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Insurance & Reinsurance 2025

14th Edition

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1 Regulatory

1.1 Which government bodies/agencies regulate insurance (and reinsurance) companies?

The Ministry of Treasury and Finance (MTF) is the main regulatory body with respect to state supervision of insurance and reinsurance activities. With Presidential Decree No. 47, issued by the President of the Republic of Turkey, the Insurance and Private Pension Regulatory and Supervisory Organization and Board were established on 18.10.2019.

MTF acts as the supervising authority through the use of two agencies – the Insurance Supervisory Board (ISB) and the General Directorate of Insurance (GD) – until the Insurance and Private Pension Regulatory and Supervisory Organization and Board are fully operational. The duties of the ISB and GD are primarily provided within Insurance Law No. 5684 (the Insurance Law) and Regulation on Insurance Supervisory Board of the Undersecretariat of the Treasury No. 4059. The ISB, according to article 28 of the Insurance Law, is the main regulatory agency responsible for regulating insurance and reinsurance companies. Both the ISB and GD are responsible for the supervision of all insurance operations in accordance with their special laws, insurance and reinsurance intermediaries, loss-adjusting activities, actuaries and other persons operating in the insurance sector.

Accordingly, the Insurance and Private Pension Regulatory and Supervisory Organization and the Insurance and Private Pension Regulatory and Supervisory Board are the regulatory authorities, and have the following duties:

- Exercising the duties and powers in respect of insurance and private pensions arising from Law on Road Traffic No. 2918 dated 13.10.1983, Law on Individual Pension Saving and Investment System No. 4632 dated 28.03.2001, Agricultural Insurance Law No. 5363 dated 14.06.2005, the Insurance Law, Turkish Commercial Code No. 6102 dated 13.01.2011 (TCC) and Catastrophe Insurance Law No. 6305 dated 09.05.2012.
- Drafting, applying and supervising the insurance and private pension legislation.
- Taking measures to improve insurance and private pension practice, and protect the insureds and participants, applying these measures by itself or by ordering the relevant institutions to execute the measures and oversee the execution.
- Examining, inspecting and investigating the persons and institutions who practise in the insurance and private pension field.
- In order to contribute to the decision-making regarding insurance business, private pensions and other financial markets, preparing reports about insurance business, private pensions and other financial markets by reviewing and taking into consideration domestic and international developments, participating and providing opinions to the workshops on these subjects, examining and evaluating the information, records and documents together with inspections and overseeing the results.
- Carrying out research and other types of work regarding the legislation and application of its duties and providing opinions on the same.
- Defining the Organization's strategy, performance criteria, purpose and mission, standard quality of service, establishing human resource and working policies, and establishing the Organization's service divisions and their duties.
- Discussing and deciding on the proposed budget prepared in accordance with the strategic plan, purpose and mission of the Organization.
- Approving the reports in respect of the performance and the financial standing of the Organization.
- Discussing and deciding on the proposals of buying, selling and leasing property.

1.2 What are the key requirements/procedures for setting up a new insurance (or reinsurance) company?

Pursuant to the applicable legislation, entities intending to engage in insurance and reinsurance activities are required to be established as joint-stock companies or cooperatives, and may not operate in fields other than insurance and reinsurance. The founders of such companies, whether real persons or legal entities, must not have been bankrupt or undergone concordat procedures, must hold sufficient financial assets, maintain a reputable standing, and must not have any criminal record related to financial crimes. In addition, the share certificates of insurance and reinsurance companies must represent actual cash contributions.

Foreign entities wishing to operate in Turkey may do so by establishing a branch office, provided that they are not prohibited from carrying out business in their home jurisdictions and that the capital assigned to the Turkish branch is at least equal to the minimum capital required for locally established insurance or reinsurance companies. Furthermore, while foreign insurance experts are subject to reciprocity, experts appointed by foreign reinsurance companies are exempt from this requirement. Insurance agents, including foreign agents, must comply with the same provisions applicable to Turkish

agents. If the agent is a foreign real person, they must reside in Turkey; if operating through a legal entity, a branch office must be established. In any case, insurance agents may only operate on behalf of Turkish insurance companies.

The procedures and requirements governing the establishment and operations of insurance and reinsurance companies, as well as the licensing processes for foreign entities seeking to open branch offices, are comprehensively set out in the Regulation on the Establishment and Rules of Procedures for Insurance and Reinsurance Companies.

1.3 Are foreign insurers able to write business directly or must they write reinsurance of a domestic insurer?

Article 15 of the Insurance Law stipulates that any party who resides in Turkey and has an insurable interest in Turkey must be insured in Turkey by an insurance company operating in Turkey. However, this does not mean that foreign insurers may only write reinsurance. Turkish Law allows foreign insurers to write business and operate in Turkey through branches established in Turkey. In addition, article 15 also provides several exceptions and it is possible to write insurance for the following interests:

- Transportation insurance for goods that are subject to export and import.
- Hull insurance to be provided for aircraft, ships and helicopters that are purchased with foreign loans, exclusively limited to the loan amount and applicable for the term until the foreign debt is paid up, or limited to the period of financial leasing if the same are brought home by financial leasing obtained abroad.
- Liability insurances arising from the operation of ships.
- Life assurances.
- Personal accident, sickness, health and motor vehicle insurances, limited to the time people will be abroad or of their temporary stay abroad.

1.4 Are there any legal rules that restrict the parties' freedom of contract by implying extraneous terms into (all or some) contracts of insurance?

Turkish Code of Obligations No. 6098 (TCO) stipulates the principle of freedom of contract; however, at the same time, there are mandatory regulations in the code which provide limitations to this.

There are articles contained in the TCO which are mandatorily applicable and the TCO clearly implies that those rules must be complied with and contrary contractual provisions would be null and void. Article 1404 of the TCO provides that insurance to cover a loss resulting from an act of the policyholder or insured in breach of the mandatory rules, moral values, public order or rights of persons shall be null and void; therefore, in general terms, the terms of insurance contracts should not be against the mandatory rules, moral values and public order. "Rights of persons" means the individual's material and spiritual existence within the concept of human rights.

In addition, article 11 of the Insurance Law provides that the main content of any insurance contract must be drafted in accordance with the general terms approved by the regulatory body and are to be applied by all insurance companies in a similar way. However, insurance companies can determine special conditions in accordance with the specifics of each matter. In such a case, these special conditions shall not be misleading and must be shown clearly in the insurance contract under the title of special conditions. Therefore, freedom of contract cannot be exercised without limit in insurance contracts.

1.5 Are companies permitted to indemnify directors and officers under local company law?

Companies may provide for an indemnification (a salary) to directors and officers.

1.6 Are there any forms of compulsory insurance?

Yes. Turkish Law provides for the following forms of compulsory insurance, among others: traffic (land vehicle) insurance; earthquake insurance; land passenger transportation financial liability insurance; marine passenger transportation financial liability insurance; hazardous substance financial insurance for business owners that carry out activities with hazardous substance; marine pollution financial liability insurance for business owners that carry out activities at the coast of Turkey; financial liability insurance for companies that offer private security services; financial liability insurance for medical doctors; financial liability insurance for electronic certificates service providers; and travel agencies' liability insurance.

2 (Re)insurance Claims

2.1 In general terms, is the substantive law relating to insurance more favourable to insurers or insureds?

As Turkish Law tends to protect the weaker party in all manners, the substantive law relating to insurance is more favourable for insureds.

2.2 Can a third party bring a direct action against an insurer?

Pursuant to article 1478 of the TCC, a third party suffering loss is entitled to bring a direct action against an insurer for coverage, provided that the claim amount does not exceed the insured amount.

2.3 Can an insured bring a direct action against a reinsurer?

Pursuant to article 1403 of the TCC, the existence of reinsurance cover does not give an insured any right to bring a direct action against the reinsurer. However, clauses giving insureds the right to recover claims directly from reinsurers are valid.

2.4 What remedies does an insurer have in cases of either misrepresentation or non-disclosure by the insured?

Pursuant to article 1435 of the TCC, the insured is liable to inform the insurer about important issues pertaining to the subject matter of the insurance. Failing that, the insurer may be entitled either to terminate the insurance contract or to claim the premium difference.

With respect to life insurance, in the event that five years have elapsed since the beginning of the insurance coverage (including renewals), the insurer will not be entitled to terminate the insurance contract and can only claim the difference in premium if the insured fails to provide accurate information. Reneging may be possible if the lack of information is a wilful breach on the part of the insured.

2.5 Is there a positive duty on an insured to disclose to insurers all matters material to a risk, irrespective of whether the insurer has specifically asked about them?

Pursuant to article 1435 of the TCC, statements that are disclosed or stated insufficiently or untruly to the insurer, or that are not disclosed at all, shall be deemed important if they can lead to the non-conclusion of the insurance contract or conclusion of the same with different terms. In cases where such circumstances of importance are not disclosed at all or are disclosed incorrectly to the insurer, the insurer may then exercise the right of rescission within 15 days from the date the insurer became aware of the breach of the duty of disclosure, or request an additional premium. In cases where the request for an additional premium is not accepted within 10 days, the insurer shall be deemed to have rescinded from the contract.

2.6 Is there an automatic right of subrogation upon payment of an indemnity by the insurer or does an insurer need a separate clause entitling subrogation?

Yes, in accordance with article 1472(1) of the TCC, the insurer legally becomes the successor of the insured once the insurer pays the insurance indemnity, and the insurer shall have the rights of the insured whom are liable for the damage occurred.

3 Litigation – Overview

3.1 Which courts are appropriate for commercial insurance disputes? Does this depend on the value of the dispute? Is there any right to a hearing before a jury?

According to article 5 of the TCC, Commercial Courts are the authorised courts for commercial insurance disputes and this does not depend on the value of the dispute. The parties will be given the right to a hearing before the court and not a jury, which does not exist in the Turkish Law system. Marine insurance disputes are heard by those courts that have been authorised as specialised maritime courts. As a separate note, there is mandatory mediation for commercial disputes; therefore, before commencing a court action, the case must be referred to a mediator through the mandatory mediation procedures.

3.2 What, if any, court fees are payable in order to commence a commercial insurance dispute?

The Turkish Act on Fees (TAF) and its Tariffs set out the court fees and charges that are applicable to the parties of commercial disputes. Article 28 and Tariff No. 1 of the TAF provide that one-quarter of 6.831% of the disputed amount shall be deposited to the court upon commencement of the legal case.

3.3 How long does a commercial case commonly take to bring to court once it has been initiated?

Once the case has been initiated before the Commercial Court, the court generally examines the petition for between three to five days and then sends the petition to the respondent(s) once the written petitions are submitted by both parties within the legal terms; the court will schedule a hearing if the case is deemed appropriate. Please kindly note that the parties usually exchange four petitions in total in the preliminary stage.

4 Litigation – Procedure

4.1 What powers do the courts have to order the disclosure/discovery and inspection of documents in respect of (a) parties to the action, and (b) non-parties to the action?

Article 83 of the TCC adopts the provisions of the Code of Civil Procedure (CCP) concerning mandatory disclosure/inspection of documents. Pursuant to article 219 of the CCP, parties are obliged to submit all the relevant documents that they hold and that are requested by the court *ex officio* or upon request of a party to the litigation. The court may request a real person or a legal entity to submit:

- Any document that forms a base to any other document submitted to the court.
- Any written document received from the counterparty in relation to the subject matter.
- Any document related to the transactions.
- Any document that is individually or jointly owned by the parties.

4.2 Can a party withhold from disclosure documents (a) relating to advice given by lawyers, or (b) prepared in contemplation of litigation, or (c) produced in the course of settlement negotiations/attempts?

There are no clear provisions under Turkish Law on cases where a party withholds documents from disclosure; under the Attorneys' Act, only a lawyer may refrain from submitting a document. Also, a party may refrain from submitting any documents prepared in contemplation of litigation or produced in the course of settlement negotiations/attempts, because such documents may constitute business secrets, may be confidential or the parties may prefer not to submit them due to ethical reasons. The consequence of not submitting a court-ordered document is regulated under article 220 of the CCP. If the court orders a document for submission and a party withholds, for any reason, that document from disclosure, the court may accept the claims of the counterparty.

4.3 Do the courts have powers to require witnesses to give evidence either before or at the final hearing?

Yes. Under article 221 of the CCP, the court may order a third-party individual or legal entity to provide information or submit a document that is necessary for the settlement of the dispute between the parties. If the court deems that the information provided is not sufficient, the court may call this third party as a witness.

Under the CCP, for civil actions, the rule is that the parties need to prove their cases. Accordingly, the parties to the action are allowed to use witness evidence. The parties are required to give a witness list and they are not allowed to amend this list at a later stage of the litigation process.

4.4 Is evidence from witnesses allowed even if they are not present?

Under Turkish Law, evidence from witnesses is only accepted if they are present before the relevant court or the evidence is taken by way of interrogation by official authorities if they are unable to be present at the court.

4.5 Are there any restrictions on calling expert witnesses? Is it common to have a court-appointed expert in addition or in place of party-appointed experts?

There are no restrictions on calling expert witnesses. The courts usually appoint experts and obtain their written evaluation. Experts who are instructed by the parties would not be in place of the court-appointed experts, but rather obtained in addition to or against the latter.

4.6 What sort of interim remedies are available from the courts?

The courts may order interim injunctions and precautionary attachments in cases where it becomes necessary depending on the facts of the case. According to article 257 of the Enforcement and Bankruptcy Law, a creditor may request precautionary attachment on movables or immovables belonging to the debtor, whether possessed by himself or a third person, to secure a due cash debt that is not pledged. Also, according to article 389 of the CCP, the granting of interim injunctions is possible if there is potential risk that any changes in the current situation would create difficulty or impossibility to obtain the rights or any damages.

4.7 Is there any right of appeal from the decisions of the courts of first instance? If so, on what general grounds? How many stages of appeal are there?

Yes, there is the right of appeal against decisions of the courts of first instance and decisions relating to the interim remedies. There are two stages of appeal under Turkish Law.

The first stage is the Regional Courts of Appeal, which examine the case over the reasons stated in the appeal petition unless there is an issue against public policy. The Regional Courts of Appeal have the competence to reject the appeal or to accept and revise the decision as they deem necessary or send the file to the court of first instance for them to revise the decision. Accordingly, the Regional Courts of Appeal have the competence to examine the case substantively and also procedurally.

An appeal to the Court of Cassation (Supreme Court) may be sought against the decisions rendered by the Regional Courts of Appeal.

Accordingly, the Court of Cassation may examine the file with regard to procedural matters. The Court of Cassation either approves the decision or approves the decision by revision, or reverses the decision if:

- there is misinterpretation or inappropriate application of the laws or the provisions of the agreement between the parties;
- the decision is given by a court that does not have jurisdiction on the subject matter;
- there is a violation of the legal procedures stated in the applicable law;
- there is an unacceptable evaluation of the disputed fact;
- the court rejected the evidence presented by a party without a valid reason;
- the decision is not related to an interim remedy; or
- the decisions relate to the jurisdiction and competence issues between the courts of first instance.

Upon a reversal decision, the file will either be sent to the court of first instance if the Regional Courts of Appeal have rejected the appeal, or be sent to the Regional Courts of Appeal if the latter decided to accept the appeal and revised the court of first instance's decision accordingly.

If the court of first instance makes a decision in accordance with the reversal decision of the Court of Cassation, the file may be appealed before the Court of Cassation.

If the court of first instance or the Regional Courts of Appeal reaffirms its initial decision, the Court of Cassation Assembly of the Civil Chambers shall decide on the matter. It is mandatory to abide by the decision of the Court of Cassation Assembly of the Civil Chambers.

4.8 Is interest generally recoverable in respect of claims? If so, what is the current rate?

Yes, interest is generally recoverable in respect of claims if requested by the claimant. The current interest rate for claims in TRY is 53.25% for commercial claims as of 01.01.2025. The interest rate for claims in foreign currencies is the maximum interest rate applicable by the banks to that relevant foreign currency account.

4.9 What are the standard rules regarding costs? Are there any potential costs advantages in making an offer to settle prior to trial?

Court fees, attorney fees and court expenses shall be paid by the defeated parties, subject to the discretion of the court. It should be noted that the attorney fees are determined in accordance with the minimum attorneys' fee tariff issued by the Turkish Bar Association every year.

If there is a settlement before the court, the costs will also be payable, but it would be advantageous if the costs have not yet arisen (if, for instance, an expert had not been appointed until the settlement).

4.10 Can the courts compel the parties to mediate disputes, or engage with other forms of Alternative Dispute Resolution? If so, do they exercise such powers?

Mandatory mediation is a prerequisite for commercial disputes before pursuing the dispute before the courts in Turkey. Parties to a commercial dispute pertaining to monetary receivables cannot bring their case before a court unless the mandatory mediation process has been completed and a final report has been issued by the mediator recording that the parties have not settled the dispute. Apart from mandatory mediation, the courts do not have any power to compel the parties to mediate the dispute during the court proceedings.

4.11 If a party refuses a request to mediate (or engage with other forms of Alternative Dispute Resolution), what consequences may follow?

Mandatory mediation is a condition for a court action;

therefore, mandatory mediation must be completed before starting a court case. As stated at question 4.10, after completing mandatory mediation and commencing the court case, the courts cannot compel the parties to mediate.

5 Arbitration

5.1 What approach do the courts take in relation to arbitration and how far is the principle of party autonomy adopted by the courts? Are the courts able to intervene in the conduct of an arbitration? If so, on what grounds and does this happen in many cases?

Arbitration is an unbound procedure under Turkish Law. But under specific circumstances, the court may intervene in the procedure. According to the legal provisions regarding arbitration, if the parties fail to appoint the arbitrators, upon an application by either party, the competent court shall make the appointments on behalf of the parties, or if the parties are unable to agree on the procedural issues, the court may intervene upon application of either party. Also, the court of first instance may order interim relief upon the request of one of the parties.

5.2 Is it necessary for a form of words to be put into a contract of (re)insurance to ensure that an arbitration clause will be enforceable? If so, what form of words is required?

Although there is not any specific form of words to be put into a contract, in order to be able to settle disputes in arbitration, the intention of the parties for arbitration has to be in written form and be shown explicitly in the contract. The arbitration agreement may either be signed before or after the dispute has arisen.

5.3 Notwithstanding the inclusion of an express arbitration clause, is there any possibility that the courts will refuse to enforce such a clause?

The conditions of validity of the arbitration clauses are defined in the CCP and International Arbitration Act. Arbitration agreements (or clauses) that are written, showing enough intention to arbitrate, stating that the arbitral award be final and binding, foreseeing only the disputes that have arisen or may arise from a present legal relation that can be referred to arbitration are deemed valid.

5.4 What interim forms of relief can be obtained in support of arbitration from the courts? Please give examples.

An application for an interim measure or precautionary attachment before the courts does not constitute a breach of the arbitration agreement. A standard arbitration clause does not affect the power of the court to order interim relief. Please kindly see the answer to question 4.6.

5.5 Is the arbitral tribunal legally bound to give detailed reasons for its award? If not, can the parties agree (in the arbitration clause or subsequently) that a reasoned award is required?

As far as insurance disputes are concerned, article 30 of the Insurance Law, which sets out the rules to be complied with in insurance arbitration, refers also to the provisions of Law of Civil Procedure No. 6100 for situations for which there are no specific stipulations. Pursuant to article 436 of the Law of Civil Procedure, an arbitrator is under an obligation to include in the award the consideration of the evidence and the findings and factual grounds upon which the award is based. This rule applies to each and every arbitration subject to the Law of Civil Procedure. In addition, article 141 of the Turkish Constitution states that any judicial decision will include its reasoning. Therefore, a detailed reasoning must be included in arbitral awards.

5.6 Is there any right of appeal to the courts from the decision of an arbitral tribunal? If so, in what circumstances does the right arise?

Arbitral awards are subject to a set-aside procedure before the courts of first instance if the arbitration procedure is subject to the CCP, International Arbitration Act or ISTAC (Istanbul Arbitration Center) Rules arbitration.

In accordance with article 30 of the Insurance Law, an award concerning a claimed amount of less than 5,000 TRY is final in an Insurance Arbitration Committee arbitration. If the claimed amount is more than 5,000 TRY but less than 40,000 TRY, the arbitral award is subject to an objection procedure before the Insurance Arbitration Committee. For awards regarding a claimed amount of over 40,000 TRY, the appeal process is applicable as defined under question 4.7.

6 Hot Topics

6.1 In your opinion, are there any current hot topics which relate to insurance and reinsurance issues in your jurisdiction? If so, please set out briefly any which are of particular note.

The sixth book of the TCC governs the Insurance Law and includes mandatory provisions that cannot be overridden by contrary agreements. These provisions impose certain obligations on both the insurer and the insured. As a rule, it is not permissible to deviate from these provisions to the detriment of either party. In this context, the insurer's general obligations include the duty to bear risk, the duty of disclosure, the obligation to issue a policy, the obligation to cover expenses and the obligation to pay indemnity. However, how these obligations are to be interpreted in the context of reinsurance agreements and the extent to which reinsurance agreements are bound by these obligations remains vague.

Pursuant to article 1403 of the TCC, reinsurance contracts do not extinguish the insurer's obligations and liabilities toward the insured and do not grant the insured the right to bring direct claims or actions against the reinsurer. Due to the lack of detailed regulation in the aforementioned article, uncertainties remain regarding how mandatory provisions might impact reinsurance contracts, whether reinsurers are bound by such provisions, and how any inconsistencies between reinsurance contracts and these provisions would be interpreted.

Caglar Coskunsu served on container vessels and bulk carriers of a major shipping company as second officer and chief officer before becoming a qualified lawyer. He was later promoted to onshore management as the manager of the claims and insurance department where he was engaged in marine claims and disputes. He was particularly involved in hull and P&I matters where one of his primary tasks was to place the fleet's insurance. After his graduation from Istanbul University Faculty of Law, he studied maritime law at the University of Southampton for an LL.M. degree in Maritime Law. He is currently in the process of completing his Ph.D. degree at Istanbul University. He has experience in the offices of international law firms, insurers, P&I Clubs, salvage brokers, adjusters and recovery agents in London, where he spent the summer of 2004, to gain experience in London insurance and shipping market practices. After admission to the Istanbul Bar Association, he founded Cavus & Coskunsu Law Firm where he provides legal assistance to Turkish and foreign clients in every aspect of maritime law and insurance law. Recently, he has been sharing his knowledge and experience by attending seminars held in London and Istanbul where he has given speeches on insurance, ship arrest, casualties and emergency response, and salvage and wreck removal.

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Ibrahim Onur Oğuzgiray joined Cavus & Coskunsu Law Firm in 2016 and became a Partner in February 2024. With a distinguished track record in insurance and shipping, he represents clients in complex litigation involving maritime and insurance/reinsurance-related disputes. Onur's client base includes P&I Clubs, shipowners, and H&M underwriters and foreign reinsurers whom he advises on a range of matters, such as collisions, salvage operations, cargo claims and charter-party disputes. His commitment to his clients is rooted in a strategic, results-driven approach, positioning him as a trusted advisor in the maritime and insurance sectors.
In addition to his expertise in marine insurance, Onur is highly experienced in commercial litigation, recognition and enforcement of foreign arbitral awards and court judgments, ensuring clients' international judgments and awards are upheld in Turkey.

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Cavus & Coskunsu Law Firm was founded by Caglar Coskunsu and Burak Cavus in 2006 as a boutique law firm aiming to provide high-quality legal services in insurance/reinsurance and maritime law matters. The firm established itself by its commitment to clarity and is a Turkish firm of choice in its practice areas of expertise.
Many of our lawyers at Cavus & Coskunsu Law Firm are both qualified lawyers and mariners, which gives us an ability to handle difficult matters with unique in-depth business knowledge. With a team of experienced and highly specialised lawyers, we do not only point out legal problems, but also present proactive solutions.
At Cavus & Coskunsu Law Firm, we have strong insurance and litigation expertise and act for insurers, reinsurers, P&I Clubs, liability insurers and insureds.
Our practice primarily focuses on insurance/reinsurance, all aspects of maritime and transport laws.

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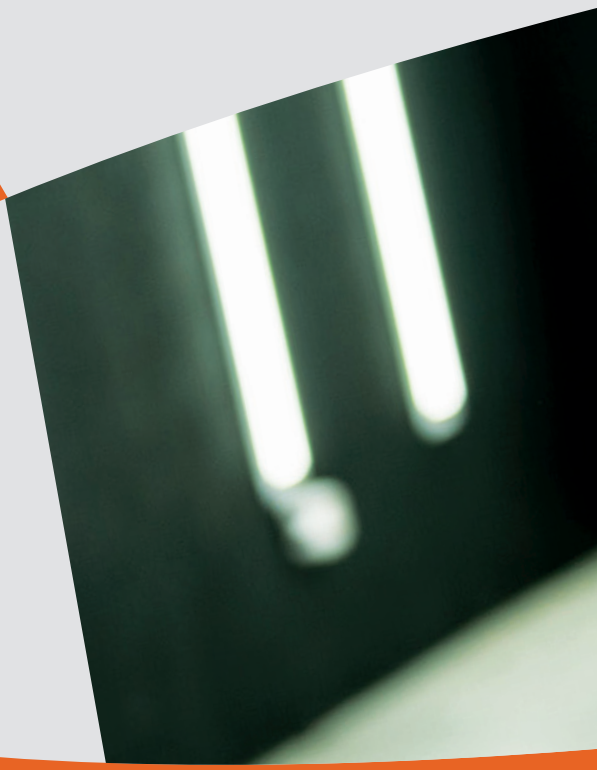
- Regulatory Authorities and Procedures
- (Re)insurance Claims
- Litigation
- Arbitration
- Hot Topics



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