



# ICLG

## The International Comparative Legal Guide to: **Insurance & Reinsurance 2018**

### **7th Edition**

A practical cross-border insight into insurance and reinsurance law

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EDITORIAL

Welcome to the seventh edition of *The International Comparative Legal Guide to: Insurance & Reinsurance*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of insurance and reinsurance.

It is divided into two main sections:

Six general chapters. These are designed to provide readers with an overview of key issues affecting insurance and reinsurance work, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in insurance and reinsurance laws and regulations in 41 jurisdictions.

All chapters are written by leading insurance and reinsurance lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Jon Turnbull and Michelle Radom of Clyde & Co LLP for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at [www.iclg.com](http://www.iclg.com).

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# Singapore

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## 1 Regulatory

### 1.1 Which government bodies/agencies regulate insurance (and reinsurance) companies?

The Monetary Authority of Singapore (“MAS”) is the regulatory authority of, *inter alia*, (re)insurance companies.

### 1.2 What are the requirements/procedures for setting up a new insurance (or reinsurance) company?

There are two main regulatory aspects to satisfy when setting up a new (re)insurance company in Singapore:

#### (1) Insurance regulatory requirements

An application has to be made to the MAS for the requisite (re)insurance licence to carry on specific types and class(es) of (re)insurance business in Singapore. The factors which the MAS takes into account when considering such an application include:

- the applicant’s domestic and international rankings based on, *inter alia*, premiums and assets;
- past and present credit ratings by international rating agencies;
- track record, financial soundness and reputation;
- business strategy and feasibility plans;
- risk management systems; and
- fitness and propriety.

#### (2) Corporate regulatory requirements

The applicant will also need to register its business with the Accounting and Corporate Regulatory Authority as a branch of a foreign company or by incorporating a Singapore company under the Companies Act (Cap. 50) (“Companies Act”).

### 1.3 Are foreign insurers able to write business directly or must they write reinsurance of a domestic insurer?

Generally, foreign (re)insurers are not permitted to write business directly without the requisite licence to carry on such (re)insurance business in Singapore except:

- authorised foreign reinsurers pursuant to section 34 of the Insurance Act (Cap. 142) (“Insurance Act”);
- approved marine, aviation and transit insurers pursuant to regulation 3 of the Insurance (Approved Marine, Aviation and Transit Insurers) Regulations;
- insurers carrying on business under a foreign insurer scheme (i.e. Lloyd’s Scheme); and

- (re)insurers who provide (re)insurance pursuant to an arrangement not solicited by them.

### 1.4 Are there any legal rules that restrict the parties’ freedom of contract by implying extraneous terms into (all or some) contracts of insurance?

The Insurance Act contains the following provisions which may be used to restrict parties’ freedom of contract:

- a life insurance policy is rendered void if the policyholder does not have an insurable interest in the life insured (section 57 of the Insurance Act);
- any other type of insurance policy (except insurance on ships or goods or contracts of indemnity against loss by fire or loss by other events) where the policyholder has no interest in the insured event or is made by way of gaming or wagering is also rendered void (section 62 of the Insurance Act);
- a person under the age of 16 years cannot enter into an insurance contract without the written consent of his parents or guardians (section 58 of the Insurance Act);
- payment under a life policy must be made without any deduction for sums not due under the policy (section 59 of the Insurance Act); and
- prescribed limitations on, *inter alia*, the surrender, lapsing or forfeiture of life insurance policies which have been in force for three or more years (section 60 of the Insurance Act).

In addition, there also exist provisions under the Marine Insurance Act (Cap. 387), such as section 4 which renders a marine policy by way of gaming or wagering void, and section 23 which states that a marine policy must specify the name of the assured/person who effects the insurance on his behalf.

### 1.5 Are companies permitted to indemnify directors and officers under local company law?

The general provision is that companies are not permitted to indemnify its officers against any liability attaching to them in connection with any negligence, default, breach of duty or breach of trust (*see* section 172(2) of the Companies Act) except that:

- a company is permitted to purchase and maintain insurance against such liability for its officers (section 172(A) of the Companies Act); and
- the prohibition does not apply in respect of indemnity against liability incurred by its officers to persons other than the company. However, certain types of liabilities are expressly excluded, such as criminal liability for fines and penalties (section 172(B) of the Companies Act).

## 1.6 Are there any forms of compulsory insurance?

Yes, the forms of compulsory insurance are:

- motor insurance as mandated under the Motor Vehicles (Third Party Risks and Compensation) Act (Cap. 189);
- employer's liability insurance as mandated under the Work Injury Compensation Act (Cap. 354) (note: the Act and subsidiary legislation contain exemptions to the general statutory requirement for employers to procure such insurance); and
- professional indemnity insurance as mandated under the relevant statutes governing a profession; for instance, to be licensed as an insurance broker in Singapore under the Insurance Act, a broker must procure professional indemnity insurance, *inter alia*, for an amount of not less than S\$1 million.

## 2 (Re)insurance Claims

### 2.1 In general terms, is the substantive law relating to insurance more favourable to insurers or insureds?

A contract of insurance is a contract of *uberrimae fidei* and, generally, the common law principle affording an insurer the right to void an insurance contract for material non-disclosure still applies in Singapore. That principle alone may be viewed as being more favourable to insurers. However, the principle of *contra proferentem* in the construction of the terms of an insurance contract also continues to apply in Singapore against insurers.

### 2.2 Can a third party bring a direct action against an insurer?

Generally, a third party cannot bring a direct action against an insurer due to the common law doctrine of privity of contract. The exceptions are:

- under the Contract (Rights of Third Parties) Act (Cap. 53B), third parties may pursue a claim under a contract if, for instance, it is expressly provided that the insurance contract is made for the third party's benefit;
- under the Third Parties (Rights against Insurers) Act (Cap. 395), if the insured which is liable to the third party becomes insolvent and there exists a liability insurance policy covering the insured's liability to the third party, the third party may invoke the act to pursue a direct claim against the insurer; and
- if the policy has been legally and absolutely assigned to the third party in accordance with the Policies of Assurance Act (Cap. 392) or the Civil Law Act (Cap. 43).

### 2.3 Can an insured bring a direct action against a reinsurer?

The same principle of privity of contract applies in the context of a reinsurance contract, but if a cut-through clause exists, an insured could rely on the provision to pursue a claim directly against the reinsurer if the condition(s) therein are satisfied.

### 2.4 What remedies does an insurer have in cases of either misrepresentation or non-disclosure by the insured?

The remedy which an insurer may avail itself to in a case of material non-disclosure, particularly if such non-disclosure occurred at the

time of application for the insurance policy, is to treat the contract as being void *ab initio*.

### 2.5 Is there a positive duty on an insured to disclose to insurers all matters material to a risk, irrespective of whether the insurer has specifically asked about them?

Yes, there still exists a positive duty on an insured to disclose all matters material to a risk, particularly at the time of application to the insurer for insurance coverage. The principle is expressly set out in section 18 of the Marine Insurance Act and there exists an express requirement in section 25(5) of the Insurance Act for insurers to include a prominently displayed warning in its proposal forms that a proposer's failure to fully and faithfully provide facts which he knows or ought to know may result in nothing being paid under the policy.

### 2.6 Is there an automatic right of subrogation upon payment of an indemnity by the insurer or does an insurer need a separate clause entitling subrogation?

Unless expressly excluded, the right of subrogation accrues by operation of law in favour of an insurer which pays its insured's claim under an indemnity policy. However, it is not uncommon for the right of subrogation to be expressly stipulated in such policies.

## 3 Litigation – Overview

### 3.1 Which courts are appropriate for commercial insurance disputes? Does this depend on the value of the dispute? Is there any right to a hearing before a jury?

Jury trials were abolished in Singapore in 1969. The appropriate courts for commercial insurance disputes in Singapore depend on the value of the dispute. The monetary jurisdictional limits of the courts in Singapore are as follows:

Magistrate's Court, which is part of the State Courts	Up to S\$60,000
District Court, which is also part of the State Courts	Up to S\$250,000/up to S\$500,000 for road traffic accident claims or claims for personal injuries arising out of industrial accidents
High Court of Singapore	Above S\$250,000

In addition, the Singapore International Commercial Court ("SICC") was established in 2015 to deal with transnational commercial disputes. It is a division of the Singapore High Court and part of the Supreme Court of Singapore. Generally, the SICC has the jurisdiction to hear and try an action if:

- the claim is of an international and commercial nature;
- the parties to the action have submitted to the SICC's jurisdiction under a written agreement; and
- the parties do not seek any relief in the form of a prerogative order.

The SICC may also hear cases transferred from the Singapore High Court.

### 3.2 How long does a commercial case commonly take to bring to court once it has been initiated?

The time taken to bring a commercial case to trial varies from case to case, depending on, *inter alia*, the complexity of the dispute, the volume of documents, the number of parties involved, etc.

## 4 Litigation – Procedure

### 4.1 What powers do the courts have to order the disclosure/discovery and inspection of documents in respect of (a) parties to the action, and (b) non-parties to the action?

The courts have the power to order the discovery and inspection of documents against parties to an action as well as non-parties.

As a matter of course, in respect of parties to an action, directions for, *inter alia*, the discovery and inspection of documents are made at a Pre-trial Conference (“PTC”) and the duty on each party to provide such discovery continues throughout the proceedings. The court also has the power to order, on application by a party, the other party to provide specific discovery of documents which are necessary either for disposing the matter fairly or for saving costs.

If a party to an action fails to discharge its obligations of discovery or inspection, the court has the power to dismiss that party’s claim or strike out its defence (as the case may be), with judgment entered accordingly. Such a party may also be liable to committal.

### 4.2 Can a party withhold from disclosure documents (a) relating to advice given by lawyers, or (b) prepared in contemplation of litigation, or (c) produced in the course of settlement negotiations/attempts?

Yes, as such documents are privileged and need not be disclosed.

### 4.3 Do the courts have powers to require witnesses to give evidence either before or at the final hearing?

The courts in Singapore have the power to order any person to attend any proceeding in an action and to produce any document which appears to be necessary (to the court) for the purpose of that proceeding.

### 4.4 Is evidence from witnesses allowed even if they are not present?

Generally, evidence from witnesses is given by way of an affidavit and the witness must be available for examination before the court, failing which his affidavit will not be received in evidence except with the leave of court. For instance, the court may grant leave for a witness to give evidence by video conferencing (*see* section 62A of the Evidence Act (Cap. 97)). The court may also allow a deposition to be taken in a foreign jurisdiction in appropriate cases, upon application.

### 4.5 Are there any restrictions on calling expert witnesses? Is it common to have a court-appointed expert in addition or in place of party-appointed experts?

The parties to an action may adduce expert evidence if the dispute so requires but the court may, at or before the trial of an action, limit the number of expert witnesses who may be called at the trial.

To be considered as an expert, the expert has to be “a person with such scientific, technical or other specialised knowledge based on training, study or experience” (section 47(2) of the Evidence Act). Further, there are certain requirements of that the expert’s evidence has to comply with as set out in Order 40A, rule 3 of the Rules of Court.

The general rule is that an expert’s duty is to the court and not to the party who appoints the expert. This is expressly stipulated in Order 40A, rule 2 of the Rules of Court.

The court also has the power to appoint independent expert(s), whether on its own motion or on the application of any party, “to inquire and report upon any question of fact or opinion not involving questions of law or of construction” (*see* Order 40 rule 1 of the Rules of Court).

### 4.6 What sort of interim remedies are available from the courts?

The general interim remedies available include:

- (a) preservation of property which is the subject matter of proceedings by sale or by injunction or the appointment of receiver or the registration of a caveat or a *lis pendens* or in any manner whatsoever;
- (b) payments to be made to a party, stakeholder or into court on account of any damages or debt which that party may subsequently be adjudged as liable to pay; and
- (c) freezing orders to prevent dissipation of assets.

### 4.7 Is there any right of appeal from the decisions of the courts of first instance? If so, on what general grounds? How many stages of appeal are there?

There exists a right of appeal against final judgments rendered by the court of first instance in civil proceedings. The levels of appeal are as follows:

- (a) An appeal from the State Courts (i.e. Magistrate Court and District Court) lies to the High Court *if*: (i) the amount in dispute (excluding interest and costs) exceeds S\$50,000 (or such amount as may vary as published in the Gazette); or (ii) with the leave of the first instance court or the High Court.
- (b) An appeal from the High Court lies to the Court of Appeal, but leave of the High Court or the Court of Appeal is required *if, inter alia*: (i) the amount in dispute at the hearing before the High Court (excluding interest and costs) does *not* exceed S\$250,000 (or such amount as may vary as published in the Gazette) unless the matter pertains to an express excepted matter under section 34 of the Supreme Court of Judicature Act (Cap. 322); or (ii) the only issue in the appeal relates to costs.

The Court of Appeal is the highest court in Singapore.

### 4.8 Is interest generally recoverable in respect of claims? If so, what is the current rate?

Yes, interest is generally recoverable from the date an action is made in court until the date of judgment and from the date of judgment to the date of payment of the judgment sum. The current applicable interest rate is 5.33% per annum.

### 4.9 What are the standard rules regarding costs? Are there any potential costs advantages in making an offer to settle prior to trial?

As with many common law jurisdictions, there are two different types of costs:

- (a) solicitor and client costs payable by a party to its own solicitors; and
- (b) party and party costs. Generally, the party which succeeds in its claim or defence will be entitled to costs against the other party, but this is entirely at the discretion of the court.

A genuine offer to settle, which must remain open for acceptance for a period of not less than 14 days after it is served, may be taken into consideration by the court when determining the issue of the party and party costs at the conclusion of an action. Generally, if for instance a plaintiff's offer to settle is not accepted by the defendant, and the plaintiff obtains a judgment not less favourable than the terms of the offer to settle, the plaintiff should be entitled to costs on: (i) a standard basis from the date of commencement of the action up to the date that the offer was served; or (ii) an indemnity basis from the date that the offer was served up to judgment. However, as stated above, the issue of costs remains entirely within the discretion of the court.

#### 4.10 Can the courts compel the parties to mediate disputes? If so, do they exercise such powers?

Whilst the courts in Singapore cannot compel parties to mediate their disputes, it is very much encouraged:

- (a) Supreme Court Judges (High Court or Court of Appeal) may refer parties to mediation before the Singapore Mediation Centre or the Singapore International Mediation Centre.
- (b) A party who wishes to attempt mediation may file and serve on all other parties an Alternative Dispute Resolution ("ADR") Offer. The other party must respond within 14 days. If it does not, it is deemed to be unwilling to attempt ADR without providing reasons (Supreme Court Practice Directions Part IIIA, paragraph 35C(3)).
- (c) State Courts Judges may also refer parties to the State Courts Centre for dispute resolution ("CDR"). Mediation at the CDR is by State Court Judges and a panel of court volunteers who are trained and accredited by the Singapore Mediation Centre.

#### 4.11 If a party refuses to a request to mediate, what consequences may follow?

Order 59, rule 5(c) of the Rules of Court provides that, in exercising its discretion as to costs, the court **shall** take into account the parties' conduct in relation to any attempts at resolving the matter by mediation or other ADR. Hence, cost consequences may follow if a party refuses to accede to a request to mediate. Further, it is also stipulated in the aforesaid rule that advocates and solicitors should advise their clients on the potential adverse cost orders for any unreasonable refusal to engage in ADR.

## 5 Arbitration

### 5.1 What approach do the courts take in relation to arbitration and how far is the principle of party autonomy adopted by the courts? Are the courts able to intervene in the conduct of an arbitration? If so, on what grounds and does this happen in many cases?

The Singapore courts recognise party autonomy and valid arbitration agreements are given effect in Singapore under two statutes on the conduct of arbitrations: Arbitration Act (Cap. 10) ("AA"); and the International Arbitration Act (Cap. 143A) ("IAA"). Both statutes contain provisions empowering the court to order a stay of any court proceedings commenced by a party in contravention of an arbitration agreement. The power to grant a stay is discretionary under the AA, but mandatory under the IAA.

Generally, the Singapore courts do not intervene in the conduct of an arbitration and in respect of an international arbitration falling under the IAA, court intervention is limited and restricted to expressly prescribed instances.

### 5.2 Is it necessary for a form of words to be put into a contract of (re)insurance to ensure that an arbitration clause will be enforceable? If so, what form of words is required?

It is not necessary for an arbitration clause to be in a particular form for incorporation into a (re)insurance contract.

### 5.3 Notwithstanding the inclusion of an express arbitration clause, is there any possibility that the courts will refuse to enforce such a clause?

If the arbitration agreement is null and void, inoperative or incapable of being performed, such a clause cannot be enforced. Another possibility where the court will not grant a stay of court proceedings despite the existence of an arbitration clause is when the dispute before the court is not one which falls within the ambit of the arbitration agreement.

### 5.4 What interim forms of relief can be obtained in support of arbitration from the courts? Please give examples.

Under section 12A of the IAA, the court has the power to order the following interim reliefs (which the arbitral tribunal is also empowered to grant under section 12 of the IAA):

- Giving of evidence by affidavit.
- Preservation, interim custody or sale of any property which is, or forms part of, the subject matter of the dispute.
- Preservation and interim custody of any evidence for the purposes of the proceedings.
- Securing the amount in dispute.
- An interim injunction or any other interim measures.

### 5.5 Is the arbitral tribunal legally bound to give detailed reasons for its award? If not, can the parties agree (in the arbitration clause or subsequently) that a reasoned award is required?

Section 38(2) of the AA provides that an arbitral award shall state the reasons upon which it is based; unless the parties have agreed that no grounds are to be stated or that the award is an award by consent. For international arbitrations, the Model Law (which is given force of law under the IAA save for Chapter VIII), contains similar provisions requiring reasons to be given for an arbitral award, unless parties have agreed otherwise or the award is by consent.

### 5.6 Is there any right of appeal to the courts from the decision of an arbitral tribunal? If so, in what circumstances does the right arise?

The right of appeal to the courts only exists against an arbitral award under the AA and is limited to questions of law. An appeal may only be made if all the parties consent or with the leave of the High Court and any application for such leave must be made within 28 days after the award is issued. The right of appeal can be excluded by the agreement of parties.



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