
THE
INSURANCE AND
REINSURANCE
LAW REVIEW

EDITOR
PETER ROGAN

LAW BUSINESS RESEARCH

THE INSURANCE AND REINSURANCE LAW REVIEW

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THE
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EDITOR'S PREFACE

It is hard to overstate the importance of insurance in personal and commercial life. It is the key means by which individuals and businesses are able to reduce the financial impact of a risk occurring. Reinsurance is equally significant: it protects insurers against very large claims and helps to obtain an international spread of risk. Insurance and reinsurance plays an important role in the world economy. It is an increasingly global industry, with the emerging markets of Brazil, Russia, India and China developing apace.

The insurance and reinsurance industry is remarkably resilient. In recent times it has been severely tested, but has passed the test on every occasion. Three examples spring to mind. As a lawyer steeped in the London market the first is the source of some personal pride. In the late 1980s and early 1990s the Lloyd's market suffered enormous losses arising largely as a result of a combination of asbestosis and pollution-related claims and the market practice, prevalent at the time, of placing inter-syndicate excess of loss retrocession in respect of catastrophe losses, commonly known as the London Market Excess of Loss (LMX) spiral. Those losses ultimately led to a plethora of litigation and forced many Lloyd's Names to cease underwriting. The scale of the losses also affected the solvency and liquidity of Lloyd's.

In 1996 Lloyd's implemented a reconstruction and renewal (R&R) plan, a complex market restructuring. Ultimately Equitas was established to reinsure and run off the 1992 and prior years' liabilities of the Names. In November 2006 National Indemnity Company, a member of the Berkshire Hathaway Group, reinsured all the liabilities of Equitas and Resolute Management Services Ltd, another member of the Berkshire Hathaway Group, took over responsibility for the run-off. On 25 June 2009 the English High Court approved the transfer of the 1992 and prior business of the Names to Equitas with the effect that, as a matter of English law, Lloyd's Names no longer have any liability for the 1992 and prior years' losses. This restructuring has been extremely successful in enabling Lloyd's not only to continue operating but to improve and enhance the service it provides. Lloyd's is today undoubtedly the world's leading market for internationally traded insurance and reinsurance.

The second test of the insurance and reinsurance market was the financial crisis of 2008–2009. While there were some high-profile casualties, in general the industry was able to withstand events better than other financial institutions, certainly better than the banks. With the exception of specialist lines such as directors' and officers' (D&O) and trade credit insurance, insurers and reinsurers suffered relatively little exposure to the financial market losses. The traditional insurance and reinsurance sectors were largely onlookers. Indeed I would go further and suggest that they arguably helped to provide a stabilising effect, given the nature of their business model and in particular a conservative investment approach. If the crisis has triggered a more stringent regulatory regime for financial services generally that is no bad thing, but it should not be forgotten that insurance activity neither led to, nor was unduly affected by, that crisis.

Finally, the natural catastrophes and man-made disasters of 2011 and 2012 have caused not only human tragedy and loss of life but also enormous insured losses. A 28 March 2012 study by Swiss Re (based on data from its *sigma* database) revealed that, altogether, natural catastrophe insured losses came to around US\$110 billion, while losses from man-made disasters were around US\$6 billion, making 2011 the second-highest catastrophe loss year ever for the insurance industry. 2012 was dominated by weather-related events in the United States, most notably Hurricane Sandy. On 19 December 2012, again based on *sigma* data, Swiss Re estimated that insurance losses arising from the catastrophic events of the year were set to reach approximately US\$65 billion. The figure is of course moderate compared with 2011 but Swiss Re notes that it is above the average of the past 10 years.

The events of 2011 and 2012 provided significant challenges for the insurance and reinsurance industry for a number of reasons – one being the sizeable impact they had on manufacturing around the world, something that had not fully been appreciated in advance. However, the industry proved to be highly effective in overcoming these challenges. Despite losses on a historic scale and a difficult economic climate, it played a key role in bringing financial relief to populations, businesses and governments suffering from the effects of the disasters.

Events such as these test not only insurers and reinsurers but also the rigour of the law. From the English perspective, the Lloyd's Insurance and Reinsurance Reports, issued almost monthly, are never short of material to fill their pages. Insurance and reinsurance disputes provide a never-ending array of complex legal issues and new points for the courts and arbitral tribunals to consider. Taking the natural catastrophes as an example, these have thrown up issues of causation, claims notification, cooperation and control, the effect of 'follow the settlements' provisions and aggregation, to name but a few.

There are many insurance and reinsurance publications available. However, in this increasingly globalised industry there is a need for a source of reference that analyses recent developments in the key jurisdictions on a comparative law basis. This volume, to which leading insurance and reinsurance practitioners around the world have made valuable contributions, seeks to fulfil that need. I would like to thank all of the contributors for their work in compiling this volume.

Peter Rogan

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Chapter 21

TAIWAN

C T Chang, Trisha Chang and Jacqueline Wang¹

I INTRODUCTION

The insurance industry in Taiwan is highly regulated and insurance business may not be carried out without regulatory approval and registration. Insurance enterprises are strictly supervised in terms of corporate governance, utilisation of funds and product innovations.

Insurance enterprises are divided into two categories: life insurance enterprises and non-life insurance enterprises. An insurance enterprise is prohibited from engaging in both life and non-life insurance businesses at the same time; however, with approval from the competent authority, non-life insurance enterprises can engage in personal injury insurance and health insurance businesses. Non-life insurance includes fire insurance, marine insurance, land and air insurance, liability insurance, bonding insurance and other types of insurance approved by the competent authority, while life insurance includes life insurance, health insurance, personal injury insurance and annuities. Professional reinsurance enterprises, not restricted by the above-mentioned rules, can engage in reinsurance of both life and non-life insurance businesses.

As of the end of 2012, in Taiwan there are 14 non-life insurance companies including two subsidiary companies incorporated in Taiwan by foreign insurance enterprises; 23 life insurance companies including five subsidiary companies incorporated in Taiwan by foreign insurance enterprises; six Taiwan branch offices of foreign insurance enterprises; and two Taiwan branch offices of foreign reinsurance enterprises.

¹ C T Chang is a partner, Trisha Chang is a senior attorney and Jacqueline Wang is an attorney at Lee and Li, Attorneys-at-Law.

II REGULATION

i Highly regulated insurance industry

The insurance regulator in the Republic of China ('ROC') is the Financial Supervisory Commission ('FSC'), which is authorised to issue ancillary regulations from time to time to supplement the supervision of insurance companies and insurance brokerage/agency companies.

Requirements for authorisation

For an insurance company, the company's minimum paid-in capital must be NT\$2 billion and the capital contributions of promoters and shareholders shall be limited to cash.

For foreign insurance enterprises, approval must be obtained from the FSC to set up a Taiwan branch office, which is allowed to engage in insurance business; the branch's minimum paid-in capital must be NT\$50 million; and the representative office shall be prohibited from solicitation activities.

According to Article 7 of the Regulations Governing the Same Person or the Same Concerned Person Holding a Certain Percentage or More of the Outstanding Voting Shares of Insurance Company, the same person or same concerned person who plans to solely, jointly or collectively hold more than 10, 25 or 50 per cent of an insurance company's outstanding voting shares must meet certain requirements or obtain the approval from the FSC, or both. A shareholder who holds more than 50 per cent ('major shareholder') must: (1) guarantee the rights and benefits of the insurance company's policyholders and employees; (2) comply with applicable laws and regulations in Taiwan with regard to his, her or its funding sources; (3) be equipped with the professional ability to operate an insurance company; and (4) indicate his, her or its intent of long-term operations (including a long-term operation commitment and adequate financial ability to meet the capital injection needs of the company in the next 10 years).

Regulation of individuals employed by insurers

The following regulations govern the required qualifications for the responsible persons, appointed actuaries, insurance solicitors, insurance underwriters and claim adjusters of insurance enterprises:

- a* the Regulations Governing Required Qualifications for Responsible Persons of Insurance Enterprises;
- b* the Regulations Governing Appointed Actuaries of Insurance Companies;
- c* the Regulations Governing the Supervision of Insurance Solicitors; and
- d* the Regulations Governing Business Solicitation, Policy Underwriting and Claim Adjusting of Insurance Enterprises.

With regard to insurance solicitors, the activity of insurance solicitation undertaken by a solicitor under authorisation shall be deemed as an activity within the scope of authorisation by insurers. The employing company shall administer rigorous supervision of solicitation by its registered solicitors and will be held jointly and severally liable under law for any damage arising out of or in relation to the solicitation activity of its solicitors. Where a solicitor is concurrently registered to solicit both non-life insurance

and personal insurance, the respective employing companies under which the solicitor is registered shall assume joint liability under law.

Under ROC laws and regulations, insurance solicitation activity refers to: (1) explaining the content of an insurance product and relevant policy provisions; (2) explaining the notes on filling out an application form; (3) forwarding the application documents or insurance policy; and (4) performing other solicitation activities authorised by the employing company.

Taxation of premiums

An individual (an insurance policyholder) can deduct life insurance premiums of up to NT\$24,000 on his or her income tax return per year. A legal person can recover its non-life insurance premiums as deductible business-related expense.

Regulation of insurance products

With regard to products, it is illegal to sell or solicit any insurance product not approved by or registered with the FSC. Hence a policy not approved by or filed with the FSC shall not be sold or solicited in Taiwan, including offshore policies. It is a criminal offence to sell offshore policies in Taiwan. Under ROC law, any person or company who provides agency, brokerage or solicitation services for unlicensed insurance companies or foreign insurance companies will be subject to up to three years' imprisonment and a fine of between NT\$3 million and NT\$20 million.

ii Compulsory insurance

There are certain compulsory insurances in Taiwan and in principle there are two types of compulsory insurance. One is social insurance, such as national health insurance, labour insurance, and farmer health insurance; the other is policy insurance, such as compulsory motor liability and residential earthquake insurance. In addition, some particular enterprises are required to hold public liability insurance and travel agencies are required to have travel agency multiple liability.

Compulsory automobile liability insurance

To protect victims of car accidents and efficiently and directly indemnify the victims, the Compulsory Automobile Liability Insurance Act was promulgated on 27 December 1996 and took effect on 1 January 1998. 'Automobile traffic accident' referred to in the Act means an accident in which an automobile is used or manoeuvred in such a manner as to cause injury or loss of life to a passenger or to a third party outside the vehicle. Where there is an automobile accident, no matter whether the offender was negligent or not, the victims, including passengers or any third party outside the car, are entitled to insurance proceeds or indemnity from the Motor Vehicle Accident Compensation Fund ('the Compensation Fund'). Briefly, when an automobile accident occurs and a claimant is unable, for one of the following reasons, to claim insurance proceeds from an insurer, the claimant may make a claim for compensation from the Compensation Fund within a certain amount: (1) the vehicle causing the accident cannot be tracked; (2) the vehicle causing the accident is an uninsured automobile; (3) the vehicle causing the accident is an insured automobile that was used or manoeuvred without the consent

of the insured; or (4) all or part of the vehicle causing the accident is exempted from compulsory automobile liability insurance.

Compulsory public liability insurance

Many local regulators have issued regulations governing compulsory public liability insurance applicable in individual counties or cities. For example, Taipei City government listed the public places that are required to be covered by compulsory public liability insurance. The places include performance or public venues that contain an audience space and stage area (such as movie theatres); places for entertainment (such as karaoke bars); places whose total floor area exceeds 500 square metres for exhibitions or commerce and in which commercial tenants change frequently (such as department stores); places for serving food and drinks to the public (such as restaurants); etc. Any entity violating such regulations may be subject to fines or even ordered to suspend its business activities.

III INSURANCE AND REINSURANCE LAW

i Sources of law

The legal system in Taiwan is based on statute. The Insurance Act ('IA') is the principal legislation that regulates insurance businesses, reinsurance business and insurance companies in Taiwan. The principles that are not specified in the IA but have been interpreted by a judgment rendered by a Taiwan court could also be cited in future cases as the judge would often follow the appeal court's judgments for stability of the juristic system.

ii Making the contract

Essential elements of an insurance contract

According to the IA, except as otherwise provided in the Act, an insurance contract shall specify the following particulars:

- a* names and domiciles of the contracting parties;
- b* the subject matter insured;
- c* the type of risk insured;
- d* the date and hour from which the insurance liability commences and the period of insurance;
- e* the insured amount;
- f* the premium;
- g* causes for voidance of contract or loss of rights; and
- h* the date the contract is entered into.

Information provided to the insurer

According to the IA, a policyholder is obliged to answer questions posed by the insurer in writing (i.e., insurance application or proposal). A policyholder is not obliged to disclose any information not specifically and reasonably requested by the insurer. In the event that a policyholder fails to disclose requested information, or has omitted or misrepresented certain details, the insurer has the right to cancel the insurance contract, even if the insured-against accident or loss has occurred.

Utmost good faith and disclosure

To prevent exposure to a moral hazard, the principle of utmost good faith (meaning that any party should reveal to the others any information that might influence the others' decision) applies to the insurer and the insured or policyholder in Taiwan. Such principle is the basis of the provisions of disclosure obligation set forth in the IA.

iii Interpreting the contract

General rules of interpretation

Interpretation of insurance contracts shall be made to seek the true intent of the parties, and the policyholders should not adhere blindly to the language employed. When there is any controversy, the provisions of the insurance contract should be interpreted in favour of the consumers.

Types of terms in insurance contracts

Insurance contracts can be categorised into definite-term contracts and indefinite contracts. Generally, non-life products are one-year definite-term contracts. However, there are some long-term contracts as well, such as a construction insurance contract, which would last from the beginning of the construction to the completion day, or a two-year compulsory motorcycle liability insurance contract. Life products include both types, such as a whole life insurance contract or a one-year accident insurance contract.

Warranties

In the event that an insurance party breaches a warranty, the counterparty has the right to cancel the contract concerned, even if the insured-against accident or loss has occurred. However, it is debatable whether breach of an affirmative warranty in the IA or a promissory warranty in the IA, or both, would cause an insurance contract to be cancelled. Local scholars advised that the IA be amended to make the warranty clauses clearer, but the clauses are yet to be amended.

Conditions precedent

According to Article 21 of the IA, premiums are categorised into two types: those to be paid in a lump sum, and those to be paid in instalments. A lump-sum premium, if such is stipulated in the insurance contract, or the first instalment of the premium, shall be paid before the contract takes effect. Some scholars consider an insurance contract to be ineffective before the premium is paid based on Article 21. In practice, however, and in most theories in Taiwan, an insurance contract will be deemed effective upon execution, regardless of whether the premium has been paid or not. In fact, a policyholder or insured should pay attention to the terms and conditions of his or her insurance policy, because certain liability insurance policies would stipulate that if the insured-against accident or loss occurs before the insurance premium is paid, the insurance company is not liable.

iv Intermediaries and the role of the broker

Globally there are three main types of insurance product selling systems: (1) selling by insurance brokers; (2) selling by insurance agents; and (3) selling by both insurance brokers and insurance agents.

Rules

The main rules in the ROC governing insurance brokers and insurance agents are the Regulations Governing Insurance Brokers and the Regulations Governing Insurance Agents.

A local licence issued by the FSC is required to operate as an insurance agent or broker. Without the licence, no entity is allowed to engage in insurance agency or brokerage business or to solicit insurance products in Taiwan.

Insurance agent

An insurance agent in the ROC is engaged by an insurer to act as a business agent on the insurer's behalf. In theory, an insurance agent is the agent of an insurer. A person meeting an insurance agent's qualification may, after obtaining a practice licence, practise independently in his or her own name or as an employee of a corporate organisation. An insurance agency company shall employ at least one qualified insurance agent to serve as a signatory, and carry out registration of permission with the competent authority.

Insurance broker

An insurance broker in the ROC means a person who, on the basis of the interests of the insured, negotiates an insurance contract or provides related services and collects a commission or remuneration. In theory, an insurance broker is the agent of a policyholder. A person meeting an insurance broker's qualification may, after obtaining a practice licence, practise independently in his or her own name or as an employee of a corporate organisation. An insurance brokerage company shall employ at least one qualified insurance broker to serve as a signatory, and carry out registration of permission with the competent authority.

v Claims

Notification

Under the following circumstances, an insured, policyholder or beneficiary is obliged to notify the insurer in accordance with the IA:

Double insurance

In double insurance, a policyholder shall notify each insurer of the names of the other insurers and the amounts insured thereby. If a policyholder wilfully fails to make such notification or obtains double insurance with the intent to acquire undue profit, the contract would be void.

Occurrence of insured-against accident or loss

When a policyholder, insured or beneficiary experiences an event for which the insurer bears insurance liability, such party should notify the insurer within five days of becoming aware of the occurrence, except as otherwise provided in the IA or stipulated in the contract.

Liability insurance

Where an insured or a beneficiary intends to settle with a third party after the occurrence of any insured-against accident or loss, the insured should notify the insurer to attend the settlement meeting. An insurer may stipulate in a contract that without the participation of the insurer, any acknowledgment, settlement, or indemnification made by the insured in connection with its liability toward a third party is not binding on the insurer, provided that this rule does not apply where the insurer, having been requested by the policyholder or insured to participate, has refused to do so without legitimate reason or has delayed its participation.

Good faith and claims

Insurance is a contract based on speculation. To prevent policyholder fraud against the insurer, an insurance contract should be entered into, and the claims should be made, based on good faith. If a policyholder or an insured is found to have made a fraudulent claim, he, she or it may be subject to criminal liability. Also, to protect the rights of a policyholder or an insured and maintain the long-term relationship, an insurance company should handle insurance claims in good faith.

Reinstatement

In the case of a total loss, after the insured proceeds are delivered, the insurance company will bear no further liability. In contrast, in the case of a partial loss, as the insured object and the insurance contract still exist, the insurance company will be liable if the insured-against accident or loss occurs again. In general, the sum insured or limit of liability will be reduced by the amount an insurance company has paid for the loss incurred. However, where a reinstatement clause contained in an insurance contract stipulates that the sum insured will remain the same as before the loss if the insured pays an additional *pro rata* premium, the sum insured will not be reduced.

Dispute resolution clauses

A dispute resolution clause set forth in a life insurance contract, personal injury insurance contract, group injury insurance contract or travel accident insurance contract generally provides that whenever there is any controversy regarding the insurance contract, the dispute shall be governed by the court in the place of the policyholder's domicile. On the other hand, a dispute resolution clause set forth in a property insurance contract, such as a residential fire and earthquake insurance contract, generally provides that the court in the place where the insured property is located shall be the governing court. As to the dispute resolution clause set forth in a liability insurance contract, such as a compulsory automobile liability insurance contract, the court in the place of the policyholder, insured or claimant shall be the governing court. Nevertheless, in some cases, to expedite the dispute resolution process, a company purchasing insurance would negotiate with the insurance company to have the dispute resolution clause provide that the dispute shall be resolved by way of arbitration. For more details on arbitration see Section IV.iii, *infra*.

IV DISPUTE RESOLUTION

i Jurisdiction, choice of law and arbitration clauses

Jurisdiction

Where the parties to an insurance contract intend to resolve a dispute over said contract in court, they must first decide the ‘jurisdiction’. In the case of no consensual jurisdiction or jurisdiction clause in the insurance contract between the parties, the plaintiff may sue the defendant in the court in the place of the defendant’s domicile in accordance with Article 1, paragraph 1 of Taiwan’s Code of Civil Procedure (‘CCP’).

In comparison, if there is agreement on consensual jurisdiction or a jurisdiction clause in the insurance contract between the parties, and such agreement or clause does not contradict mandatory provisions such as paragraph 26 of point 1 and paragraph 5 of point 2 of the Mandatory and Prohibitory Provisions of Standard Form Contract for Personal Automobile Insurance, the plaintiff may sue the defendant in the court designated by the agreement on consensual jurisdiction or the jurisdiction clause.

Choice of law

Regarding the choice of law, assuming that no ‘foreign element’ is involved in the insurance contract, generally the court would assume Taiwanese law to be the governing law.

In comparison, if any foreign element is involved, the court would use the laws of the jurisdiction having the closest relevance with the contract to govern the contract in compliance with the Law Governing the Application of Law to Civil Matters Involving Foreign Elements (‘the Application of Laws’). Subject to the Application of Laws, however, the relevant provisions of foreign law shall be applied by court under the preconditions of not contradicting the public order or good morals in Taiwan as well as the mandatory or prohibitive provisions under Taiwanese law.

Arbitration clauses

If the insurance contract contains any mandatory arbitration clause, the parties to the contract shall resolve any disputes arising from the contract through arbitral proceedings. If any party ignores the arbitration clause and sues the adverse party in the court, according to Article 4, paragraph 1 of the ROC Arbitration Law (‘the Arbitration Law’), upon submission of the case to the court by the adverse party, the court shall suspend the legal action and order the plaintiff to submit the case to arbitration within a specified time, unless the defendant proceeds with responding to the legal action.

If the insurance contract contains any voluntary arbitration clause, the parties may decide to resolve any disputes arising from the insurance contract through arbitral proceedings or civil action.

ii Litigation

Stages of litigation

Assuming the insurance contract contains no arbitration clause or there is no arbitration agreement between the parties, the party who wishes to resolve the dispute arising from the insurance contract may sue the defendant in court in accordance with the CCP.

If any party refuses to accept the judgment rendered in the first instance, except as otherwise provided, such party may appeal to the court of second instance having jurisdiction.

If any party refuses to accept the judgment rendered in the second instance, except as otherwise provided, such party may appeal to the court of third instance with jurisdiction. However, the conditions of the appeal in third instance are much more rigorous than in second instance, requiring 'compulsory litigation agency of attorney', 'minimum limit of interests of appeal', 'on the ground that the original judgment is in contravention of the laws and regulations', etc.

Evidence

With regard to evidence, the most frequently discussed issue is the burden of proof. According to the CCP, a party bears the burden of proof with regard to the facts that it alleges in its favour, except either where the law provides otherwise or where the circumstances render it manifestly unfair. Taking an insurance dispute for example, if an insured alleges an insurance company should pay the insurance proceeds, which is in favour of him, her or it, the insured should prove at least that the insured-against accident or loss has occurred. In contrast, if an insurance company intends to reject the said claim, which is in favour of it, the insurance company may prove that the accident or loss is excluded by the insurance contract.

Costs

To prevent abuse of judicial resources, litigation expenses should be paid in advance by the plaintiff depending on the type of case and the claim amount. However, it is common that the litigation expense is paid by the losing party.

iii Arbitration

Insurance arbitrations

With regard to insurance arbitration, under Article 1, paragraph 1 of the Arbitration Law, parties to a dispute arising at present or in the future may enter into an arbitration agreement designating a single arbitrator or an odd number of arbitrators to constitute an arbitral tribunal to determine the dispute. The legal force of arbitral award is same as a final judgment of a court.

Under the Arbitration Law, an arbitral award may not be enforceable unless a competent court has, on application of a concerned party, granted an enforcement order. However, the arbitral award may be enforced without having an enforcement order granted by a competent court if the contending parties so agree in writing and the arbitral award concerns either of the following: (1) payment of a specified sum of money or certain amount of fungible goods or valuable securities; or (2) delivery of a specified moveable property.

Procedure and evidence

In terms of the arbitration procedure, in the absence of an agreement on the procedural rules governing the arbitration, the arbitral tribunal shall apply the Arbitration Law; where the Arbitration Law is silent, the arbitral tribunal may adopt the CCP *mutatis*

mutandis or other rules of procedure that it deems proper. Under Article 21, paragraph 1 of the Arbitration Law, the arbitral tribunal shall, within 10 days upon receipt of notice of the final arbitral appointment, determine the place of arbitration as well as the time and date for the hearing, and shall notify both parties thereof. The arbitral tribunal shall render an arbitral award within six months of commencement of the arbitration.

Evidence

With regard to evidence, there is not much guidance from the Arbitration Law besides the court assistance under Articles 26 and 28 of said Law. But, as mentioned above, according to Article 19 of the Arbitration Law, the arbitral tribunal may adopt the CCP *mutatis mutandis* or other rules of procedure that it deems proper where the Arbitration Law is silent. Therefore, when the arbitral tribunal is confronted with the matters of evidence, it could follow the CPP regarding the provision of burden of proof allocation.

Costs

The applicant shall pay the arbitration fee in advance depending on the type of case and the claim amount. However, the party that should eventually pay the arbitration fee shall be decided by the arbitral tribunal.

iv Alternative dispute resolution

Regarding insurance dispute resolution in Taiwan, disputes may be submitted either to the court or to alternative dispute resolution ('ADR') institutions. One prominent ADR institution is the Financial Ombudsman Institution ('FOI'), which is established in accordance with Article 13 of the FCPA as an independently incorporated foundation to fairly, reasonably and effectively resolve disputes between financial consumers and financial services enterprises including insurance enterprises. Under certain circumstances, an insurance enterprise may be subject to decisions made by the FOI relating to insurance disputes. Other ADR institutions are:

- a* the County Mediation Committee;
- b* the Non-Life Insurance Association of the ROC;
- c* the Life Insurance Association of the ROC;
- d* the Consumers' Foundation of Chinese Taipei; and
- e* the Consumers' Protection Committee.

v Mediation

Generally, if the amount in dispute arising from an insurance contract is less than NT\$500,000, according to the CCP the dispute shall first be subject to mediation by the court before other legal actions. For insurance contracts, there are three types of mediation: non-proceeding mediation, mediation with arbitration, and court mediation.

For the non-proceeding mediation, pursuant to Article 25, paragraph 1 of the Statute for Mediation at Village, Township and City Level ('the Mediation Statute'), when mediation succeeds, the mediation committee shall prepare the mediated agreement and deliver it to court, and then the mediated agreement is served as a writ of execution.

For mediation with arbitration, according to Article 45, paragraph 1 of the Arbitration Law, in the absence of any arbitration agreement to the contrary, the parties

may choose to submit their dispute to mediation and jointly appoint an arbitrator to conduct the mediation. Upon the successful conclusion of the mediation between the parties, the arbitrator shall record the results of the mediation in a mediated agreement. Such mediated agreement has the same legal effect as that of an arbitral award. However, the terms of the mediated agreement may be enforced only after the court has granted approval to an application for enforcement submitted by a party and issued an enforcement order.

For court mediation, subject to the CCP, the mediation shall be conducted by a judge or mediator, and if the mediation succeeds, the court clerk shall preserve the mediation proceeding transcript. A successful mediation shall have the same legal effect as a settlement of action, and the settlement of action shall have the same effect as a final judgment.

V YEAR IN REVIEW

There have been a number of amendments to the IA in recent years that will affect the day-to-day operations of insurance-related businesses in Taiwan, including without limitation amendments regarding insurance intermediaries, domestic investments and foreign investments, policy review, transactions among interested parties, public disclosure of information, etc. The main amendments are summarised below.

i New rules governing security bond and insurance requirements applicable to insurance intermediaries

Currently insurance intermediaries are required to purchase professional liability insurance and deposit security bonds with the FSC before commencing operations. The security bond amount required ranges from NT\$200,000 to NT\$3 million and the professional liability insurance amount required ranges from NT\$10 million to NT\$20 million, based primarily upon the annual revenue of the relevant insurance intermediary in the preceding year. In addition to professional liability insurance, brokerage companies are now required under the amended IA to purchase bonding insurance to protect against their inability to fully perform their obligations on behalf of the insured parties or applicants.²

ii New rules governing internal control and internal audit applicable to insurance intermediaries

Insurance intermediaries above certain size thresholds must establish internal control, internal audit and business solicitation systems and procedures. Specifically, the required systems and procedures must be in place (1) by the end of the following year once an insurance intermediary books annual sales of NT\$300 million; or (2) by the end of the next two years once the annual sales reaches NT\$100 million.³

2 C T Chang, 'New rule for Insurance Intermediaries', *Asia Insurance Review*, 1 August 2012, p. 45.

3 Id.

iii Amendments to the Standards and Handling Guidelines for Verification of Immediate Utilisation with Revenue of Insurance Companies Investment in Real Estate

On 23 November 2012, the FSC amended the Standards and Handling Guidelines for Verification of Immediate Utilisation with Revenue of Insurance Companies Investment in Real Estate ('the Guidelines'). Under the Guidelines, all real property acquired after 19 November 2012 by insurance companies shall conform to the newly amended Guidelines and ownership of such real property shall not be transferred within five years upon acquisition, unless the insurance company meets the exception criteria set forth in the IA. Regarding investment in vacant land that conforms to the newly amended Guidelines, an insurance company should obtain, in addition to the construction licence, a 'lease letter of intent' or similar qualification documents to prove the development plan's conformity with the newly amended Guidelines. However, the aforesaid restrictions are not applicable to investment in the right of superficies in government-owned land acquired for infrastructure projects, provided that an insurance company shall notify the development plan for the aforesaid land to the FSC for approval within 10 days upon acquiring such right. Separately, insurance companies shall not invest in any buildings and structures under construction.

VI OUTLOOK AND CONCLUSIONS

As insurance enterprises are strictly supervised financial institutions in Taiwan, strong emphasis is put on protecting the rights and interests of the insured and insurance enterprises are subject to considerable restrictions on utilisation of funds. That said, by means of allocating funds properly to keep themselves in good financial condition and solvent, insurance enterprises can become multiple-function financial institutions offering reimbursement and financial services rather than being just single-function institutions handling reimbursement. It is vital to the regulator to find a balance between restriction and permission. In the beginning of 2013, the regulator is likely to make breakthroughs in expanding permissible foreign investment items for insurance enterprises, such as permission to invest in whole commercial buildings in overseas financial centres or the world's major cities, lowering required credit ratings of foreign bonds, increasing the legitimate investment amount of foreign bonds and granting permission to buy Chinese government bonds.

According to the latest statistics of the Non-life Insurance Association of the ROC, in 2012 the non-life insurance industry's total premium revenue was NT\$119.8 billion, up 6.61 per cent from 2011. (The top three premium earners were car insurance, accident insurance and personal injury insurance). The non-life insurance enterprises expect that the implementation of the new policy in 2013, requiring the receipt of payment of an insurance premium before issuance of an insurance contract, will expedite the collection of car insurance premiums and that the premium revenue of non-life insurance enterprises might reach NT\$120 billion in 2013.

2012 was a good year for life insurance enterprises as well, as their total premium revenue reached NT\$2.397 trillion. While the industry turned a profit in 2012, thereby ending the status of net loss or break-even since 2008, some rating agencies reckon the

credit rating prospect remains negative as the credit risk structure facing Taiwan's life insurance enterprises has not changed. In addition to low interest rates, the supervisory measures taken by the regulator are another challenge to life insurance enterprises. Nevertheless, some international reinsurance companies predict that Asian insurance enterprises including those in Taiwan will likely see strong revenue growth in 2013.

Appendix 1

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Chang Chao-Tung, LLM (Soochow University Graduate Law School, 1994) and LLB (1983, National Cheng Chi University Law School), joined Lee and Li in 1990, with principal practice areas in banking, capital markets, privatisation, corporate M&A transactions, and IPO services. Some of his most recent significant deals include acting for AEGON in the divestment of AEGON Life Insurance (Taiwan) Inc; acting for AIG in the merger of Central Insurance Co and AIG General Insurance (Taiwan) Co; advising Warburg Pincus Fund (a private equity fund) on participation in the rights issue of Chunghwa Picture Tubes; and Asia Cement (China) Holdings Corp's IPO in Hong Kong, etc. Mr Chang also has extensive experience advising on high-profile property insurance settlement cases in Taiwan in recent years, for instance, the fire insurance settlement in 2005 for ASE (Advanced Semiconductor Engineering Inc) Chung-li plant.

Mr Chang is also a lead partner in the practice in privatisation work, has been a consultant of the Council for Economic Planning and Development (CEPD) of Executive Yuan since 1996, and since 2004 has been a member of the Privatisation Supervisory Council of Executive Yuan, frequently participating in privatisation-related discussions on regulatory issues and policy studies.

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Trisha Chang, LLM (Soochow University Graduate Law School) and LLB (National Cheng Chi University Law School), worked for non-life insurance companies handling underwriting, claims, legal compliance and product filing matters for almost 10 years. Trisha is regularly invited to be a lecturer for insurance training courses by the Insurance Institute of the ROC ('IIROC') and the Non-life Underwriters Society of the ROC, and she also participates in meetings organised by IIROC and Insurance Bureau of Financial

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Jacqueline Wang, (Master of Risk Management and Insurance, National Cheng Chi University, 2009; LLB, National Cheng Chi University Law School, 2006), joined Lee and Li in 2009, with principal practice areas in insurance, banking and capital markets. Jacqueline has assisted Everest Textile Co, Ltd and Chiahui Power Corp Co, Ltd in fire insurance claims in 2010 and 2012, respectively; Yeong Guan Energy Technology Group Company Limited in an IPO case; and she has advised banks in syndication loan cases, etc.

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