limited in a consumer contract. Other types of liability can be excluded or limited in a consumer contract but only so far as the contract term satisfies the requirement of reasonableness.
- The Supply of Goods and Services Act 1996 implies certain terms into contracts for goods and services. The implied terms can be negated or varied by express agreement, or by the course of dealing between the parties, or by usage that binds both parties to the contract.
- The Consumer Protection Act 1991 contains (among other things) provisions to protect consumers from misleading price indications, misleading advertisements and unfair contract terms in consumer contracts. The unfair contract terms provisions apply to terms that are not individually negotiated and impose a test of fairness in relation to certain terms. If a term is unfair, it will not be binding on a consumer, although the rest of the contract will remain in force. Terms relating to the adequacy of the price or remuneration, as against the goods or services supplied in exchange are outside the fairness test, but only if they are drafted in plain intelligible language.

See *Question 15* in relation to unsolicited communications restrictions.

Insurance policies

The CGC RIE and the CGC CI impose an obligation on (re)insurers (among other things) to:

- Act honestly and in a straightforward manner.
- Conduct their business with due care, skill and diligence, and with due regard for the potential consequences of their intended actions.

The COB Codes expand on and extend these requirements, and (re)insurance policies and related marketing materials should be drafted in accordance with these requirements.

The Rule Book provides similar requirements in relation to long-term business intermediaries who are subject to the financial services regime, and contains further requirements in relation to consumers who are considered “vulnerable”.

Standard policies or terms

22. What are the main standard policies or terms produced by trade associations or relevant authorities?

There are no standard policies or terms produced by trade associations or relevant authorities in the Isle of Man. However, those in circulation in the London insurance market (including, for example, the standard policy wordings produced by Lloyd's or the International Underwriters Association) are widely used in the Isle of Man.

Insurance and reinsurance policy claims

Establishing an insurance claim

23. What must be established to trigger coverage under an insurance policy?

Unless there are any relevant statutory or regulatory requirements governing the notification of claims or the identification or happening of the insured event giving rise to the claim by the insured, the establishment of a claim and its notification are mainly regulated by the terms of the insurance policy. For coverage under an insurance policy to be triggered, there must be an event or loss covered by the policy.

A claim must also be notified to the insurer in accordance with the claims notification procedure and within any prescribed time limits under the insurance policy. If the notification clause is drafted as a condition, the insured's failure to comply with the notice clause enables the insurer to avoid liability, even if the insurer suffers no prejudice through late or non-compliant notification.

Third party insurance claims

24. What are the circumstances in which third parties can claim under an insurance policy?

An insured can assign their rights to a third party, unless assignment is prohibited by the insurance policy. Various pieces of legislation expressly make provision for claims by third parties against insurers, including the following

- The Third Parties (Rights Against Insurers) Act 1932, which provides that a third party with a claim against an insolvent insured can claim against the insolvent insured's insurer.
- The Matrimonial Proceedings Act 2003, which allows a spouse or child named as a beneficiary to a policy of life insurance to enforce the policy (*section 127*).

While it may also be possible to bring a third-party claim under the Contracts (Rights of Third Parties) Act 2001 (CRTP Act), insurance policies usually expressly exclude this.

Time limits

25. Is there a time limit outside of which the insured/reinsured is barred from making a claim?

A claim under an insurance or reinsurance contract is subject to the normal limitation period under the Limitation Act 1984 for causes of action founded on breach of contract (that is, six years from the date on which the cause of action accrues).

A contract of insurance is a contract of indemnity. A breach arises as soon as the insurer fails to hold the insured harmless against the relevant loss. Usually, the cause of action and right of recovery against the insurer accrue on the happening of the loss. However, the terms of the policy can specify that the indemnity is not payable until a later time, in which case the cause of action only accrues at the later time.

As well as the statutory limitation period, insurance and reinsurance contracts typically include a notification clause requiring the insured to give the insurer notice of claims or losses, or of circumstances which give rise to a claim or loss, in a particular manner (usually in writing) and within a particular period (for example, "as soon as reasonably practicable"). An insured can lose the right to an indemnity for failure to comply with a notification clause where compliance is a condition precedent to bringing the claim.

Enforcement

26. Can the original policyholder or other third party enforce the reinsurance contract against a reinsurer?

A contract of reinsurance is a contract between the reinsured (the primary insurer) and the reinsurer. The starting point is that there is no privity of contract between the original policyholder and the reinsurer. Therefore, the original policyholder or another third party has no rights under the reinsurance contract. The original policyholder's rights are solely against the primary insurer. Where the primary insurer is insolvent, or where the contract of primary insurance is for some reason defective, the original policyholder cannot rely on the reinsurance arrangements in the same way as the insolvent primary insurer could have. In certain special circumstances, such as aviation insurance, a cut-through clause may be incorporated, which gives the insured rights against the reinsurer under the reinsurance agreement.

The CRTP Act provides certain rights to third parties. However, reinsurance contracts usually expressly exclude these rights.

Remedies

27. What remedies are available for breach of an insurance policy?

Breach by the insurer

Unless the contract provides otherwise, the general actions for breach of contract are available to the insured. Accordingly, an insured would have an action for damages in respect of its loss.

Normally damages are an adequate remedy for breach of an insurance policy. However, if damages are deemed neither adequate nor appropriate, the court can grant the remedy of specific performance.

Breach by the insured

A breach of a term that is a condition precedent means that there is no liability for an insurer to pay, whereas breach of any other term provides a remedy of damages for the insurer.

The common law principle of utmost good faith applies to insurance contracts (*see Question 20*). If an insurer has been misled by material misrepresentation or non-disclosure by the insured, it can treat this as a breach of the insured's duty of good faith and regard the insurance contract as void.

Punitive damage claims

28. Are punitive damages insurable? Can punitive damages be reinsured if they are covered by an underlying policy?

Subject to the terms of the insurance contract, as a matter of general principle and public policy, damages awarded by a court, whether ordinary or punitive, are insurable. This insurance can be reinsured in the ordinary way.

Insolvency of insurance and reinsurance providers

29. What is the regulatory framework for dealing with distressed or insolvent insurance or reinsurance companies, or other persons or entities providing insurance or reinsurance related services? What regulatory and/or other protections exist for policyholders if the insurance company is insolvent?

The regulatory framework for dealing with distressed or insolvent (re)insurance companies or other persons or entities providing (re)insurance-related services is primarily dealt with in the following legislation:

- Insurance Act.
- Companies Acts 1931-2004 (Companies Acts), Companies Act 2006 and Limited Liability Companies Act 1996 (the vast majority of (re)insurance companies and other persons providing (re)insurance-related services are incorporated under the Companies Acts, rendering the other two pieces of legislation mentioned here of limited application in practice).
- Companies (Winding-Up) Rules 1934.
- Bankruptcy Code 1892 (Bankruptcy Code).

Winding up

No authorised insurer that carries on long-term business can be wound up voluntarily. (The same restriction applies to authorised insurers carrying on business other than long-term business, subject to certain qualifications.) Paragraph 12 of Schedule 3 to the Insurance Act provides that, unless a court directs otherwise, the liquidator must carry on the long-term business of the company with a view to it being transferred as a going concern to another corporate body. Under the Insurance Act, on a winding-up of an insurer the assets comprising the insurer's technical provisions are available only for meeting the obligations of the insurer in relation to its policyholders. ("Technical provisions" is defined in paragraph 20 of Schedule 3 to the Insurance Act as "the assets of the insurer representing the economic value of the insurer fulfilling its obligations to its policyholders arising over the lifetime of its portfolio of insurance policies.")

Policyholder protection scheme

The Isle of Man has established a scheme for the statutory protection of policyholders through the Life Assurance (Compensation of Policyholders) Regulations 1991 (1991 Regulations).

Under the 1991 Regulations, if an authorised insurer carrying on long-term business becomes unable to meet its liabilities to policyholders (that is, it becomes insolvent), up to 90% of the liabilities to policyholders under protected contracts (that is, long-term business contracts effected by the insurer concerned) would be met by a fund consisting of, among other things, money obtained by levying contributions from other authorised insurers. The 1991 Regulations provide protection to any person having an interest in any sum falling due under a protected contract, wherever they reside.

30. Can excess insurance policies "drop down" to provide coverage if the primary insurer goes into insolvency?

The possibility of a drop down depends on how the excess insurance policy has been drafted. Excess of loss reinsurance cover typically provides layers of reinsurance that operate in excess of each other and in a "stack" above the original insurer(s) for whose reinsurance cover the stack is created. Insolvency of the primary insurer is not usually a trigger for liability on the part of the excess layers (although there is no reason in principle why an excess insurance policy could not be drafted to provide for this). The usual policy provision is that liability under the excess layer only attaches as and when the primary insurer(s) pay, or admit, or are held liable to pay, the original insured(s)'s ascertained liability, and this liability exhausts the primary policy and triggers the attachment point under the excess reinsurance layer.

31. Is a right to set-off mutual debts and credits recognised in an insolvency proceeding involving an insurer or reinsurer?

Section 22 of the Bankruptcy Code (which applies to Isle of Man companies incorporated under the Companies Acts by virtue of section 248 of the Companies Act 1931) makes provision for a general right to set-off of mutual debts and credits in an insolvency proceeding.

Taxation of insurance and reinsurance providers

32. What is the tax treatment for insurers, reinsurers, and other persons or entities providing insurance and reinsurance-related services?

Subject to certain exceptions that would not usually be expected to be relevant to (re)insurers and other persons or entities providing (re)insurance-related activities, the standard rate of corporate income tax for companies in the Isle of Man is 0%.

Insurance and reinsurance dispute resolution

33. Are there special procedures or venues for dealing with insurance or reinsurance complaints or disputes?

As regards litigation, there are no special procedures or venues per se. (Re)insurance disputes are heard in the High Court of Justice of the Isle of Man and the ordinary rules of court (namely, the Rules of the High Court of Justice 2009) apply.

Where the Authority exercises any of its powers under the Insurance Act, any person who is aggrieved by a decision can appeal to the Insurance Tribunal, in accordance with rules made under section 8 of the Tribunals Act 2006.

Complaints from consumers or small businesses against insurers can be made to the Financial Services Ombudsman Scheme after the internal complaints procedure within the insurance company has failed to resolve the issue.

34. Are arbitration clauses in insurance and reinsurance agreements enforceable?

Arbitration clauses in (re)insurance agreements are generally enforceable provided that the clause is valid under the applicable law.

35. Are choice of forum, venue and applicable law clauses in an insurance or reinsurance contract recognised and enforced?

Choice of forum, venue and applicable law clauses in a (re)insurance contract are generally recognised and enforced, provided that the choice is:

- Reasonable.
- Not contrary to Isle of Man public policy.
- Decided in good faith.

Reform

36. What proposals are there for reform of the law, regulation or rules relating to the provision of insurance or reinsurance services?

See [Question 2](#) for further information regarding the project that is currently underway to update the Isle of Man's insurance regulatory framework. Among the changes that have yet to be implemented are the introduction of new capital adequacy and solvency (including group solvency) requirements for non-life (re)insurers, governance and enterprise risk management requirements for captives, public disclosure requirements for (re)insurers generally and a new regulatory regime for general insurance intermediaries.

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