International
Comparative
Legal Guides

Insurance & Reinsurance

2024

13th Edition

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Lloyd's market association
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International Comparative Legal Guides

Finland

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1 Regulatory

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

Insurance is supervised by the Finnish Financial Supervisory Authority (FIN-FSA) under the Act on the Supervision of Financial and Insurance Conglomerates (699/2004). The FIN-FSA acts according to the Act on Financial Inspection (878/2008). The FIN-FSA also issues binding guidelines and instructions on insurance and reinsurance companies' insurance activities.

Additionally, consumer protection authorities (such as the Finnish Competition and Consumer Authority (KKV)) have authority with regard to consumer insurance matters and the Data Protection Ombudsman's Office within the field of data protection.

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

The Insurance Companies Act (1062/1979) stipulates the requirements and procedures for the establishment, administration and operation of an insurance company registered under Finnish law. According to the Act, the founder of an insurance company must be a Finnish citizen resident in Finland or a Finnish entity or foundation. Setting up an insurance or reinsurance company requires authorisation from the FIN-FSA. The Insurance Companies Act and the FIN-FSA's guidelines lay down more detailed requirements for establishing an insurance company.

The Act on Foreign Insurance Companies (398/1005) stipulates how a foreign insurance or reinsurance company is entitled to carry on insurance business in Finland. A foreign insurance company domiciled within the EEA may carry on insurance business in Finland either through the freedom of service (FoS) without having a presence in Finland or establishing a branch in Finland. Foreign insurance companies established outside the EEA must, however, operate through a branch. In this case, the establishment requires authorisation that must be granted if the criteria set out in the Act on Foreign Insurance Companies is fulfilled.

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

According to the Act on Foreign Insurance Companies, a foreign insurer that is domiciled within the EEA may write their business directly on two bases.

First, an insurer may carry on direct insurance business in Finland based on the right of establishment after the authority responsible for insurance supervision in the insurer's domicile has notified the FIN-FSA.

The insurer may also carry on direct insurance business in Finland on the basis of the free provision of services. In this case as well, the foreign authority responsible for insurance supervision must deliver a declaration of starting a business to the FIN-FSA.

An insurance company domiciled outside the EEA may not, however, conduct direct insurance business in Finland without a licence issued by the FIN-FSA. The company is also required to establish a branch in Finland for its direct insurance business, which is headed by a principal approved by the FIN-FSA.

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?

Insurance Contracts Act (543/1994) (ICA) applies to contracts of insurance made between insurance companies and policyholders. Any contractual term that deviates from a provision of the ICA to the detriment of an insured person or a person entitled to compensation other than the policyholder is null and void. In this respect, insurance contract terms must not deviate from minimum terms stated in the ICA.

Any terms or conditions that deviate from the provisions of the ICA to the detriment of the policyholder shall be null and void if the policyholder is a consumer or other natural person. This rule also applies if the policyholder is a company that, in terms of the nature and scope of its business or activities or other circumstances, can be compared to a consumer as a party to the contract signed with the insurer.

It must be noted that the ICA does not apply to reinsurance. Reinsurance falls under the principle of freedom of contract, and parties can imply extraneous terms into them.

In addition to legislation, the general principles of insurance and tort law are applicable to insurance contracts and policies. The principles set obligations on both the insurer and the policyholder or insured. These include, *inter alia*, the principle relating to unreasonable contractual terms.

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

Under the Limited Liability Companies Act (624/2006), members of the board of directors, members of the supervisory board and the CEO are liable for the damages that they, in violation of the provisions of the Limited Liability Companies

Act or the Articles of Association of the company, have, in their duties, deliberately or negligently caused to the company, a shareholder or a third party. As for other employees and directors, the company is vicariously liable for damage caused by an employee or director through an error or negligence at work.

Finnish companies typically obtain liability insurance – at least for their CEOs and board members.

1.6 Are there any forms of compulsory insurance?

Mandatory and statutory forms of insurance include, e.g., occupational accident and death insurance, motor liability insurance, patient insurance and environmental damage insurance. There is a specific act on each of them, defining the situations where an insurance policy must be taken out. Health insurance, unemployment security and the national pension are also compulsory forms of insurance in Finland.

There are also compulsory forms of liability insurance for professionals in certain sectors, such as attorneys.

2 (Re)insurance Claims

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

It cannot be directly stated that the substantive insurance legislation is clearly more favourable to either the insured or the insurer. However, in situations where an insurance company provides insurance to a consumer or another natural person or legal person that in terms of the nature and scope of its business or other activities or other circumstances can be compared to a consumer as a party to the contract signed with the insurer, the ICA provides somewhat strong (or at least stronger) protection for the insured in relation to the insurer. The ICA is therefore protective of the consumer and comparable natural and legal person. The insurer cannot, for example, impose more strict terms than what would follow according to the law.

The ICA establishes rights and obligations regarding the disclosure obligations of the policyholder, the insured and the insurer, as well as the conditions for insurance compensation. However, it must be noted that the ICA does not apply to statutory insurance unless it concerns insurance governed by the Motor Liability Insurance Act, the Patient Injury Act or the Environmental Damage Insurance Act.

The provisions of the Consumer Protection Act also apply to all forms of insurance, excluding statutory insurance and group life insurance for employees or equivalent benefits granted by a municipal pension institution. From the perspective of an ordinary consumer, the legislation is therefore more favourable to the insureds. The law also regulates various quality requirements and quality controls for insurers.

The ICA does not apply to reinsurance. In reinsurance, the parties involved are both insurance companies and, hence, consumer protection provisions or the protection of the weaker party have not been considered necessary.

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

Yes. Pursuant to Section 67 of the ICA, under general liability insurance, the injured party is entitled to claim compensation in accordance with the insurance contract direct from the insurer, if:

1) the insurance policy has been taken out pursuant to laws or regulations issued by the authorities;
2) the insured has been declared bankrupt or is otherwise insolvent; or
3) the general liability insurance has been mentioned in marketing efforts launched to promote the insured's business.

However, if the insurer accepts a claim made by the injured person, such acceptance is not binding on the insured.

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

As the ICA does not apply to reinsurance, this possibility remains unregulated. In Finland, situations where an insured has brought direct action against a reinsurer can be considered extremely rare in legal practice and literature.

One case where such situation appeared is the Supreme Court's judgment KKO:1994:71. In this case, the action could be brought against the reinsurer for the reason that the insurance company's claims business had been outsourced to the reinsurance company. Notwithstanding the above, we believe that this case – due to the very specific merits of the case and because the Supreme Court did not consider the right to present a claim towards the reinsurer – cannot be considered a precedent, but the legal position remains unclear.

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

According to the ICA, where the insured of a non-life insurance has provided false or incomplete information before the issuance of the insurance or after the insured event has occurred, the insurer has the right to terminate the contract during the insurance period based on the misrepresentation or non-disclosure. The false or incomplete information must be such that if the insurer had known the true state of affairs, they would not have granted the insurance.

Further, if the policyholder or the insured has acted in bad faith under a non-life insurance policy when fulfilling the duty of disclosure, the insurer is not bound by the policy and is entitled to retain all premiums paid even if the insurance expires. If the policyholder or the insured has, either wilfully or through negligence which cannot be considered slight, failed to fulfil their duty of disclosure, compensation may be reduced or refused.

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?

Under Section 22 of the ICA, the policyholder and the insured shall before the issuance of an insurance contract give true and complete answers to the insurer's questions which may be of importance for the assessment of the liability of the insurer. Moreover, throughout the insurance period, the policyholder and the insured shall rectify any errors or deficiencies that they may discover in the information given to the insurer. The insurer is not required to disclose information that the insurer has not specifically asked for.

Reinsurance contracts vary in this aspect, and they more closely align with the obligations outlined in general contract law principles. The principle of fidelity between the parties may create a positive duty to disclose all matters material to a risk, despite the insurer having not specifically asked about them.

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?

Under Section 75 of the ICA, after the insured has received compensation from the insurer, the insured's right to recover compensation for the loss from a third person is subrogated to the insurer only if such third person has caused the occurrence of the insured event wilfully or through gross negligence or is liable to pay compensation under law irrespective of their negligence. Provisions on the limitations on the insurer's subrogated right in some insurance lines are set forth in the Product Liability Act.

The insurer's right to subrogation is limited when the third person is an individual or employee, government official or another person deemed equivalent in Chapter 3 of the Tort Liability Act (412/1974) for whom another party is under vicarious liability.

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?

The appropriate court is not determined based on the value of the dispute. Insurance-related disputes are, regardless of the monetary interest of the case, considered by the general courts, i.e., district courts (as the court of first instance), the courts of appeal and the Supreme Court. Under the ICA, any statement of claim based on either a decision made by the insurer on a claim or another decision that affects the position of the policyholder, the insured or another party entitled to compensation or benefits shall be filed within three years from the date on which the party concerned received the insurer's written notice of the decision and the time limit. The statement of claim shall be filed within the three-year time limit under penalty of forfeiture of the underlying right.

The procedural rules, including the rules for determining jurisdiction, set out in the Code of Judicial Procedure (4/1734), apply to insurance-related disputes. The dispute is, as a rule, considered by the district court with jurisdiction over the place where the defendant has its domicile (*forum domicili*). However, in practice, a choice of court agreement is often applicable for corporate customers.

Insurance-related disputes may also be resolved by arbitration. If the relevant insurance policy provides for an agreement to arbitrate, the dispute shall be resolved by arbitration.

In addition, the Finnish Financial Ombudsman Bureau (FINE) also handles insurance disputes and can give the parties solution recommendations. These recommendations are not binding by nature, but, in practice, insurance companies tend to follow the recommendations to a great extent.

The right to a hearing before a jury is not applicable under Finnish law.

3.2 What, if any, court fees are payable in order to commence a commercial insurance dispute?

The general courts charge a court fee. The court fee for initiating a civil case, such as an insurance-related dispute, before a district court acting as the court of first instance is currently EUR 530.

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

The length of the process varies largely depending on the district and the circumstances of the case in question. The handling time in the general courts is, especially in the capital region, currently regrettably long. Taking into account the possibility of appeal, it may take several years (even up to three to five years) to obtain a final judgment.

3.4 Does COVID-19 have, or continue to have, a significant effect on the operation of the courts, or litigation in general?

In 2020, COVID-19 led to substantial disruptions and delays as oral hearings for civil cases were postponed. This, in turn, had a cumulative impact on the progression of new cases.

COVID-19 has also significantly accelerated the adoption of technology in courts. For example, the courts are increasingly allowing virtual or remote hearings using video conferencing platforms. This allows legal proceedings to continue while minimising the need for physical presence in the courtroom.

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?

Under the Code of Judicial Procedure, the court may, upon a party's request, order that an object or document shall be brought to court if the object or document could be of significance as proof or that an inspection shall be conducted if the inspection could be of significance in obtaining proof. Such request and order may be addressed to the parties of the dispute as well as to third parties who hold possession of the relevant object or document. The party who requests the document must be able to identify the document and prove that it is in the possession of the person against whom the request is made.

Where considered necessary, the court may order the party or other person in question to fulfil the obligation under threat of a fine, or that a distraint officer shall bring the document or object to court.

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, a party may successfully object to the request, for instance, on the ground that the document in question contains trade secrets or is subject to legal privilege.

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

A general obligation to testify applies as a main rule in Finland, and witnesses are heard in the main hearing. Individuals called as witnesses are typically required to appear in court under the threat of facing a fine. A witness will be issued a written summons for the trial and is expected to be present at the specified time unless circumstances such as illness or disruption of public transport prevent attendance.

The witness has a duty to tell the truth. Should the witness be discovered altering the truth or withholding information, they may face charges for making a false statement. Nevertheless, individuals have the privilege against self-incrimination.

There are exceptions to the general obligation to testify. For instance, the family members and certain other persons may be exempted from testifying under the Code of Judicial Procedure. Additionally, a witness has the right to decline making a statement that would reveal a trade or professional secret, unless there are compelling reasons to disclose such information.

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

A written testimony that has been prepared for pending or early-stage proceedings may not be used as evidence. Consequently, witnesses must be heard orally in the main hearing.

In principle, the witnesses must attend court in person. However, testimony may be allowed remotely, for example by video or telephone, if the court considers it appropriate and if there is another specific reason. Such a reason could be, for example, if the witness would incur unreasonable costs to attend court or if they are unable to attend the main hearing due to illness.

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?

An expert witness is heard on empirical rules requiring special knowledge and on their application to the circumstances arisen in the matter under courts consideration. Although a court may appoint an expert witness, the expert witnesses are typically called by the parties, not by the court. Certain people may be required to act as expert witnesses by virtue of their public office, other functions or other special provisions.

As for the restrictions on expert witnesses, an expert witness must be known to be honest and competent in their field of expertise. Most importantly, a person who has a connection to the matter or a party in a manner that endangers their impartiality may not serve as an expert witness.

Under Code of Judicial Procedure, an expert witness shall present their statement in writing. However, an expert witness shall, under certain circumstances, additionally be heard in court in person.

The expert witness is obliged to remain truthful under penalty of prosecution. The expert is also entitled to a reasonable fee.

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

The precautionary measures available are stipulated in Chapter 7 of the Code of Judicial Procedure and consist of three kinds of precautionary measures, i.e., attachment of real or movable property to secure a debt owed, attachment of object or other given property to secure ownership or another prior right, and other precautionary measures (so-called "general precautionary measures"). Decisions to order a precautionary measure are taken by the general courts and enforced by bailiffs.

As for an attachment, the applicant must demonstrate: (i) that it is probable that the applicant holds a debt or other type of right; and (ii) that there is a danger that the opposing party will hide, destroy or convey its property, or take other action endangering the payment of the debt or other right of the applicant. Correspondingly, general precautionary measures (where a court may prohibit the opposing party, under a threat of fine, from performing or refraining from performing certain acts) require *prima facie* evidence of another right of the applicant and a danger that the opposing party may hinder or undermine the realisation of the right of the applicant or essentially decrease the value or significance thereof. Additionally, when deciding on a general precautionary measure, the court shall take into consideration that the opposing party does not suffer undue inconvenience in comparison with the benefit to be secured.

Before a precautionary measure can be enforced, the applicant must, as a rule, lodge with the bailiff a security for loss that the opposing party may incur as a result of the precautionary measure.

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?

A judgment of a district court may be appealed to the competent court of appeal. If a party wishes to appeal the district court's judgment it shall, at the latest on the seventh day after the day when the district court's judgment was issued, declare its intent to appeal under threat of forfeiting their right to be heard, and file the written appeal within 30 days from the date of the judgment.

In a civil case, such as an insurance claims case, an appeal is subject to leave for continued consideration granted by a court of appeal. This shall be granted if:

i. there is cause to suspect the correctness of the final result of the decision of the district court;
ii. it is not possible to assess the correctness of the final result of the decision of the district court without granting leave for continued consideration;
iii. in view of the application of the law in other, similar cases, it is important to grant leave for continued consideration on the matter; or
iv. there is another important reason for granting leave.

A judgment of a court of appeal may be further appealed to the Supreme Court. However, to appeal a decision of the court of appeal, leave to appeal shall be requested from the Supreme Court. Leave to appeal may be granted only if it is important to bring a case before the Supreme Court:

i. for a decision with regard to the application of the law in other similar cases or because of the uniformity of legal practice;
ii. if there is a special reason for this because of a procedural or other error that has been made in the case on the basis of which the judgment is to be reversed or annulled; or
iii. if there is another important reason for granting leave to appeal.

The requirements for leave to apply are restricted and high. Thus, in practice, it is very rare that the Supreme Court would grant leave to appeal and, therefore, the majority of the cases are finally settled by the court of appeal.

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

Yes, interest is, upon a request of a party, generally recoverable in respect of claims.

Unless otherwise agreed, the obligation to pay interest is determined under the Interest Act (633/1982). Under Section 4 of said Act, the amount of the interest is seven percentage points higher than the reference rate (i.e., the interest rate applied by the European Central Bank to its most recent main refinancing operation carried out before the first calendar day of each half-year rounded up to the nearest half-percentage point) in force at the time in question.

The reference rate from 1 July 2023 to 31 December 2023 was four per cent, and the interest rate for late payment in commercial contracts was 12 per cent.

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

The costs of the trial consist of court fees to the state and costs incurred by the parties, including attorneys' fees.

The party who loses the matter shall, as a rule, be liable for all reasonable legal costs incurred by the necessary measures of the opposing party. This rule is, however, not absolute and the court may, for example, under certain circumstances, reduce the payment liability of the party. As a further example, the parties shall, as a rule, be liable for their own legal costs if several claims have been made in the same matter and some of them are decided in favour of one party and some in favour of the other party.

A settlement offer made before or during the proceedings can be a factor to be considered when the court decides on the liability to cover the counterparty's legal and other costs. In the case of a settlement, the parties often agree also on the reimbursement of legal costs.

4.10 Can the courts compel the parties to mediate disputes, or engage with other forms of Alternative Dispute Resolution? If so, do they exercise such powers?

No, the courts cannot compel the parties to mediate disputes, or engage with other forms of Alternative Dispute Resolution. However, the courts are, in matters that could be settled, required to try to persuade the parties to settle the matter. The courts offer court mediation in civil matters as an alternative to court proceedings. When the matter is considered suitable for a court mediation, the courts encourage the parties to refer their dispute to court mediation. However, commencing a court mediation requires that both parties give their consent to the mediation.

4.11 If a party refuses a request to mediate (or engage with other forms of Alternative Dispute Resolution), what consequences may follow?

A party cannot be forced to mediate or engage with anther forms of Alternative Dispute Resolution and, therefore, there are no sanctions or direct consequences as such. However, the court may, in practice, draw conclusions from the parties' behaviour when considering the matter under the theory of free evidence.

Alternative Dispute Resolution would be applicable based on an explicit agreement on Alternative Dispute Resolution concluded between the relevant parties. Should a party refuse to comply with the agreement, this would, in practice, constitute a breach of such agreement.

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?

Arbitration is widely used in the resolution of commercial disputes, including insurance-related cases. Finnish insurance policies applicable to large corporate customers commonly include a clause on dispute resolution referring to arbitration instead of the general courts. The Arbitration Act (967/1992) is largely based on the UNCITRAL Model Law on International Commercial Arbitration of 1985. However, arbitration under the Arbitration Rules of the Finland Chamber of Commerce (FAI Rules) is often used in insurance policies governed by Finnish law.

A valid arbitration agreement excludes the jurisdiction of the general courts. Therefore, if an agreement refers the matter to arbitration, a Finnish court cannot, *per se*, hear the matter. However, if a proceeding is initiated in a general court despite the existence of the arbitration agreement, the opposing party must invoke the arbitration agreement before it states its case on the merits in the general court.

If the arbitration is not governed by the FAI Rules, the courts have the authority to designate arbitrators under specific circumstances. In *ad hoc* arbitration, a party has the option to petition the court for the appointment of an arbitrator if the opposing party neglects to propose one, if a designated arbitrator becomes unavailable, or if the parties are unable to reach a consensus on a sole arbitrator. The court may dismiss an arbitrator based on negligence or unjustifiable delay of the proceedings.

Finally, a valid arbitral award has the same legal effects as a court decision and may also be, under the Enforcement Code (705/2007), enforced by the enforcement authorities, in cases where a Finnish court has issued an enforcement order.

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?

Any existing or future dispute in a civil or commercial matter which can be settled by agreement between the parties may be referred to arbitration. There is no prescribed wording that must be adhered to for the arbitration agreement to be enforceable. However, an arbitration agreement must be concluded in writing.

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

A court may examine the validity and scope of an arbitration agreement if such request is made before them, for example, when ruling on the enforcement of the award. The court may also, on a party's request, set an arbitration award aside if, for example, the arbitration tribunal has exceeded its authority.

It must be noted that an arbitration agreement concluded between a company and a consumer before a dispute emerges is not binding on the consumer. Further, should the arbitration agreement be considered unreasonable, the court may set the agreement aside.

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

Under the FAI Rules, before the case file is transmitted to the arbitral tribunal, and in appropriate circumstances even thereafter, the parties may apply to any competent judicial authority for interim measures of protection. The application of a party to a judicial authority for such measures is considered an infringement or a waiver of the arbitration agreement.

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?

This is not particularly regulated in the Arbitration Act. In other words, the law does not impose an obligation on an

arbitral tribunal to give reasons for its award. The parties may agree that the award shall be reasoned. In practice, reasoning is included in awards in the majority of cases, even if the parties have not specifically requested for reasoning.

On the other hand, in arbitration governed by the FAI Rules, the arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.

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?

An award cannot be appealed to the courts on the merits and, according to the FAI Rules, an award shall be final and binding on the parties.

However, an award may, under certain restricted circumstances, be declared null and void or set aside by the court. Declaring an award null and void or setting an award aside is, in practice, extremely rare and the threshold for doing so is somewhat high.

Olli Kiuru has over 20 years of experience in the banking and finance and insurance fields, and specialises in a wide range of financial regulatory, compliance, financial transactions and corporate governance matters for domestic and international financial institutions, insurance companies and other regulated entities as well as fintech companies. Olli also has a solid and proven track record in licence applications and restructuring of financial entities.
Olli has further strengthened the firm's financial regulatory and fintech capabilities. Olli is also a founding member and former chair of the Fintech Finland Association. Additionally, Olli was just appointed as the chairman of the board for a Finnish-owned EEA credit institution (subject to supervision of EEA resolution authorities), Saldo Bank UAB.

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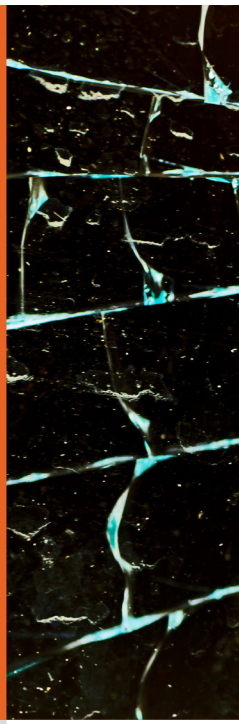

Insurance & Reinsurance 2024 features one industry chapter, two expert analysis chapters and 31 Q&A jurisdiction chapters covering key issues, including:

- Regulatory Authorities and Procedures
- (Re)insurance Claims
- Litigation
- Arbitration

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