Cyprus

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1. WHAT ARE THE SOURCES OF INSURANCE AND REINSURANCE LAW?

The English legal system, practice and procedure which applied in Cyprus during the period of British rule were largely retained when Cyprus became an independent state in 1960. The Courts of Justice Law of 1960 provides that the common law and the principles of equity apply in Cyprus, provided that they do not conflict with the Constitution of Cyprus or with laws passed by the House of Representatives. Since 2004, when Cyprus became a member of the EU, EU law has also shaped Cyprus law.

The first pieces of specific insurance legislation in Cyprus were the Insurance Companies Law of 1967 and the Insurance Companies Regulations of 1969. They aimed at regulating the establishment, operation and supervision of insurance companies in Cyprus and at protecting the rights and interests of the insured. They have now been superseded by subsequent legislation.

2. HOW AND BY WHOM IS INSURANCE/REINSURANCE REGULATED?

The insurance regulatory regime in Cyprus is governed by the Insurance Services and other Related Issues Law of 2002 (the 2002 Law) which came into force on 1 January 2003. The 2002 Law expressly abolished the Insurance Laws 1984-2001 and thoroughly revised the system of insurance administration in Cyprus. It may be supplemented from time to time by Regulations issued by the Council of Ministers.

The 2002 Law has been amended at various times to align it with EU law, particularly to implement European Directive 2008/37 of the European Parliament and Council on reinsurance and amending European Directive 2005/68 of the European Parliament and Council on reinsurance and amending Council Directive 73/239 as well as Directive 98/78 and 2002/82. For convenience we will refer to the 2002 Law as amended (up to and including Law 50(I) of 2011) as the Insurance Law.

The Insurance Law applies to all insurance organisations, including intermediary organisations, which conduct:

- insurance business within Cyprus, whether located within Cyprus or not, including mutual insurance organisations and reinsurance companies;
- insurance business outside Cyprus, where the company is registered in Cyprus; or

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- business in Cyprus as a broker, agent, mediator or advisor.

The Insurance Law also applies to insurance organisations with their head office in member states of the European Union (EU) or European Economic Area (EEA) or in Switzerland in the case of non-life insurance, which seek to provide services in Cyprus under the freedom to provide services or the freedom of establishment.

However, the Insurance Law does not apply where the Republic of Cyprus itself underwrites risks, or where businesses are engaged solely in assistance insurance, such as breakdown cover, where this is provided locally and consists only of benefits in kind, and where the total annual income collected in respect of such assistance insurance does not exceed EUR 200,000.

Additionally, the Insurance Law does not apply to the provision of reinsurance cover carried out or fully guaranteed by the Republic of Cyprus for reasons of substantial public interest, in the capacity of reinsurer of last resort, particularly where it is not feasible to obtain adequate commercial cover as a result of specific circumstances in a market.

The Insurance Law also does not apply to mutual insurance organisations whose articles of association contain provisions for calling up additional contributions or reducing their benefits, or where the annual non-life contributions do not exceed EUR 5 million or whose life contributions do not exceed EUR 5 million for three consecutive years, unless this amount is exceeded for three consecutive years or where half the annual non-life contributions are derived from its own members.

Regulatory bodies

The administrative supervision of the application of the Insurance Law is delegated to the Superintendent of Insurance, with the Minister of Finance retaining an appellate role. The Superintendent and their assistants are public servants, appointed by the Council of Ministers, and together they form the Insurance Companies Control Service.

The Superintendent grants licences under the Insurance Law and supervises those to whom such licenses have been granted, with power to withdraw licenses where necessary. The Superintendent is also expressly responsible for safeguarding the interests of policyholders and any other parties entitled to compensation under a contract of insurance.

The Insurance Advisory Committee sits from time to time to propose measures to improve the operation of the insurance market and the education of those in the insurance industry, and to formulate a Code of Conduct for insurance businesses. The Committee is composed of the Superintendent, their assistants and four other individuals appointed by the Minister after consultation with the Insurance Association of Cyprus.

Non-governmental bodies

The Insurance Association of Cyprus is the trade association for the insurance industry; member companies account for about 95 per cent of the insurance business in Cyprus. The Association aims to represent its members'

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interests before the government, regulators, parliament and other political and trade bodies, and to promote the concept of insurance generally. In 1925, the insurance companies then operating in Cyprus, which were principally agencies of British companies, formed three associations, namely the Fire Insurance Association, the Marine Insurance Association and the Accident Insurance Association. With the continuous growth of life assurance business a fourth group was formed in 1976 which then led to the creation of the Insurance Association of Cyprus, a company limited by guarantee. The Association is a full member of the Comité Europeén des Assurances as well as of the International Union of Marine Insurance.

The Motor Insurers Fund is registered as a company limited by guarantee and is composed of all the insurance companies which carry on motor insurance business in Cyprus; it was modelled on the British Motor Insurers' Bureau. Cyprus is a member of the Green Card system, through the Motor Insurers Fund.

The Cyprus Hire Risks Pool is an association which pools the risks of insuring public service vehicles, taxis and hire cars on behalf of all the Cypriot insurance companies underwriting such business.

The Insurance Institute of Cyprus offers education and training in the field of insurance. It is affiliated to the Chartered Insurance Institute, the equivalent body in the UK.

3. FORMATION OF CONTRACT OF INSURANCE/ REINSURANCE

As in the case of any other contract, a contract of insurance requires offer, acceptance, agreement, consideration and an intention to create legal relations in order to form a binding legal contract. There must be a clear agreement as to the distinctive features of the particular contract.

There must be agreement between the parties on all the terms and conditions of the contract, including certain essential matters, namely the amount of the premium, the nature of the risk, including the subject matter of the insurance and the duration of the risk.

Offer: although an offer to enter into an insurance contract may be made either by the prospective insured or by the insurer, in practice it is usually made by the former completing a proposal form. To be considered as complete and communicated, the offer contained in the proposal form must be forwarded to the insurer. The content of proposal forms varies according to the nature of the insurance and the practices of insurance companies. However, all proposal forms contain questions about:

- the description of the proposed insured;
- the risk to be insured;
- the circumstances affecting the risk; and
- the history of the proposed insured.

Acceptance: the insurer may accept the offer as made, or it may accept it with qualifications, in which case the acceptance may amount to a counter-offer. As a general rule of the law of contract, the acceptance of an offer is not effective until it is communicated to the offeror, and this

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rule also applies to an insurance contract. The insurer may communicate the acceptance of a proposal made by the prospective insured by a formal acceptance, the issue of a policy or the acceptance of the premium.

As in English law, the purchaser of insurance or reinsurance is obliged to disclose information about the risk to the insurer and present the risk fairly. The basic principles of disclosure are stated in the leading case of *Carter v Bohm* (1766) 3 Burr. 1905:

'Insurance is a contract on speculation. The special facts, on which the contingent chance is to be computed, lie most commonly in the knowledge of the insured only: the underwriter trusts to his representation, and proceeds on the confidence that he does not keep back any circumstance in his knowledge, to mislead the underwriter into a belief that the circumstance does not exist, and to induce him to estimate the risk as if it did not exist.'

3.1 What is the duty of utmost good faith?

In an insurance contract, the parties have an overriding duty to disclose all the material facts for the reason that a contract of insurance is a contract of *uberrima fides*.

3.2 What are the requirements on a purchaser of insurance or reinsurance to disclose information about the risk to the insurer and to present the risk 'fairly'?

It follows that the insured has a duty to disclose to the insurer at the time of making or remaking the contract of insurance all the facts which are material to the risk. Whether a fact is material is a matter of fact.

A fact is material for the purposes of both non-disclosure and misrepresentation if it is one which would influence the judgment of a reasonable or prudent insurer in deciding whether or not to accept the risk or what premium to charge or, possibly, whether to impose particular terms in the contract such as an exclusion or excess. Section 15(3)(b) of the Motor Vehicle (Third Party Insurance) Law defines material fact as a fact of such a nature as to influence the judgment of a prudent insurer in determining whether it will accept the risk, and if so, at what premium and on what conditions.

3.3 What are the remedies for breach?

For an insurer to obtain the benefit of section 15(2) of the Third Party Insurance Law, it must prove that the policy in question was obtained by non-disclosure or misstatement, that is to say, that the contract which was obtained would not have been obtained if the non-disclosure or misstatement had not occurred. The misrepresentation must be of a fact known or which ought reasonably to have been known by the insured at the time it answers the questions in the proposal form. The burden of proving that the proposer has made a misstatement in the proposal form lies on the insurance company.

These principles were adopted by the District Court of Nicosia in *Commercial Union Assurance (Cyprus) Ltd v Costas Stavrides* (1981) J.S.C. 1-2. Although a contract may be voidable on the ground of a positive misrepresentation with regard to a material fact, only some contracts are voidable on the ground that

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a material fact was not disclosed. In an insurance contract, the parties have an overriding duty to disclose all the material facts for the reason that a contract of insurance is a contract of *uberrima fides*. For these purposes non-disclosure may be defined as the intentional or unintentional failure of one party to the contract to disclose to the other party a fact which is known to it but unknown to the other party and which, if disclosed to the other party, would have influenced it not to enter into the contract or, if it had entered into the contract, would have done so on more favourable terms (Charalambides, *Legal Aspects of Insurance in Cyprus* (1991), p.4).

The remedies available for breach of an insurance policy by the insurer are damages for breach of contract, return of the premiums paid and interest on the premiums.

4. WHAT IS THE ROLE AND FUNCTION OF INTERMEDIARIES?

The business of an insurance intermediary is defined in section 2 of the 2002 Law as the:

'… activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance or of concluding such contracts or of assisting in the administration and performance of such contracts, in particular in the event of a claim.'

This business can be carried out only by insurance agents, brokers, mediators, advisers and tied advisers duly registered by the Insurance Companies Control Service; registration must be undertaken according to section 170 of the 2002 Law.

4.1 For whom do they act?

The precise functions of each type of intermediary are set out in sections 165–168A of the 2002 Law and the classification of intermediaries depends on factors such as whether they may bind the underwriter, collect premiums, advise and assist the insured and settle claims, and whether they are tied to a particular underwriter.

Before the registration of an intermediary, agreements must be concluded in writing between the intermediary and the underwriter, unless that intermediary is acting as an insurance broker.

All intermediary businesses, whether companies or individuals, must, at the time of their registration and for as long as they are active in the provision of intermediation services, either hold professional indemnity insurance covering work undertaken in any EU or EEA country for at least EUR 1 million per claim and a total of at least EUR 1.5 million per annum for all claims, or hold a professional negligence civil liability guarantee comparable to the above.

These obligations will not apply, however, in the event that the insurance cover or guarantee is already provided by an insurance company or other company on whose account the intermediary acts; or where that insurance company or other company has assumed all liability for that intermediary's acts.

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5. WHAT ARE THE REQUIREMENTS AND DISTINGUISHING FEATURES OF INSURANCE CONTRACTS AND REINSURANCE CONTRACTS?

5.1 Requirement for insurable interest

According to the English common law applicable in Cyprus, an insurable interest is a basic requirement of any contract of insurance. Every contract of insurance requires an insurable interest to support it; otherwise, it is invalid. An attempt to define insurable interest was made in the case of *Lucena v Graufurd* (1806) 2 B.O.S. & P.N.R. 269 where Lawrence J. stated:

'…interest does not necessarily imply a right to the whole or part of a thing, nor necessarily and exclusively that which may be the subject of privation, but having some relation to or concern in the subject of the insurance, which relation or concern by the happening of the perils insured against may be so affected as, to produce a damage, detriment or prejudice to the person insuring'.

Certain statutes contain their own definition of insurable interest. In the English Marine Insurance Act 1906, which is applicable in Cyprus due to the absence of any local legislation, every person who is interested in a marine adventure has an insurable interest. In particular, a person is interested in a marine adventure where they stand in any legal or equitable relation to the adventure or to any insurable property at risk in it, in consequence of which they may benefit by the safe or due arrival of the property, or may be prejudiced by its loss, by damage to it or by the detention of it, or may incur liability in respect of it. In certain kinds of insurance such as liability insurance and fidelity or solvency insurance, the very nature of the insurance implies the existence of an insurable interest, while other kinds of insurance such as personal accident insurance are generally effected by the insured, for the most part in respect of their own person or property.

The question of insurable interest becomes important when the insured, for its own benefit, takes out insurance on the person or property of another. In the case of personal accident insurance, the policy may be taken out by the insured against the loss which it may suffer by reason of an accident to a third person. In such a case, the existence of the insurable interest is questionable.

However, a solution to the question of whether or not there is an insurable interest is found in section 4(3)(b) of the Third Party Insurance Law, which is identical to section 36(4) of the English Road Traffic Act 1930 and which reads as follows:

'Notwithstanding anything in any Law contained, a person issuing a policy under this section shall be liable to indemnify the persons or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of those persons or classes of persons.'

In the English case of *McCormick v National Motor and Accident Insurance Union Ltd* (1934) 49 Ll. L. Rep. 361 the phrase 'notwithstanding anything in any Law contained' was interpreted to mean that contracts of motor vehicle insurance are excluded from the need to show an insurable interest.

As a general rule, although the insured must have some interest in the subject matter to entitle it to effect insurance in respect of it, it is not necessary that it should specify in the contract, or even disclose to the

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insurers, either the nature or the extent of its interest.

However, there are exceptional cases in which a specific description of the insurable interest is required. This is the case where there is an express condition to this effect, the insurance is of prospective profits or against consequential loss or the interest is material to the risk. The insurable interest must have a pecuniary value and must be a real interest. A right to future possession or a future interest is also insurable, but it must exist at the time of the loss. Thus, in the case of fire insurance, the insured must show that, at the time of the loss, it had an insurable interest in the object destroyed. It is worth noting that there is a debate as to whether there is a new approach to the meaning of insurable interest and whether it should be approached rather differently today, especially in the light of the decision of the Court of Appeal in *Feasey v Sun Life Assurance Corporation of Canada* [2003] EWCA Civ 885, [2003] Lloyd's Rep. I. R. 637.

5.2 Transfer of risk

Transfer between Cyprus companies

Section 102(1) of the 2002 Law provides that the transfer of a portfolio of life assurance policies from one Cyprus insurance company to another may take place only with court approval. Either the transferor or the transferee may apply to the court, and a copy of the application must be submitted to the Insurance Control Service within 15 days, accompanied by the documents prescribed in section 103.

Transfer of the General Business Class insurance policies portfolio of a Cyprus insurance company to another requires the approval of the Superintendent, and the application is made by the transferor to the Superintendent, accompanied by the prescribed fee.

Transfer of companies incorporated in other member states

Cyprus insurance or reinsurance undertakings may transfer all or part of their portfolio of contracts, including those concluded either under the right of establishment or the freedom to provide services, to an accepting office within or outside Cyprus subject to the competent authorities of the home member state of the accepting office certifying that after taking the transfer into account, the transferee possesses the necessary solvency margin.

Insurance companies may cede any amount of risk to one or more reinsurance companies. There is no legal prohibition against an insurance company ceding its entire risk to a reinsurer.

5.3 Prohibition against gambling

The requirement for an insurable interest to exist effectively rules out use of insurance contracts for gambling. For marine insurance, section 4 of the English Marine Insurance Act 1906, which applies in Cyprus in the absence of local legislation, provides that every contract of marine insurance where the assured does not have an insurable interest is deemed to be a gaming or wagering contract and is void.

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5.4 Form

Sections 126 and 127 of the Insurance Law require insurance policies to be worded clearly and precisely, in an official language of Cyprus (Greek or Turkish) or another official language of a member state of the EU or the EEA, as long as the policyholder has made a written request or as long as the policyholder has a right to choose the law applicable to the insurance contract. The detailed matters to be included in each type of policy are determined by the Superintendent and published in the Insurance Regulations.

Minimum standards for compulsory third-party motor insurance are set out in the Motor Vehicles (Third Party Insurance) Law (Law 96(I) of 2000) as amended.

6. WHERE ARE THE CONTRACT TERMS TO BE FOUND?

The same principles apply as in every contract agreement. The terms of the contract concerning the insurance are generally provided by the insurance company to the insured in the form of a draft policy handbook before a contract is concluded. The insured can read the terms and conditions and seek clarification of any term that is not clear, then the insurer explains to the insured all the terms of the contract, both the express and implied terms, in order for the insured to be fully informed before entering into the contract.

6.1 Slip

The general principles of contract law apply. If the terms set out in the booking slip (referred to as a 'quotation' in Cyprus) have been accepted then there is an agreement. The acceptance need not be in writing but if it is not it becomes more difficult to prove.

6.2 Wording

No particular form of wording is required.

6.3 Implied terms, incorporated terms

Given that insurance contracts are contracts of the utmost good faith there is an implied term of good faith and fair dealing, though the issue has never been tested in the Cyprus courts.

7. CLASSIFICATION OF TERMS: WARRANTIES, CONDITION PRECEDENT: SUSPENSIVE CONDITIONS OR SIMPLE CONDITIONS

A warranty is a term of an insurance contract, and in case of breach, the insurer can repudiate the contract. The basic characteristics of a warranty are that it must be a term of the contract, it must be material to the risk and the person who gives it must comply with it. A breach releases the insurer from its responsibilities, even if the loss is not the result of the breach or the breach was waived before the loss occurred. In *Charalambos Andreou Mavrides and others v American Life Insurance Co* (1984) 1 C.L.R. 611, it was stated that:

'The proposal, by an express agreement, is made part of the insurance agreement

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and forms the basis of that contract. That means that the truths of the statements contained in the proposal are made a condition precedent to the liability of the insurers. The answers contained in the proposal constitute a warranty, in that it is expressly agreed to be so, and a breach of warranty avoids the contract.'

A representation may be equitably and substantially answered, but a warranty must be strictly complied with. A warranty in a contract of insurance is a condition or contingency and unless it is performed, there is no contract. It is immaterial for what purpose the warranty is introduced but once it has been inserted the contract does not exist unless the warranty is fully complied with.

Many non-life policies contain a condition entitling either party to cancel the policy by giving notice to the other party, and a clause permitting immediate cancellation would be valid. Life insurance policies do not contain such cancellation clauses, but they commonly permit the insured to surrender the policy after a certain number of years, so that the insured then receives a lump sum, the surrender value, or they provide for the policy to become paid up so that no more premiums are due but the benefits accruing on death are reduced to the appropriate sum in relation to the premiums actually paid.

Where an insurer alleges that it was induced to issue the policy by reason of fraud, misrepresentation or non-disclosure on the part of the insured, it is entitled to apply to the court, on discovering the facts, for an order that the policy be delivered up to be cancelled. The right of cancellation, whether on the ground of fraud, misrepresentation or non-disclosure, is based on the fact that the policy is thereby voidable *ab initio*. The power of the court to declare the contract void and to order cancellation of the policy only exists where the contract is voidable *ab initio* by reason of a defect existing when the contract was made. Similarly, where the insured alleges that it was induced to enter into the contract contained in the policy by similar conduct on the part of the insurer or its agents, it is entitled to apply to the court for an order rescinding the contract.

8. LOSS

8.1 Triggers of loss

The insurer is obliged to indemnify the insured for its loss from the accepted risk, or to pay the value of the policy. The trigger for the obligation is the occurrence of the accepted insured event resulting in loss.

8.2 Proximate cause

There are no reported cases on this issue and the courts would follow English law principles.

8.3 Burden of proof

The insured will be required to make a statutory declaration. Even though in some cases the proof may show that the loss is *prima facie* covered by the policy, the burden of proving this rests upon the insured.

9. CLAIM PROCESS

To establish a claim under an insurance policy there must be a cause of

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action from an insured party for an insured risk.

9.1 Notification

Each insurance company creates its own regulations regarding the time limit for claims.

As regards general limitation periods, these are set out in the Limitation of Actions Law, Cap 15 ('Limitations Law'), which dates back to the time when Cyprus was a British colony. The principal time limits range from two to 15 years, depending on the nature of the claim. In relation to causes of action not expressly provided for by the Limitations Law or not expressly exempted, the limitation period is six years from the date when the cause of action accrued.

The Limitations Law was suspended in 1964 following inter-communal disturbances and it has effectively remained suspended ever since.

The Suspension of Limitation Period (Provisional Provisions) Law (Law 110(I) of 2002) provided that the Limitations Law would re-enter into force with effect from 1 June 2005, except in relation to any immovable or movable property situated in areas now occupied by Turkish troops (or property which was situated there at the time of the Turkish invasion), but its entry into force has been postponed by a succession of laws passed in the interim, each temporarily extending the suspension. The latest of these, enacted in March 2011, extends the suspension for a further nine months until the end of 2011.

9.2 Claims co-operation

Provisions requiring the insured to assist the insurer in defending claims are normal in many types of policy. There are no reported cases on these clauses in the Cyprus courts, and the courts would follow English law principles.

9.3 Proof of loss

The insured may be required to provide proof of its loss. This differs from particulars in that it means documentary proof of the loss and not merely a description of the loss.

9.4 Fraud

See section 7, above.

9.5 Subrogation

Subrogation applies to all insurance contracts which are contracts of indemnity, such as fire insurance, vehicle insurance, loss of profits insurance, property insurance and liability insurance. It does not apply to life insurance nor *prima facie* to personal accident insurance. However, although most personal accident policies provide for payment of fixed benefits or benefits according to a scale, some policies do provide for payments to be made on an indemnity basis, related to the specific loss suffered by the insured.

9.6 Double insurance

Double insurance arises when the same party is insured with more than one

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insurer in respect of the same interest on the same subject-matter against the same risks. The general principle is that, subject to the terms of each policy, the insured can recover in full from either insurer and the paying insurer is then entitled to a contribution from the other insurer. However, most policies include a term designed to limit, or even exclude, the right of contribution if there is other insurance in place, for example by transforming the policy into an excess layer policy, limiting the insurer's liability to a rateable proportion of the loss or excluding indemnity altogether.

For marine insurance, section 32 of the English Marine Insurance Act 1906, which applies in Cyprus in the absence of local legislation, applies. It allows the insured to claim from the insurers in such order as it may think fit, subject to any provisions to the contrary in any policy. It limits the insured's entitlement to indemnity for the loss and provides that any sum received in excess of that amount is deemed to be held in trust for the insurers according to their right of contribution among themselves.

10. REINSURANCE CLAIMS ISSUES

The requirements for reinsurance policies are not prescribed in detail: sections 126 and 127 of the Insurance Law set out the main requirements, which are that policies and the conditions attaching to them must be worded clearly and precisely and be in an official language of Cyprus (Greek or Turkish) or another official language of a member state of the EU or the EEA, as long as the policyholder has made a written request or as long as the policyholder has a right to choose the law applicable to the insurance contract. The detailed matters to be included in each type of policy are determined by the Superintendent and published in the Insurance Regulations.

10.1 Follow settlements

The specific terms contained in individual policies vary according to the nature of the contract and the preference of the parties. Generally, European practices and norms predominate.

10.2 Claims control

Reinsurance companies can monitor the claims and settlements of the insurance company (cedant company) at any time, subject to notifying the cedant company in advance. The law does not provide any rules as far as the monitoring is concerned and the extent of and procedure for monitoring are a matter for agreement between the insurer and the reinsurer.

10.3 Aggregation

This is a matter for agreement between the parties.

10.4 Law and jurisdiction

The parties are free to agree on this.

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