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THE  
INSURANCE AND  
REINSURANCE  
LAW REVIEW

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FOURTH EDITION

EDITOR  
PETER ROGAN

LAW BUSINESS RESEARCH

# THE INSURANCE AND REINSURANCE LAW REVIEW

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# EDITOR'S PREFACE

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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 play 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.

Given the expanding reach of the industry, there is a need for a source of reference that analyses recent developments in the key jurisdictions on a comparative 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.

Looking back on the past year, market estimates suggest that the insured losses flowing from the explosion at the Port of Tianjin in China may well exceed US\$3 billion. The losses will arise on a wide variety of policies ranging from cargo, property and ports and terminals insurance through to product liability and business interruption. Those policies will be subject to a range of governing laws. It is likely that there will be complex issues to consider in relation to each of these types of coverage, both at the direct insurance and reinsurance levels. The US winter storm of January 2016 is predicted to be a multi-billion dollar loss event. In the UK, December 2015 was the wettest on record. Denial of access to homes and businesses was significant, and the insurance market is braced for the ensuing losses.

Events such as these test not only insurers and reinsurers but also the rigour of the law. Insurance and reinsurance disputes provide a never-ending array of complex legal issues and new points for the courts and arbitral tribunals to consider. I hope that you find this fourth edition of *The Insurance and Reinsurance Law Review* of use in seeking to understand them and I would like once again to thank all the contributors.

**Peter Rogan**

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April 2016

## Chapter 26

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# TAIWAN

*C T Chang, Trisha Chang and Jessica Wang<sup>1</sup>*

### 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, which are not restricted by the above-mentioned rules, can engage in reinsurance of both life and non-life insurance businesses.

As of the end of 2015, there are 18 non-life insurance companies in Taiwan, including 10 local insurance enterprises, four subsidiary companies incorporated in Taiwan by foreign insurance enterprises and four Taiwan branch offices of foreign insurance enterprises; and 27 life insurance companies, including 19 local insurance enterprises, four subsidiary companies incorporated in Taiwan by foreign insurance enterprises and four Taiwan branch offices of foreign insurance enterprises.

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<sup>1</sup> C T Chang is a partner, Trisha Chang is an associate partner and Jessica Wang is a senior attorney at Lee and Li, Attorneys-at-Law.

## II REGULATION

### i A highly regulated insurance industry

The insurance regulator in Taiwan 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 or 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 approval from the FSC, or both. A shareholder who holds more than 50 per cent (major shareholder) must:

- a* guarantee the rights and benefits of the insurance company's policyholders and employees;
- b* comply with applicable laws and regulations in Taiwan with regard to his, her or its funding sources;
- c* be equipped with the professional ability to operate an insurance company; and
- d* indicate its intent to conduct 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).

#### *Position of non-admitted insurers*

According to the Insurance Act (IA), an insurance enterprise may not commence operations unless it has received permission from the competent authority (i.e., the FSC), completed establishment registration, posted bond and obtained a business licence. An enterprise that engages in the business of insurance without obtaining approval from the competent authority in accordance with the IA shall be ordered to suspend business, and shall be liable for a fine of between NT\$3 million and NT\$15 million.

It is a criminal offence in Taiwan when a non-insurance enterprise engages in the operation of insurance business. In such case, the responsible person of the non-insurance enterprise is subject to imprisonment for a term of between three and 10 years. In addition, such enterprise may be subject to a fine of NT\$10 million to NT\$200 million. Where the violator's (the non-insurance enterprise's) gains from its criminal conduct reach NT\$100 million or more, the minimum prison term rises to seven years, and in addition a fine of NT\$25 million to NT\$500 million may be imposed.

*Regulation of individuals employed by insurers*

The following regulations govern the required qualifications for 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(Qualification Regulations);
- b* the Regulations Governing Appointed Actuaries and External Reviewing 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.

Articles 4 and 5 of the Qualification Regulations provide more detailed qualifications for responsible persons of insurance enterprises.

With regard to the qualifications for a general manager, Article 4 of the Qualification Regulations indicates that such person shall possess one of the following qualifications:

- a* he or she has graduated from a domestic or foreign school at the level of junior college or higher or possesses equivalent academic qualifications; has worked for at least nine years in insurance enterprises; and has served for at least three years in the position of manager or higher or in an equivalent position at the head office of an insurance enterprise (or cooperative), and has performed with excellence in such position;
- b* he or she has graduated from a domestic or foreign school at the level of junior college or higher or possesses equivalent academic qualifications; has worked for at least nine years in insurance administration or supervision; and has served for at least three years in the position of intermediate civil service employee at grade nine or higher or in an equivalent position, and has performed with excellence in such position;
- c* he or she has worked for no less than five years in insurance enterprises; has served for at least three years in the position of vice general manager or higher or in an equivalent position at an insurance enterprise; and has performed with excellence in such position; or
- d* he or she has other academic or employment experience sufficient to show that he or she has leadership ability, professional insurance expertise or experience in managing an insurance business; and is capable of operating an insurance business soundly and efficiently.

Further to the above, a person who is to serve as general manager of an insurance enterprise may not take up the post until the relevant board of directors' meeting pertaining to such post, the documents evidencing his or her qualifications have been submitted to the FSC for review, and the FSC approves such submission.

Moreover, Article 5 of the Qualification Regulations stipulates that the chair, vice general manager, assistant vice general manager, manager of an insurance enterprise, at least one-third of the directors and supervisors or at least two of the managing directors (if any) of the same insurance enterprise shall meet one of the following qualification requirements:

- a* they have graduated from a domestic or foreign school at the level of junior college or higher or possesses equivalent academic qualifications; have worked for at least five years in insurance enterprises; and have served for at least one year in the position of assistant manager or higher or in an equivalent position at the head office of an insurance enterprise (cooperative), and in such position have performed with excellence;

- b* they have graduated from a domestic or foreign school at the level of junior college or higher or possesses equivalent academic qualifications; have worked for at least five years in insurance administration or supervision; and have served for at least one year in the position of intermediate civil service employee at grade 9 or higher or in an equivalent position, and in such position has performed with excellence;
- c* they have worked for no less than five years in insurance enterprises, have served for at least three years in the position of assistant manager or higher or in an equivalent position at the head office of an insurance enterprise (or cooperative); and in such position have performed with excellence; or
- d* there is other factual evidence sufficient to prove that they have professional insurance expertise, or experience in managing an insurance enterprise, and are capable of the safe, sound and effective operation of an insurance business.

The FSC treats a person who holds a position of general manager in a branch of a foreign insurance enterprise as being at the same level as a chair or vice general manager of a local insurance enterprise. Hence, Article 5 of the Qualification Regulations shall govern the qualification requirements for a general manager of a branch of a foreign insurance enterprise.

#### *The distribution of products*

With regard to products, it is illegal to sell or solicit any insurance product not approved by or registered with the FSC. As such, 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 Taiwanese 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.

A person may not solicit any insurance product for the employing company (i.e., an insurance enterprise, an insurance agent company or an insurance broker company) unless such person has been registered and obtained a registration certificate in accordance with the Regulations Governing the Supervision of Insurance Solicitors. Once registered, such person becoming an insurance solicitor shall solicit insurance exclusively for his or her employing company. The employing company shall administer rigorous supervision of solicitation by its registered insurance 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 insurance solicitors.

Under Taiwanese laws and regulations, insurance solicitation activity refers to:

- a* explaining the content of an insurance product and relevant policy provisions;
- b* explaining the notes on filling out an application form;
- c* forwarding the application documents or insurance policy; and
- d* performing other solicitation activities authorised by the employing company.

#### **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 (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:

- a* the vehicle causing the accident cannot be tracked;
- b* the vehicle causing the accident is an uninsured automobile;
- c* the vehicle causing the accident is an insured automobile that was used or manoeuvred without the consent of the insured; or
- d* 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 lists the public places that are required to be covered by compulsory public liability insurance. These places include:

- a* performance or public venues that contain an audience space and stage area (such as cinemas);
- b* places for entertainment (such as karaoke bars);
- c* venues whose total floor area exceeds 500 square metres for exhibitions or commerce and in which commercial tenants change frequently (such as department stores); and
- d* places for serving food and drinks to the public (such as restaurants).

Any entity violating such regulations may be subject to fines or even ordered to suspend its business activities.

### *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 a deductible business-related expense.

## **III INSURANCE AND REINSURANCE LAW**

### **i Sources of law**

The legal system in Taiwan is based on statute. The 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 will often follow the appeal court's judgments for the 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 IA, 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 the 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 the 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 ambiguity, 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 construction insurance contracts, which would last from the beginning of the construction to the completion day, and two-year compulsory motorcycle liability insurance contracts. Life products include both types, such as whole life insurance contracts and one-year accident insurance contracts.

*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 advise 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 under most theories in Taiwan, an insurance contract will be deemed effective upon execution regardless of whether the premium has been paid or not. To ease the above-mentioned problem, Article 4 of the Enforcement Rules for IA stipulates that before underwriting or issuing an insurance policy, in cases where an insurer collects the premium in advance and the insured peril occurs, the insurer shall be liable for the insured peril. 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: selling by insurance brokers, selling by insurance agents, and selling by both insurance brokers and insurance agents.

### *Conduct rules*

The main rules in Taiwan 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 this 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 Taiwan 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 to carry out the registration of permission with the competent authority.

### *Position of insurance brokers*

An insurance broker 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 to 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 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. In addition, 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*

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 (Application of Laws). Subject to the Application of Laws, however, the relevant provisions of foreign law shall be applied by the 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 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, *inter alia*, 'compulsory litigation agency of attorney', 'minimum limit of interests of appeal' and that the appeal be 'on the ground that the original judgment is in contravention of the laws and regulations'.

### *Evidence*

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 as an example, if an insured alleges that an insurance company should pay the insurance proceeds that are 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 said claim that 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 an arbitral award is the 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: payment of a specified sum of money or certain amount of fungible goods or valuable securities; or 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 of receiving 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 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 (ADR)

Regarding insurance dispute resolution in Taiwan, disputes may be submitted either to the court or to ADR institutions. One prominent ADR institution is the Financial Ombudsman Institution (FOI), which is established in accordance with Article 13 of the Financial Consumer Protection Act 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 Republic of China (NLIA);
- c* the Life Insurance Association of the Republic of China (LIA);
- 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 non-proceeding mediation, pursuant to Article 25, Paragraph 1 of the Statute for Mediation at Village, Township and City Level, 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, *inter alia*, amendments regarding offshore insurance branches (OIUs), e-commerce of insurance enterprises, domestic and foreign investments, and policy reviews. The main amendments are summarised below.

### i Amendment of the Enforcement Rules for the Offshore Banking Act and issuance of the Regulations Governing Offshore Insurance Branches

According to the amended Enforcement Rules for the Offshore Banking Act and the new Regulations Governing Offshore Insurance Branches, promulgated on 25 May 2015, the amendments and new regulations aim to strengthen the operation of OIUs that may provide insurance services to any party that is offshore and non-resident. The main points are as follows:

- a* an OIU's ratio of total adjusted net capital to risk-based capital shall be calculated together with that of the foreign insurance parent or its branches in Taiwan, and shall not be lower than 200 per cent. Moreover, an OIU's net worth shall not be lower than US\$1 million. In addition, the minimum working capital for setting up an OIU shall be US\$2 million;
- b* to encourage insurance industry innovation and attract offshore business, product-related rules, including rules regarding the submission of products for approval, provision of reserves and principles of insurance product design, are relaxed. The principles of insurance product design include that the denomination currency shall not be New Taiwan dollars; that the premium rate shall correspond to adequacy, rationale, fairness and actuarial principles, and reflect any and all costs and reasonable profit; and that sound risk control mechanisms shall be established; and
- c* as to fund allocations of OIUs, unless they obtain the approval of the competent authority, the linked underlying portfolio shall not use a New Taiwan dollar exchange rate, a New Taiwan dollar interest rate index or a New Taiwan dollar-denominated product, and no investment portfolio may involve any product denominated in New Taiwan dollars. In addition, to increase the flexibility of fund allocation, an OIU may be excluded from the calculation of the limit on the total amount of foreign investment.

**ii Amendments to the Directions Governing E-Commerce of Insurance Enterprises (E-Commerce Directions)**

The FSC amended the E-Commerce Directions on 24 June 2015. The main points include:

- a* regarding consumer demand and risk management in the insurance industry, the maximum insurance liability limits provided via the internet by a single insurance company is raised to be the same as the cumulative insurance liability limits provided by all insurance companies; and
- b* in addition to the previously permitted insurance products for online distribution (i.e., motor insurance, residential fire and earthquake insurance, homeowners insurance, travel inconvenience insurance, travel accident insurance, personal accident insurance and term life insurance), personal liability insurance, golf liability insurance, home appliances repair insurance, smart mobile devices theft insurance and reimbursement benefits (health insurance) have become new types of insurance products permitted for online distribution.

**iii Issue of the Interpretative Letter for Main Business of Financial Services Technology Business Invested by Insurance Companies and Complementary Measures (Interpretative Letter)**

Article 146 of the IA sets limitations on fund allocations of an insurance company: namely, its funds may be allocated to ‘insurance-related businesses’. On 7 October 2015, the FSC issued the Interpretative Letter to expand the scope of ‘insurance-related businesses’ to financial services technology business (fintech venture) engaging in big data analysis, interface design, software development, the internet of things and wireless communication (excluding manufacturing, distribution and lease of hardware and equipment in principle) and meeting the following:

- a* the annual operating costs of or revenue from financial enterprises (including financial holding companies, banks, securities, insurance companies and subsidiaries thereof) and financial services shall exceed 51 per cent (inclusive) of the total operating costs or revenue of the fintech venture (51 per cent threshold) in general; and
- b* if the fintech venture shall meet the 51 per cent threshold, the insurance company shall report the ratio of the annual operating costs and revenue of the fintech venture accounted for by financial enterprises and financial services to the competent authority for reference within one month after the end of each fiscal year. If the fintech venture fails to meet the 51 per cent threshold within the required period, the insurance company shall lower its investment or shareholding to less than 10 per cent of the total paid-in capital or total outstanding shares of such fintech venture.

## **VI OUTLOOK AND CONCLUSIONS**

As insurance enterprises are rigorously supervised financial institutions in Taiwan, strong emphasis is put on protecting the rights and interests of insureds, and insurance enterprises are subject to considerable restrictions on the utilisation of funds. That said, by allocating funds properly to keep themselves in good financial condition and solvent, insurance enterprises can become multi-function financial institutions offering reimbursement and financial services rather than being just single-function institutions handling reimbursement. To ease the regulatory limitations on investment activities, the FSC has expanded the scope of insurance-related businesses to financial ventures. In addition, the FSC played an active

role in enabling the OIU, and as of July 2015, 14 insurance companies are approved to establish OIUs. Moreover, the amendment of the E-Commerce Directions, which raised insurance liability limits for insurance products distributed via the internet and expanded the variety of insurance provided via the internet, indicates that the FSC is making efforts to promote a different distribution channel for insurance products.

According to the latest statistics of the NLIA, for the period from January 2015 to November 2015, the non-life insurance industry's total written premium was NT\$122.7 billion, up 2.55 per cent from 2014, again hitting a record high for revenues generated by non-life insurance enterprises.

The total gross premium of life insurance enterprises reached NT\$2.45 trillion for the period from January 2015 to October 2015, up around 5.1 per cent from 2014 according to the latest statistics of the LIA.

## Appendix 1

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# ABOUT THE AUTHORS

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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. Mr Chang also has extensive experience advising on high-profile property insurance settlement cases in Taiwan in recent years, such as 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 for privatisation work, has been a consultant of the Council for Economic Planning and Development of the 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. She is regularly invited to be a lecturer for insurance training courses by the Taiwan Insurance Institute (TII) and the Non-life Underwriters Society of the Republic of China, and she also participates in meetings organised by TII and the Insurance Bureau of Financial Supervisory Commission, the insurance regulator in Taiwan, to provide comments on the revision of insurance laws and regulations.

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