

Insurance & Reinsurance

in Israel

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Israel



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MARKET SPOTLIGHT

Trends and prospects

What are the current trends in and future prospects for the insurance and reinsurance markets in your jurisdiction?

During the past few years, the controller (formerly, commissioner) of capital markets, insurance and savings has focused on increasing competition, mainly between pension funds. This important step follows a law, enacted approximately five years ago, which set out that all employees must pay monthly premiums to pension funds in order to secure their future. The opening of new pension funds offering minimum commission and low management fees has increased competition and forced existing pension funds to adapt their rates.

Another major trend has been increased insurance product transparency. The controller has issued various decrees and circulars, under which insurers must disclose monthly information regarding insurance programmes, exclusions, limitations and any updates to rates. The controller may fine an insurer which contravenes these rules, even as much as \$1 million.

In order to increase competition between insurers, the controller substantially reduced the capital requirement for digital insurers. In 2018 two new and entirely digital insurers were established with the aim of serving the private line sector.

Looking ahead, the controller aims to lower the requirement from digital insurers in various technical aspects which will enable them to operate more economically and efficiently. Further, tighter controls will be imposed on the insurance sector – including pension funds – in order to ensure that their activities are transparent and fair.

Enhanced investment in insurtech

The controller recently issued a circular to insurers under which it will ease the regulations on capital demands for any investments in insurtech companies which will allow them to operate digitally and make the distribution of insurance products more efficient.

REGULATORY FRAMEWORK

Legislation

What is the primary legislation governing the (re)insurance industry in your jurisdiction?

The insurance industry is governed by:

- the Control Over Financial Services (Insurance) Law 1981 (the Control Law); and
- the Insurance Contract Law 1981 (the Contract Law).

The Control Law – and the regulation enacted therefrom – regulates all aspects of the insurance industry, including the activities of and requirements for insurers and insurance agents. It also enables the controller of capital markets, insurance and savings to issue circulars and decrees to insurers and insurance agents regarding any aspect of their activities. During the past few years, more than 800 circulars and decrees have been issued (in addition to regulations).

The Contract Law governs the substance of insurance contracts and, in conjunction with the case laws developed by the courts, sets out guidelines on how insurance contracts should be written and interpreted.

Regulators

Which government bodies regulate the (re)insurance industry in your jurisdiction and what is the extent of their powers?

The Control Law also applies to reinsurers; however, no Israeli reinsurers currently exist. The Contract Law does not apply to reinsurance. The General Contract Law, which applies to all contracts, governs reinsurance contracts.

According to the Control Law, the controller regulates all sectors of the insurance industry, provided that the insurers therein were incorporated in Israel.

OWNERSHIP AND ORGANISATIONAL REQUIREMENTS

Ownership of (re)insurers

Are there any restrictions on ownership of or investment in (re)insurers in your jurisdiction, including any limits on foreign ownership/investment?

In order to hold 5% means of control in an insurer, the holder must receive the approval of the controller of capital markets, insurance and savings.

The term 'means of control' covers:

- the right to vote in the general assembly of a company or in a parallel body of another incorporation;
- the right to nominate a director to a board of directors;
- the right to participate in a company's profits by way of dividends; and
- the right to receive the balance of a company's assets in case of liquidation after payment of the company's debts.

There are no specific restrictions on the domicile of the owner of the means of control.

During the past few years, several foreign companies have tried to gain control over Israeli insurers. The controller demanded full disclosure of the chain of companies behind the candidates in order to ensure that they had sufficient capital and did not represent hostile buyers. As a result, most of these potential buyers (mainly Chinese investments companies) were denied the right to purchase means of control.

What regulations, procedures and eligibility criteria govern the transfer of control of/acquisition of a stake in a (re)insurer?

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Organisational requirements

Must (re)insurers adopt a certain legal structure in order to operate? If no mandatory company organisation applies, what are the common structures used?

In order to receive a licence to operate as an insurer in Israel, the applicant must:

- establish a company in Israel; or
- if the applicant is an insurer incorporated outside Israel, be registered in Israel as a foreign company.

Do any particular corporate governance requirements apply to (re)insurers, including any eligibility criteria for directors and officers?

Several circulars issued by the controller specify various corporate governance rules that insurers must adhere to, including:

- nominating an internal auditor;
- ensuring boards receive periodical information from various departments within the organisation;
- reviewing cyber risks and other potential exposure; and
- supervising outsourcing activities.

Before granting an insurer's licence, the controller will consider the suitability of the insurer's directors, senior officers, actuaries and external and internal auditors.

When dealing with a foreign insurer, the commissioner will consider the fulfilment of capital requirements, management and types of representative in Israel.

For the controller to consider the above, applicants must submit to the controller details of the abovementioned parties, including personal details and education and professional qualifications and experience.

OPERATING REQUIREMENTS

Authorisation procedure

Which (re)insurers must obtain authorisation from the regulator before operating on the market and what is the procedure for doing so?

Section 14 of the Control Over Financial Services (Insurance) Law 1981 (the Control Law) prohibits the carrying out of insurance business in Israel without and contrary to the terms of a licence.

According to the Control Law, the above terms do not apply to foreign insurers whose business in Israel is limited to reinsurance.

A foreign insurer that is subject to the supervision of another country and wishes to engage in insurance business in

Israel may be granted a foreign insurer's licence; however, to receive such a licence, the foreign insurer must be registered in Israel and have an Israeli place of business.

In order to receive a licence, applicants must complete the necessary forms, wherein they must disclose and provide proof of their:

- capital, including its source;
- potential directors' and officers' names;
- business plan;
- reinsurance programme; and
- insurance products' wording and tariffs.

The controller of capital markets, insurance and savings may demand additional documents as required to determine whether the candidate is eligible for receiving a licence.

Financial requirements

What are the minimum capital and solvency requirements for (re)insurers operating in your jurisdiction?

Applicants must provide the controller with proof that they can meet the minimum capital requirement, which depends on the branch of insurance in which they conduct business and should be set according to the Supervision over Financial Services (Insurance) Regulations (Minimum Capital Required of an Insurer) 1998.

The controller may require special additional capital from an insurer.

Currently, the capital requirements for digital insurance companies and traditional insurance companies are substantially different:

	General insurance	Life insurance	General and life
Traditional insurance company	NIS59 million	NIS52 million	NIS89 million
Digital insurance company	NIS10 million	NIS15 million	NIS25 million

Do any other financial requirements apply?

In addition to capital requirements, limitations apply regarding insurers' investments both within and outside Israel.

Personnel qualifications

Are personnel of (re)insurers subject to any professional qualification requirements?

An insurers board of directors must have at least seven but no more than 15 directors. Each member must be a natural person who fulfils at least one of the following:

- holds an academic degree in one of the following: insurance, law, economics, accountancy, statistics, business management, actuary, international auditing or any other field approved by the controller;
- is qualified to serve as an actuary or risk manager in an insurer;
- has managerial experience; or
- holds a licence as an accountant, pension adviser, investment adviser, portfolio manager or an insurance broker

and has been engaged in this field for at least four years.

A person may not be appointed as a director for an insurer if:

- their other business activities leave insufficient time to fulfil the duties of a director;
- they are employed by the insurer;
- they serve as a director or officer of another institutional body (unless the controller confirms that no conflict of interest exists); or
- they have been convicted of a criminal offence as listed in the regulations.

At least one-third of a board's members must include external directors who have no connection with any shareholder that holds more than 10% of the company's shares. At least half of the external directors must have:

- clear and proven expertise in the insurance field or three years' experience as a CEO; or
- held another senior position in a financial institution.

In addition, at least half of the external directors must have expertise in accounting and finance.

There are no specific requirements for officers of an insurer. However, according to the Control Law, prior to the appointment of a director or officer of an insurer, a notice must be sent to the controller, which may object to the appointment within 60 days.

Business plan

What rules and requirements govern the business plans of (re)insurers?

Together with the application for an insurer's licence, applicants must submit a business plan covering (at least) a three-year period. The plan must satisfactorily prove that the insurer will be able to maintain its financial strength and fulfil its obligations.

Among other things, the plan must refer to:

- the branches of insurance for which the licence is requested;
- the proposed insurance plans;
- the proposed premiums;
- the actuarial assumptions that served as the basis for setting the premium tariffs; and
- the proposed reinsurance arrangements.

Applicants must also supply the controller with samples of policies, proposal forms and other forms that the applicant intends to use, including:

- annual statements sent to insureds;
- proposal forms for joining an insurance programme; and
- a certified copy of the insurer's incorporation documents.

Risk management

What risk management systems and procedures must (re)insurers adopt?

The controller has issued the following circulars on risk management issues that should be dealt with by insurers' board members:

- risk management in case of a natural catastrophe (eg, earthquake), war or terrorist attack;
- risk management of IT, including defence against cyberattacks;
- management of compliance risks;
- management of credit risks ancillary to investment activities; and
- management of money laundering risk.

Reporting and disclosure

What ongoing regulatory reporting and disclosure requirements apply to (re)insurers?

The Control Law and the regulations and circulars which are based on it set out a significant number of topics which insurers must report and disclose to their customers and the controller's office.

Insurers must report all of their activities to the controller's office on either a monthly or quarterly basis. Financial reports must be presented to the controller's office every quarter.

Other requirements

Do any other operating requirements apply in your jurisdiction?

The controller's office may intervene in insurers' day-to-day activities for numerous reasons and instances of such intervention are exceptionally high. For example, there are circulars regarding how insurers must:

- handle claims;
- enter into insurance contracts;
- solicit customers by telephone; and
- renew policies.

All of these requirements are regularly reviewed by random audits by the controller's office.

Non-compliance

What are the consequences of non-compliance with the operating requirements applicable to (re)insurers?

In severe non-compliance cases, the controller may revoke an insurer's licence.

The controller's office frequently audits insurers. Where circulars, regulations or law have been contravened, substantial fines – in some cases up to \$1 million – may be imposed on the culpable company.

CONTRACTS

General

What general rules, requirements and procedures govern the conclusion of (re)insurance contracts in your jurisdiction?

The Insurance Contract Law 1981 (the Contract Law) sets out all of the requirements for concluding insurance contracts.

The insurance contract (ie, the policy) must be in writing and handed to the insured together with a copy of the proposal form. Any limitation or exclusion must be underlined. The insured must truthfully answer any question which is essential to the willingness of a reasonable insurer would use to enter into the insurance contract and is specified in the proposal form. No independent duty of disclosure is imposed on the insured.

Mandatory/prohibited provisions

Are (re)insurance contracts subject to any mandatory/prohibited provisions?

Certain insurance contracts are subject to mandatory wording, including those relating to:

- bodily injury in motor vehicles;
- private apartment dwellings;
- personal accidents; and
- travel insurance.

Other types of insurance contract must include certain elements as dictated by the Contract Law – for example:

- if an insurance contract is not cancelled ab initio, the insurer cannot cancel the contract after the insured event; and
- in suicide cases, insurers cannot cancel a policy if the suicide occurred 12 months after the contract was entered into.

Insurance benefits are linked to the cost-of-living index.

Implied terms

Can any terms be implied into (re)insurance contracts (eg, a duty of good faith)?

The Contract Law is silent on implied terms. However, according to court precedent, no implied terms can be added to the policy. All terms must be written in the policy.

Further, conditions precedents are not allowed and requirements that the insured will voluntarily disclose information which was not included in the proposal form are unacceptable.

Standard/common terms

What standard or common contractual terms are in use?

As the Contract Law sets out certain terms and obligations, most policies adapt its terms and import the wording of its terms and clauses.

'Smart' contracts

What is the state of development in your jurisdiction with regard to the use of 'smart' contracts (ie, blockchain based) for (re)insurance purposes? Are any other types of financial technology commonly used in the conclusion of (re)insurance contracts?

For insurance and reinsurance purposes, there is currently no use of smart contracts which skip the middle person

(broker or agent). However, direct insurers (there are four such insurers) are creating direct contact with insureds and eliminating the use of agents, though this is not similar to blockchain.

Breach

What rules and procedures govern breach of contract (for both (re)insurer and insured)?

The Contract Law governs breach of contract. For instance, if an insurer unjustly fails to pay insurance benefits, the court may obligate it to pay the consequential losses suffered by the insured as a result of a declination over and the above policy limits (ie, these are losses which the insured actually suffered, such as loss of income due to the declination of the claim or additional interest on loans taken out). These are not punitive damages, but a direct consequence of a declination.

If an insured breaches its contract, the insurer is entitled to remedies only if the loss is a direct consequence of the breach (eg, security measures not being implemented).

In case of late notice, insurers can decline coverage only if they can prove that the late notification actually caused it a loss (eg, the refusal of reinsurers to participate in a claim) and even then, up to the loss the insurer can prove.

If a breach relates to misrepresentation or partial disclosure, the remedy is payment of proportional insurance benefits.

Only a proven fraudulent breach entitles insurers to decline a claim in full.

CONSUMER PROTECTION

Regulation

What consumer protection regulations are in place to safeguard the rights of purchasers of insurance products and services?

The Insurance Contract Law 1981 (the Contract Law) is a consumer-orientated law (ie, it generally favours consumers' rights over insurers' rights). Further, numerous circulars from the controller of capital markets, insurance and savings concern the transparency obligations imposed on insurers with respect to sales of insurance products and claim handling procedures. Infringements thereof may undermine insurers' ability to deny a claim.

Court cases have interpreted the Contract Law by adding more obstacles for insurers. For example, insurers cannot rely on policy exclusions unless they can prove that the insured received the policy wording prior to the date of the event in question.

Further, insureds cannot rely on misrepresentation if they believed in good faith that the information rendered was true (particularly relating to medical information).

CLAIMS

General

What general rules, requirements and procedures govern the filing of insurance claims?

According to the Insurance Contract Law 1981 (the Contract Law), insureds must:

- inform their insurer about an insurance event as soon as they become aware of the event; and
- submit all of the information and documents necessary to enable the insurer to review its liability.

Insurers must notify insureds within 30 days of receiving the first notification regarding a claim. Insureds which delay submitting information could delay their insurer's response.

Insureds who receive a late or unsatisfactory response from their insurer may file a court claim; the type of court will depend on the claim amount.

Time bar

What is the time bar for filing claims?

The time bar for filing non-liability insurance claims is three years from the insured event. In liability claims, the claim is not time barred until prescribed by the insured's claim against the insurer (ie, at least seven years or in case of a minor, the time bar is calculated from the date on which they turn 18 years of age).

Denial of claim

On what grounds can the (re)insurer deny coverage?

An insurer can deny coverage in case of a breach of the insurance contract. For example:

- fraudulent misrepresentation, either by submitting fraudulent information in the proposal form or concealing essential information relating to the circumstances of the claim;
- fraud in submitting the claim – only if such fraud is proven can the insurer deny the claim in full; in all other cases, insurers are not allowed to void the contract;
- late notification – the insurer can deny a claim based on late notification only if it can prove that the late notice caused them a loss; or
- breach of security measures – only if the insurer can prove that the breach is the direct cause of the insured's event. In such case, the insurer's remedy will be proportional payment of insurance benefits in the same proportion as the premium for aggravated risk that would have been charged by a reasonable insurer compared with the premium that was actually charged.

If the alleged fraudulent activity relates to the circumstances of the claim, the insurer must prove that the fraud was intentional. Negligence or omissions in describing the circumstances of the event on the part of the insured will not be enough to reject the claim entirely.

What rules and procedures govern the insured's challenge of the denial of a claim?

Where a claim is denied, the insured can approach the courts or the office of the controller of capital markets, insurance and savings.

If the claim is for a small amount (ie, up to NIS30,000 (approximately \$7,500)), insureds can approach a small claims court, where no attorneys are allowed. For larger claims, insureds must file a claim in a regular civil court with the assistance of an attorney.

In addition, insureds may approach the controller by filing a complaint against their insurer. The controller will usually not intervene if the case had been filed before a court.

Israeli procedural law permits class actions. Therefore, in case of a declination or behaviour that may influence many potential insureds, a claim can be filed in the form of a class action (eg, where an insurer does not pay loss of value in road accidents which damage cars).

Third-party actions

On what grounds can a third party file a claim directly with the (re)insurer?

Israeli law allows a third party to bring a direct action against a liability insurer of the tortfeasor (Section 68 of the Contract Law) in all circumstances.

Punitive damages

Are punitive damages insurable?

No Israeli law or court ruling prohibits insuring punitive damages. The topic was never tested in Israel as the courts do not impose punitive damages. That said, such damages will usually be excluded under terms which do not form part of a private line type of policy.

Subrogation

What regime governs (re)insurers' subrogation rights?

Clause 62 of the Contract Law stipulates that Israeli insurers have the right of subrogation against any tortfeasor. This right is automatically transferred to insurers after they have paid insurance benefits to an insured. However, when exercising their right, insurers cannot jeopardise any rights of an insured (for additional compensation over insurance benefits).

A recent Supreme Court precedent ruled that non-admitted insurers which cover an Israeli risk cannot use Clause 62 for a subrogation claim. Such non-admitted companies require insureds to file a claim on their behalf.

INTERMEDIARIES

Regulation

How are the services of insurance intermediaries regulated in your jurisdiction?

Section 24 of the Control Over Financial Services (Insurance) Law 1981 sets out that a person cannot serve as an intermediary between an insured and an insurer unless they hold a licence and comply with the terms of that licence. The controller of capital markets, insurance and savings may grant an agent licence to an individual or corporation provided that all of the individuals engaged in brokering services on behalf of the corporation hold an agents licence. An Israeli agent cannot act as an intermediary between an insured and a non-licensed insurer.

TAX

Tax liability

What tax liabilities arise in the conduct of (re)insurance business?

Insurer profits are subject to Israeli tax. In addition, insurers are subject to 17% value added tax on their profit in addition to the regular profit tax. Domestic and foreign reinsurers are also subject to tax on premium received from Israeli cedents.

INSOLVENCY

Regulation

What regime governs the insolvency of (re)insurers?

The Control Over Financial Services (Insurance) Law 1981 (the Control Law) has a special section which deals with insurer insolvency.

The controller of capital markets, insurance and savings has the power to appoint an administrative manager if it thinks that the insurer cannot cover its obligation.

Special clauses in the Control Law give preference to insureds' rights over any other creditors.

Under Israeli case law, administrators may void any set-offs that reinsurers may wish to apply on their debts to an insolvent cedent.

Effect on insureds

How does a (re)insurer's insolvency affect insureds and the (re)insurer's obligations to insureds?

Under the Control Law, an insolvent company's administrators must prepare a programme whereby it will specify the insured's compensation (percentage wise) from the insurance benefits that they would have received had the liquidation not taken place. Insureds are preferred creditors. The programme must receive the Court of Liquidation's approval.

DISPUTE RESOLUTION

Litigation

Are there any compulsory or preferred venues for insurance litigation in your jurisdiction?

There is no compulsory or preferred venue for insurance litigation in Israel.

How are insurance disputes with a cross-border element handled in your jurisdiction?

If the case has cross-border elements, the parties will usually prefer to handle the case either through mediation or arbitration using a mediating arbitrator who is a known insurance expert.

What issues are commonly the subject of insurance litigation?

Common issues in insurance litigation include declination due to non-disclosure, late notification or alleged fraud on the part of the insured or lack of security measures.

What is the typical timeframe for insurance litigation?

Litigation may take between three and six years to reach a judgment in a court of first instance and an additional two years at appeal. If the case is referred to mediation or arbitration, it may be resolved within one year or less.

Arbitration**What regime governs the arbitrability of insurance disputes?**

According to circulars from the controller of capital markets, insurance and savings, insurers may not include arbitration clauses in standard policies. As a result, there are few insurance-linked arbitration cases. However, these circulars do not relate to reinsurance contracts.

Most reinsurance contracts include an arbitration clause and follow Israeli law rather than general reinsurance practice.

The Arbitration Law 1968 governs arbitration and provides that parties to arbitration can seek to confirm or vacate arbitration awards. In general, the courts tend to respect arbitration awards and will cancel them only in rare situations (eg, where no valid arbitration agreement exists, where an arbitrator exceeds their authority or where an award contradicts public policy).

In addition, parties to an arbitration agreement may agree to appeal an award to a specific arbitration forum or court.

LAW STATED DATE**Correct on**

Give the date on which the above content is accurate.

1 May 2019.