International
Comparative
Legal Guides

Practical cross-border insights into insurance and reinsurance law

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Industry Chapter

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Croatia

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1 Regulatory

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

The Croatian Financial Services Supervisory Agency (HANFA) is the regulatory body for:

1. insurance and reinsurance companies with registered seats in Croatia and their branches abroad;
2. insurance companies from outside the EU performing insurance activities in Croatia via branches; and
3. insurance and reinsurance companies with registered seats in EU Member States, which perform insurance activities in Croatia through freedom of establishment or freedom to provide services.

HANFA exercises supervision within the scope of the Insurance Act (Official Gazette nos 30/15, 112/18, 63/20 and 133/20; hereinafter: IA), the Croatian Financial Services Supervisory Agency Act (Official Gazette nos NN 140/05, 154/11 and 12/12; hereinafter: HANFA Act) and other pieces of legislation regulating activities of insurance companies.

The IA implements EU directives regulating insurance and secures prerequisites for the implementation of EU regulations on insurance.

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

To perform insurance/reinsurance activities, HANFA's approval is required. The procedure for issuance is regulated by the IA.

Insurance companies may be issued approval for both insurance and reinsurance activities. Reinsurance companies can only be issued approval for reinsurance activities.

Approval for insurance activities may be issued for the following types of insurance:

1. entire group of general (non-life) insurances;
2. entire group of life insurances;
3. individual types of general and life insurance;
4. risks belonging to a certain type of insurance; and
5. sub-groups of some general insurances.

Insurance companies cannot obtain approval for simultaneously performing insurance activities in entire groups of both general and life insurance.

Approval for reinsurance activities may be issued for individual entire groups of general and life insurance, or both.

HANFA should reach a decision within 60 days from the date of receipt of the application. If a decision is not reached within 60 days, or the application is dismissed, the applicant is entitled to initiate administrative litigation against HANFA before the competent Administrative Court.

The approval issued by HANFA is valid in all EU Member States.

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

Foreign insurers can write business directly, provided certain prerequisites, prescribed by the IA, are met.

The prerequisites differ with regards to: (1) EU insurers; and (2) non-EU insurers.

(1) EU insurers can write business through freedom of establishment (i.e., a domestic branch) and freedom to provide services – they do not require approval from HANFA.

EU insurers are only obliged to notify the competent supervisory authority of the country of the seat.

(2) Non-EU insurers can write business only via branches and with prior approval from HANFA.

Non-EU insurers cannot simultaneously perform general and life insurance activities through the same branch.

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?

The parties' freedom of contract is limited by certain mandatory substantive law rules.

The Civil Obligations Act (Official Gazette nos NN 35/05, 41/08, 125/11, 78/15, 29/18 and 126/21; hereinafter: COA) prescribes the rights and duties of both insurer and insured, as well as certain terms for different types of insurance.

COA contains (1) general provisions, and (2) special provisions regarding the insurance of: (a) property; (b) persons (life and accident insurance); and (c) liability. COA does not fully apply to marine insurance and other transportation insurances particularly regulated by the Maritime Code (MC) as *lex specialis*.

The parties may derogate only from those provisions of COA and MC which expressly permit it or authorise the parties to act at their disposition. Derogation from other provisions, unless forbidden by COA or another law, is permitted only if it is undoubtedly in the interest of the insured.

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

The Companies Act (Official Gazette nos NN 111/93, 34/99, 121/99, 52/00, 118/03, 107/07, 146/08, 137/09, 125/11, 152/11,

111/12, 68/13, 110/15 and 40/19; hereinafter: CA) does not contain any provisions regarding indemnification of directors and officers. However, there are strict rules regarding the liability of directors and officers to the company for failure to exercise due care.

Generally, directors and officers may contract Directors & Officers insurance (D&O); however, this is usually only the case with larger companies. Croatian law does not specifically regulate D&O.

1.6 Are there any forms of compulsory insurance?

There are various types of compulsory insurance in Croatia, mostly life and liability insurance; for example, passenger insurance in public transport, which includes all means of public transportation, third-party motor vehicle liability insurance, third-party aircraft liability insurance and third-party ship liability insurance.

2 (Re)insurance Claims

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

The substantive law is generally more favourable to the insured.

COA tends to protect the policyholders as the weaker party against insurers who are experts in the field, who are obliged to exercise a higher level of due diligence, and who determine the terms and conditions as provisions of an adhesion contract.

The increased level of protection for consumers stems from the Consumer Protection Act (Official Gazette nos 41/14, 110/15 and 14/19; hereinafter: CPA).

The case law of the Supreme Court has also generally been more favourable to policyholders in recent years when considering the due performance of contractual obligations by the parties.

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

Third parties can bring a direct action against insurers in case of liability insurance, up to the amount of the insurance amount. The insurer also bears the costs of the dispute and other eligible costs in connection with determining the insured's liability, within the limits of the insurance amount.

Third parties can also bring a direct action against the insurer in case of assignment of contractual rights from the insured to the third party.

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

The insured cannot bring a direct action against the reinsurer, except in the case of a cut-through clause coming into effect.

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

COA differentiates between (1) intentional, and (2) non-intentional misrepresentation or non-disclosure.

(1) If the insured intentionally omitted/misrepresented a circumstance due to which the insured would not have concluded the contract, the insurer may cancel the contract.

The deadline for cancellation of the contract is three months from the date the insurer was informed of the misrepresentation/omission.

(2) If the misrepresentation/omission was not intentional, the insurer can either (a) cancel the contract, or (b) propose an increase of the insurance premium proportionate to the increased risk.

The deadline is one month from the date the insurer was informed of the misrepresentation/omission.

The above also applies with regards to (a) insurance in the name and on behalf of another, (b) for the benefit of another, (c) for someone else's account, or (d) for the account of whom it may concern, provided that the said persons were aware of the misrepresentation/omission.

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?

At the time of concluding the contract, the insured is obliged to report all circumstances relevant for risk assessment that are known or could not remain unknown to the insured.

After the contract is concluded, there are different obligations regarding disclosure in: (a) insurance of property; and (b) insurance of persons.

(a) In insurance of property, the insured must disclose any change in circumstances that might be significant for risk assessment.

(b) In insurance of persons, only a change in occupation must be disclosed, and only if this has led to an increase in risk.

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?

(1) General

COA prescribes an automatic right of subrogation upon payment of an indemnity in insurance of property and liability insurance, up to the amount of the paid indemnity.

If the indemnity from the insurer is lower than the damages suffered, the insured has the right to claim the balance from the injuring party.

(2) Insurance of property

If subrogation is prevented through the fault of the insured, the insurer will be proportionately released from its obligation to the insured.

Subrogation will not take place if the damage was caused by the following persons unless they caused the damage intentionally:

1. a person related to the insured;
2. a person for whom the insured is responsible;
3. a person who lives with the insured in the same household; or
4. a person who is an employee of the insured.

If any of these persons were insured from the liability, the insurer may demand reimbursement of the paid indemnity from their insurer.

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 the Civil Procedure Act (Official Gazette nos

53/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 96/08, 123/08, 57/11, 148/11, 25/13, 89/14 and 70/19; hereinafter: CivPA), Commercial Courts have jurisdiction over commercial insurance disputes.

Jurisdiction does not depend on the value of the dispute.

The Croatian civil procedure is not familiar with juries but professional judges only. Disputes are tried by sole judges in the first instance, a three-judge senate in the second instance, and a five-judge senate in the third instance.

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

The plaintiff is obliged to pay court tax for the Writ and judgment tax once the judgment is rendered. Payment of due court taxes does not affect the commencement of the trial. Proceedings commence with the filing of the Writ, and the trial ("*Lis pendens*") commences with the delivery of the Writ to Defendant for reply.

Court taxes vary depending on the value of the dispute. The maximum court taxes payable for the Writ and the first instance judgment are the same: HRK 5,000.00 (approximately EUR 670.00) each. Court taxes are reimbursable from the opposing party, subject to success in the trial.

Opposing attorneys' fees and costs are also reimbursable from the opposing party, subject to success in the trial.

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

Depending on caseload and the individual Commercial Court, on average it will take approximately six months to bring a case to court.

It takes two months to notify the Writ to Defendant. The Defendant may reply to the Writ within 30 to 45 days, before the preparatory hearing. After receipt of the Defendant's reply to the Writ, the preparatory hearing is scheduled. Due to the courts' congested schedule and high caseload, the preparatory hearing is scheduled at least three months in advance, sometimes even longer. It is the pre-main hearing or preparatory main-hearing stage.

3.4 Does COVID-19 have, or continue to have, a significant effect on the operation of the courts, or litigation in general?

Due to COVID-19 infections and, as a consequence, the protection measures that were put in place, primarily social distancing and mandatory passes, the courts are scheduling fewer hearings than previously.

However, COVID-19 has also had a "positive" impact as it has led to the introduction of videoconferencing as a means to conduct hearings. As a result, long-awaited amendments of the CivPA regarding videoconferencing are currently being drafted.

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?

Croatian civil procedural law is not familiar with disclosure/discovery of evidence by the parties in the pre-trial phase. CivPA prescribes during the trial the following:

(1) The court will order a party to provide documentation, on motion of the opposing party, in two cases:

(a) The party filed the copy of a document as proof, and the opposing party requests that the original be presented for verification by the opposing party.

(b) The party invokes a particular unavailable document and claims that it is in the possession of the opposing party.

In liability insurance – in terms of a direct action against the insurer – the injured party, in most cases, does not have insight into the policy or applicable general terms and conditions, so the above will apply.

(2) The court may also order non-parties to provide a particular document, or obtain a particular document from the public authority, upon request of one of the parties to the trial.

In insurance disputes, this is mostly the case with documentation regarding police, Public Prosecutor, or other State agencies' investigations of accidents.

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?

CivPA prescribes that the parties can reject to provide a document in litigation (see question 4.1 above) if the following conditions are met:

1. the document refers to what the party entrusted to, or learned as an attorney, a religious confessor, lawyer, doctor, or another person performing any other vocation or activity which has an obligation of secrecy; or
2. if important reasons exist, especially if the document would expose the party, its close relatives, guardian, and/or protégée to severe shame, significant material damage, and/or criminal prosecution.

The party may not refuse to provide a document:

1. if it has referred to the particular document as proof of its pleadings;
2. if it is a document that the party is required to submit or show as a matter of law; or
3. if the document is considered common to both parties.

If the party, contrary to the above, (i) refuses to provide a document upon court order, or (ii) contrary to the court's belief, claims that it does not have the document, the court will, considering all circumstances, in its own opinion assess the significance of such refusal or denial.

Therefore, (a) documents relating to advice given by lawyers can always be withheld, while documents (b) prepared in contemplation of litigation, or (c) produced during settlement negotiations/attempts can be withheld if the above conditions are met.

Due to the above reasons, the insurer might refuse to provide internal documentation regarding liquidation of damages. There is no clear case law on this issue.

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

According to CivPA, in preparatory proceedings, the parties propose witnesses which should be heard during the main hearing. The court decides which witnesses will be heard.

The witnesses summoned by the court are due to appear and, unless otherwise prescribed by CivPA, are obliged to testify.

In commercial insurance disputes, the witnesses may be heard only if there is no sufficient documentary evidence. In such

case, the parties may propose that the court allow the parties to submit notarised witness statements, but only after the completion of the preparatory stage of the main hearing.

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

The general rule is that evidence from witnesses must be presented to the court directly by the witnesses themselves. In insurance disputes before the municipal courts, as courts of first instance, witnesses must be present to give testimony.

An exception exists concerning commercial disputes before the Commercial Courts.

The court may order that the parties file notarised written witness statements.

If neither party disputes the written statement and the court deems it unnecessary, the witness shall not be heard orally. Otherwise, the court will hear the witness to verify, supplement or clarify the written statement.

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 such restrictions, but there is a distinction between "court official expertise" and "private party's expertise". There is no difference in credibility between these two types of expertise, they are both equally credible; the difference lies in the standard of quality, which is used as a criterion for the evaluation of reliability by the court. Usually, a party that has no "private expertise" applies for "court expertise" to challenge the opposing party's "private expertise".

(1) A court expert witness can be called to determine or clarify relevant facts, for which the judge lacks sufficient expertise.

A court expert witness can be called (a) upon proposal of one party, or (b) both parties. Court-appointed expert witness findings and opinions are considered "court official expertise".

If one party proposes the expertise, the court will order the party to advance the costs.

If both parties propose the expertise, the court will order that they advance the costs in equal shares.

The party proposing the expertise may also propose the expert witness who should be appointed as the court expert witness in the matter. The court will appoint the expert witness if the opposing party does not object; otherwise, the court will decide on the expert witness. Commercial and County Courts keep Lists of court expert witnesses with various expertise. The Lists do not prevent the court from appointing a court expert witness from outside the Lists or area of jurisdiction.

Once the expert witness issues its written findings and opinion, it is served to both parties for consideration and objections. If the parties object, or clarifications are required, the court will summon the expert witness to be heard at the main hearing. If necessary, the expertise can be redone with the same or another expert witness.

Court-appointed expert witnesses are the standard in Croatian civil procedures and party-appointed expert witnesses are considered biased. Therefore, the parties only rarely use their experts, primarily to inspect the findings and opinion of the court-appointed witness and provide a basis for an objection.

(2) "Private party's expertise". Insurers and insureds regularly engage surveyors to perform out-of-court expertise on various issues. Such Survey Reports and other expertise arranged by the parties are used by the parties as evidence and are known as "private party's expertise".

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

Usually, only preliminary measures and interim injunctions for securing monetary claims prescribed by the Enforcement Act (Official Gazette nos 112/12, 25/13, 93/14, 55/16, 73/17 and 131/20; hereinafter: EA) are ordered in insurance-related matters.

Preliminary measures are ordered to secure claims arising from final but still non-enforceable court judgments. The applicant must make it probable that without such measure the collection of the claim will be prevented or significantly jeopardised.

An interim injunction may be ordered before, or during litigation proceedings, until enforcement is carried out. It is ordered if the applicant makes probable the existence of the claim and risk that without the injunction the respondent will prevent or significantly jeopardise collection of the claim by selling, concealing or otherwise disposing with his assets.

Most insurers apply for interim relief against the injuring party to secure a subrogated claim.

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?

A first instance judgment may be appealed on the grounds of (i) substantial violation of procedural rules, (ii) incorrect or incomplete ascertainment of facts, and/or (iii) incorrect application of substantive law rules. If the judgment was not lawful and proper, it is set aside, and the matter returns to the first instance for a retrial. A retrial may take place only once.

There is only one stage in the appellate proceedings. Generally, the appellate court decides on the appeal based on the documentation in the court file. It is the appellate court senate closed session.

Exceptionally, the appellate court may set the hearing, hear the parties, and consider new evidence.

Once the appellate court renders the final judgment in the matter, it is possible to file the Proposal for Approval of Revision of the Judgement to the Supreme Court of the Republic of Croatia, as the extraordinary legal remedy. If the revision is granted, it may be filed.

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

Interest is generally recoverable, and COA prescribes two types of default interest rates:

(1) claims arising from commercial contracts and contracts between traders and public authorities; and

(2) all other relations.

Both rates are floating, periodically adjustable subject to the average interest rate on loans granted for a period longer than one year to non-financial companies, calculated for the reference period.

The present rates are: (1) 7.49%; and (2) 5.49%.

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

The principal rule is that the losing party covers the costs of the winning party, or proportionately to the success rate.

If the winning party was unsuccessful only in an insignificant part, the court may order that the losing party covers all costs. If the parties were successful in approximately equal parts, the court may order that each party bears its costs.

Only those costs that were necessary for conducting the trial are ordered for reimbursement. The court decides which costs were necessary by assessing all circumstances of the case.

Regardless of success, the party is entitled to reimbursement of costs from the opposing party if the opposing party caused them unnecessarily.

There are no potential costs advantages in making an offer to settle prior to trial.

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?

Generally, all forms of Alternative Dispute Resolution are not mandatory.

However, as of 2019, CivPA prescribes that the court may *ex officio*, considering the interests of the parties, and non-parties tied to the parties, as well as their relationship, order the parties to enter mediation within eight days from service of the order.

Since these provisions are quite recent, there is still no case law of court practice in this regard.

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

If the party ordered to enter mediation as described in question 4.10 above does not attend the first meeting for mediation, it loses the right to claim any further costs of the proceedings afterward, regardless of success in the litigation.

In all other cases, there are no adverse consequences for the party refusing mediation or arbitration since it is not mandatory.

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?

The principle of contractual autonomy means that contracting arbitration in insurance-related matters is fully respected by the courts, notwithstanding whether institutional or *ad hoc* arbitration is agreed.

The courts will not intervene in the conduct of an arbitration unless it is prescribed by the Arbitration Act (Official Gazette no. 88/01; hereinafter: AA) and requested by the parties and/or the arbitral tribunal.

AA differentiates between institutional and *ad hoc* arbitral tribunal, but there is no difference in the court's authority to intervene with regards to individual types of arbitration.

The court may:

1. Appoint the sole arbitrator if the parties do not reach an agreement.
2. Appoint arbitrators of the tribunal if the parties fail to appoint their respective arbitrators, or the appointed arbitrators do not agree on the third, presiding arbitrator.
3. End the arbitrator's term due to the arbitrator's inability to perform his/her duties and appoint replacements.
4. Decide on the exclusion of arbitrators, if the party's request for exclusion was rejected by the arbitral tribunal or a decision was not reached within 30 days.
5. Decide on the arbitrator's fees and costs if the parties do not accept the arbitrator's decision regarding his/her fees and costs.

Generally, when parties agree on institutional arbitration, they also agree that the institution will action all of the above when necessary.

The court may also:

1. Enforce preliminary measures ordered by the tribunal.
2. Order an interim injunction during arbitration.
3. Assist in the gathering of evidence for the arbitral tribunal.
4. Decide on the jurisdiction of the arbitral tribunal if the arbitral tribunal decided on its jurisdiction as a preliminary issue.

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?

AA does not prescribe specific wording of the arbitration clause.

The arbitration clause, or separate arbitration agreement, must be in written form, signed by both parties, or agreed by an exchange of letters, telegrams, or any other means of telecommunications that provide written proof, regardless of whether the parties have signed them. Arbitral institutions usually recommend the wording of arbitration agreements or clauses.

The arbitration clause is valid if it is incorporated in the insurance policy. If the arbitration clause is part of a separate document, the policy must incorporate the clause.

In consumer insurance contracts, the arbitration agreement must be a separate document signed by both parties.

Under certain conditions, the arbitration agreement can be concluded orally or tacitly.

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

If the arbitration clause or agreement is valid, and the matter is arbitrable, which is the case with insurance-related matters, the court will uphold the clause/agreement.

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

In insurance arbitration, the court will either: (1) enforce the interim injunction ordered by the tribunal; or (2) order an interim injunction for security of a monetary claim according to EA.

The court may order any interim injunction that it deems appropriate to secure a claim.

In an insurance dispute, this will most likely be the insurer against the injuring party after subrogation.

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?

Yes, AA prescribes that the arbitral award must give detailed reasons.

The parties may agree that the reasons for the award are not required. An award rendered based on a settlement agreement reached by the parties during arbitration will not have the reasons.

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?

No, there is no right to appeal to the court from the arbitral tribunal award.

The parties may file with the court the Writ for annulment of the award. No other legal remedies are allowed to be taken with the court against the award.

The award may be annulled only:

(1) if the party filing the Writ proves:
  (a) that the arbitration agreement was not concluded or was not valid;
  (b) that one or both parties were not capable of concluding the arbitration agreement and be party to the dispute, or that the party had not been duly represented;
  (c) that the party that filed the Writ was not duly notified of the initiation of the arbitration proceedings, or that it was otherwise unlawfully prevented from pleading before the tribunal;
  (d) that the award relates to a dispute not provided for in the arbitration agreement, or not covered by its provisions, or that it contains decisions on matters exceeding the limits of the arbitration agreement;
  (e) that the composition of the tribunal or the arbitral proceedings were not by AA or party agreement (agreed institutional or *ad hoc* arbitration rules), and this may have affected the content of the award; and/or
  (f) that the award has no reasons, or was not signed, contrary to AA;

(2) if the court finds *ex officio*, even if the party has not invoked such reason:
  (a) that the subject matter of the dispute is not arbitrable under Croatian law; and/or
  (b) that the award is contrary to the public order of the Republic of Croatia; or

(3) if the parties explicitly agree on the reason in the arbitration agreement:
  (a) if one of the parties discovers new facts or procures or can present new evidence, which might have led to a favourable award, provided that it was not the party's fault that it could not have presented the facts/evidence in arbitration.

The Writ may be filed within three months from the day when the award was duly served to the party who filed the Writ.

The parties may not waive in advance their right to challenge the award.

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