ICLG

The International Comparative Legal Guide to:

Insurance & Reinsurance 2015

4th Edition

A practical cross-border insight into insurance and reinsurance law

Published by Global Legal Group, with contributions from:

Acuña, Sahurie, Hoetz & Cifuentes
Advokatfirmaet Steenstrup Stordrange DA
Advokatfirman Vinge KB
AlixPartners
ALTENBURGER LTD legal + tax
Anderson Mōri & Tomotsune
Arthur Cox
Attorneys at Law Borenius Ltd
Bedell Cristin Guernsey Partnership
Blaney McMurtry LLP
Cabinet BOPS
Camilleri Preziosi
Chalfin, Goldberg, Vainboim & Fichtner Advogados Associados
Clyde & Co LLP
CMS
Creel, García-Cuéllar, Aiza y Enríquez, S.C.
DAC Beachcroft Colombia Abogados SAS
DAC Beachcroft SLPU
Gün + Partners
Kyriakides Georgopoulos Law Firm
McMillan LLP
MJM Limited
Morton Fraser LLP
Oppenhoff & Partner Rechtsanwälte Steuerberater mbB
Osterling Abogados
Studio Legale Giorgetti
Tuli & Co
Willkie Farr & Gallagher LLP

GLG
Global Legal Group

GLG
Global Legal Group

Contributing Editors
Jon Turnbull & Geraldine Quirk, Clyde & Co LLP

Head of Business Development
Dror Levy

Sales Director
Florjan Osmani

Commercial Director
Antony Dine

Account Directors
Oliver Smith, Rory Smith

Senior Account Manager
Maria Lopez

Sales Support Manager
Toni Hayward

Senior Editor
Suzie Levy

Editor
Rachel Williams

Group Consulting Editor
Alan Falach

Group Publisher
Richard Firth

Published by
Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

GLG Cover Image Source
Colin/Wikimedia Commons

Printed by
Ashford Colour Press Ltd
February 2015

ISBN 978-1-910083-33-8
ISSN 2048-6871

Strategic Partners

General Chapters:

Country Question and Answer Chapters:

Further copies of this book and others in the series can be ordered from the publisher. Please call +44 20 7367 0720

Bermuda

Jean-Paul (JP) Dyer

MJM Limited

Timothy Frith

1 Regulatory

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

The Bermuda Monetary Authority (the "Authority") is responsible for the regulation of (re)insurance companies in Bermuda and generally for those matters pertaining to the Insurance Act, 1978 and its related regulations (the "Insurance Act"). The Authority is an independent body and is the sole regulator for Bermuda's financial services industry.

The Authority is assisted by the Insurance Advisory Committee (the "IAC") which has a duty under the Insurance Act to advise the Authority on matters relating to the development and promotion of the insurance industry in Bermuda.

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

The establishment of new insurance companies in Bermuda is an efficient process that can be accomplished in a relatively short timeframe. It is common practice for applicants to submit a pre-incorporation application to a sub-committee of the IAC called the Assessing and Licensing Committee (the "ALC") for registration as an insurer concurrently with the application to Registrar of Companies to incorporate.

The ALC is comprised of employees of the Authority and meets once a week to hear all applications to establish new insurers. The application for a licence submitted to the ALC will typically include details of the ownership structure, business plan and *pro-forma* financials. However, if requested by the Authority, it may be necessary to submit additional documentation in order for the Authority to vet the fitness, propriety and underwriting experience of the management, the feasibility of the proposed business plan and the level of capitalisation relative to the proposed risk profile.

Once incorporated and organised, the company applies to the Authority for registration under the Insurance Act which does not distinguish between insurers and reinsurers for the purposes of registration. Assuming the company satisfies all conditions imposed by the Authority (e.g. confirmation that statutory capital and surplus has been paid in), the Authority will issue an insurance licence and the exempted company can begin operations.

Bermuda has a multi-licence system of regulation which categorises general business insurance companies into six classes (1-4), long-term business insurers into five classes (A-E), a class for Special Purpose Insurers and provides for composite or dual licence companies.

Pursuant to the Insurance Act, the Authority is guided by the general application of its Statement of Principles when considering, among other things, the registration of new insurers in Bermuda. More specifically, the Authority must be satisfied that certain minimum requirements are complied with by prospective insurers and applies the principle of proportionality when assessing any prospective insurers.

Minimum Criteria

When considering whether to register a company as an insurer, the Authority must be satisfied that a) the minimum criteria are fulfilled, b) the company has, or has available, adequate knowledge and expertise, and c) that the premises intended to be used in the business are adequate for the conduct of the business. In addition, with respect to SPIs, the Authority will also consider whether the insurer is (re)insuring the risk(s) of one or more policyholders and the sophistication of the policyholders and investors. The minimum criteria for registration considered by the Authority include matters such as the fitness and propriety of controllers, board composition, business conduct and risk management.

Minimum Paid Up Capital

Prior to registration, a minimum amount must be paid up on the share capital of each class of insurer.

With the exceptions of Class 4s and SPIs, each general business insurer must maintain a fully paid up share capital of at least $120,000. Class 4 general business insurers and SPIs must maintain a minimum paid up capital of at least $1,000,000 and $1, respectively.

Class A long-term business insurers must maintain a minimum paid up capital of at least $120,000 and all other classes of long-term business insurer must maintain a paid up capital of at least $250,000.

Minimum Solvency Margin, Enhanced Capital Requirements and Minimum Liquidity

Each insurer must meet the minimum margin of solvency which is the prescribed minimum amount by which the value of the statutory assets of the insurer must exceed the value of its statutory liabilities. The minimum solvency margin varies based upon the class of insurer. In respect of general business insurers it is based upon the insurer's i) statutory capital and surplus, ii) net premiums written, and iii) loss and loss expense provisions and other insurance reserves. In respect of long-term insurers, the minimum margin of solvency is a function of assets rather than premiums written and loss and loss expense provisions and other reserves.

In addition, the Authority will not register a company as a Class 3A,

3B, 4, C, D or E insurer unless the amount of the available statutory capital and surplus of such company meets its minimum margin of solvency and its enhanced capital requirement (the "ECR"). The ECR is established with reference to either the applicable Bermuda Solvency Capital Requirement model or an internal capital model approved by the Authority as well as associated eligible capital rules and other prudential standards. For those insurers that are subject to an ECR, the Authority also requires that it maintain a Target Capital Level that is 120% of its ECR.

All general business insurers are required to maintain the value of their relevant assets at not less than 75% of their relevant liabilities as such terms are defined in the Insurance Act.

Prudential Standards

The Authority has also established rules that prescribe prudential standards with respect to Classes 3A, 3B, 4 and C-E in relation to enhanced capital requirements, capital and solvency returns, insurance reserves and eligible capital.

Insurance Code of Conduct (the "Code")

When evaluating whether an insurer is or will be able to conduct its business in a prudent manner, the Authority will consider the insurers' compliance with the Code having regard to the principle of proportionality. The Code establishes principles to be observed in relation to: i) corporate governance; ii) risk management; iii) governance mechanism; iv) outsourcing; and v) market discipline and disclosure.

Approved Offices and Service Providers

Each insurer must also appoint an approved resident principal representative and maintain a principal office in Bermuda. Subject to dispensation granted by the Authority, each insurer must also appoint an approved auditor, loss reserve specialist in respect of general business and an approved actuary in respect of long-term business.

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

There are restrictions on the ability of a foreign insurer to write business in Bermuda. For example, most foreign insurers are incorporated as exempted companies and are therefore generally prohibited from carrying on business in Bermuda unless they obtain specific permission from the relevant Bermuda Government Minister.

Exempted companies are able to conduct business from within Bermuda which means that they carry on business outside of Bermuda but maintain a registered office in Bermuda. Unless expressly authorised by a special licence, exempted companies are not permitted to write domestic business. Domestic business is defined to mean insurance business, both general and/or long-term, where the subject matter of the policy or contract is local or domestic to Bermuda. Reinsurance of domestic insurers by non-Bermuda entities or exempted companies is permitted but not required.

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 Insurance Act does not mandate the wording of insurance or reinsurance contracts therefore parties generally have a broad freedom to contract on terms they see fit. However, the Code does require all (re)insurers, as part of the legal/litigation risk component of its risk management framework, to ensure compliance with internationally recognised contract certainty standards. It is worth also noting that the Association of Bermuda Insurers and Reinsurers together with the Bermuda Insurance and Reinsurance Brokers Association promulgated a self-imposed contract certainty code of practice in 2008 (the "Contract Certainty Code"). By ensuring the full and final agreement of all terms and conditions between the (re)insurer and the (re)insured at the time of binding, the Contract Certainty Code seeks to ensure contract certainty and therefore reduce operational and financial risk.

Although not governed by statute, in practice, there are some instances where the Authority does express a preferred practice regarding the drafting of reinsurance contracts. One example is in connection with SPIs. The construction and evolution of SPIs is predicated on, among other things, the sophistication of participating policyholders and investors and the limited nature of the products. The Authority will sometimes prefer the incorporation of specific language in the risk transfer instrument addressing the limited nature of any recourse available to investors and subordination of recovery in favour of policyholders. However, such disclosure is more typically found within related securities offering documents related to the transaction.

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

Under Bermuda company law, a company is permitted, either by contract or in its bye-laws, to indemnify its directors and officers against, or to exempt them from, any liability attaching to them by reason of their office, other than in respect of fraud or dishonesty. A company may also purchase and maintain insurance for the benefit of its directors and officers.

1.6 Are there any forms of compulsory insurance?

There are a number of types of compulsory insurance in Bermuda. The most common forms are motor vehicle, shipping, workers compensation, health, and professional liability for certain providers of professional services such as barristers, insurance intermediaries, accountants and fund administrators.

2 (Re)insurance Claims

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

In general, substantive insurance law in Bermuda is similar to that of English law, in that it is perceived to be more favourable to insurers.

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

Yes, where under a contract of insurance an insured is protected against liabilities to third parties, in the event of the bankruptcy or winding-up of such insured, a third party can bring a direct action against the insurer under the Third Parties (Rights Against Insurers) Act 1963. It is not possible to contract out of this provision. Similarly, direct actions are also permissible in certain circumstances against the insured by third parties pursuant to the Motor Car Insurance (Third-Party Risks) Act 1943 and the Merchant Shipping Act 2002.

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

The common law doctrine of privity applies in Bermuda and as such a contract is not generally enforceable against or in favour of a

person who is not a party to the reinsurance contract. "Cut-through" clauses (or any other similar term in a reinsurance contract that purports to confer on the insured a right to claim directly from the reinsurer) are unusual in Bermuda and generally ineffective under Bermuda law especially as against the liquidator of a Bermudian insurer/cedent. There is no equivalent of the UK Contracts (Rights of Third Parties) Act 1999.

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

In general, an insurer has the right to avoid an insurance contract *ab initio* if the insured is found guilty of material misrepresentation or non-disclosure prior to entry into the contract and that such acts or omissions induced the insurers' entry into the same. Absent fraudulent misrepresentation or non-disclosure, the insurer must return the premium to the insurer where it elects to avoid the policy.

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?

The insured (or applicant for insurance cover) must disclose all material facts actually known to him or ought to have been known to him prior to the date on which the contract is concluded. The (re)insured's duty to disclose material information is not impacted by any specific requests from the (re)insurer. However, the insured is not required to disclose any facts which (i) he did not know or could not reasonably have been expected to have known, (ii) are known or ought to have been known by the insurer, (iii) diminish the risk, or (iv) have been waived by the insurer.

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?

The right of subrogation under a contract of insurance (being a contract of indemnity) arises automatically upon full indemnification of the insured in respect of all claims made by the insured arising out of a particular event. However, an insurer can voluntarily waive or modify its common law rights of subrogation within the express terms of the policy. Absent contractual provisions to the contrary, the insurer acquires the right, in his name, to pursue any right of action available to the insured against a third party responsible for the loss and to claim from the insured any profit he realises from such third party.

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?

By virtue of its history as Britain's oldest overseas territory the legal system in Bermuda closely resembles that of the United Kingdom. The court structure in Bermuda comprises the Magistrates Court, the Supreme Court and the Court of Appeal with a final appeal to the Privy Council in London.

With regard to civil and commercial work, the Magistrates Court is a court of summary jurisdiction and, pursuant to Section 15 Magistrates Act 1948, the court may hear and determine actions where the amount in dispute does not exceed $25,000.

The Supreme Court is the superior court of record pursuant to Section 12 Supreme Court Act 1905. The Supreme Court is where the more serious criminal cases are tried on indictment where the cases are tried by a judge and jury. The Supreme Court is also the first instance trial court for civil matters where the amount in dispute exceeds $25,000.

Civil trials are normally conducted by a judge alone and civil procedure is governed by the Rules of the Supreme Court (1985) as amended. The rules are based upon the English Supreme Court Practice (1979) but have been updated and amended and reflect some aspects of the English Civil Procedure Rules (1998) introduced by Lord Woolf.

The Commercial Court, as part of the Supreme Court, tries cases of a business and mercantile nature including those concerning insurance and reinsurance, international business and the winding up of insolvent companies. Its jurisdiction and procedure closely follows that of the English Commercial Court.

Commercial Insurance and Reinsurance cases are heard by a Judge alone. There is the ability to apply for a hearing to be heard before a judge with a jury under Order 33 rule 2, Rules of the Supreme Court (1985), but such an application is seldom, if ever, granted in commercial cases that do not involve fraud.

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

A commercial case initiated by writ of summons which involves pleadings, discovery and witness statements, will take between one and two years to bring on to hearing. This is due to the nature of the preparation concerned, not the restrictions of the court list. The Commercial Court is responsive and has the ability to hear cases on short timetables if necessary.

An action based on an originating summons for the construction of a policy clause will only take about four to six months to be heard following issue of the summons.

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?

A. Parties to the Action

Discovery

Order 24 Rules of the Supreme Court (1985) provides that after the close of pleadings in an action initiated by writ the parties must make discovery by exchanging lists of documents in Form 26 which contains two schedules. Schedule 1 Part 1 sets out a list of all documents which are in the possession, power, custody or control of the party and to which the party in question does not object to produce, together with a brief description of each document. Schedule 1 Part 2 contains a list of documents which are in the possession, power, custody or control of the party and to which there is an objection to production. Schedule 2 contains a list of documents which have been, but are no longer, in the possession, power, custody or control of the party. Order 24 rule 2 provides that discovery by list should take place 14 days after close of pleadings. Order 24 rule 3 provides the Court with power to order discovery if it has not taken place and Order 24 rule 7 with powers to order specific discovery if a party considers that the other has not made full disclosure by list. Often discovery issues will be dealt at the directions hearing.

Inspection of Documents

The parties must allow inspection and copying of documents to take place within seven days of lists being served. Often upon an undertaking as to costs, copies of the documents will be sent to the other party rather than inspection taking place at the attorney's offices.

B. Non-Party

In Bermuda the availability of Discovery Orders against third parties is more restricted than in the UK. The Rules of the Supreme Court (1985) do not allow for pre-action discovery. Discovery against a third party is available following the issue of proceedings in order to identify a tortfeasor and obtain evidence in accordance with *Norwich Pharmacal Co v Commissioners of Customs and Excise* (1974).

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?

Under Order 24 some classes of documents, although they must be disclosed in the Affidavit of Documents as relating to matters in question in the action, are nevertheless privileged from production and inspection. The principal category of documents privileged from production is that of legal professional privilege. This category includes communications between solicitor and client, which are privileged even though no litigation was contemplated or pending at the time.

Documents prepared by experts and other advisors in circumstances where litigation was contemplated are also exempt from production and inspection.

Further, documents tending to incriminate or expose to a penalty are exempt from inspection and production as are documents that are privileged on the ground that the production would be injurious to the public interest.

Correspondence or documents produced in the course of settlement negotiations or attempts should technically be referred to in the affidavit but are not subject to production and will not be placed before the judge at trial until judgment is given where they may be relied on concerning the question of costs if clearly headed 'without prejudice save as to costs'.

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

Parties to an action may issue a Writ of Subpoena requiring a witness to attend court to testify and additionally to produce documents. If the witness does not attend he or she is liable to be held in contempt of court.

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

Under Order 38, Rules of the Supreme Court (1985), the general rule is that any fact required to be proved at the trial of any action initiated by writ by the evidence of witnesses shall be proved by the examination of witnesses orally and in open court.

However, there are exceptions to this rule and the Court may at, or before, the trial of an action initiated by writ, order that the affidavit of any witness may be read at the trial if in the circumstances of the case it thinks it reasonable so to order under Order 38 Rule 2, Rules of the Supreme Court (1985). The question for the Court is whether the reason for giving evidence by affidavit, such as residence abroad or inability to attend Bermuda to give evidence, outweighs the prejudicial effect on the other party by not being given the opportunity to cross-examine that witness.

The admissibility of documentary evidence considered to be hearsay is governed by Evidence Act 1905.

Under Order 39 the Court may, in any cause or matter where it appears necessary for the purposes of justice, make an order for the examination on oath before a judge or an officer or examiner of the Court in Bermuda, or for that person to be examined out of the jurisdiction in accordance with the procedure set out under Order 39 Rules 3 – 16 Rules of the Supreme Court (1985).

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?

The parties may instruct experts to give evidence on any issue in dispute in a case which is within their expertise. At the directions hearing the Court will usually respect party autonomy in the appointment of an expert and will usually limit expert evidence to one expert per side for each disputed issue which is within their area of expertise. The Court also has power to appoint a Court expert pursuant to Order 40, Rules of the Supreme Court (1985), with or without the consent of the parties. However, it is not common practice for powers under this rule to be exercised.

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

In the Bermuda Supreme Court the rules of procedure are governed by the Rules of the Supreme Court (1985). Most interim remedies that are available in the High Court in England and Wales are available in Bermuda such as freezing orders, search and inspection orders and orders for the preservation of property and evidence.

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?

The decisions of the Supreme Court of Bermuda may be appealed in Bermuda to the Court of Appeal which sits three times a year. Appeals with respect to interlocutory hearings or costs require the leave of the Supreme Court. No leave is required to appeal a final judgment. Appeals are made by way of rehearing and are governed by the Court of Appeal Act 1964 and the Rules for the Court of Appeal for Bermuda.

There is a final appeal from the Court of Appeal to the Privy Council in London.

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

Following judgment, interest can be claimed on costs as a sum of money due or payable by virtue of the judgment pursuant to Section 9, Interest and Credit Charges Regulation (Act) 1975, at 7% *per annum*.

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

Under Order 62 Rule 3, Rules of the Supreme Court (1985), no party to any proceeding shall be entitled to recover any of the costs of those proceedings from any other party except under an order of the Court. The Court usually makes an order for costs to follow the event, that is, the unsuccessful party pays unless it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs.

In accordance with the overriding objective pursuant to Order 1(A), the judge has an obligation to decide the question of costs justly and will take into account pre-trial offers to settle. Under Order 62 Rule 9 there are specific guidelines as to matters which should be taken into account by the Court in exercising the discretion as to costs, including:

a) any offer of contribution brought to its attention in accordance with Order 16 Rule 10;

b) any payment of money into court and the amount of such payment;

c) any written offer made under Order 33 Rule 4(A)(2); and

d) any written offer made under Order 22 Rule 14 provided that the Court shall not take such an offer into account if at the time it is shown the party making it could have protected his position as to costs by means of a payment into Court under Order 22.

Following the decision by the trial judge as to liability for the payment of costs, the successful party may initiate the taxation (assessment) of costs procedure under Part 3 of Order 62 unless the question is previously settled by agreement.

4.10 Can the courts compel the parties to mediate disputes? If so, do they exercise such powers?

The Supreme Court of Bermuda has no power under the Rules of the Supreme Court (1985) to compel parties to mediate a dispute, however, pursuant to Order 1A Rule 4, Rules of the Supreme Court (1985), as part of the Court's duty to manage cases there is a duty to help the parties to settle the whole or part of their case. Furthermore it is an obligation on counsel under the Barristers Code of Professional Conduct 1981, Section 10, to advise and encourage a client to settle a dispute whenever such a course appears to be advantageous for the client.

4.11 If a party refuses to a request to mediate, what consequences may follow?

There are no direct consequences to a party's refusal of a request to mediate. However, following the hearing of a case and the handing down of judgment, conduct of the parties may be taken into account under Order 62 Rule 3 when it appears to the court that in the circumstances of the case it is not appropriate that the general rule of costs following the event should be ordered. However, if the losing party does not protect itself by a payment into Court or by a written offer of settlement which is better than the judgment obtained by the winning party, the refusal of the winning party to mediate is unlikely on its own to have any significant cost consequences.

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 Bermuda Supreme Court supports and facilitates arbitration in Bermuda and respects party autonomy. There are two different regimes for commercial arbitration in Bermuda. The Arbitration Act 1986, which applies to domestic arbitrations, and the Bermuda International Conciliation & Arbitration Act 1993, which applies to international arbitrations. The 1993 Act incorporates into Bermuda law the UNCITRAL Model Law on International Commercial Arbitration ("the Model Law"). The 1993 Act and the Incorporated UNCITRAL Model Law on International Commercial Arbitration provides a facilitative context for the conduct of commercial international arbitrations. For example, under Article 10 if the appointment of arbitrators fails and agreement to their appointment cannot be reached, the Court may order the appointment in place of party agreement. Further, the Court may assist in the taking of evidence by deposition under Article 27 of the Model Law and by the granting of a variety of interim and procedural orders pursuant to powers set out in Section 35(5) of the 1993 Act.

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?

The Bermuda International Conciliation & Arbitration Act 1993 does not require a particular form of words, however, the arbitration agreement needs to be in writing in accordance with Article 7 of the Incorporated UNCITRAL Model Law.

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 Bermuda Supreme Court will support international arbitration under Article 8 of the Incorporated Model Law. Where a claim is brought before the Court which should properly be determined by arbitration under an arbitration clause, the Court must, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

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

Under the Bermuda International Conciliation & Arbitration Act 1993 the Court has the power to support arbitration by making orders in respect of the preservation, interim custody or sale of any goods which are the subject matter of the arbitration, securing the amount in dispute in the arbitration, the detention or inspection of any property or thing which is subject to the arbitration, the issuance of other interim injunctions and the appointment of a receiver.

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?

Under the Bermuda International Conciliation & Arbitration Act 1993 the Award must be made in writing and must be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice provided that the reason for any omitted signature is stated. The Award is required to state the reasons upon which it is based pursuant to Article 31 of the Model Law unless the parties have agreed that an award should be made on agreed terms pursuant to Article 30 of the Model Law. The Award is required to state its date and place of arbitration and the award is deemed to have been made at that place.

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?

An arbitral award in Bermuda is final and not subject to any appeal on the merits. However, under Part 4 of the Incorporated Model Law the Bermuda Supreme Court may refuse to enforce an arbitral award under the standard grounds set out in the New York Convention 1958. Further, the enforcement of the Convention Award may also be refused if the Award is in respect of a matter which is not capable of settlement by arbitration or if it would be contrary to public policy to enforce the award. A convention award which contains decisions on matters not submitted to the arbitration may be enforced to the extent that it contains decisions on matters submitted to arbitration which can be separated from those on matters not so submitted.

Jean-Paul (JP) Dyer
MJM Limited
Thistle House,4 Burnaby Street
Hamilton HM11
Bermuda

Tel: *+1 441 294 3626*
Fax: *+1 441 292 9151*
Email: *jpdyer@mjm.bm*
URL: *www.mjm.bm*
www.bermudalawblog.bm

JP focuses his practice on capital market and corporate finance transactions with a particular emphasis on the (re)insurance industry across all classes of insurer. He has represented issuers in connection with public and private debt and equity securities offerings. JP also advises sponsors and investors on structured finance transactions such as catastrophe bonds and other insurance linked securities, as well as the establishment and operation of side cars and collateralised reinsurance vehicles. Prior to joining MJM, JP was the Associate General Counsel for PartnerRe and Flagstone Re.

Timothy Frith
MJM Limited
Thistle House, 4 Burnaby Street
Hamilton HM11
Bermuda

Tel: *+1 441 294 3627*
Fax: *+1 441 292 0756*
Email: *tfrith@mjm.bm*
URL: *www.mjm.bm*
www.bermudalawblog.bm

Timothy Frith is a Commercial and Corporate Barrister with 15 years of experience at the Bar in London. He moved to MJM from Devereux Chambers in 2012 and was called to the Bermudian Bar by the Chief Justice in 2013. As part of his Commercial practice he has been involved in the formation and regulation of (re)insurance companies, coverage disputes, subrogation claims and actions against claims handlers. He is a Fellow of the Chartered Institute of Arbitrators and an Accredited Mediator.

Other titles in the ICLG series include:

- Alternative Investment Funds
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Competition Litigation
- Construction & Engineering Law
- Copyright
- Corporate Governance
- Corporate Immigration
- Corporate Recovery & Insolvency
- Corporate Tax
- Data Protection
- Employment & Labour Law
- Environment & Climate Change Law
- Franchise
- Gambling
- International Arbitration
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Mining Law
- Oil & Gas Regulation
- Patents
- Pharmaceutical Advertising
- Private Client
- Private Equity
- Product Liability
- Project Finance
- Public Procurement
- Real Estate
- Securitisation
- Shipping Law
- Telecoms, Media & Internet
- Trade Marks

GLG
Global Legal Group

59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: sales@glgroup.co.uk

www.iclg.co.uk