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## Insurance & Reinsurance in Lebanon

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### **Market spotlight**

*Trends and prospects*

#### **What are the current trends in and future prospects for the insurance and reinsurance markets in your jurisdiction?**

Lebanon's insurance industry is one of the most developed in the Middle East region. The country's liberal regulatory regime means that foreign entities enjoy a considerable share of Lebanon's insurance industry. Indeed, the Lebanese government has stepped up its efforts to modernise the insurance sector and ensure its sustainable development from the standpoint of both the insurer's solvency and the buyer's safety.

Market research reports show that, in terms of gross written premium, the industry posted a compound annual growth rate of 10.5% for the 2008-2012 review period. The gross written premium was equivalent to 3.13% of the gross domestic product in 2012. The minimum paid-up capital required for insurers to operate in the Lebanese insurance industry is \$1.5 million. This low threshold means that there are over 50 operational insurers in the industry, resulting in intense completion. Pressure is consequently mounting on regulatory authorities to increase the minimum paid-up capital requirements.

### **Regulatory framework**

*Legislation*

#### **What is the primary legislation governing the (re)insurance industry in your jurisdiction?**

The primary legislation governing the (re)insurance industry in Lebanon is Decree 9812/1968.

The decree has to be read in light of the Code of Obligations and Contracts, the Code of Civil Procedure and the Code of Commerce.

*Regulators*

#### **Which government bodies regulate the (re)insurance industry in your jurisdiction and what is the extent of their powers?**

The Insurance Control Commission (ICC) at the Ministry of Economy and Commerce is the authority supervising the insurance industry in Lebanon, with powers to enforce the regulatory and supervisory frameworks through interventions and sanctions.

The ICC's responsibilities include:

- monitoring the activities and practices of insurers as to their compliance with the laws and regulations governing the insurance sector in Lebanon;
- observing the legal and financial situation of insurers operating in Lebanon to ensure that they continue to satisfy the conditions and requirements on which their licences were granted;
- reviewing, controlling and analysing the financial statements and documents reported by insurers and preparing the ICC's own related reports, consolidations and sector studies;

- conducting regular on-site visits to insurers and brokers based on a pre-scheduled programme set by the head of the ICC;
- prescribing the appropriate actions to be taken against insurers that are in violation of the rules and regulations or those that are financially insolvent, and following up closely on the implementation of any corrective action prescribed;
- submitting recommendations concerning the granting, the withdrawal or the change of licences of insurers and expressing the ICC's opinion on any technical or legal matter that might be of relevance or have an impact on the insurance sector;
- licensing and renewing of licences of insurance brokers and insurance agents after evaluation of their eligibility to such licences;
- collecting statistical data and conducting studies on certain aspects of the insurance industry and submitting recommendations and/or ideas that are deemed of public benefit; and
- keeping custody and administrating the guarantees that are deposited by insurers, brokers and agents with the Ministry of Economy and Commerce, as a required security for the right of conducting insurance business under Lebanese law.

### **Ownership and organisational requirements**

#### *Ownership of (re)insurers*

#### **Are there any restrictions on ownership of or investment in (re)insurers in your jurisdiction, including any limits on foreign ownership/investment?**

Foreign companies whose sole business is re-insurance operations and that are internationally classified in a category B or higher may operate in Lebanon through a representative resident in Lebanon, on condition that they obtain an *ad hoc* licence. The licence is granted by a ministerial order issued by the Minister of Economy and Commerce, following consultation with the National Insurance Board.

In order to be authorised to operate in Lebanon, foreign insurers must also meet the same conditions as those set for national insurers. In addition, foreign companies must file at the Ministry of Economy and Commerce:

- a certificate confirming that they are from a country where Lebanese insurers are free to operate (including in the territories of the country's dependencies). However, this condition does not apply to companies from countries where the laws and regulations do not allow the formation of private insurers;
- evidence that the organisations enjoy in their country of origin the legal aptitude to undertake the insurance activities that they wish to perform in Lebanon, and that they actually perform the same activity in their countries of origin;
- evidence that they have elected domicile in Lebanon;
- documents relating to their appointment of one legal representative residing in Lebanon and vested with the powers mentioned in Article 8 of the present law, and that whoever is entrusted with the general management of their Lebanese branch indeed has relevant experience and technical qualifications;

- an economic worthiness report, underlining the companies' projected operations over the three years following the granting of the licence, with an indication of the technical data on which the report was based;
- copies of the company's balance sheet for the three years preceding the date of the application; and
- evidence that their capital at their head office is not inferior to three times the minimum capital required for any Lebanese insurer, and that it is fully paid up. Foreign companies are allowed three years to prove compliance with this requirement.

### **What regulations, procedures and eligibility criteria govern the transfer of control of/acquisition of a stake in a (re)insurer?**

In general, regulations and procedures governing transfer of control/acquisition of stakes in a (re)insurer are those governing joint-stock companies.

Those regulations are set by the Code of Commerce. In general, any merger/acquisition must be approved by resolution of the extraordinary general meeting of each of the companies involved.

When a merger is effected by dissolving prematurely existing companies and creating a new one, legal rules as to formation of companies must be observed and all publicity requirements relating to formation or to dissolution of companies must be fulfilled. However, when the merger is effected by the absorption of one company by another, the acquiring company must abide by the substantive rules governing an increase of capital and must comply with all formal requirements. Besides, the premature dissolution of the absorbed company must be announced publicly.

Furthermore, in a merger the acquiring company takes over the rights and assets of the absorbed company and assumes its liabilities; it issues its shares in exchange for the shares of the disappearing company. Thus, the shareholders of the absorbed company become shareholders of the acquiring one. Likewise, the debtors of the dissolved company become automatically debtors to the acquiring company without any change in their situation.

However, the merger may cause prejudice to creditors (bond holders included). For this purpose, Lebanese law provides that the rules governing the reduction of capital will govern the merger of companies as regards third parties. Auditors and bondholders may object to the merger by applying to the court within three months of the publishing of the decision of merger in the *Official Gazette*. The merger may not be effected if the court does not overrule the objections. As for creditors (bond holders included) of the acquiring company, they may not object to the merger unless fraud is involved in the operation.

#### *Organisational requirements*

### **Must (re)insurers adopt a certain legal structure in order to operate? If no mandatory company organisation applies, what are the common structures used?**

A Lebanese insurance organisation must be in the form of a joint-stock company in order to be authorised to operate. Joint-stock companies are governed by Articles 77 to 225 of the Code of Commerce. Joint-stock companies are characterised by their *intuitu pecuniare* nature – that is, the monetary contribution of each shareholder. The company cannot be identified by a style or the name of any of its shareholders.

In order to be considered as Lebanese companies, joint-stock companies should have their head offices in Lebanon.

### **Do any particular corporate governance requirements apply to (re)insurers, including any eligibility criteria for directors and officers?**

The employees of companies under the law and all those who work for the account of these companies must be of Lebanese nationality. However, each company operating in Lebanon may hire a maximum of three foreign specialists, following the approval of the minister of labour, on the proposal of the minister of economy and commerce subsequent to the advice of the National Insurance Board. One pre-condition for these foreigners to be allowed to work for companies submitted to the present law is that they should abstain from carrying on any other profession that is not within the scope of this licence. As for foreign companies, they are authorised to have, additionally, a foreign manager or general representative residing in Lebanon.

#### **Operating requirements**

*Authorisation procedure***Which (re)insurers must obtain authorisation from the regulator before operating on the market and what is the procedure for doing so?**

Insurance operations may be carried out in Lebanon only by organisations duly licensed for this purpose. The licence is either granted, amended, refused or withdrawn by ministerial order from the minister of economy and commerce, following consultation with the National Insurance Board.

The employees of the said insurers and all those who work for the account of these companies must be of Lebanese nationality. However, each company operating in Lebanon may hire a maximum of three foreign specialists, following the approval of the minister of labour, on the proposal of the minister of economy and commerce following the advice of the National Insurance Board. One pre-condition for these foreigners to be allowed to work for companies under the law is that they should abstain from carrying on any profession that is outside the scope of this licence. As for foreign companies, they are authorised to have, additionally, a foreign manager or general representative residing in Lebanon.

*Financial requirements***What are the minimum capital and solvency requirements for (re)insurers operating in your jurisdiction?**

The fully paid-up capital of Lebanese insurers may not be inferior to L£2.250 billion. Previously authorised insurers are given three months to take a decision to increase their capital to the minimum level mentioned above; they are also given two years to pay the whole amount of the increase, on condition that at least half of the increase is paid during the first year.

**Do any other financial requirements apply?**

The declared capital may not be decreased, or any part of it restituted, except with the approval of the minister of economy and commerce, based on a report by the Insurance Control Commission (ICC) following consultation with the National Insurance Board, and always while complying with the minimum capital requirement.

Any Lebanese company that has suffered losses must reconstitute its capital within a maximum of three months of the end of the financial year in which the losses have occurred. Exceptionally, and by ministerial order issued by the minister of economy and commerce, this time limit may be extended by a further three months, on condition that the company concerned submits sufficient guarantees to prove its capacity to reconstitute its capital within the said time limit.

Responsibility for the evaluation of the loss rests with the ICC. The company concerned may challenge the said evaluation by the commission within 20 days of its notification of the evaluation, by means of a petition to the minister of economy and commerce.

Insurers should post adequate estimates of their commitments towards the insureds or the beneficiaries of insurance policies:

- to the liabilities of their balance sheet if they are Lebanese; and
- on a special balance sheet concerning their activities in Lebanon if they are foreign.

*Personnel qualifications***Are personnel of (re)insurers subject to any professional qualification requirements?**

The general manager or assistant general manager must enjoy a good reputation, and hold a university degree, as well as have at least 10 years' experience in the insurance business.

*Business plan***What rules and requirements govern the business plans of (re)insurers?**

Rules applicable are those governing risk management below.

*Risk management***What risk management systems and procedures must (re)insurers adopt?**

The general assembly of Lebanese insurers and the legal representatives of foreign insurers will appoint one or more supervisory commissioners who meet all legal requirements, for one renewable year.

The supervisory commissioners, as well as the actuaries appointed by the company, will, each in what concerns him or her in the conduct of his or her business, comply with the following rules:

- Survey the company's operations to ensure that its situation conforms with the current laws and regulations and that, if needed, it introduces a basic programme of corrective measures.
- Inform the ICC at once of any irregularities or infringements that the company may have committed; failing which, their responsibility will be engaged.
- Write a detailed annual report on their supervision work and the results achieved. A copy of the report should be sent to the insurer concerned, and to the ICC within a maximum period of five months of the end of the company's fiscal year.
- Notify each of the company's general assembly and the ICC, over and above the report that they must draw up in accordance with the provisions of the Code of Commerce, of a special report about the contracts concluded by the company, whether directly or indirectly, for the members of its management board, its representatives, any of its agents or any of its managers.
- Satisfy, within a maximum period of 15 days, any demand for information or clarification that they may receive from either the ICC or the Ministry of Economy and Commerce.

#### *Reporting and disclosure*

#### **What ongoing regulatory reporting and disclosure requirements apply to (re)insurers?**

Please see above.

#### *Other requirements*

#### **Do any other operating requirements apply in your jurisdiction?**

No.

#### *Non-compliance*

#### **What are the consequences of non-compliance with the operating requirements applicable to (re)insurers?**

Any company that should be late in transmitting to the Ministry of Economy and Commerce any of the statements or documents that it is under obligation to provide, or should delay their publications within the time limits specified by the ministry, will be under penalty of an administrative cash fine of L£100,000 per day's delay. The amount of the fine will double if the infringement is repeated.

#### **Contracts**

##### *General*

#### **What general rules, requirements and procedures govern the conclusion of (re)insurance contracts in your jurisdiction?**

In general, rules, requirements and procedures set under the Code of Obligations and Contracts (COC) are those governing (re)insurance contracts in Lebanon.

##### *Mandatory/prohibited provisions*

#### **Are (re)insurance contracts subject to any mandatory/prohibited provisions?**

(Re)insurance contracts are subject to provisions set under the COC that implies certain rules of form – for instance, the policies have to be transmitted in writing.

#### *Implied terms*

#### **Can any terms be implied into (re)insurance contracts (eg, a duty of good faith)?**

Implied terms depend in general on the type of (re)insurance contract, duty of good faith is implied by the general principles of law.

#### *Standard/common terms*

#### **What standard or common contractual terms are in use?**

Aside from what is set by the COC and by the general principles of law governing agreements, insurance policies will determine mainly the terms and conditions of coverage, the term and the premium.

#### *'Smart' contracts*

#### **What is the state of development in your jurisdiction with regard to the use of 'smart' contracts (ie, blockchain based) for (re)insurance purposes? Are any other types of financial technology commonly used in the conclusion of (re)insurance contracts?**

Not applicable.

#### *Breach*

#### **What rules and procedures govern breach of contract (for both (re)insurer and insured)?**

In general, rules set under the COC govern the breach of contract in Lebanon. Accordingly, breach of contract may lead either to the termination of the contract and/or liquidated damages.

Termination of contract may be in certain cases subject to a court decision.

#### **Consumer protection**

#### *Regulation*

#### **What consumer protection regulations are in place to safeguard the rights of purchasers of insurance products and services?**

Complaints may be filed before the Consumer Protection Directorate, which is responsible to survey legitimate businesses and ensure that they can compete honestly and fairly.

#### **Claims**

#### *General*

#### **What general rules, requirements and procedures govern the filing of insurance claims?**

Insurance claims are filed based on the terms of the insurance policy in light of the common law. Quality, interest and capacity are to be gathered in the subject filing the claim.

#### *Time bar*

#### **What is the time bar for filing claims?**

Article 985 of the Code of Obligations and Contracts (COC) sets the time bar for filing claims at two years.

#### *Denial of claim*

#### **On what grounds can the (re)insurer deny coverage?**

Deny of coverage may be based either on the policy itself or on stipulations set by Lebanese law (eg, the COC) and can be for reasons such as prescription of time bar.

#### **What rules and procedures govern the insured's challenge of the denial of a claim?**

Insurance claims are filed before an insurance arbitration council that is set up at the Ministry of Economy and Commerce to look into disputes relating to financial claims resulting from medication and hospitalisation insurance policies, as well as insurance policies covering vehicles, carriages and traffic accidents, subject to the following two conditions:

- the amount of the claim must be inferior to L£75 million Lebanese; and
- the plaintiff must not have introduced a court action in connection with the same case. Should a court action be taken subsequent to the submission of the dispute to the arbitration board, the latter will suspend the case, and will then cross it out as a matter of course or at the request of one of the parties.

Verdicts by the insurance arbitration council are not open to recourse, except appeal, the appeal by third parties and the recourse to the Cassation Court in conformity with the rules stated in the Code of Civil Procedure.

#### *Third-party actions*

#### **On what grounds can a third party file a claim directly with the (re)insurer?**

A third party may file a claim directly with the (re)insurer if such party has suffered damage and the damage is insured. Subrogation actions are admissible if their legal elements are gathered.

#### *Punitive damages*

#### **Are punitive damages insurable?**

In principle, punitive damages are not insurable.

#### *Subrogation*

#### **What regime governs (re)insurers' subrogation rights?**

Subrogation of rights is governed by the COC. In terms of insurance, the insurer that has paid the insurance indemnity is subrogated, by right, in all the rights and claims of the insured against all third parties involved.

### **Intermediaries**

#### *Regulation*

#### **How are the services of insurance intermediaries regulated in your jurisdiction?**

The Insurance Control Commission at the Ministry of Economy and Commerce interprets the prohibition set by the law narrowly, in that the prohibition is not limited to direct marketing, but applies also to any indirect approach or marketing to the public.

In order for a legal entity to obtain a licence of independent insurance broker or general insurance agent, the following conditions, among others, should be fulfilled:

- The applicant should be registered at the Commercial Register with its purpose stating that its activity is strictly restricted to insurance intermediation;
- The manager of the applicant should fulfil certain conditions regarding age, qualifications and judicial record; and
- A bank guarantee may be asked to be deposited at the ministry with the licence application.

### **Tax**

#### *Tax liability*

#### **What tax liabilities arise in the conduct of (re)insurance business?**

Applicable taxes on insurers are in general those implied on joint-stock companies.

### **Insolvency**

*Regulation***What regime governs the insolvency of (re)insurers?**

The common law regime in principle is applicable to insolvency for (re)insurers; however, some particular conditions are implied in some cases. In summary, insolvency of (re)insurers has to be considered in light of the common law and Decree 9812/1968.

The ministerial order for the withdrawal of the licence from all the branches that the company exploited entails, as a matter of course:

- the winding-up of the company, if it is Lebanese; or
- the liquidation of its claims and obligations in Lebanon, if it is foreign.

In the absence of the appointment of a liquidator by the company concerned within one month of the total withdrawal of the licence, the provisions of the Code of Commerce are applicable to the Lebanese companies referred to in the preceding paragraph.

A decree by the Council of Ministers, based on a proposal by the minister of economy and commerce, following a consultation with the National Insurance Board, will designate the competent authorities, and the procedure to follow, for the liquidation of the debts and rights of foreign insurers in Lebanon.

If one of the companies applies for a scheme for arrangement, the court may not adjudicate the matter, except on the advice of the minister of economy and commerce, which will at the same time propose the name of a commissioner.

*Effect on insureds***How does a (re)insurer's insolvency affect insureds and the (re)insurer's obligations to insureds?**

In the absence of the appointment of a liquidator by the company concerned within one month of the total withdrawal of the licence, the provisions of the Code of Commerce are applicable to the Lebanese companies.

Further to the procedure of liquidation, all creditors including insureds will enter the creditors hierarchy and the court appoints a liquidator to manage and oversight the liquidation procedure.

**Dispute resolution***Litigation***Are there any compulsory or preferred venues for insurance litigation in your jurisdiction?**

Insurance claims that are inferior to L£75 million and resulting from medication and hospitalisation insurance policies, as well as insurance policies covering vehicles, carriages and traffic accidents, are filed before an insurance arbitration council set within the Ministry of Economy and Commerce.

**How are insurance disputes with a cross-border element handled in your jurisdiction?**

When handling a dispute on insurance policies that contain a cross-border element, common law, in light of the Code of Obligations and Contracts (COC), has to be taken in consideration.

**What issues are commonly the subject of insurance litigation?**

Any issue related to insurance may be subject to insurance litigation.

**What is the typical timeframe for insurance litigation?**

The timeframe for insurance litigation is in principle similar to civil/commercial litigation, ranging theoretically from between one and two years for the first instance; however, in practice it is impossible to estimate an exact timeframe.

*Arbitration***What regime governs the arbitrability of insurance disputes?**

Arbitrability of insurance disputes is governed by the common law regime in light of the COC and Decree 9812/1968.

As mentioned above, insurance claims are filed before an insurance arbitration council set within the Ministry of Economy and Commerce to look into disputes relating to financial claims resulting from medication and hospitalisation insurance policies, as well as insurance policies covering vehicles, carriages and traffic accidents, subject to the following two conditions:

- The amount of the claim must be below L£75 million; and
- The plaintiff must not have introduced a court action in connection with the same case. Should a court action be initiated after the submission of the dispute to the arbitration board, the latter will suspend the case, and will then cross it out as matter of course or at the request of one of the two parties.

Verdicts by the insurance arbitration council are not open to recourse, except appeal, the appeal by third parties and the recourse to the Cassation Court in conformity with the rules stated in the Code of Civil Procedure.

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