

# United States

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## MARKET TRENDS AND REGULATORY FRAMEWORK

### 1. Please give a brief overview of the insurance and reinsurance markets in your jurisdiction, identifying market trends.

#### Overview

The US has a mature insurance market, with numerous multi-line and specialised insurers operating nationally and regionally, targeting different risks through different distribution channels. Based on 2008 year-end data, there were about 1,750 US domestic property and casualty insurers with a combined policyholder surplus of US\$430 billion (about EUR231 billion) (*A.M. Best Co. 2009 Aggregates & Averages - Property/Casualty: Insurance Company Groups p. 613*). In addition, in 2008 there were about 511 US domestic life and health insurers operating in the US with combined capital and surplus of US\$237 billion (about EUR161 billion) (*A.M. Best Co. 2009 Aggregates & Averages - Life/Health: Insurance Company Groups p. 263*).

#### Competition and market entry

Competition exists for both commercial and personal lines of insurance, although product regulation may limit pricing flexibility in certain lines of property and casualty insurance and it may take more than a year to complete filings necessary for the launch of a new life product. Certain state requirements for “seasoning” (see *Question 8*), make it difficult to form and license new insurance companies to quickly respond to market opportunities on a nationwide basis. However, there is an active market in “shell” insurance companies that makes it possible for new participants to enter the market more easily.

#### Challenged markets

Certain markets present greater regulatory challenges for insurers, for example, property coverage in certain catastrophe exposed areas and casualty coverage for certain medical professions in certain states. State-run facilities and coverage plans may play a greater role in these markets. In addition, licensed insurers may be restricted in their ability to exit these markets.

#### Globalisation

Many major insurers in the US are affiliated with non-US insurers. While non-US insurance groups play a lesser role in personal lines insurance than commercial lines, reinsurance is dominated by insurance groups based outside the US. For example, the entities responsible for the largest payments stemming from the World Trade Center attack were UK, German, Swiss and Bermuda reinsurers. Non-US insurance groups play a lesser role in the US life insurance market, but many large US-based life groups operate internationally.

### 2. What is the regulatory framework for insurance/reinsurance activities?

Insurance is regulated primarily by the states, not the US federal government. Insurers and reinsurers are regulated by state government officials in their state of incorporation (referred to as their “domiciliary state”), and potentially in non-domiciliary states in which they transact business. The state system of regulation seeks to protect consumers through supervision of:

- Insurance company licensing.
- Producer licensing.
- Product regulation.
- Market conduct rules.
- Regulation of investments.
- Capital requirements.
- Regulation of holding companies.
- Financial examination.
- Consumer protection services.

An officer within the state’s executive branch is designated in each state as the chief supervisory official for implementation and enforcement of the state insurance laws (called the insurance commissioner, insurance superintendent or insurance director). This official may be elected or appointed by the governor, depending on the state. The official presides over a regulatory agency, generally referred to as the insurance department, although the exact name of the agency varies from state to state.

The National Association of Insurance Commissioners (NAIC) is an organisation of state insurance regulators for all 50 states, the District of Columbia and five US territories. The NAIC provides a forum for the development and implementation of uniform policy. Its chief tools include:

- The development of model laws and rules, which may or may not be enacted into law by each state or territory.
- The development of standardised financial reporting and solvency ratios.
- Information sharing.
- Co-ordination of examinations of insurers.

Life insurance products may be subject to regulation by the US Securities and Exchange Commission (SEC) if the products qualify

as securities that are not exempt under the US federal securities laws. Life products also may be subject to regulation by the US Department of Labor if they are offered in connection with employee benefit plans.

Finally, all insurance companies operating in the US are subject to US federal regulation that affects businesses generally, such as investor protection rules under federal securities laws, anti-money laundering rules and anti-bribery and trade sanction rules.

Since insurance in the US is regulated on a state-by-state basis (see above), the responses below provide a guideline to the general rules. It is important to verify the information provided in the specific state(s) of interest.

## CONTRACTS OF INSURANCE

### 3. What is a contract of insurance for the purposes of the law and regulation in your jurisdiction?

In the US, a contract of insurance is typically an agreement where one party, the insurer, agrees to confer the benefit of monetary value on another party, the insured, on the happening of a specified event that is beyond the control of either party in return for receiving payments of premium from the insured. To procure insurance, the insured must have a material interest that would be adversely affected by the happening of the specified event, called an insurable interest. For example, a person would only have an insurable interest in any property which he owns or that is in his possession.

### 4. Are all contracts of insurance regulated in your jurisdiction?

Under the current regulatory system in most states, insurance contracts covering risks in a state must meet state law requirements concerning content. Contract forms must be filed with the state insurance department for most lines of insurance and may be rejected (some states require prior approval). Rates to be charged are subject to filing and disapproval or prior approval for some lines of insurance.

Large risk commercial lines may be non-regulated or deregulated depending on the jurisdiction. Insurers for deregulated lines are not required to file policy or rate changes with the state, but generally must adhere to substantive state laws as to coverage, terms and conditions. Insurance issued by unauthorised insurers in reliance on an exemption from state licensing laws generally is exempted from state rate and form requirements (see Question 5).

## INSURERS AND REINSURERS

### 5. Are insurers and reinsurers regulated in the same way in your jurisdiction?

Insurance companies are regulated based on their licence status. To lawfully transact insurance in a state, an insurer must be licensed in that state by the state insurance department. A licensed insurance company is one that has been granted a licence

by the state regulator, as opposed to an unauthorised insurance company, which is not licensed by the state insurance department. Unauthorised insurers can insure people within the state through the state's excess or surplus lines law or other licensing exemptions. Licensed insurers are highly regulated in each state.

Reinsurers can reinsure risks in the US without being licensed, although they generally need to be licensed in a jurisdiction in which they establish offices to conduct business. Unauthorised reinsurers must provide qualifying collateral to cedants so that cedants receive financial statement credit for the ceded reinsurance. These collateral requirements serve as a proxy for financial regulation of unauthorised reinsurers under the current rules.

### 6. Can insurers or reinsurers carry on non-insurance business? Please summarise any restrictions on their business activities.

It is important to draw a distinction between what a regulated insurance entity can do and what an affiliate of a regulated insurance entity can do. Insurers and reinsurers can only carry on activities that are reasonably incidental to the insurance business, while their non-insurer affiliates can carry on non-insurance business.

### 7. Are there any statutory limits or other restrictions on, or requirements relating to, the transfer of risk by insurance or reinsurance companies?

Insurers and reinsurers can enter into contracts that do not transfer insurance risk. However, a contract cannot be recorded as insurance or reinsurance on a company's income statement and balance sheet if it does not transfer significant insurance risk as determined under applicable accounting standards. US statutory accounting rules for insurers and reinsurers have a number of disclosure requirements intended to ensure that contracts recorded as insurance and reinsurance do, in fact, transfer significant insurance risk. Most US states have adopted a regulation for life insurance that sets out the different aspects of insurance risk that must be transferred for different kinds of life insurance for a life reinsurance contract to be recorded as reinsurance.

Companies with securities publicly traded in the US also may be subject to sanction by the SEC or the US Department of Justice if they intentionally misstate earnings and assets by recording non-risk transfer transactions as insurance or reinsurance.

## OPERATING RESTRICTIONS

### 8. Does the entity or person have to be authorised or licensed in your jurisdiction? If so, please outline the key steps involved in this process and the requirements that must be satisfied.

#### Insurance/reinsurance providers

Unless exempted, an insurer must be licensed in all states in which it transacts insurance. Each state insurance department establishes the required qualifications for licensing in its state. To become licensed, most states require the insurer to submit an application, meet certain minimum capital and surplus re-

quirements, and disclose information about the individuals who manage the company. The application must include the insurer's business plan, which addresses information about its products and services, sales, underwriting, claims handling, advertising and its financial information.

In addition, various states require, either by statute or as a matter of insurance department policy, that an insurer seeking a licence for a particular line of business have experience in that line of business for a number of years (for example, two to five years) before it is eligible for licensing. These requirements, commonly referred to as "seasoning" requirements, vary from state to state and, in some states, may be subject to waiver.

In relation to reinsurance, a licensed insurer can typically assume reinsurance of the kinds of insurance that it is licensed to transact directly. Some states require the reinsurer to become accredited to reinsure admitted companies as if it were admitted itself, and to allow its ceding company to receive financial statement credit for the risks that it cedes to the reinsurer. Otherwise, a reinsurer must provide collateral.

Certain unauthorised insurers (known as excess and surplus lines insurers) may transact insurance covering risks in a particular state if the insurance is placed through qualified excess and surplus lines producers in accordance with specified procedures (see *Question 5*).

#### Marketing insurance/reinsurance services

Insurance brokers and agents that serve as intermediaries between the customer and the insurer (collectively, producers) must be licensed to sell insurance and must comply with various state laws and regulations governing their activities. State insurance departments oversee producer activities to protect insurance consumer interests in insurance transactions. The type of licence granted (agent, broker or producer) varies by state. An excess and surplus lines broker is a specialty broker empowered to place insurance with surplus line eligible insurers under the state's surplus lines law and must obtain a surplus lines broker licence. In addition, reinsurance intermediaries are the agents and brokers of the reinsurance market and are also subject to licensing.

To become licensed, insurance producers must submit applications and take an examination on completion of required courses. There are different requirements for applicants that are residents of a state and those that are non-residents.

#### Other providers of insurance/reinsurance-related activities

Other providers of insurance and reinsurance-related activities are:

- Managing general agents (organisations that handle most or all of the functions of an insurance company, except that they do not retain risk).
- Insurance consultants (insurance professionals who specialise in assisting businesses and individuals in assessing their insurance needs and creating an insurance plan to meet those needs).
- Third party administrators (organisations that handle the claims processing and employee benefits plans for the insurer).

Some, but not all, states regulate providers of insurance-related activities; those states typically require such providers to be licensed.

#### 9. Please summarise the main exemptions or exclusions from authorisation or licensing that are available in your jurisdiction, if any.

##### Insurance/reinsurance providers

Generally, unauthorised insurers are prohibited from transacting the business of insurance (or doing insurance business) in the US, subject to certain exceptions recognised by state law. "Doing insurance business" is broadly defined in most states. Typically, any of the following acts in the state, whether done in person or effected by mail or telephone from outside of the state or otherwise, constitute doing insurance business:

- Making, or proposing to make, any insurance contract.
- Issuance or delivery of a policy or contract of insurance.
- Solicitation of applications for any such policies or contracts.
- Collecting any premium or other consideration for any policy or contract of insurance.
- Doing anything else that is substantially equivalent to any of the above in a manner designed to evade the provisions of the state's insurance law.

The limited exceptions to the general prohibition against doing unauthorised insurance business include:

- Lawful placements made pursuant to a state's surplus lines law.
- Reinsurance.
- Self-insurance.
- Marine, aviation, and transportation and railroad exemptions.

Large, sophisticated commercial buyers in some states can access unauthorised insurers directly under limited circumstances.

##### Marketing insurance/reinsurance services

Insurance producers are not exempt from licensing in any jurisdiction. Insurance agents and brokers placing insurance with licensed insurers must be licensed for the type of insurance being placed. Brokers that place insurance with surplus lines insurers must be specially licensed as surplus lines brokers.

In addition to prohibiting unauthorised insurers from doing insurance business in the state, the states also prohibit any other person in the state from in any way assisting or aiding and abetting unauthorised insurers in doing insurance business in the state. This includes:

- Acting as agent for an unauthorised insurer in the transaction of insurance business.
- In any manner advertising an unauthorised insurer.
- In any other manner aiding an unauthorised insurer to transact insurance business in the state.

**Other providers of insurance/reinsurance-related activities**

There are no exemptions or exclusions for licensing of providers of insurance or reinsurance-related activities. However, some types of providers, such as third party administrators, are not regulated by every state (see *Question 8*).

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**10. Are there any restrictions on the ownership or control of insurance-related entities in your jurisdiction (for example, age, nationality, qualification or other restrictions)?**


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**Insurance/reinsurance providers**

The owners of, and persons who control, insurance companies are reviewed by US regulators to determine their fitness to control an insurer. The focus of the review is on experience, competency and integrity of the owner or controlling person (and its management if a corporation). Regulators also review the finances of an owner or controlling person.

Several states' laws restrict ownership or control by any government entity, including ownership by US states, the US federal government and foreign governments.

In addition, federal law broadly prohibits felons from being involved in the insurance business (*Violent Crime Control and Law Enforcement Act of 1984 (18 USCA §1033)*). It provides that any individual who has been convicted of any criminal felony involving dishonesty or a breach of trust, or who has been convicted of other types of offences, cannot wilfully engage in the business of insurance without a special waiver.

**Marketing insurance/reinsurance services**

Licensed insurance producers are reviewed for their fitness to serve as a licensee.

Any individual who has been convicted of any criminal felony involving dishonesty or a breach of trust, or who has been convicted of other types of offences, cannot wilfully engage in the business of insurance in any capacity without a special waiver.

**Other providers of insurance/reinsurance-related activities**

As discussed above, any individual who has been convicted of any criminal felony involving dishonesty or a breach of trust, or who has been convicted of other types of offences, cannot wilfully engage in the business of insurance in any capacity without a special waiver.

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**11. Do owners or controllers have to be pre-approved by or notified to the relevant authorities before taking, increasing or reducing their control or ownership of the entity?**


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**Insurance/reinsurance providers**

Acquisition of an insurer is subject to the prior approval of the insurance department in the insurer's domicile state. No entity can acquire control over a domestic insurance company without receiving such approval. Control is defined as actual control and is generally presumed to exist if any person acquires 10% or more of an insurer (a few states set the threshold at 5%). State insurance regulators have the power to evaluate the business plans and financing involved in the purchase.

All potential acquirers must file an elaborate disclosure statement with the state insurance department (Form A application). Form A discloses the identity of the acquirer, financial information about the acquirer and its owners, the source of financing for the acquisition and biographical information on the officers and directors of the acquirer. The acquirer must also disclose the terms of the purchase and file a copy of the purchase agreement.

A person who has been approved to acquire control may be able to increase ownership without prior regulatory approval, depending on the circumstances. No approval or notice is required for the divestiture of control.

**Marketing insurance/reinsurance services**

Acquisition of an insurance agency does not require prior approval. Some states require a post-acquisition notification filing.

**Other providers of insurance/reinsurance-related activities**

Likewise, acquisition of a provider of insurance-related activities does not require prior approval of the insurance department in the provider's domicile state. Some states require a post-acquisition notification filing.

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**12. Please summarise the key ongoing requirements that the authorised or licensed entity must comply with.**


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**Insurance/reinsurance providers**

Licensed insurers must prepare and file annual and quarterly financial statements prepared in accordance with US statutory accounting principles (SAP) as determined by the NAIC, subject to variations prescribed or permitted under state law. The annual statements must be audited. Insurers must calculate and submit various ratios used by regulators for solvency regulation, including risk based capital (RBC) ratios.

Insurers must also undergo periodic financial examinations and market conduct examinations by the states in which they are licensed. During financial examinations, state financial examiners investigate a company's accounting methods, procedures and financial statement presentation. These examinations verify and validate what is presented in the company's annual statement to ascertain whether the company is in good financial standing. Market conduct examinations occur on a routine basis, but also can be triggered by complaints against an insurer. These examinations review agent licensing issues, complaints, types of products sold by the company and agents, agent sales practices, proper rating, claims handling and other market-related aspects of an insurer's operation.

Insurers are restricted in the kinds of investments they can make.

In addition, every insurer that is part of a holding company structure must:

- File an annual registration statement (Form B) with the insurance department of its state of domicile. Form B describes all of the affiliated relationships between the insurer and its affiliated entities. All transactions between affiliates must be described, and information must be provided with respect to the ultimate controlling person.
- Receive prior approval of any material transaction between the insurer and any affiliated entity, including purchases

and sales of assets, reinsurance arrangements, management agreements and tax-sharing agreements (Form D). These transactions are reviewed by regulators to determine whether the terms are arm's-length, fair and reasonable, and to ensure that any fees paid by the insurer are commensurate with the value of the services provided.

- Submit extraordinary dividends for review and approval by insurance regulators before they are distributed to ensure that the insurer's assets are not being drained for the benefit of shareholders. Extraordinary dividends are those declared by an insurer to exceed the state's threshold.

### Marketing insurance/reinsurance services

Insurance producers must make re-qualification filings and filings in connection with certain placements of insurance policies and must report changes in background information on an ongoing basis. In addition, some states require brokers to hold money received from insureds in a separate trust pursuant to specific guidelines.

### Other providers of insurance/reinsurance-related activities

Providers of insurance-related activities must also make re-qualification filings in some states and report changes in background information on an ongoing basis. In addition, some states also require third party administrators to hold funds remitted to them in a separate trust pursuant to specific guidelines so that the funds are not commingled (mixed) with any other funds of the administrator or other clients of the administrator. Administrators are also required to file annual reports with their domiciliary state insurance regulator.

### 13. Please outline the possible consequences of an entity failing to comply with applicable legal and regulatory requirements (including the disciplinary powers any relevant regulators have, as well possible customer remedies).

#### Insurance/reinsurance providers

Possible consequences of an insurer failing to comply with applicable legal and regulatory requirements include:

- Civil fines and penalties.
- Suspension or revocation of the insurer's licence.
- Imposition of a cease and desist order.
- Voiding of the policy at the option of the insured.

In extreme situations, an insurance regulator may initiate proceedings to be appointed receiver of an insurance company and, as receiver, take possession of and control over the insurer's property and businesses. Criminal penalties may apply for intentional conduct, including penalties for the officers and directors of the insurer.

### Marketing insurance/reinsurance services

Similar penalties exist for insurance producers. However, in addition to the above, insurance producers who aid and abet an unauthorised insurer can be held personally liable for loss payments, premium tax payments or both, pursuant to an order issued by a state insurance department.

### Other providers of insurance/reinsurance-related activities

Penalties for providers of insurance-related activities are similar to the penalties imposed on insurers and reinsurers, as discussed above.

### 14. Are there any restrictions on the persons to whom insurance/reinsurance services and contracts can be marketed or sold?

All persons who purchase insurance must have an insurable interest in the coverage (*see Question 3*).

In addition, specific classes of insureds, such as the elderly, are protected under certain state laws. These states have special protections that must be adhered to for the sale of insurance to insureds in those classes.

Licensed insurers are free to advertise to any and all persons without restriction provided their advertisements are truthful. In contrast, in many states there are broad prohibitions in place against advertising on behalf of, or even calling attention to the existence of, an unauthorised insurer, to any audience.

## REINSURANCE

### 15. To what extent can/must a reinsurance company monitor the claims, settlements and underwriting of the cedant company?

The extent to which a reinsurance company can monitor claims, settlements and underwriting of the cedant company is typically set out in the reinsurance contract. In terms of underwriting, generally the reinsurance company reviews the underwriting guidelines of a ceding company before agreeing to provide the reinsurance and the cedant may covenant to adhere to those guidelines.

Reinsurance contracts also require ceding companies to provide reports to the reinsurer, generally on a quarterly or monthly basis, detailing information for claims and settlements reported or paid during the period. This information typically is statistical and does not provide the detailed information necessary to closely monitor the cedant's business. Reinsurance contracts typically have an access-to-records clause that provides reinsurers with the right to audit the books and records of the cedant.

Reinsurance contracts commonly utilise the "follow the fortunes" doctrine, which generally requires reinsurance companies to follow the underwriting fortunes of their cedant companies and, therefore, be bound by the claims-handling, settlement and allocation decisions of the cedant companies so long as there is no evidence of fraud, collusion with the insured, or bad faith.

### 16. What disclosure/notification obligations does the cedant company have to the reinsurance company?

The disclosure and notification obligations of the cedant company depend on the terms of the reinsurance contract. Contracts generally require reports to the reinsurance company on a month-

ly or quarterly basis (see *Question 15*). A reinsurance contract also typically has a notice provision specifically addressing how and when the cedant must notify the reinsurer of claims.

## INSURANCE POLICIES

### 17. Please outline the main general form and content requirements for insurance policies in your jurisdiction, including a description of the most commonly found clauses.

An insurance policy typically describes the term of the policy, the coverage under the policy, the premium payable by the insured and the deductible owed by the insured in the event of a loss. The most common parts of a policy include the:

- Policy declarations, which identifies who is insured, the insured's address, the insuring company, what risks or property are covered, the policy limits (amount of insurance), any applicable deductibles, the policy period and premium amount.
- Coverage clause, which describes the covered perils, or risks assumed, and describes the nature of the coverage.
- Exclusions clause, which limits coverage by describing property, perils, hazards or losses arising from specific causes that are not covered by the policy.
- Conditions clause, which describes the rules of conduct and duties and obligations required for coverage.

Many states have specific coverage requirements for specified lines of coverage. In addition, most states restrict non-renewal and cancellation and require that the policy form conforms to state law requirements.

Life insurance policies are required to comply with state law provisions on non-contestability and non-forfeiture. Other provisions may be necessary for life products to qualify for life insurance tax benefits under the US Internal Revenue Code.

### 18. Please identify any terms found in insurance policies in your jurisdiction that are implied by law or regulation (identifying the applicable laws or regulations and any mandatory provisions).

Insurance policies have an implied duty of good faith, which requires insurers to generally engage in fair dealing with the policyholder. This includes:

- Adjusting policyholders' claims (either pay it or deny it) within a reasonably prompt time.
- Co-operating with policyholders concerning their claim by responding to letters and phone calls in a timely fashion.
- Explaining in writing precisely why a claim is being denied.
- Attempting to find a basis to pay the claim rather than finding reasons to deny it.

Many states have laws that provide that policies will be interpreted to conform to state law. Therefore, if, for example, a policy is missing a required coverage, or the policy terms relating to cancellation or non-renewal conflict with state law, the policy will be enforced as if written to comply with the state requirements.

### 19. What customer protections are generally included in insurance policies to supplement relief available under general law?

Most, but not all, insurance policy forms are subject to regulation, so such contracts must include certain terms and conditions designed to protect consumers. In addition, there are certain statutory provisions that supplement these protections. For example, many states regulate cancellation or non-renewal of an insurance policy:

- Requiring that insureds receive timely notice of cancellation or non-renewal (to allow them sufficient time to obtain a new policy).
- Prohibiting cancellation in the absence of certain triggering events (non-payment of premium, fraud or misrepresentation in procurement of the policy, material change in risk and so on).

### 20. Please identify examples of standard policies or terms produced by trade associations or relevant authorities, if any, and explain how these can be obtained.

Examples of standard policies or terms can be obtained through the Insurance Services Office (ISO). The ISO is a leading source of information for property and casualty risk. It provides statistical, actuarial, underwriting and claims information, policy language, fraud-identification tools and technical services. There is a standard form of fire insurance policy in many states. Personal lines policies are fairly standardised, such as for homeowners and private passenger automobile insurance.

### 21. What must be established to trigger a claim under an insurance policy?

An insured can make a claim to the insurer if it incurs a loss within the policy limits and which is not covered by an exclusion of the policy. Policies may be "occurrence based", "claims first made", or "claims first made and reported". Insurance policies typically have detailed provisions on when a claim must be made and notice provided to the insurer.

### 22. Please provide brief circumstances in which third parties can claim under an insurance policy?

There are very limited circumstances in which a third party can make a claim under an insurance policy. Typically, the third party must be named as an additional insured under the policy or the terms of the contract must otherwise specifically allow such party to make a claim. The other instance in which a third party could make a claim under the insurance policy is if that claim has been assigned or subrogated.

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### 23. Is there a time limit outside of which the insured/reinsured is barred from making a claim?

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The time period an insured has to make a claim is governed by the policy. Insurance contracts are either “claims first made”, “claims first made and reported”, or “occurrence” contracts. Typically, insurance and reinsurance contracts also include notice provisions governing when the insured must notify the reinsurer of a claim or a potential claim. Many states allow claimants to submit late claims provided the insurer has not been prejudiced. State law may address when a claim is deemed to have been discovered for the purposes of these requirements as well as applicable statutes of limitations.

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### 24. Can the original policyholder or other third party enforce the reinsurance contract against a reinsurer?

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Generally, an original policyholder or other third party has no privity with the reinsurer and cannot sue the reinsurer directly. The main exception to this rule is where a contract expressly contains a “cut-through” provision granting such right to an original policyholder or other third party. In addition, in the case of assumption reinsurance with a novation agreement, the original policyholder would have privity with the reinsurer.

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### 25. What remedies are available for breach of an insurance policy?

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A breach of insurance policy is considered a breach of contract. The remedy for any breach of contract is the right to sue (or arbitrate if required by the contract) to recover losses. If the breaching party has acted in bad faith, the claimant can obtain damages in tort, which potentially includes consequential damages and punitive damages.

## INSOLVENCY

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### 26. Please outline the regulatory framework for dealing with distressed or insolvent insurance or reinsurance companies, or other persons or entities providing insurance or reinsurance related services.

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US insurance companies are not subject to bankruptcy under the US federal bankruptcy code. Instead, they are subject to receivership proceedings under state law. These proceedings apply US bankruptcy law concepts in many respects.

All states have laws allowing the state insurance commissioner to take action if the solvency of a domestic insurer or reinsurer becomes a concern. The level of control that may be exerted differs depending on the severity of the insurer's distress:

- **Supervision.** An insurer would be allowed to remain under its existing ownership and management while the commissioner actively instructs and works with the company to pursue a plan of remediation. Supervision may not be available to insurers in all lines of business.

- **Conservation/rehabilitation.** The commissioner can obtain a court order granting him control of an insurer. This is an intermediary step that is intended to help the insurer rehabilitate.
- **Liquidation.** If there is no reasonable chance of rehabilitation, the commissioner can obtain a court order for the insurer's liquidation. Liquidation is a remedy that is unusual for a life insurer, but more common for other lines of business.
- **Ancillary proceedings.** Each state authorises its commissioner to begin ancillary proceedings to preserve and to marshal the assets of an insurer that are located within that state, if the commissioner of the insurer's state of domicile does not act in regards to solvency concerns, or if requested by the commissioner of another state. The commissioner acting in an ancillary proceeding acts for the benefit of all policyholders, wherever located, but has authority only in relation to assets located in that state. As a general matter, the exercise of ancillary jurisdiction by one state commissioner is co-ordinated with the actions being taken by the commissioner of the state in which the insolvent or impaired insurer is domiciled.

Typically these insolvency laws apply only to insurers and reinsurers, and not to agencies, brokerages or other entities providing insurance-related services. Those entities remain subject to bankruptcy under the US federal bankruptcy laws.

Every state has guarantee funds for certain lines of business that provide coverage, up to a certain amount, to insureds under policies issued by a licensed insurer.

## TAX

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### 27. Briefly describe the tax treatment for insurers, reinsurers, and other persons or entities providing insurance and reinsurance-related services in your jurisdiction.

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US insurers and reinsurers are subject to taxation at federal and state levels. Federal income tax is imposed at 35% for insurers having taxable income in excess of US\$10 million (about EUR6.8 million). Federal taxable income, which is the tax base, is calculated by including premiums plus investment income and gains, and other income, less expenses and loss reserves allowable under the tax law.

There are different federal tax law provisions for life insurance companies (which include accident and health insurance) and property and casualty insurance companies. Statutory loss reserves of property and casualty companies are discounted for tax purposes, while the tax loss reserves for life insurers are calculated by statutory formula (with reference to NAIC tables and valuation techniques).

States impose premiums and/or franchise taxes on insurers licensed in their state, which range from 1% to 4% and are typically imposed on gross premiums minus return premiums and amounts received for reinsurance.

Reinsurance of US risks ceded or retroceded to reinsurers located outside the US may be subject to a federal insurance excise tax

## MAIN INSURANCE/REINSURANCE TRADE ORGANISATIONS

There are many different insurance and reinsurance trade organisations that represent various market participants in the US. Set out below are some of the most well-known trade organisations that represent life insurers, property and casualty insurers and reinsurers.

### American Council of Life Insurers (ACLI)

**Main activities.** ACLI represents over 340 life insurance companies before federal and state legislators, regulators and courts on issues from financial and retirement security to international trade to regulatory reform. It works to educate the industry and the public at large on annuities, life, disability income, and long-term care insurance, as well as pensions and 401(k)-type plans.

W [www.acli.com/ACLI/DefaultNotLoggedIn.htm](http://www.acli.com/ACLI/DefaultNotLoggedIn.htm)

### American Insurance Association (AIA)

**Main activities.** The AIA is a property and casualty insurance trade organisation, representing 350 insurers that write more than US\$123 billion (about EUR83.6 billion) in premiums each year. AIA member companies offer all types of property and casualty insurance, including personal and commercial auto insurance, commercial property and liability coverage for small businesses, workers' compensation, homeowners' insurance, medical malpractice coverage, and product liability insurance.

W [www.aiadc.org/aiapub/](http://www.aiadc.org/aiapub/)

### Property Casualty Insurers Association of America (PCI)

**Main activities.** PCI members are diverse and include publicly held national companies as well as single-state and specialty writers. PCI's goal is to foster a competitive insurance marketplace to benefit both insurers and consumers.

W [www.pciaa.net/web/sitehome.nsf/main](http://www.pciaa.net/web/sitehome.nsf/main)

### Reinsurance Association of America (RAA)

**Main activities.** The RAA is a national trade association established to influence and guide federal and state lawmakers, and international bodies, as they formulate and consider legislation that regulates the business environment in which the property and casualty reinsurance industry operates.

W [www.reinsurance.org/i4a/pages/index.cfm?pageid=1](http://www.reinsurance.org/i4a/pages/index.cfm?pageid=1)

### Independent Insurance Agents & Brokers of America (IIABA)

**Main activities.** IIABA is a national alliance of 300,000 business owners and their employees who offer all types of insurance and financial services products. Members include both independent insurance agents and insurance brokers. IIABA is a voluntary federation of state associations and local boards, with affiliates in every state and the District of Columbia.

W [www.iiaba.net/na/default?ContentPreference=NA&ActiveTab=NA&ActiveState=0](http://www.iiaba.net/na/default?ContentPreference=NA&ActiveTab=NA&ActiveState=0)

### Council of Insurance Agents and Brokers (CIAB)

**Main activities.** The CIAB is an association for commercial insurance and employee benefits intermediaries in the US and abroad. CIAB represents leading commercial insurance agencies and brokerage firms. It is devoted to protecting business, industry, government and the public at-large, and it administers billions of dollars in employee benefits.

W [www.ciab.com/](http://www.ciab.com/)

of 1% on reinsurance premiums. Direct insurance of US risks placed with insurers located outside the US may be subject to a federal insurance excise tax of 1% on insurance premiums for life or accident insurance or 4% for property casualty insurance.

There is a separate tax on excess and surplus lines insurance, typically imposed on the insured and collected by the excess or surplus lines broker.

## DISPUTE RESOLUTION

### 28. Are there special procedures or venues for dealing with insurance or reinsurance complaints or disputes in your jurisdiction?

Generally speaking, state insurance regulators handle complaints filed by consumers in their state under standard procedures. Otherwise, there are no special procedures or venues for insurance or reinsurance complaints or disputes. Such matters would be

brought in the appropriate court of law or before an arbitration panel if arbitration is provided by contract. Typically in the US, reinsurance arbitration is *ad hoc* rather than before a particular arbitral organisation.

### 29. Please give a brief overview of the main dispute resolution methods used to settle reinsurance claims.

Almost all reinsurance contracts, and many insurance contracts, contain language requiring binding arbitration to settle disputes. Arbitration clauses in reinsurance contracts tend to be very broad.

Reinsurance arbitrations are private, confidential proceedings that generally are not open to public or competitor scrutiny. Typically the arbitration proceedings occur in front of a panel of three active or retired insurance or reinsurance professionals who resolve disputes based on industry custom and practice. Reinsurance arbitration clauses typically require the arbitrators to

consider the reinsurance contract as an honourable engagement rather than a strict legal obligation and the parties and the arbitrators set their own rules for the arbitration.

An arbitration award may be entered into the US courts as a judgment and have the same legally binding effect as a judgment awarded by a court.

## REFORM

### 30. Please summarise any proposals for reform of the law, regulation or rules in your jurisdiction relating to the provision of insurance or reinsurance services.

Insurance continues to be primarily regulated by the various states. The various states are usually considering any number of insurance regulatory reforms at any given time. Some reforms also may be co-ordinated through the NAIC.

Recently, financial services regulation reforms have been proposed that will impact insurance companies doing business in the US if they are enacted. Such proposals include:

- The creation of an optional federal charter for insurers to supervise insurance holding companies at the federal level.
- Limitations on anti-trust immunity for insurers.
- Minimum solvency requirements.
- Health care reform.
- Systemic risk regulation and grant of resolution authority to a federal agency.
- Uniform market conduct standards.
- Credit for reinsurance initiatives.

These federal proposals are intended to replace or streamline state insurance regulatory processes. The US Congress is considering the proposals and has not yet enacted legislation to make them law in the US.

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