



Chambers Global Practice Guides

Definitive global law guides offering
comparative analysis from top-ranked lawyers

Insurance & Reinsurance 2022

Hong Kong: Law & Practice
Edwin Northover, Jan Buschmann and Cameron Sim
Debevoise & Plimpton

practiceguides.chambers.com

HONG KONG

Law and Practice

Contributed by:

Edwin Northover, Jan Buschmann and Cameron Sim
Debevoise & Plimpton see p.15



CONTENTS

1. Basis of Insurance and Reinsurance Law	p.3	8. Interpreting an Insurance Contract	p.8
1.1 Sources of Insurance and Reinsurance Law	p.3	8.1 Interpretation of Insurance Contracts and Use of Extraneous Evidence	p.8
2. Regulation of Insurance and Reinsurance	p.3	8.2 Warranties	p.8
2.1 Insurance and Reinsurance Regulatory Bodies and Legislative Guidance	p.3	8.3 Conditions Precedent	p.8
2.2 The Writing of Insurance and Reinsurance	p.3	9. Insurance Disputes	p.9
2.3 The Taxation of Premium	p.4	9.1 Insurance Disputes over Coverage	p.9
3. Overseas Firms Doing Business in the Jurisdiction	p.4	9.2 Insurance Disputes over Jurisdiction and Choice of Law	p.9
3.1 Overseas-Based Insurers or Reinsurers	p.4	9.3 Litigation Process	p.9
3.2 Fronting	p.4	9.4 The Enforcement of Judgments	p.9
4. Transaction Activity	p.4	9.5 The Enforcement of Arbitration Clauses	p.10
4.1 M&A Activities Relating to Insurance Companies	p.4	9.6 The Enforcement of Awards	p.11
5. Distribution	p.4	9.7 Alternative Dispute Resolution	p.11
5.1 Distribution of Insurance and Reinsurance Products	p.4	9.8 Penalties for Late Payment of Claims	p.12
6. Making an Insurance Contract	p.5	9.9 Insurers' Rights of Subrogation	p.12
6.1 Obligations of the Insured and Insurer	p.5	10. Insurtech	p.12
6.2 Failure to Comply with Obligations of an Insurance Contract	p.5	10.1 Insurtech Developments	p.12
6.3 Intermediary Involvement in an Insurance Contract	p.5	10.2 Regulatory Response	p.12
6.4 Legal Requirements and Distinguishing Features of an Insurance Contract	p.6	11. Emerging Risks and New Products	p.13
6.5 Multiple Insured or Potential Beneficiaries	p.6	11.1 Emerging Risks Affecting the Insurance Market	p.13
6.6 Consumer Contracts or Reinsurance Contracts	p.7	11.2 New Products or Alternative Solutions	p.13
7. Alternative Risk Transfer (ART)	p.7	12. Recent and Forthcoming Legal Developments	p.14
7.1 ART Transactions	p.7	12.1 Developments Impacting on Insurers or Insurance Products	p.14
7.2 Foreign ART Transactions	p.8	13. Other Developments in Insurance Law	p.14
		13.1 Additional Market Developments	p.14

1. BASIS OF INSURANCE AND REINSURANCE LAW

1.1 Sources of Insurance and Reinsurance Law

The Insurance Ordinance (Cap. 41 of the Laws of Hong Kong) is the principal source of law governing (re)insurance in Hong Kong. It is supplemented by subordinate legislation covering matters such as the determination of capital requirements and the payment of fees and levies. While the codes and guidelines issued by the Hong Kong Insurance Authority (IA) are not legally binding as such, they contain many of the key regulatory obligations applicable to insurers and insurance intermediaries and are therefore of great importance in practice.

Hong Kong is a common law jurisdiction, so precedent judicial decisions are relevant to insurance law, in particular in relation to insurance contract law and claims. The law in relation to portfolio transfers is also to a large extent determined by judicial precedent.

2. REGULATION OF INSURANCE AND REINSURANCE

2.1 Insurance and Reinsurance Regulatory Bodies and Legislative Guidance

(Re)insurers and (re)insurance intermediaries in Hong Kong are regulated by the IA, which has issued detailed guidelines and codes governing the key aspects of regulation not exhaustively dealt with by the Insurance Ordinance and subordinate legislation. The guidelines are supplemented by interpretation notes, explanatory notes and other regulatory circulars.

The writing of unit-linked business, known locally as “investment-linked assurance schemes”,

is to some extent also regulated by the Hong Kong Securities and Futures Commission (SFC), which has issued a code governing key aspects of such schemes.

While there is currently no cross-border legislation, there is a level of mutual recognition of prudential supervision of insurers between Hong Kong and Mainland China, and the scope of possible cross-border schemes permitting the sale of insurance products across the Greater Bay Area (an area including Hong Kong, Macau, Shenzhen and a number of other cities in Guangdong province) is currently under discussion.

2.2 The Writing of Insurance and Reinsurance

Subject to narrow exemptions, anyone carrying on insurance or reinsurance business in Hong Kong must be authorised by the IA under the Insurance Ordinance. Such business can be carried on either through a Hong Kong-incorporated company or through a branch of an overseas (re)insurer subject to regulation in its home jurisdiction. The exemption applicable to offshore reinsurers conducting reinsurance on a non-admitted basis is considered in **3.1 Overseas-Based Insurers or Reinsurers**.

In order to become authorised, a company must meet certain key criteria, including having sufficient regulatory capital, “fit and proper” directors, controllers and other key persons, adequate reinsurance (or retrocession) arrangements and a local office with a CEO and other relevant staff.

In terms of shareholder controllers, the IA will focus on their financial resources and ability to finance the insurer’s business operations and future capital needs, as well as their industry experience and reputation.

2.3 The Taxation of Premium

An insurance levy payable by policyholders has been applied to premium payments for new and in-force policies since 1 January 2018, subject to certain exceptions. The levy is collected by the relevant insurers and ultimately paid to the IA. The levy rate starts at 0.04% of the insurance premium per policy year and increases gradually to 0.1%. The amount of the levy imposed on each policy is subject to a cap.

3. OVERSEAS FIRMS DOING BUSINESS IN THE JURISDICTION

3.1 Overseas-Based Insurers or Reinsurers

Overseas-based direct insurers are not permitted to conduct insurance business in Hong Kong without authorisation.

Overseas insurers may accept business from Hong Kong on a “reverse solicitation” basis so long as they do not conduct insurance or solicitation activities in Hong Kong and do not hold themselves out as insurers in Hong Kong. In practice, the scope of such activity is very limited and typically relates to specialist policies written at the initiative of Hong Kong-based policyholders or their brokers.

Reinsurers are permitted to conduct reinsurance business in Hong Kong without authorisation if they do not have a local presence, do not act through an agent in Hong Kong and do not carry out any regulated intermediary activities.

There is currently no passporting or equivalence regime that would allow overseas insurers or reinsurers to operate in Hong Kong without going through the usual authorisation process.

3.2 Fronting

Fronting is not permitted in Hong Kong and the general expectation is that each insurer retains a minimum share of the business it writes.

4. TRANSACTION ACTIVITY

4.1 M&A Activities Relating to Insurance Companies

Hong Kong has been an active M&A market with regard to insurance companies in recent years. This has largely been driven on the one hand by the desire of Chinese and overseas players to enter what is viewed as a lucrative market with potential for future growth into Mainland China, and on the other hand by owners of small and medium-sized insurers seeking to exit a highly competitive and increasingly regulated market in which it is difficult to remain profitable without scale, especially where Hong Kong is not core to their strategy. The impending introduction of a risk-based capital regime, the reduced premium growth in life insurance due to COVID-19 and political uncertainty in Hong Kong has accelerated this trend.

Hong Kong-based insurance groups continue to invest in Mainland China as well as the other growth markets in the region, in particular South East Asia. Acquisitions linked to bancassurance or other distribution arrangements have been particularly popular.

5. DISTRIBUTION

5.1 Distribution of Insurance and Reinsurance Products

Insurance products are most commonly distributed through:

- individual insurance agents engaged by insurers;

- insurance agencies such as banks and other corporates;
- insurance brokers; and
- directly by insurers, including through the internet.

Bancassurance typically falls within the second bullet point since banks act as insurance agencies, although some banks act as insurance brokers. The staff acting for corporate agencies or brokers in the sale of policies is referred to as technical representatives.

Reinsurance contracts are typically written through reinsurance brokers or based on existing relationships between cedants and reinsurers.

Insurance intermediaries that carry on regulated activities in Hong Kong must be licensed by the IA, subject to narrow exemptions. “Regulated activities” is widely defined and includes a wide range of solicitation and intermediary activities.

6. MAKING AN INSURANCE CONTRACT

6.1 Obligations of the Insured and Insurer

The insured must avoid making misrepresentations and must disclose all material facts which are or ought to be known to him and which are material to the formation of the contract. “Material” in this context means that the fact would influence the judgment of a prudent insurer in determining whether to accept the risk and in fixing the premium where the risk is accepted.

The law in Hong Kong reflects the traditional common law position and does not incorporate the reforms that have been undertaken in this area in other jurisdictions, including England and Wales.

While the common law does not impose obligations on insurers to seek information proactively, the Code of Conduct for Insurers issued by the Hong Kong Federation of Insurers, which is not legally binding, provides that insurers should ask clear and specific questions in relation to matters which insurers generally consider to be material to the type of insurance in question. A serious failure to ask pertinent questions could also constitute misconduct under the Insurance Ordinance and have other regulatory implications.

The rules are not generally different as between consumer and commercial contracts, but the courts and regulator are likely to impose higher standards on insurers with regard to questions asked of consumers.

6.2 Failure to Comply with Obligations of an Insurance Contract

The insurer is entitled to avoid the policy (ie, to treat it as if it had never existed) if the insured fails to comply with its obligation to disclose material facts.

The non-binding Code of Conduct for Insurers issued by the Hong Kong Federation of Insurers provides that an insurer should not refuse a claim by a policyholder on the grounds of non-disclosure of a material fact which the policyholder could not reasonably have been expected to disclose. The exact scope of that proviso is unclear and does not, in any event, change the legal position that an insured must disclose all material facts.

6.3 Intermediary Involvement in an Insurance Contract

Insurance brokers act for insureds and owe them contractual and fiduciary duties. In addition, they are subject to statutory duties which at least partly overlap with the contractual and

fiduciary duties owed to the insured. The key obligations are:

- to act honestly, fairly and in the best interest of the (prospective) insured;
- to exercise an appropriate level of care, skill and diligence;
- to have regard to the circumstances of the (prospective) insured to ensure that the insurance cover sought is suitable;
- to disclose sufficient information to the (prospective) insured;
- to avoid conflicts of interest; and
- to handle the monies of the insured in an appropriate manner.

Insurance agents (whether corporates or individuals) act for an appointing insurer and owe fiduciary and contractual obligations to such insurer. They are also subject to the same statutory duties vis-à-vis insureds as apply to brokers, including an obligation to act in the best interest of the insureds. Some of these obligations are hard to reconcile with their role as agents of the insurers, which has been subject to extensive criticism during the legislative process that applied the statutory duties to insurance agents.

Detailed regulatory obligations applicable to insurance brokers and agents are set out in the respective codes of conduct issued by the IA.

6.4 Legal Requirements and Distinguishing Features of an Insurance Contract

Features of Insurance Contracts

The distinguishing features of an insurance contract are determined by reference to English case law, namely as an arrangement under which consideration is paid for the provision of benefits upon the happening of an uncertain event that is adverse to the insured. The common law does not require insurance contracts to be in writing, but there are legal and regula-

tory requirements in relation to the issuance of policy documents and it is universal practice for insurance contracts to be issued in written form.

Generally speaking, there are no specific minimum terms for an insurance contract to be legally valid, but the key terms must be agreed with reasonable certainty or there must be a mechanism for unresolved terms to be agreed at a later stage. In practice, premiums and cover will usually be clearly set out in the insurance policy (or the reinsurance treaty in the case of reinsurance). There are also numerous regulatory requirements in relation to the structure and terms of certain types of policies.

Insurable Interest

For life insurance contracts, the insured must at the outset have an insurable interest in the person whose life is being insured. Certain persons are legally regarded as having an unlimited interest in the life assured (ie, the person whose life is being insured under the policy), such as the life assured themselves and their spouse. Parents are also deemed to have an insurable interest in the lives of their children under Hong Kong law. For other relationships, the insured will usually need to have an economic interest in the relevant life in order for the policy to be valid.

While an insurable interest is not strictly speaking required for most types of general insurance contracts, they must not amount to gambling or wagering, and the insured must typically prove loss after the insured event occurs.

6.5 Multiple Insured or Potential Beneficiaries

Beneficiaries and Unnamed Insureds

It is common for persons other than the insured/policyholder to be beneficiaries of a life insurance policy. Where certain close family members are named as beneficiaries, this creates a statutory trust in their favour.

It is also possible for certain unnamed persons to obtain rights against the insurer, for instance on the basis of the Contracts (Rights of Third Parties) Ordinance. The ordinance enables third party enforcement if the contract expressly provides that the third party may enforce the insurance contract or the contract purports to confer a benefit on the third party. However, the operation of the ordinance is typically excluded by policy wording in Hong Kong.

Unnamed persons may also receive the benefit of group insurance policies, such as insurance taken out by employers for the benefit of all their employees. Beneficiaries may also be described generically by reference to certain characteristics.

There are other cases where unnamed persons can become insureds on the basis of agency considerations, but those cases are rare and will not be considered further here.

Impact on Disclosure Obligations

The impact of a wider group of insureds on disclosure obligations is that material facts in relation to the risk arising from those insureds must be disclosed. Where the cover extends to unnamed persons (rather than the unnamed persons just being beneficiaries/payees of the insurance proceeds), the disclosure obligation is therefore also correspondingly extended.

6.6 Consumer Contracts or Reinsurance Contracts

From a legal perspective, the position is generally the same with regard to consumer contracts and reinsurance contracts. However, detailed regulatory obligations apply to direct insurers with regard to the issuance of policies to their policyholders, such as processes in relation to application forms, suitability assessments, disclosure of information and issuance of poli-

cies. Most of those regulatory obligations do not apply to reinsurance contracts.

7. ALTERNATIVE RISK TRANSFER (ART)

7.1 ART Transactions

New ILS Regime

Hong Kong introduced a specific regime in relation to insurance-linked securities (ILS) in 2021 and the first ILS was issued under such regime in the same year. The protection provided by the issuer of the ILS is treated as insurance for the purpose of Hong Kong insurance law, but is subject to specific rules.

Requirements for Issuance

In order to issue ILS under the Hong Kong regime, the issuing entity must be authorised by the IA for “special purpose business”, which is a separate class of insurance. In order to be authorised, the entity must normally appoint two or more directors and an administrator, all of whom must be “fit and proper” for the purposes of Hong Kong regulation (including by virtue of the administrator having the relevant experience with regard to ILS).

Another key criterion is that the special purpose insurer must be fully funded, ie, its assets (which are typically held in a trust account) must be sufficient to meet the liabilities of the insurer in all reasonably foreseeable circumstances.

ILS can only be sold to certain types of institutional investors specified by Hong Kong legislation.

Challenges

The current challenge with regard to ILS in Hong Kong is that it is a nascent product and the issuance of ILS in the local market therefore takes

longer and is procedurally more challenging than in established ILS markets.

7.2 Foreign ART Transactions

There is no specific regime for the recognition of overseas ART transactions. Whether such transactions will be treated as reinsurance for the purposes of the Hong Kong regulatory regime would therefore depend on whether they meet the common law definition of insurance (see **6.4 Legal Requirements and Distinguishing Features of an Insurance Contract**).

8. INTERPRETING AN INSURANCE CONTRACT

8.1 Interpretation of Insurance Contracts and Use of Extraneous Evidence

Insurance contracts are generally interpreted in the same way as other contracts. The ordinary meaning of words is typically the starting point for interpretation, but circumstances may be taken into account as part of the process. While evidence in relation to market understanding and customs in the market are admissible in evidence, previous negotiations between the parties and their subjective intent are generally not admissible.

The contra proferentem rule generally applies for the benefit of the insured where there is ambiguity in the policy wording, in particular with regard to exclusions from policy coverage. In those cases, the interpretation that is more favourable to the policyholder will generally be adopted.

The rules are generally the same for consumer and business contracts. However, the courts are more likely to strictly follow the wording of the contract in a business context. In the interpretation of reinsurance contracts, custom and market understanding play a greater role than in

consumer insurance policies given the technical and industry nature of reinsurance.

8.2 Warranties

Contractual terms can become warranties on the basis of express identification as warranties or by implication, commonly by virtue of “basis of the contract” clauses, which are provisions set out in the proposal form or in the insurance contract to the effect that all answers to the questions in the proposal will form the basis of the contract.

Warranties are different from other contractual terms in that they require strict compliance and any breach permits the insurer to disclaim liability, whether or not the breach was material to the insured risk.

Hong Kong is still subject to the common law approach to insurance warranties and has not implemented reforms that have been undertaken in other jurisdictions, including England and Wales.

8.3 Conditions Precedent

Contractual terms need not be expressly described as conditions precedent in order to be treated as such. While express designation as a condition precedent is a common approach, the classification may also be derived from the contractual wording, eg, a provision that the insurers have the right to refuse a claim if a particular condition is not complied with.

The consequences of a breach of a condition precedent depend on the contractual wording and the nature of the condition. Failure to comply with a condition will typically preclude the insured from bringing a claim; it may also, if sufficiently fundamental, entitle the insurer to terminate the policy.

9. INSURANCE DISPUTES

9.1 Insurance Disputes over Coverage

Coverage Disputes

Disputes over coverage under an insurance contract are typically settled through the Insurance Complaints Bureau (in the case of consumer contracts) or through litigation or arbitration (see **9.7 Alternative Dispute Resolution** for further details).

Limitation Period

Pursuant to the Limitation Ordinance (Cap. 347), the insured generally has six years from the date on which the cause of action accrued to issue proceedings against the insurer. However, the insurance policy will typically specify periods during which claims must be brought following the occurrence of the insured event or the insured's awareness of such event (as applicable).

Enforcement of Insurance Contracts by Third Parties

See **6.5 Multiple Insured or Potential Beneficiaries** regarding the enforcement of insurance contracts by third parties.

9.2 Insurance Disputes over Jurisdiction and Choice of Law

In practice, insurance contracts typically include jurisdiction and governing law provisions. Hong Kong courts will generally recognise and enforce these provisions provided that they are bona fide (ie, made in good faith), legal and are not against public policy. Disputes over jurisdiction and choice of law in insurance contracts are rare.

Where the contract does not contain a jurisdiction or governing law clause, the court will apply the usual common law principles and examine a variety of factors to determine these issues. In considering choice of law, the court will consider the place of intended performance and the

insurer's head office location to determine which law has the closest and most real connection with the insurance contract.

9.3 Litigation Process

Depending on the nature of the claim and the amount involved, insurance claims are generally heard in the District Court or the Court of First Instance in Hong Kong.

The main stages in civil proceedings include:

- issuing and service of originating process by way of writ of summons, originating summons, or petition;
- filing pleadings such as the statement of claim, defence and reply;
- discovery and inspection of documents;
- exchange of factual witness statements;
- filing of expert reports (if required); and
- trial.

9.4 The Enforcement of Judgments Domestic Judgments

The most common ways to enforce domestic judgments in Hong Kong include:

- Garnishee proceedings – where a third party (the garnishee) owes money to the judgment debtor, the judgment can be enforced directly against the garnishee. The garnishee will then pay its debts to the judgment creditor instead of the judgment debtor. This option is commonly used against the judgment debtor's bank.
- Charging order/order for sale of assets – judgment creditors can obtain security over the assets of the judgment debtor.
- Writ of Fieri facias – also known as a fifa order, this allows an officer of the court to seize and sell the judgment debtor's goods and chattels.
- Bankruptcy or insolvency proceedings may also be considered.

Foreign Judgments – Statutory Registration Scheme

A foreign judgment can be enforced in Hong Kong either through the statutory registration scheme based on reciprocity under the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap. 319) (FJREO) or at common law.

Under the FJREO, judgments from “superior courts” of 15 countries (namely, Australia, Austria, Belgium, Bermuda, Brunei, France, Germany, India, Israel, Italy, Malaysia, the Netherlands, New Zealand, Singapore, and Sri Lanka) are enforceable by the simple procedure of registration through an application to the Court of First Instance provided that the application is made within six years of the original judgment.

Once leave is granted, the foreign judgment can be enforced in the same way as a Hong Kong judgment.

Foreign Judgments – Common Law

If the foreign judgment is not from a country listed under the FJREO, it can only be enforced at common law. In this case, the foreign judgment will form the basis of a cause of action and the judgment will be treated as a debt between the parties. To be enforceable at common law, the following requirements must be met:

- the foreign judgment must be for a debt or a definite sum of money, and the defendant must have submitted to the jurisdiction of the foreign court;
- the foreign judgment was final and conclusive;
- the foreign judgment was not obtained by fraud, and was obtained against the same defendant;
- the foreign judgment was not contrary to Hong Kong rules of public policy or notions of natural justice;

- the foreign court had jurisdiction over the defendant according to Hong Kong rules; and
- an action in Hong Kong based on a foreign judgment must be brought within 12 years from the date on which the foreign judgment became enforceable.

Mainland Judgments

Enforcement of PRC judgments is governed by the “Arrangement on Reciprocal Enforcement of Judgments in Civil and Commercial Matters” and the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597) in Hong Kong (MJREO). The MJREO makes provision for mutual enforcement of Hong Kong and PRC judgments in civil or commercial matters. It also applies to the enforcement of money judgments on disputes arising out of commercial contracts.

In order to register a PRC judgment in Hong Kong:

- the judgment must be from a court which is a designated court under the MJREO (ie, courts at the Intermediate People’s Court Level or above and specified Basic Level People’s Courts);
- the judgment must be final and conclusive and enforceable in the PRC;
- the judgment must order the payment of a sum of money (not being a sum payable in respect of taxes, fines or penalties); and
- the application to the Court of First Instance must be made within two years from the date of the judgment.

9.5 The Enforcement of Arbitration Clauses

Arbitration clauses in commercial insurance and reinsurance contracts can be enforced, so long as they comply with the formal requirements under Section 19 of the Arbitration Ordinance (Cap. 609). These include that an arbitration agreement must be in writing, and there must

be a reference of the dispute to arbitration. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

9.6 The Enforcement of Awards

Under the Hong Kong Arbitration Ordinance (Cap. 609), there are four main categories of arbitral awards:

- convention awards (which are awards issued in states or territories that are party to the New York Convention, other than the PRC);
- Mainland awards (which are awards issued in Mainland China);
- Macao awards (which are awards issued in Macao); and
- awards issued in Hong Kong and Taiwan, and any awards not captured by the first three categories.

Hong Kong is not a contracting state to the New York Convention. In 1997, following the PRC's resumption of the exercise of sovereignty over Hong Kong, the PRC extended the application of the New York Convention to Hong Kong. The PRC's reciprocity and commercial reservations made under Article I(3) of the New York Convention are binding on Hong Kong. As a result, Hong Kong recognises awards issued in the territory of another contracting state to the New York Convention, and arising out of commercial disputes. Enforcement may only be refused pursuant to the limited grounds set out in the New York Convention.

Arrangements in place allow for the enforcement of arbitral awards between Mainland China and Hong Kong (namely the 1999 and 2020 Arrangements Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region). All arbitral awards issued pursuant to the Hong Kong Arbitration Ordinance can be enforced in Mainland

China. All arbitral awards issued pursuant to the PRC Arbitration Law can be enforced in Hong Kong. Simultaneous enforcement applications may be commenced in the courts of Hong Kong and Mainland China.

There is also an arrangement resulting in mutual recognition of arbitral awards between Hong Kong and Macao.

There are separate provisions in the Hong Kong Arbitration Ordinance concerning the enforcement of awards under these categories. With the leave of the court, arbitral awards (including interim awards), whether domestic or foreign, are enforceable in the same manner as a Hong Kong court judgment.

9.7 Alternative Dispute Resolution

Alternative dispute resolution (ADR), including arbitration, mediation and adjudication, is commonly used in insurance disputes in Hong Kong. Since the introduction of the Civil Justice Reform in Hong Kong in April 2009 and Practice Direction 31 in January 2010, parties to litigation are required to attempt settlement by mediation. Adverse costs orders may be made against a party which unreasonably fails to engage in mediation, regardless of the outcome of the litigation.

Consumer Contracts

For consumer insurance disputes, the Insurance Complaints Bureau (ICB) provides a mechanism to assist in the resolution of insurance disputes arising from personal insurance policies. These disputes must be monetary in nature, including complaints regarding claim decisions of insurers and maladministration on the part of insurer.

The ICB handles claim-related complaints by way of adjudication under the Insurance Claims Complaints Panel, and non-claim related com-

plaints by way of mediation provided by the ICB List of Mediators.

- Adjudication involves an independent adjudicator (usually an expert) who considers the claims of both parties and issues a binding decision.
- Mediation is a voluntary procedure whereby a professionally trained and impartial mediator helps the parties settle their dispute. A mediator will not make a decision for the parties, but will assist the parties in exploring the merits of their own cases, as well as to identify possible solutions in order to facilitate settlement.

Policyholders are not bound to refer their disputes to the ICB. If they choose to litigate or arbitrate their case instead, the ICB does not have jurisdiction unless and until those proceedings are resolved. However, since consumer insurance policies typically do not contain arbitration provisions, ADR outside the ICB would be uncommon for consumer insurance disputes. The ICB has no jurisdiction to handle disputes arising from industrial, commercial or third-party insurance.

Reinsurance Contracts

Reinsurance contracts often contain arbitration clauses, and it is common to arbitrate reinsurance-related disputes (see **9.5 The Enforcement of Arbitration Clauses**).

9.8 Penalties for Late Payment of Claims

Subject to general contractual obligations between the insurer and the insured under an insurance policy, and unlike in the United Kingdom, there is currently no provision in Hong Kong which confers a statutory right of damages if insurers delay payment of claims.

9.9 Insurers' Rights of Subrogation

Subrogation, in the context of insurance, is the right of the insurer to pursue third parties for claims pursuant to which the insurer may be liable to the insured. Where the insurer pays for a claim under an insurance contract, the insurer becomes entitled to “step into the shoes” of the insured and is subrogated to all of the insured’s rights and remedies in respect of that subject matter. The insurer is only entitled to the rights and remedies which are available to the insured and the insurer has no greater right than that of the insured.

10. INSURTECH

10.1 Insurtech Developments

Insurtech developments in Hong Kong are similar to those in other jurisdictions. For example, online sales and online claims portals, digitally customisable products, online brokers (such as comparison websites), Blockchain-based products and products involving connected devices are all seen in the market. There is great interest in insurtech solutions, including those developed in nearby markets with strong insurtech ecosystems, such as Mainland China and Singapore.

A number of purely digital life and general insurers have been authorised by the IA.

10.2 Regulatory Response

The IA has two primary initiatives in relation to insurtech.

Fast Track

One is a “fast track” authorisation process for purely digital insurers, which has been used by a number of new entrants to the life and general insurance markets. Such “fast track” insurers are generally limited to distributing their products through their digital platform and are not

permitted to sell them through traditional agent or broker channels.

Sandbox

The other initiative is a “sandbox” which allows insurers to work on insurtech applications and products with the IA before they are launched to the market. Since the launch of the sandbox, this has included online sales platforms and non-face-to-face sale models involving videoconferencing tools. Certain requirements apply to participation in the sandbox, including a reasonably mature insurtech application, solid testing, exit and customer protection measures and the compliance of the application with law and regulation.

11. EMERGING RISKS AND NEW PRODUCTS

11.1 Emerging Risks Affecting the Insurance Market

Catastrophe risk (including more severe typhoons as a result of climate change) is regarded as one of the key emerging risks in Hong Kong. The newly established regime for ILS (see **7.1 ART Transactions**) is a key response of the regulator to such risk, which affects not only Hong Kong, but Mainland China and the wider region as well and may give rise to an increased demand for risk transfer to the capital markets.

The other regulatory initiatives in Hong Kong have been primarily focused on the emerging protection gaps for an aging population. Many Hong Kong residents have no or limited private health insurance and only limited pensions or other retirement protection. This has resulted in the design and promotion of new products with the assistance of the IA and the Hong Kong government, see **11.2 New Products or Alternative Solutions**.

11.2 New Products or Alternative Solutions

The new ILS regime has been described in **7.1 ART Transactions**.

In the last few years the Hong Kong insurance industry, supported by the Hong Kong government, has developed a number of products that are designed to address existing protection gaps.

This includes voluntary health insurance scheme (VHIS) products that provide indemnity coverage for hospital treatments in accordance with standards set by the Food and Health Bureau.

The newly developed products also include qualified deferred annuity plans, which are deferred annuity plans meeting certain requirements set by the IA and permit taxpayers to claim a tax deduction for their premiums up to a defined maximum limit.

In November and December 2021 the IA and the Securities and Futures Commission (SFC) provided updated guidance on unit-linked products, which are locally known as “investment linked assurance scheme” (ILAS) products. The guidance sets out new requirements that such products must meet in relation to various aspects (such as cost of insurance charges, fees and surrender charges) in order to benefit from a swifter approval process involving both regulators.

12. RECENT AND FORTHCOMING LEGAL DEVELOPMENTS

12.1 Developments Impacting on Insurers or Insurance Products

Relaxation of Rules Relating to Sale Process

In response to COVID-19, the IA relaxed the requirements relating to the sale of certain types of insurance products. Those relaxations continue to apply while the pandemic continues and are intended to facilitate non-face-to-face sales of products that are not regarded as complex.

As insurers sought to sell a wider range of policies through videoconferences between agents and customers, the IA adopted new rules on the conduct of such sales and required insurers to have the process for such sales approved by it through the insurtech sandbox.

Policy Coverage

A number of insurers have adapted their policies to cover specific COVID-19-related risks, such as under travel or health insurance policies.

The cases conducted in other jurisdictions such as England and Wales in relation to the scope of coverage for business interruption caused by COVID-19 has been closely followed in Hong Kong since similar coverage issues arise under local insurance policies and reinsurance contracts.

13. OTHER DEVELOPMENTS IN INSURANCE LAW

13.1 Additional Market Developments

Cross-border Regimes and ILS

The proposed cross-border insurance regimes for the Greater Bay Area referred to in **2.1 Insurance and Reinsurance Regulatory Bodies and Legislative Guidance** and the new ILS regime set out in **7.1 ART Transactions** are key recent market developments.

Risk-Based Capital Regime

The IA is working on the final rules for a new risk-based capital regime that is expected to replace the current formula-based “Solvency I” style regime in 2024. This follows years of extensive quantitative testing and consultation with the industry. The new risk-based regime follows a three-pillar approach similar to Solvency II and other risk-based frameworks. It is complemented by a new group-wide solvency regime for Hong Kong-regulated insurance groups, which was implemented in 2021.

Policyholders’ Protection Fund

Following a 2012 consultation regarding the establishment of a Policyholders’ Protection Fund (PPF), the Hong Kong government is preparing the legislation needed for such PPF. The fund will consist of two schemes, one for life and one for general insurance, and will be available to pay claims in the event of an insurer’s insolvency. There are existing compensation funds in relation to motor and employees’ compensation insurance, which will be carved out from the new PPF.

Debevoise & Plimpton regularly handles some of the largest insurance M&A transactions in Hong Kong, China and Asia and is considered a leading insurance regulatory practice. The firm is involved in all large insurance M&A transactions that are currently being undertaken in Asia Pacific. Debevoise & Plimpton regularly advises clients on significant cross-border public and private transactions, with a particular focus on M&A, joint ventures and bancassurance and

distribution agreements in the insurance industry. The practice works closely with banks, insurance and reinsurance firms, asset managers, private and listed funds, intermediaries and other financial institutions. The firm represents most of the major insurance companies in the world in their Asia transactions. Many of the deals also involve IP and technology players as insurers seek to partner with these in Asia.

AUTHORS



Edwin Northover is an Asia-based corporate partner at Debevoise & Plimpton, and head of financial institutions in Asia. Edwin has a broad cross-border public and private M&A practice,

with a particular focus on M&A, joint ventures and distribution agreements in the insurance industry. He has worked on several of the most significant insurance M&A transactions in Asia, including running major insurance company auction processes as well as acting on the buy-side. Edwin is the first port of call for multinational insurers looking to do transactions in Asia. He also has extensive private equity experience, having worked on a number of strategic and co-investments in the region.



Jan Buschmann joined Debevoise & Plimpton in 2018 from another leading international law firm, where he advised global insurance companies, banks and other

financial institutions on corporate transactions and the full range of regulatory matters, and is widely recognised as a leading Hong Kong insurance regulatory specialist in the industry. He also has particular expertise in complex reinsurance arrangements and regulatory capital issues. Jan is admitted to practise as a solicitor in Hong Kong and England & Wales.

Contributed by: Edwin Northover, Jan Buschmann and Cameron Sim, Debevoise & Plimpton



Cameron Sim is an international counsel in Debevoise & Plimpton's international dispute resolution group. He specialises in international arbitration and complex cross-border disputes,

with a focus on Asia-related matters. He is admitted in Hong Kong, New York, England & Wales and Australia. Cameron has represented corporates and sovereigns across a range of industries, including banking and finance, energy, insurance, pharmaceuticals, private equity, retail, and telecommunications. He has particular experience in commercial disputes concerning shareholder agreements, joint ventures, private equity funds, M&A issues, supply and distribution, fraud, and investment protections.

Debevoise & Plimpton

21/F AIA Central
1 Connaught Road Central
Hong Kong

Tel: +852 2160 9846
Email: achau@debevoise.com
Web: www.debevoise.com

Debevoise & Plimpton