

Research handbook on international insurance law and regulation

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This new book, entitled “Research Handbook on International Insurance Law and Regulation”, is one of a series of Research Handbooks on Financial law. As its title suggests, it covers, in its four parts, insurance contract law, insurance regulation, developing areas of insurance law and regulation and finally some regional studies in insurance law and regulation.

Including the two editors, there are 47 contributors, practitioners in leading firms in England and the other jurisdictions covered by the book, as well as leading academics and regulators. One of the editors was, until last year, Counsel to Lloyd’s; the other is a Solicitor at Lloyd’s.

This ambitious book consists of well over 800 pages of text and over 60 additional pages at the start containing the introduction and tables of cases and legislation. The scope of the book can be gathered from the fact that the table of legislation has sections for 28 different countries in addition to the UK and the US, and the US section comprises legislation in 21 different states.

The need for such a book is encapsulated in the Editors’ remark that practitioners no longer regard detailed law and regulation as a burden in the field of insurance but recognise the importance of adequate and appropriate law and regulation for the proper functioning of markets and for enabling consumers to have confidence in those markets. The book is not intended as a textbook across the field; it assumes that readers will be expert in their own local insurance law and regulation. Instead it focuses more on international angles and is intended to supplement practitioners’ and academics’ courses on insurance law and regulation. The regional studies at the end are intended to serve as an introduction to several other jurisdictions.

It is not possible in a review of this length to refer to all 30 chapters and instead this review can only pick out certain highlights.

The book emphasises that there is often no clear distinction between insurance law and regulation, but whereas insurance law has tended to develop nationally, there is an increasing focus on international regulation.

In the first part, the chapter on pre-contract disclosure focuses largely on the law in the UK, and contrasts the UK with Australia and Germany, with brief references to the US, and then

considers proposals for reform in the UK, Australia and Germany. The chapter on interpretation of contracts contrasts throughout the UK position with those in European countries and the US, and ends with an extensive bibliography. There is a chapter on the US tort of bad faith. The chapter on reinsurance and the balance of the interests between reinsurers and reinsureds is based mainly on the US and the UK because very few other jurisdictions have any reported cases in this area, and those that do are mostly common law jurisdictions. A significant reason for this is the prevalence of arbitration provisions in reinsurance contracts.

The chapter on closing books of business, by two UK lawyers, looks at portfolio transfers, mostly from the UK perspective, with a brief look at the EU, the US and some commonwealth states; the section on schemes of arrangement, for obvious reasons, focuses almost entirely on the UK, with brief references to Rhode Island and, even more briefly, to Australia, Bermuda and Hong Kong. The chapter on choice of law specifically contrasts the position in New York and the UK.

Conduct of business rules, the subject of Chapter 15, generally regulate the relationship between the insurer and the customer and deal with such matters as how products are advertised, what information must be given to the consumer, how claims and complaints should be dealt with, rules regarding conflicts of interest and record keeping requirements. In the common law jurisdictions, much of the relationship between insurer and customer derives from insurance contract law, which pre-dates conduct of business rules becoming part of the regulatory framework. In France and Germany the distinction between conduct of business rules and insurance contract law is less clear. The chapter surveys the origin of conduct of business rules in these jurisdictions, and their territorial application; it looks in some detail at the FSA's Principles for Businesses, such as treating customers fairly, managing conflicts of interest, ensuring suitability of advice etc.

A look at those high level rules is followed by an examination of some examples of how those principles are applied in the conduct of business rules in the UK and how they are applied, or in some cases not applied, in the other jurisdictions. This includes matters such as product information, information about the firm, advice and suitability of products and cooling off periods. Finally the chapter looks at how such rules are enforced in the UK, Hong Kong, the US and Germany. This leads into a chapter surveying different approaches to insurance regulatory enforcement in the UK, the US and Sweden. The second part of the book ends with two chapters on Lloyd's, one from each of the Editors; the first deals with its authorisation in the UK and overseas, and the other deals with the development of performance management.

The third part consists of chapters on micro-insurance, Takaful, alternative risk transfer and e-commerce. The first of these is oriented towards certain countries in Latin America and the Far East. The legal and regulatory framework regarding Takaful is still in its infancy. The most developed systems of Islamic finance and Takaful are found in Malaysia, although

Takaful products may also be found in a number of Middle Eastern and Asian countries, and in some European countries. The chapter on Takaful explains the origin and current nature of Takaful, looks at some financial reporting and general regulatory issues, and at Takaful regulations in the UAE.

The chapter on ART examines the transfer of risks to government and to financial markets, and the use of captives. Transfers to governments have been made where insurance companies were not willing to insure the risks concerned; obvious examples of this are terrorism and natural catastrophes. Transfers to financial markets deal with risks, mainly from earthquakes, windstorms, floods, droughts and other cataclysmic events, considered too large scale for insurance companies to absorb. This has included catastrophe bonds, industry loss warranties and derivatives and credit default swaps; it also covers letters of credit and the timing risk or finite reinsurance.

The chapter on e-commerce looks at the conduct of business generally by electronic means and the UNCITRAL Model Law on Electronic Commerce and then turns to legal principles underlying the exercise of jurisdiction in an online insurance context and also some potential areas of liability that could give rise to cross-border jurisdiction issues. It looks at regulatory compliance both in insurance and in terms of data protection and information security, tort liability for the content of a website, at the Brussels I Regulation and some choice of law issues.

The fourth part consists of regional studies in insurance law and regulation. Here separate chapters deal with Europe, one looking forward to a harmonised European insurance contract law and another the architecture and content of EU insurance regulation. There is a regulatory overview of insurance in the US, and further chapters are devoted to Singapore, Brazil, China, Japan and South Africa.