Index

abusive clauses doctrine 113
accounting 263, 268, 552, 636
catastrophe bonds 553
credit for reinsurance 238, 239, 441, 443, 565, 671–2
insurance contracts and financial instruments 566–8
takaful insurance 537–8
Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) 528, 535, 537, 538
adhesion, contract of 93, 110, 221–2, 223, 240, 242
adverse selection 23, 25–8, 29, 32, 488, 494
agency 6, 8, 12, 73, 90, 364, 593, 689, 690, 728–9
bad faith, US tort of 125
takaful insurance 534–5, 538, 540
aggravation/increase of risk 12–13, 613, 704, 737–8, 741, 759
agricultural insurance 488, 507, 778
AIG 25, 225, 234, 568, 647
alternative risk transfer (ART) 4, 407, 544, 747
financial markets 551
industry loss warranties and derivatives 554–7
aggravation/increase of risk 12–13, 613, 704, 737–8, 741, 759
Austria 94, 96–7, 102, 104, 105, 546
definition of insurance 50–51
automobile insurance see motor insurance
bad faith, US tort of 120–121, 145, 387, 404–5, 564
absence of coverage and 143–5
history and development
‘first party’ vs ‘third party’ 127–9
origins 124–7
international law applicable 129–31
outside insurer–insured context
primary insurer and excess insurer 140–141
overview 122–4
third-party context 133
wrongful denial of defense or indemnity
insurer and reinsurer 141–3
primary insurer and excess insurer 140–141
wrongful refusal to settle 133–6
Bank of England 268, 274, 275, 278–9, 415, 430, 466
Bank for International Settlements (BIS) 296, 298
Basel Committee on Banking Supervision 280, 284, 296, 298, 300, 301–2, 303, 304
Belgium 104, 105, 546
Bermuda 193, 241, 558–61, 672
Bond and Security Business 249, 762
Brazil 324, 699, 720–721
insurance: legal and regulatory framework 701–3
general section 703–4
Research handbook on international insurance law and regulation

insurante against damage 704–5
insurance of persons 705–6
legal system 699–701
Lloyd’s 451–2
microinsurance 482, 501, 502, 513
reinsurance 699, 706–9, 721
regulation 712–18
transition 709–12
state-owned insurance company, proposal to create 719–20, 721
bribery, economic 785
Brunei 542
burden of proof 704, 735, 739
disclosure duty 74, 88
notification to insurer 695–6
reinsurance 152
risk management law: Germany 349
buy-back/commutation agreements 168–9
Canada 13, 95, 100–101, 105, 112, 297
regulation 239, 241, 324, 440
Lloyd’s 444–5
cancellation of policies 245, 381
capacity 786
captive insurance 4, 553, 557–62
car insurance see motor insurance
catastrophe bonds 4, 551–4
catastrophe futures 554
catastrophe losses 463–4
causation 731–3
Cayman Islands 47, 561
cease and desist orders 373, 395
central limit theorem, law of large numbers and risk aversion 21–3
children 730, 786
China 291, 746
courts and judiciary 100, 102, 114, 724–6, 742–3
ambiguity doctrine (contra proferentem) 107–8, 742
definition of insurance 52, 54
electronic signatures 578
foreign exchange controls 744
Insurance Act 2009: practical issues
assignment of policy 741
conclusion of contract and inception of risk 734
construction of policy 742–3
fraudulent claims 740–741
increase of risk 737–8, 741
notification of claim and burden of proof 738–40
parties to contract 733–4
standard clauses and exclusions 735–6
microinsurance 501
principles of insurance contract law
causation 731–3
insurable interest 729–31
utmost good faith 108, 726–9, 740
regulation 52, 248, 440
cooling off period 736
cross-border direct insurance business 743–4
Lloyd’s 452–3
market entry 233
mergers and acquisitions 745–6
portfolio transfers 182
product price and content 241, 243, 736, 739
reinsurance 324, 744–5
risk classifications 236
choice of law: e-commerce 571, 597–9
choice of law: New York and English approaches 195–6, 217–18
agreement and no agreement: insurance closest connection 204–6
express choice 201
implied choice 203–4
most significant relationship 206
no express choice 202
preference for location of risk and insured 209–10
state interests 206–9
agreement and no agreement
actual conflict 200
insurance 201–10
one law for one contract 213–14
reinsurance 156–7, 210–213, 216, 218
general
English rules in brief 197–8
New York rules in brief 196–7
limits to party autonomy 214
consumer contracts: non-large and outside EU 196, 217
non large insurance in Member State 196, 216–17
non-derogable laws 215–16
protective laws 216
public policy 214–15
procedure 198–9
scope of applicable law 199–200
claims adjusters 153, 247, 664
class actions 155, 387, 400, 571, 599
closing books of business 167–8, 193–4
commutation, reinsurance and share sales 168–9
portfolio transfers 170, 184, 193–4, 646
international comparisons 181–3
personal performance 173–6
privity doctrine 170–73
procedural fairness 176–81
Rhode Island: accelerated run-off 193
schemes of arrangement 184–5, 192–4
approval 186–91
role of regulator 192
co-payments 31, 222, 505, 705
commutation agreements 168–9
conditions precedent 688–9, 734, 738
reinsurance 159–60, 161, 162
cconduct of business regulation: UK regime plus
US, German and Hong Kong approaches 121, 355, 387–8, 662
anti-discrimination rules 14, 235–6, 342, 360, 383–5, 399–400, 628, 629, 631
application of rules 361–4
classification of products 370–372
high level rules 364–70
insurance contract law distinguished from COB rules 357–9
legal effect of rules 385–7
matters covered by 356–7
sources of rules 359–60
specific rules 372–83
claims management and complaints 381–3
product information 373–5
supported in other areas of regulation 360–361
conflict of laws
applicable law 373, 588, 591, 790
choice of law: New York and English approaches see separate entry
e-commerce 597–9
Rome I Regulation 146, 195, 197–8, 199, 203, 204–6, 216, 217, 362, 373, 591, 592, 597, 619
e-commerce see under European Union
jurisdiction 588–90
Brussels I Regulation and EU-domiciled defendants 591–5
forum non conveniens 596
non-EU defendants 596
portfolio transfers 183
takaful insurance 542
conflicts of interest 368–9, 378, 402, 419–20, 540, 562
construction agreements 222
consumer protection 93, 148, 229–30, 239–41, 359, 629, 631, 750
choice of law 196, 209, 215, 216, 217, 599
claims handling 245–7
defences to insurance claims 381
enforcement 400–401
policing market conduct 244–5
treating customers fairly 366–7, 386
disclosure duty 57, 75–6, 77–8
reform 79, 84–90, 91
disputes, regulatory intervention in 247–9
e-commerce 572, 575–6, 585, 593
Financial Conduct Authority (FCA) 415
Financial Services Authority (FSA) 269, 272, 273–4, 410–411, 415–16
history of regulation in UK 260–261, 269
insurance-related products 249–50
microinsurance 508–12, 518
misrepresentation 75–6
UK 2011 Bill 87–90
personal data 585
product price and content 241–3
South Africa 770, 776, 790–791
Swedish Financial Supervisory Authority (SFSA) 416, 418, 419
unfair contract terms 95, 105, 113–16, 215, 216, 366–7, 368, 379
contingent commissions 237–8, 368–9, 402–3
contra proferentem rule (ambiguity doctrine) 97, 104, 105–9, 112, 113, 117, 359, 692–3, 742
disclosure 72, 91
formation of contract 691
transparency rule 114–15
contract law, insurance 11, 12
causation 731–3
conditions precedent 688–9, 734, 738
reinsurance 159–60, 161, 162
conditions, warranties and innominate terms 160
distinguished from conduct of business rules 357–9
freedom of contract 222, 756–7, 786, 790
fundamental breach 113
insurance, contract for 39
introduction to 3, 18
market practice 5–8
origins of insurance 8–11
themes in insurance law 11–18
types of insurance 3–5
novation 171, 182
PEICL see PEICL (Principles of European Insurance Contract Law)
post-classical theory of contract law 109
pre-contractual information duties see disclosure duty
privity, doctrine of 170–171, 684, 780, 781
portfolio transfers and 171–3
Singapore 688–9
claims and settlements 694–6
formation of contract 691–2
illegality and public policy 693–4
South Africa 102, 784–90
terms: interpretation see contract terms
United States 359
state competence 182
see also choice of law: e-commerce; choice of law: New York and English approaches; closing books of business; definition of insurance; good faith; insurable interest; reinsurance; unfair contract terms
contract terms: judicial approaches to interpretation 93, 117, 773
ambiguity doctrine see contra proferentem
general rules of interpretation
context and extrinsic evidence 101–3, 107
meaning of terms 99–101
objective and subjective 97–8
parties' intentions 98, 107
precedent 103
rules of general contract law 96–7
noscitur a sociis 693
purpose of clauses 743
reasonable expectations doctrine 109–13, 117, 359
reinsurance 148
restriction, principle of 104, 117
scope of judicial control 94
approaches 95–6
interrelation with regulatory control 94–5
special rules for standard terms 113–14
transparency rule 114–15
unexpected terms 115–17
cooling off periods 377, 583, 736, 775
copyright 586–8
corporate issues 234–5
accounting see separate entry
corporate members of Lloyd's 425
information security 585
Sarbanes-Oxley Act 586
Sweden 422
conversion of mutual to profit-distributing company 419–20
governance and control 420–421
transfer of assets abroad 419
covariance or correlation 23, 24–5, 31
coverage ceilings: moral hazard 29
credit default swaps 25, 36, 234, 249, 554–7, 647
credit ratings 400, 555, 567, 745
criminal law 389, 536, 690–691, 694, 705, 761
Philippines 504
United Kingdom 271, 408, 410
United States 229, 395, 397, 403, 568, 586
cross-subsidies 24, 32, 491
Cyprus 48
damages 248, 357, 381, 384, 386, 404, 685, 779, 784
bad faith, US tort of 120–121, 122–4, 125, 128, 131–3, 141, 145, 387, 404–5
decoy 76
delay in processing claims: China 246
late payment 13
non-disclosure 75–6, 80, 83
reinsurance 160–161
data protection: e-commerce 583–6
decoy, tort of 76
deductibles 505, 705, 736
earthquake insurance in California 24
high 563–5
moral hazard 29, 222
reinsurance 148
defamation 588
definition of insurance 54–5
civil law jurisdictions 53–4
Austria 50–51
China 52, 54
Denmark 52–3
Germany 51–2, 53, 54
Greece 49–50
Italy 51
Japan 53, 54, 749, 750, 752–5, 761–5, 766–8
Spain 52
common law jurisdictions 48–9, 54
Australia 46
Bermuda 47–8, 54, 55
Cayman Islands 47
Cyprus 48
England 35, 36, 37–41, 54, 55
Hong Kong 45–6
India 45
Israel 48, 49
Malaysia 46
Singapore 45
South Africa 784
United States 41–4, 54–5
introduction 33
critique 35–6
historical overview 33–4
position nowadays 34–5
regulatory jurisdiction 249
Denmark 52–3, 546
derivatives 554, 556–7, 679, 761
credit default swaps 25, 36, 234, 249, 554–7, 647
developing countries/emerging economies 291, 294, 298, 303, 304–5
see also individual countries; microinsurance
directors
disqualification 265
Index 799

IPO laddering claims 167

disability insurance 112
disclosure
duty see disclosure duty
full and frank
portfolio transfers 177–8, 180
microinsurance 506, 509, 510
Solvency II 638, 640
takaful insurance 539, 543
disclosure duty 56–60, 92, 115, 357, 684–6, 704, 726–9, 757–8, 784, 785
basis clauses and warranties 57, 75, 687
consequences of non-disclosure 74–5, 113
consumers 57, 75–6, 77–8, 358, 366, 381
reform 79, 84–90, 358
contours of 62–3
inducement 64–7, 69
materiality of facts known to insured 67–71
moral hazard 67–70
physical hazard 70–71
s. 18(2): meaning of influence 63–4
e-commerce 575, 582–3
fiduciary relationship 60–61
limits of 71–4
misrepresentation 56, 65–6, 75–7, 78, 113, 687
nature of 60–61
PEICL 612
reconstructing 79–80
Australia 80–83
Germany 91
United Kingdom 83–90, 358
small businesses 77–9, 85–6
discrimination 342, 383–4, 774, 787
European Union and EEA 14, 235–6, 360, 384, 628, 629, 631
United States 235, 384–5, 399–400
dispute resolution 247–9, 382–3
ombudsman see separate entry
Singapore 680–681
South Africa 777
United States 245, 248–9, 364, 383, 387, 400, 403–5
divorce 29, 731
dot-com boom
IPO laddering claims 167
duress 148, 785
e-commerce 8, 238, 362, 364, 569, 600, 636, 770
e-business and 569–73
electronic contracting 573–6
electronic signatures 576–9
jurisdiction and legal liability 579
choice of law 571, 597–9
contract 590–596
regulatory compliance 579–86
tort liability 586–90
earthquake insurance 24, 548, 552
ECF (electronic claims file) at Lloyd’s 477

ecologies
cooperation or correlation 23, 24–5, 31
law and see separate entry
risk aversion, law of large numbers and
central limit theorem 21–3
electronic channels and microinsurance 506–8
electronic claims file (ECF) at Lloyd’s 477
electronic data interchange (EDI) 569–70
emails 576–7, 578, 584, 585, 590, 695–6
emerging economies/developing countries 291, 294, 298, 304–5
see also individual countries; microinsurance
employment benefits: group insurance 89–90, 684
enforcement, regulatory 244–5, 246–9, 389, 422–3
Sweden 416–22
United Kingdom 382, 385–6, 406–16
United States 390–404
bad faith see separate entry
environmental liability insurance 27, 779, 783
estoppel 80, 112, 113, 726–7
bank supervision 301
CEIOPS (Committee of European Insurance and Pensions Supervisors) 332, 333, 334, 345–6, 349, 350, 633, 636–7, 647, 648
comitology committees 331–2, 333–4
Commission 622–3, 651, 652–4, 655
conduct of business regulation 240, 241, 311, 356, 359–60, 387
application of COB rules 361, 362–3, 364
cooling off periods 377
mandatory rules 380
sex discrimination 14, 235–6, 364
treating customers fairly 366
conflict of laws 590–591, 597, 599, 605, 618, 638
Brussels I Regulation and EU-domiciled defendants 591–5
jurisdiction and non-EU defendants 596
Rome I Regulation 146, 195, 197–8, 199, 203, 204–6, 216, 217, 362, 373, 591, 592, 597, 619
Rome II Regulation 590, 591
creation of EU law 623, 651, 652–3
relationship between law of Member States and law of EU 624–8
direct effect doctrine 627
800  Research handbook on international insurance law and regulation

Directives 14, 181, 261–4, 581, 616, 624, 625, 628, 629–30, 632–4
Consumer Protection 600
Data Protection 583, 584–5, 587
Distance Marketing 85, 114, 581, 583, 617
E-Commerce 572, 574–5, 581–3, 594
E-Signatures 572, 578
Insurance Mediation 363, 582, 636–7
Life Assurance and Non-Life Insurance 114, 181, 263, 311, 362, 582, 632, 634–5
overview 634–7
Reinsurance 181, 308, 311–16, 363, 635
Solvency II see separate entry
Unfair Commercial Practices 92, 241, 246, 366
Unfair Contract Terms 95, 105, 113–16, 366
dispute resolution forum 248
e-commerce 572, 574–5, 578, 581–3, 587, 636
data protection 583, 584–5
jurisdiction 590
EEA Agreement 630, 631
EIOPA (European Insurance and
Occupational Pensions Authority) 296, 333, 334, 351, 352, 648–9, 655
crisis management 654–5
dispute settlement 655
enforcement of EU law 653–4
primary objective 648–9
tasks 650–651
technical standards 651–3
financial regulatory architecture 296, 647–50, 655
EIOPA see above
ESRB (European Systematic Risk Board) 296, 648, 649, 650
Financial Stability Board (FSB) 298
framework of 621–8
G20 297
history of regulation in UK 251, 257, 261–4, 268, 273, 430–431
IAIS 303
internal market and four freedoms 628
general good 243, 364, 631, 635, 638
Single European Act 632
treaty freedoms and passporting 311, 629–30
Lamfalussy process 431, 632–3, 634
risk management principles see separate entry
Lloyd’s in EEA, authorisation of members of 438–40, 441
market withdrawal 234
motor insurance 222, 245, 382, 635
mutual recognition see under transnational supervisory recognition
OTC derivative contracts 557
PEICL see PEICL (Principles of European Insurance Contract Law)
portfolio transfers 181, 183
principles-based regulation 240, 241, 246, 339, 340
risk management principles: comparison of EU and German law see separate entry
product price and content 241, 243
reinsurance 146, 311, 356, 363
mutual recognition see under transnational supervisory recognition
sex discrimination 14, 235–6, 384
shared competence between Member States and 629, 635, 640, 647
Solvency II 635
Solvency II see separate entry
subsidiarity 621–2
supremacy of EU law 626–7
Switzerland 630, 631
transparency rule 114
World Trade Organization (WTO) 291
excess clauses 5
exclusion clauses 367, 369, 379, 735–6, 787
disclosure duty 72–3
restriction, principle of 104
transparency rule 115
unexpected terms 116
experts
claims handling in US 564
Germany: loss determination 382–3
portfolio transfers: independent expert report 178–9, 180, 181
Facebook 579, 595
fairness/fair dealing 223, 241, 366–7
Brazil 704
competition, unfair 588
data protection 584
disclosure duty 71, 79, 80, 83–4, 89, 92
European Union
unfair commercial practices 92, 241, 246, 366
unfair contract terms 95, 105, 113–16, 366
Japan 750
microinsurance 510
portfolio transfers: procedural 176–81
Singapore 686, 687, 698
South Africa 773, 784, 787, 791
statutory requirement: market practices 244
United Kingdom 271, 358, 366, 379, 386, 580
disclosure duty 71, 83–4, 89
financial promotion 372
unfair contract terms 95, 105, 113–16, 215, 216, 366–7, 368, 379
United States 395
ambiguity rule 107
covenant of good faith and fair dealing 122, 124–5, 127, 128, 142, 143, 144, 359, 404
justice and fair play 588
unfair practices law 34, 241, 244, 246, 373, 383, 384, 387, 400, 402, 404, 585
fiduciary relationship 60–61, 237, 370, 404, 784–5
bad faith, US tort of 122, 124, 125, 127, 129, 137, 140–141
Financial Accounting Standards Board (FASB) 567
financial crisis 2008/09 278, 389, 555, 561, 636–7
Basel Committee 302
corporate group supervision 234
European Union 296, 636–7, 647–8
Northern Rock 409
OECD 287–8
Singapore 678–9
Sweden 417, 421
UK regulatory change 273–5, 408, 430
United Nations 292–3
Asian (97/98) 285, 297–8, 678
financial guarantees 249
insurance 462, 669
financial inclusion 482–4
see also microinsurance
Financial Ombudsman Service (FOS) 247–8, 271, 386
claims handling 382
disclosure duty 84
small businesses 78–9, 85, 86
warranties of opinion 57
financial reporting and takaful insurance 537–9
Financial Services Authority (FSA) 224, 254, 271–2, 357–8, 362, 363, 406
abolition of 274, 415, 430
activities regulated, insurance 270, 273
appeals from decisions by 407
approach of 271–2, 411
principles-based 240–241, 364, 387, 407
risk-based 272, 406, 408
claims handling 382
conduct-risk approach 411
credit default swaps 556
definition of insurance 35, 37
e-commerce 579–80, 581
enforcement 382, 385–6, 406–10
client money 412–13
co-operation 413–14
firm response 413
future 415–16
payment protection insurance 410–411
settlement 414–15
systems and controls 412
establishment of 268–71
Handbook 241, 271, 373, 431, 433
fairness standards 366
General Prudential Sourcebook (GENPRU) 433, 434, 437
Prudential Sourcebook for Insurers (INSPRU) 433, 434, 436, 437
Solvency II sourcebook 433
transfer schemes 175
Lloyd’s 429–30, 431–8, 474
brokers 428
coverholders 428
managing agents of syndicates 426, 432, 433, 434, 435, 436, 437–8, 456
members’ agents 456
reporting by 435
merger of insurance company 183
payment protection insurance (PPI) 380, 382, 409, 410–411
principles-based approach 240–241, 364, 387, 407
risk-based approach 272, 406, 408
schemes of arrangement 192
statutory objectives 192, 269, 273–4, 387, 410
transfer schemes 175, 176, 177, 178, 183
unfair terms in consumer contracts 366–7
Financial Services and Markets Act 2000 224, 264, 268–9, 270, 271, 426
breach of statutory duty 78
compensation scheme 271
damages 386
Lloyd’s 426, 429–30, 431–3
market entry 233
restitution orders 386
transfer schemes 170, 172, 180, 193–4
Financial Stability Board (previously Financial Stability Forum) 279, 280, 286–7, 293, 296, 297–300, 303, 304, 323
fines/penalties 244, 246, 510, 584

Index 801
802 Research handbook on international insurance law and regulation

China 736, 744
Singapore 690, 691
Sweden 417, 418, 421
United Kingdom 271, 366, 385, 386, 408, 409, 410–411, 412, 413
co-operation and settlement discounts 414
United States 248, 373, 387, 395, 401
disclosure duty 68, 69, 71
flood insurance 24–5, 30, 226, 549–50, 659
foetus and Islamic law 532
France 121, 297, 546
contract terms: judicial approaches to interpretation 95, 103
ambiguity doctrine (contra proferentem) 105, 108
extrinsic evidence 102
restriction, principle of 104
subjective 97
regulation 245, 355, 359, 387
advice and suitability 376, 377
anti-discrimination rules 384
applicable law 373
cooling off periods 377
information about firm 375
long-term insurance contracts 378
portfolio transfers 181
premium rates 379
franchise clauses 5
fraud 404, 568, 696, 704
claims 14–17, 740–741, 759
e-commerce 577
general good: prevention of 631
non-disclosure 58, 82, 92, 113, 687, 704
premiums 75
post-contract: utmost good faith (uberrima fides) 126
reinsurance 161
standard of proof 696
fraudulent misrepresentation 76, 92
free look periods 692
free-trade agreements 325
functions of insurance 3, 277
G7 and G8 285, 297, 298
G10 296, 301
G20 291, 293, 297, 298, 299, 300, 323, 327
OTC derivatives contracts 556–7
Principles of Innovative Financial Inclusion 498, 499, 518
gambling 530, 555, 556, 682
GATT/GATS see WTO
general average 8–9
 genetic information 28, 384
Geneva Association 279, 300, 302, 304
Germany 9, 10, 121, 297, 301, 342, 366, 546
contract terms: judicial approaches to interpretation 94, 95–7, 103
ambiguity doctrine (contra proferentem) 105, 106, 108–9
extrinsic evidence 102
meaning of terms 100
parties' intentions 98
reasonable expectations doctrine 113
restriction, principle of 104
subjective 97
transparency rule 114, 115
unexpected terms 115–16
definition of insurance 51–2, 53, 54
disclosure duty 59, 70, 80, 91, 92, 113
regulation 94, 254, 262, 263, 355, 359, 387
advice and suitability 376, 377
anti-discrimination rules 384
applicable law 373
application of COB rules 382–3
classification of products 371, 372
client assets 370
conflicts of interest 368
cooling off periods 377
Federal Financial Supervisory Authority (BaFin) 224, 231, 326, 335–6, 340–41, 343–4, 346–9, 350, 352, 383
financial promotion rules 372
information about firm 375
legal effect of COB rules 387
mandatory and semi-mandatory rules 380
market entry 232
portfolio transfers 181
product information 374
risk management principles: comparison of EU and German law see separate entry
treating customers fairly 366–7
with-profits policies 379
Ghana 501, 512
good faith 17, 223, 241, 246, 366
bad faith, US tort of see separate entry
Germany 366
South Africa 784–5
surplus lines in US 668
takaful insurance 536
utmost good faith (uberrima fides) 16, 57–8, 63, 74, 77, 83–4, 147, 357, 366
Australia 80–81
Brazil 704
China 108, 726–9, 740
conduct of business rules in UK 358, 366, 381, 386
reinsurance 159
Singapore 684–5
South Africa 784
US tort of bad faith and 120, 125–6
Greece 49–50, 102, 245
guarantees
financial 249
insurance 462, 669
rent guarantee for vacancies 763–4, 765, 766, 767
guaranty funds 232, 562, 564–5
Guernsey 560–561
health hazard 463, 464
long-tail liabilities see closing books of business
health insurance 222, 277, 371, 372, 381, 385, 660, 702, 774–5
ambiguity doctrine (contra proferentem) 106
disclosure duty 70–71
e-commerce 576
enforcement, regulatory 401
information security 583, 585
licensed and non-admitted: US 664, 666, 667, 669
Lloyd’s outside EEA 443, 445, 452
microinsurance 488
PEICL 611
self-insurance 557, 562
takaful insurance 528, 532, 541
historical overview
Lloyd’s 9, 34, 253, 260, 428–9, 456–62, 477
origins of insurance 8–11, 33–4
history of regulation in UK 34
1997 to present
approach of FSA 271–2
establishment of FSA 268–71
insurance intermediaries and insurance mediation 272–3
eyearly regulation 252–3
1870–1872 Life Assurance Companies Acts 253–4
1909 Assurance Companies Act: general business 254–5
1909–1956 continued pressure for reform 255–7
1956–1973 larger role for government 257–60
increased policyholder protection 260–261
insurance intermediaries 261
European Community
accession and implementation 261–2
development of EEC regulation 262–4,
430–431
looking forward 273
Financial Services Act 2010 273–4
single regulator model 274–5
Solvency II 274
overview 251–2
Financial Services Act 1986 265–8
history of regulation in US 34, 656–60
Hong Kong
definition of insurance 45–6
portfolio transfers 181–2
regulation 239, 357, 360, 365, 387
advice and suitability 376
anti-discrimination rules 384
applicable law 373
application of COB rules 362
claims management and complaints 382
classification of products 371
client assets 370
communications with clients 367–8
conflicts of interest 368
cooling off periods 377
financial promotion rules 372
legal effect of COB rules 386–7
long-term insurance contracts 378
portfolio transfers 181–2
product information 374
treating customers fairly 367
with-profits policies 379
reinsurance 147
schemes of arrangement 193
human rights 271, 771–2
IAIS (International Association of Insurance Supervisors) 225–6, 284, 285, 287, 288, 298, 302–4, 306, 327, 361
access to insurance 514
consumer protection 240
Core Principles 225–6, 231, 233, 234–5, 246, 300, 303, 516
dispute resolution 247
market conduct principles 358
microinsurance 514, 516
reinsurance 239, 311, 325–6
Solvency II 296
systematic risk 279–80, 304
IBNR (incurred but not reported) claims 169, 187–8, 189–90, 191, 192, 446
Iceland 630
illegality 75, 684, 693–4, 786
IMF (International Monetary Fund) 282, 283, 284–7, 288, 293, 296
core principles: bank supervision 302
Financial Stability Board 286–7, 298, 299, 300
G20 297
IAIS standards 303
reinsurance 311
systemic stability 306
immigration 243
indemnity principle 16, 147
moral hazard 30
India 546, 578
ambiguity doctrine (contra proferentem) 105
definition of insurance 45
microinsurance 482, 483, 500, 501, 507, 509, 515, 516
regulation
claims handling 245
cross-border purchasing of insurance 440
Insurance Ombudsman 248
microinsurance 509, 515, 516
portfolio transfers 182
reinsurance 324, 325
India 182
industry loss warranties (ILWs) 554
information
asymmetries 25, 26–7, 28, 277, 488, 494, 508, 704
moral hazard 29, 488
conduct of business rules 376
information about firm 374
product information 373–4, 509, 511, 690–691, 735–6
e-commerce 573, 575–6
security 583–6
enforcement
information gathering 397
genetic 28, 384
license applications 666
Lloyd’s
prudential regime 433
microinsurance 488, 494, 508, 509, 511, 513–15
NAIC in US 396
portfolio transfers 181
full and frank disclosure 177–8, 180
notification to policyholders 179–80
pre-contractual information duties see disclosure duty
reinsurance and rights to 162–3
implied right of inspection 150, 163–4
practical considerations 164–5
security 583–6
sharing and transnational supervisory recognition/cooperation 320, 326
Solvency II 330, 638, 640
takaful insurance 538, 539, 543
see also disclosure; notification
injunctions 384, 700
innominate terms 160–161
insolvency 185, 231–2, 242, 398–9, 453, 562, 593
European Union 637
international organisations 285
large deductible policies 564–5
mandatory insurance 783
third-party rights 780
United Kingdom 271
see also solvency
institutional investors 551
insurable interest 17–18, 38–9, 357, 682–4, 729–31
credit default swaps (CDSs) 555
gambling 17, 530
moral hazard 17–18, 30–31, 222
South Africa 777–8, 781, 788, 789
insurance contract law 3, 18
market practice 5–8
origins of insurance 8–11
themes in insurance law 11–12
aggravation of risk 12–13
discrimination 14
fraudulent claims 14–17
insurance interest in property 17–18
late payment 13
types of insurance 3–5
insurance intermediaries 6–8, 12, 222–3, 728–9
ambiguity doctrine (contra proferentem)
106–7
crime
consumer insurance in UK: 2011 Bill 90
e-commerce 571, 582
exclusion clauses 735
impute knowledge to insurer 689–90, 729
PEIICL 610, 611, 618
regulation 237–8, 356, 368–70, 374
European Union 363, 636–7
Lloyd’s brokers 428
Lloyd’s outside EEA 441
Singapore 678, 690–691
South Africa 771, 774, 776–7
Sweden 418, 422
United Kingdom 238, 261, 266, 272–3, 363, 368, 369–70, 376, 385, 386
United States 238, 364, 368–9, 370, 402–3, 663–4
Singapore 678, 689–91
see also conduct of business regulation
Insurance Ombudsman 75–6, 77–8, 260–261, 271
insurance regulation 250
common concerns 221–3
common themes 229–30
consumer protection and market conduct 239–50
insurance markets 232–9
solvency and prudential monitoring 230–232
Index: 805

theories and structures
international 224–6
philosophies 228–9
regulatory organization 223–4
United States 226–7
interest 531, 533, 536
International Accounting Standards Board (IASB) 552
International Association of Insurance Supervisors see IAIS
International Financial Reporting Standards (IFRS) 537–8
International Monetary Fund see IMF
international organisations 276–7, 306–7
Bank for International Settlements (BIS) 296, 298
EU see European Union
Financial Stability Board (previously Financial Stability Forum) 279, 280, 286–7, 293, 296, 297–300, 303, 304, 323
functions of insurance 277
G7 and G8 285, 297, 298
G20 see separate entry
IGOs (international governmental organisations) 280, 281, 283
historical context 282–3
International Monetary Fund see IMF
OECD 283, 285, 287–8, 296, 298, 303, 306, 325, 327
WTO/GATT/GATS 282, 283, 288–9, 297, 304, 306, 325
interest in insurance regulation of 277–80
international non-governmental organisations (INGOs) 281
significance of 280–281
soft law or legislation: role of 304–6
standard-setting bodies
Basel Committee 280, 284, 296, 298, 300, 301–2, 303, 304
International Association of Insurance Supervisors see IAIS
international sale of goods 608, 730
internet 8
e-commerce see separate entry
electronic channels and microinsurance 506–8
electronic claims file (ECF) at Lloyd’s 477
investment insurance products 370–371, 374, 376, 377
investment risk 231, 361, 378
investments, takaful 540–541
IPO laddering claims 167
Ireland 100, 112, 181
Islamic insurance see takaful insurance
Israel 48, 49, 545
Italy 9, 10, 51, 105, 181, 380
Japan 10, 121, 747–8, 767–8
calculation of claims: non-life insurance 760
Insurance Act 747, 748–9, 751–2, 766–8
definition of insurance 53, 54, 749, 755, 767
definition of insurance contract 53, 749, 752–5
regulations 755–60
Insurance Business Act (IBA) 747, 748, 750–751, 766–8
definition of insurance business 53, 750, 761–5, 766, 767–8
mutual aid (kyosa) 747, 750–752, 753, 754
regulation 239, 241, 242, 755–60, 766
disclosure duty 757–8
Financial Services Agency (FSA) 751, 762–5, 766, 767–8
increase or decrease of risk 759
Lloyd’s 449–51
overinsurance 758
portfolio transfers 182
rescission 758, 759–60
road-side assistance services 763
terrorist acts 546
vacancy rent guarantee 763–4, 765, 766, 767
judicial approaches to interpretation see contract terms
jurisdiction see under conflict of laws
Kenya 507
law and economics 19–21, 32
adverse selection 23, 25–7, 29, 32
debate 27–8
ambiguity doctrine (contra proferentem) 105, 109
moral hazard 23, 28–9
case law 30–31
debate 32
regulation and legislation 30
tort law and 31
reasonable expectations doctrine 109
law of large numbers, central limit theorem and risk aversion 21–3
legal expenses insurance 368, 371, 380
letters of credit 563, 565–6, 642
liability insurance 46, 222, 256, 371, 778, 779–81
bad faith, US tort of 122, 127–8, 129, 133
wrongful denial of defence or indemnity obligation 137–9

Julian Burling and Kevin Lazarus - 9781849807890
Downloaded from Elgar Online at 08/27/2019 05:26:00PM
via free access
<table>
<thead>
<tr>
<th>Page</th>
<th>Content</th>
</tr>
</thead>
<tbody>
<tr>
<td>806</td>
<td>Research handbook on international insurance law and regulation</td>
</tr>
<tr>
<td></td>
<td>wrongful refusal to settle 133–6</td>
</tr>
<tr>
<td></td>
<td>captive insurance 557, 562</td>
</tr>
<tr>
<td></td>
<td>insurable interest 729</td>
</tr>
<tr>
<td></td>
<td>legal expenses 367</td>
</tr>
<tr>
<td></td>
<td>long-tail liabilities 557</td>
</tr>
<tr>
<td></td>
<td>closing books of business see separate entry</td>
</tr>
<tr>
<td></td>
<td>mandatory 32, 98, 222, 236, 380, 635, 694, 782–3</td>
</tr>
<tr>
<td></td>
<td>rate regulation 242</td>
</tr>
<tr>
<td></td>
<td>reinsurance 148</td>
</tr>
<tr>
<td></td>
<td>residual market 668</td>
</tr>
<tr>
<td></td>
<td>retrospective rating 563</td>
</tr>
<tr>
<td></td>
<td>takaful insurance 541</td>
</tr>
<tr>
<td></td>
<td>Liechtenstein 630</td>
</tr>
<tr>
<td></td>
<td>life insurance 10–11, 38, 224, 311, 705–6, 725, 733–4, 741</td>
</tr>
<tr>
<td></td>
<td>adverse selection 26–7</td>
</tr>
<tr>
<td></td>
<td>benefits: money payments 754–5</td>
</tr>
<tr>
<td></td>
<td>conduct of business regulation 360</td>
</tr>
<tr>
<td></td>
<td>product information 736</td>
</tr>
<tr>
<td></td>
<td>credit grantor, to benefit of 783</td>
</tr>
<tr>
<td></td>
<td>death of wage-earner 222</td>
</tr>
<tr>
<td></td>
<td>disclosure duty 58, 70–71, 78, 686, 687</td>
</tr>
<tr>
<td></td>
<td>Australia 82</td>
</tr>
<tr>
<td></td>
<td>China 728–9</td>
</tr>
<tr>
<td></td>
<td>e-commerce 576</td>
</tr>
<tr>
<td></td>
<td>insurable interest 38–9, 683, 729, 730–731, 777–8</td>
</tr>
<tr>
<td></td>
<td>insurance intermediaries 690–691</td>
</tr>
<tr>
<td></td>
<td>life assurance and 10</td>
</tr>
<tr>
<td></td>
<td>microinsurance 488, 505, 506, 516</td>
</tr>
<tr>
<td></td>
<td>overview of EU Life Assurance Directives 263, 634–5</td>
</tr>
<tr>
<td></td>
<td>PEICL 611</td>
</tr>
<tr>
<td></td>
<td>portfolio transfers 181</td>
</tr>
<tr>
<td></td>
<td>regulation 360, 370, 371, 372, 377, 379, 677</td>
</tr>
<tr>
<td></td>
<td>admitted and non-admitted business in US 664, 666, 667, 669</td>
</tr>
<tr>
<td></td>
<td>China 744, 745</td>
</tr>
<tr>
<td></td>
<td>history of regulation in UK 251, 253–7, 258, 262, 263, 266, 267, 271</td>
</tr>
<tr>
<td></td>
<td>investment element 374</td>
</tr>
<tr>
<td></td>
<td>Lloyd’s outside EEA 442, 443, 444, 445, 447, 451</td>
</tr>
<tr>
<td></td>
<td>Singapore 680, 686, 687</td>
</tr>
<tr>
<td></td>
<td>South Africa 774–5</td>
</tr>
<tr>
<td></td>
<td>risk aversion, law of large numbers and central limit theorem 23</td>
</tr>
<tr>
<td></td>
<td>risk classifications 235</td>
</tr>
<tr>
<td></td>
<td>suicide 529, 694, 706</td>
</tr>
<tr>
<td></td>
<td>takaful family insurance 528–9, 531–2</td>
</tr>
<tr>
<td></td>
<td>transparency rule 114</td>
</tr>
<tr>
<td></td>
<td>liquidation 398, 399</td>
</tr>
<tr>
<td></td>
<td>Lloyd’s 8, 639, 776, 790</td>
</tr>
<tr>
<td></td>
<td>authorisation of members of 424–5, 440–441, 453</td>
</tr>
<tr>
<td></td>
<td>Australia 445–6</td>
</tr>
<tr>
<td></td>
<td>Brazil 451–2</td>
</tr>
<tr>
<td></td>
<td>Canada 444–5</td>
</tr>
<tr>
<td></td>
<td>China 452–3</td>
</tr>
<tr>
<td></td>
<td>European Economic Area (EEA) 438–40, 441</td>
</tr>
<tr>
<td></td>
<td>Japan 449–51</td>
</tr>
<tr>
<td></td>
<td>Singapore 446–9</td>
</tr>
<tr>
<td></td>
<td>unique features of Lloyd’s market 425–9</td>
</tr>
<tr>
<td></td>
<td>United Kingdom 429–38</td>
</tr>
<tr>
<td></td>
<td>United States 440, 441–4</td>
</tr>
<tr>
<td></td>
<td>authorisation of 432</td>
</tr>
<tr>
<td></td>
<td>central assets 434, 436–7, 438, 453, 455, 456, 476</td>
</tr>
<tr>
<td></td>
<td>history 9, 34, 253, 260, 428–9, 456–62, 477</td>
</tr>
<tr>
<td></td>
<td>overview of Lloyd’s market 455–6</td>
</tr>
<tr>
<td></td>
<td>performance management 434, 454–5, 465, 476–7</td>
</tr>
<tr>
<td></td>
<td>Business Plan 470–473</td>
</tr>
<tr>
<td></td>
<td>Chairman’s Strategy Group (CSG) Report 473–4</td>
</tr>
<tr>
<td></td>
<td>current position 474–7</td>
</tr>
<tr>
<td></td>
<td>Fisher Report 465–7</td>
</tr>
<tr>
<td></td>
<td>Neill Report 467–8</td>
</tr>
<tr>
<td></td>
<td>Task Force, Walker and Morse Reports 468–70</td>
</tr>
<tr>
<td></td>
<td>report to FSA 435, 438</td>
</tr>
<tr>
<td></td>
<td>unique features of Lloyd’s market 425–9</td>
</tr>
<tr>
<td></td>
<td>LMX (London Market Excess of Loss) spirals 463–4</td>
</tr>
<tr>
<td></td>
<td>loans: collateral insured 27, 222</td>
</tr>
<tr>
<td></td>
<td>long-tail liabilities see closing books of business</td>
</tr>
<tr>
<td></td>
<td>long-term care insurance 371, 381</td>
</tr>
<tr>
<td></td>
<td>loss adjusters 153, 247, 664</td>
</tr>
<tr>
<td></td>
<td>Malaysia 501, 525, 528, 532, 537, 542, 676, 698</td>
</tr>
<tr>
<td></td>
<td>basis clauses 687</td>
</tr>
<tr>
<td></td>
<td>compulsory insurance 694</td>
</tr>
<tr>
<td></td>
<td>contra proferentem rule 691, 693</td>
</tr>
<tr>
<td></td>
<td>definition of insurance 46</td>
</tr>
<tr>
<td></td>
<td>formation of contract 691–2</td>
</tr>
<tr>
<td></td>
<td>fraud 696</td>
</tr>
<tr>
<td></td>
<td>free look periods 692</td>
</tr>
<tr>
<td></td>
<td>insurance intermediaries 690</td>
</tr>
<tr>
<td></td>
<td>noscitur a sociis 693</td>
</tr>
<tr>
<td></td>
<td>portfolio transfers 181</td>
</tr>
<tr>
<td></td>
<td>public policy 694</td>
</tr>
<tr>
<td></td>
<td>time-line provisions 695</td>
</tr>
<tr>
<td></td>
<td>mandatory insurance and adverse selection 27</td>
</tr>
<tr>
<td></td>
<td>marine insurance 58, 444, 451, 574, 669–70, 702</td>
</tr>
<tr>
<td></td>
<td>China 724, 725, 726, 727–8, 737, 739</td>
</tr>
<tr>
<td></td>
<td>general average 8–9</td>
</tr>
</tbody>
</table>
Index 807

historical overview 8–9, 33, 252, 256, 457, 458, 459, 460
Japan 756
South Africa 771
Takaful insurance 528
market conduct rules see conduct of business regulation
markets regulation, insurance 229, 232–9
mediation 681
mergers 183, 745–6
see also portfolio transfers
Mexico 501, 503, 505, 509, 578
micro-businesses 85–6
microcredit 482, 483–4, 513
microinsurance 481–2, 519–20
barriers 493–8
conceptual framework
business models 490
concept of microinsurance 484–6
continuum 491–3
insurable risks and popular products 486–8
providers 488–90
conventional insurance vs 485–6
financial inclusion and insurance 482–4
overcoming barriers: principles 498–9
1: leadership 499–502
2: diversity 502–5
3: innovation 506–8
4: protection 508–11
5: empowerment 511–12
6: cooperation 513
7: knowledge 513–15
8: proportionality 515–16, 518
9: framework 516–19
misrepresentation 56, 65–6, 75–7, 78, 82, 84, 92, 113, 727–8, 784, 785
cancellation or non-renewal of policies 245
consumer insurance: UK 2011 Bill 87–90
US: unfair practices 246, 373, 382
mistake 785
payments 696
unilateral 113
mobile financial services 506–8, 513, 584
moral hazard 23, 28–32, 222, 228, 232, 299, 552
disclosure duty 67–70
microinsurance 488, 494
mortgage endowments 372, 382
most favoured nation (MFN) principle 289–90
motor insurance 173, 235, 256, 372, 439, 681, 725, 775
basis clauses 687
claims handling 245, 382
conflicts of interest 368
covariance 24, 25
mandatory 4, 32, 98, 222, 236, 380, 635, 694, 782
moral hazard 29, 32
premium rates 380
residual markets 236, 668
surplus lines in US 669
Takaful insurance 528
mutual aid (kyosai) 747, 750–752, 753, 754
mutual insurance company
conversion into profit-distributing company 419–20
mutual recognition 263, 308, 310–311, 636, 637
supervision see transnational supervisory recognition
mutuals 4, 488, 503, 533
National Association of Insurance Commissioners (NAIC) 280, 324, 396, 658, 661
authorisation of members of Lloyd’s 442, 443
catastrophe bonds 552, 553
customer complaints 400, 401
enforcement activities 396
federal regulation 324, 360
finite reinsurance 567
international harmonisation 360
model statutes 244, 246, 355, 360, 373, 383, 396, 400, 659, 661, 664, 672
multi-state examination of complaints 401
principles-based approach 388
solvency monitoring 231, 397–8
national sovereignty 281, 298, 307
natural disasters 226, 236, 242, 243, 454, 463, 491, 548–51, 558, 659
adverse selection 27
catastrophe bonds 4, 551–4
covariance 24–5
moral hazard 30
negligence 62, 91, 364, 404, 564, 728, 758, 779
bad faith, US tort of 130–131, 133, 142, 143
failure to notify promptly 738, 759
Lloyd’s 464
negligent misrepresentation 403–4, 784
Neill, Sir Patrick (Lord Neill of Bladen) 465, 467
Nepal 501
Netherlands 107, 181, 546, 574
New Zealand 13, 147, 239, 241
non-disclosure see disclosure duty
non-renewal of policies 245, 381
Norway 630
nuscitur a sociis 693
notification 167–8, 259, 363, 688–9, 695, 738–9
aggravation/increase of risk 613, 704, 737, 759
assignment of policy 741  
bad faith tort in US 139, 140, 142–3, 148  
e-commerce 582  
emails 695–6  
EU Treaty freedoms 630  
Lloyd's 437–8, 439, 440  
personal data breach 585  
portfolio transfers 179–80, 745  
reinsurance: claims conditions 158  
scheme of arrangement 186  
novation 171, 182  
Obama, Barack 323, 557  
objective and subjective interpretation 97–8  
OECD 283, 285, 287–8, 296, 298, 303, 306, 325, 327  
Oesch, M. 280, 282, 283, 288, 304  
Office of Fair Trading (OFT) 411  
ombudsman 511  
Germany 383, 387  
Hong Kong 386–7  
India 248  
PEICL 614, 619  
South Africa: ombud 777  
UK: Financial Ombudsman Service (FOS) 247–8, 271, 386  
claims handling 382  
disclosure duty 57, 78–9, 84, 85, 86  
UK: Insurance Ombudsman 75–6, 77–8, 260–261, 271  
origins of insurance 8–11  
Pakistan 501, 542  
parol evidence rule 101, 102  
Parsons, Christopher 31  
patents 588, 596  
payment protection insurance (PPI) 360, 365, 369, 372, 374, 376–7, 380, 382, 409, 410–411  
PEICL (Principles of European Insurance Contract Law) 96, 603  
aggravation of risk 12–13, 613  
Common Frame of Reference (CFR) 605–8, 619, 620  
extrinsic evidence rule 102  
future prospects 619–20  
harmonization 603–5, 616–17  
optional instrument 608–9, 619–20  
suitability as 615–16  
overview 609  
acquis communautaire 611–12  
beyond the scope 610–611  
enforcement 614–15  
mandatory character 614  
mandatory change in rule 12–13, 613  
pre-contractual duties 612  
premium 613–14  
structure 609–10  
substantive scope 610  
uniform interpretation 614  
second regime 618–19  
Peru 501, 503, 505  
Philippines 8, 503, 504, 506, 509, 510, 513  
physical hazard: disclosure duty 70–71  
pollution liability insurance 27, 463, 464, 783  
long-tail liabilities see closing books of business  
portfolio transfers 170, 184, 193–4, 646  
international comparisons 181–3  
personal performance 173–6  
privity doctrine 170–173  
procedural fairness 176–81  
power control 109, 148, 215, 228, 774  
bad faith, US tort of 122, 126–7, 145  
PPI (payment protection insurance) 360, 365, 369, 372, 374, 376–7, 380, 382, 409, 410–411  
pre-contractual information duties see disclosure duty  
precedent 103, 699–700, 720, 725  
premium 221, 222, 223, 255, 544, 557–8, 704  
condition precedent 734  
consumer insurance: 2011 Bill 89  
decrease of risk 704, 759  
definition of insurance 39, 46, 784, 788  
Japan 752, 754, 761, 762  
determined or determinable 787  
discrimination 14, 384  
formation of contract 691–2  
fradulent claims and 740  
material change in risk 12–13, 613  
reasonable expectations doctrine and 112  
regulation 241–2, 243, 254  
class actions 387, 400  
European Union 241, 243, 379–80, 639  
reinsurance 238  
United States 241, 242, 243, 254, 277, 381, 388, 399–400, 403, 668  
residual markets 237, 549–50  
retrospective rating 563, 565  
takaful insurance: donations 533, 536, 537, 538, 539  
taxation 557, 558–60, 561, 562, 564  
waiver of misrepresentation 728
Index 809

principles-based regulation 240–241, 246, 288, 407
high level conduct of business rules 364–70, 387
Lloyd’s: Franchise Minimum Standards 476
pros and cons 338–40
risk management principles: comparison of
EU and German law see separate entry
Principles of European Insurance Contract Law
see PEICL
privacy 586
private international law see conflict of laws
privity, doctrine of 170–173, 684, 780, 781
product liability 757
long-tail liabilities see closing books of
business
product warranties 249–50, 763
professional indemnity insurance 80, 222, 236, 557, 562, 782
property insurance 173, 222, 242, 372, 666, 733, 734, 741, 775, 778, 780, 783
aggravation of risk 12
disclosure duty 70
insurable interest 729–30
microinsurance 488
moral hazard 29
residual markets 548, 548–50, 668
takaful insurance 528, 536, 541
proportionality 78, 82, 83, 631, 641, 646
EU’s use of powers 621
microinsurance 515–16, 518
principles-based regulation: EU and
Germany 336, 345, 347, 349
prudential regulation see solvency
public policy 227, 367, 669, 693–4, 760, 772–3, 786–7, 788
choice of law 214–15
fraud 16–17
microinsurance 499–502
risk classifications 235–6
transferring risk to governments 545–51
public–private partnerships 546
rational discrimination 399–400, 774
reasonable expectations doctrine 109–13, 117, 359
rectification 113, 149
redlining 393
regulation

captive insurance 560–562
conduct of business regulation: UK regime
plus US, German and Hong Kong
approaches see separate entry
credit default swaps 556
e-commerce 579–83
data protection and information security
583–6
enforcement see separate entry
financial regulatory architecture of EU see
under European Union
history of regulation in UK see separate entry
international organisations see separate entry
introduction to insurance see separate entry
justification for 277, 677
Lloyd’s see separate entry
macroprudential 277–80
OTC derivatives contracts 556–7
portfolio transfers 181–2, 646
principles-based see separate entry
solvency/prudential see separate entry
transnational supervisory recognition see separate entry
see also under individual countries
reinsurance 4, 6, 146–8, 165–6, 593, 610, 757
assumption 182
bad faith, US tort of 141–3
Brazil 699, 706–19, 721
catastrophe bonds 4, 552, 553
catastrophe losses 463, 554
choice of law: New York and English
approaches 195–6, 217, 218
agreement and no agreement 156–7,
210–13, 216, 218
general 196–200
limits to party autonomy 214–16
claims conditions 158
consequences of breach 159–61
content of 158–9
follow the settlements and 161–2
construction of agreements 148
definition 5, 146
facultative contracts 5, 158, 162
finality, economic 169
finite 566–8
government-provided 547
implication of terms 149–50
information rights 162–3
implied right of inspection 150, 163–4
practical considerations 164–5
Islamic (retakaful) 529–30, 540
letters of credit 565
natural disasters 550, 551
catastrophe bonds 552, 553
non-proportional 5, 150, 163, 529, 775
proof of loss
common law 150–152
follow the settlements and follow the
fortunes 152–3
‘Hill’ clauses 153–5
proportional 5, 149–50, 163, 529–30, 775
regulation 238–9, 262, 264, 356, 363, 635, 639
Brazil 324, 712–18
catastrophe bonds 553
China 324, 744–5
credit for reinsurance 238, 239, 441, 443, 565, 671–2
Lloyd’s 441, 443, 444, 445, 446, 451, 452
Solvency II see separate entry
South Africa 239, 775
transnational supervisory recognition see separate entry
United States 239, 322–3, 324, 441, 443, 659–60, 663, 664, 671–3
retakaful 529–30, 540
scope of coverage 155–8
side-cars 554
Singapore 674
taxation 559
terrorist acts 546
treaties 5, 158, 162
residual markets 236–7, 548–50, 667–8
responsibility doctrine 108–9
restitution orders 385, 386, 401
restriction, principle of 104, 117
retrospective rating 563, 565
risk 3
aversion 21–2
law of large numbers and central limit theorem 22–3
classifications 235–6
of contagion 280
investment 231, 361, 378
letters of credit 566
microinsurance product category 503
securitization of catastrophe bonds 4, 551–2
transfer 544, 566, 767
alternative risk transfer see separate entry
definition of insurance 39, 42, 44, 54–5
takaful insurance 538, 539
risk management principles: comparison of EU and German law 329, 351–2
amend and supplement principles 340
CircularMaRisk 346–9
content of sub-rules 344–50
differences in content 349–50
legal basis 340–341
legal form and legal effect of sub-rules 341–4
Level 2 measures in EU 344–6
possible scope of sub-rules 341
background
German legislation 330–331
Solvency II 329–30
basic provisions
German legislation 335–6
Solvency II 331–4
meaning of principles-based law 336
EU law 336–7
German law 337–8
pros and cons of principles-based law 338–40
run-off 167, 168, 172–3, 177, 184, 193–4
closing books of business see separate entry
Rhode Island: accelerated 193
Russia 291–2, 297
Saudi Arabia 528
schemes of arrangement 184–5, 192–4
approval 186–91
self-insurance 26, 29, 42, 483, 544
captive insurance 4, 553, 557–62
sex discrimination 14, 235–6, 383–4, 774
share sales and finality 169
Sharia see takaful insurance
Singapore 674–5, 681, 698
authorisation of members of Lloyd’s 427, 446–9
background 675–7
basis clauses and warranties 687
claims and settlements 694–6
construction of policy 692–3
definition of insurance 45
disclosure of material information 684–6
formation of contract 691–2
free look periods 692
illegality and public policy 693–4
insurable interest 682–4
insurance intermediaries 689–91
policy terms 688–9
regulation 238, 239, 677–81, 686, 688, 692
Lloyd’s 446–9
portfolio transfers 182
reinsurance 147
subrogation 696–8
small businesses 77–9, 85–6, 386
soft law 304–6, 340, 352
solicitors 363
authorisation and conditions of business 638–9
Lloyd’s 431, 433, 434, 435–6, 438, 439, 440
localisation of assets 642
main objects and means of supervision 640–641
own funds 642
minimum capital requirement (MCR) 644

810 Research handbook on international insurance law and regulation

Julian Burling and Kevin Lazarus - 9781849807890
Downloaded from Elgar Online at 08/27/2019 05:26:00PM
via free access
solvency capital requirement (SCR) 643–4, 646
Pillar 2 640
capital add-ons 645–6
own risk and solvency assessment (ORSA) 644–5
supervisory review 645
portfolio transfers 646
risk management principles: comparison of EU and German law see separate entry
Three Pillars 639–40
transnational supervisory recognition 316–21, 323, 327
valuation of assets, liabilities and technical provisions 641–2
European Union 263, 264, 634–5
mutual recognition 263, 310–312
non-EEA regimes: Reinsurance Directive 308, 312–16
Solvency I 295, 635
Solvency II see separate entry
finite reinsurance 567
Germany 370
Japan 750, 751
Lloyd's 426–7, 429–38, 441, 455, 458–9, 461–2
Australia 445–6
Brazil 451–2
Canada 444–5
capital requirements 435–8
China 452–3
Japan 450–451
prudential regime 433–4, 454–5, 465–77
Singapore 447–9
solvency 434–5
United States 441–3
microinsurance 503, 504, 515–16, 517, 518
national treatment provision 325
rate control 242
Singapore 678
Sweden 418–19
takaful insurance 533, 539
transnational supervisory recognition see separate entry
United Kingdom 361, 363, 379, 635
history of regulation in 256, 258–9, 262, 263, 267–8
Lloyd's see above
looking forward 274, 275, 415
United States 225, 231, 395, 397–9, 662, 666, 668, 669
captive insurance 561–2
reinsurance 239, 322–3, 441
transnational supervisory recognition 322–4, 326
Sonnenberger, Hans-Jürgen 97
South Africa 769–70
classification of insurance contracts 777–8
mandatory 781–8
third-party 779–81
consumer protection 770, 776, 790–791
contract law, insurance capacity 786
certainty and possibility 787
consensus 785–6
essential elements 788–9
extrinsic evidence 102
formalities 787–8
insurable interest 777–8, 781, 788, 789
legality 786–7
prescription and jurisdiction 789–90
subrogation 789
valid contract 784–5
warranties 789
definition of insurance 784
Financial Services Board (FSB) 512, 770, 771, 777
language 787–8
microinsurance 512, 516, 517
public policy 772–3, 786–7, 788
regulation, statutory 770–771
Constitution 771–4, 777, 787
Financial Advisory and Intermediary Services Act 770, 776–7, 790
Long-term Insurance Act 770, 774–5, 778, 790–91
Short-term Insurance Act 770, 775–6, 778, 779, 790–791
reinsurance 239, 775
terrorist acts 545
South America 105
see also Brazil; Peru
Spain 11, 52, 181, 545
standard of proof 154, 155, 696
stereotypes 774
subjective and objective interpretation 97–8
subrogation 140, 141, 153, 591, 730
Brazili 705
Singapore 696–8
South Africa 789
subsidies 24–5, 27, 30, 491, 509
Sudan 527
suicide 529, 694, 706
surety bond business 249, 762
surprising clauses, rule against 115–16, 117
Sweden 416–22
Switzerland 94, 314–15, 630, 631
812 Research handbook on international insurance law and regulation

contract terms 95–6, 97, 100–101, 102, 104, 105, 113
Taiwan 546
takaful insurance 525, 542–3
AA and RAC breakdown cover 528
bancataful 535, 540
basic issues facing 535–7
family or personal 528–9, 541
financial reporting 537–9
foetus 532
general or property 528, 541
general regulatory issues conflict of interest 540
investments and Sharia compliance 540–541
solvency 539
United Arab Emirates 541–2
inheritance 531–2
Islamic law and Sharia 525–6
operational models of 533–5
origins of 527–8
problems with conventional insurance 530–532
solutions 532–3
Qur’an 526, 527, 530, 531
retakaful 529–30, 540
waqf 535, 542
zakat 527
taxation 553, 557, 558–61, 567, 631
premiums 557, 558–60, 561, 562, 564
terrorism 226, 236, 285, 367, 515, 545–8, 659
Thatcher, Margaret 264–5
tort law 31, 32, 76, 120, 586–90, 690
bad faith, US tort of see separate entry
negligence see separate entry
trademarks 596, 618
transnational supervisory recognition 308
European Union 308, 309–10, 312–13
agreements with third countries (Art 50) 316
equivalence assessment (Art 49) 313–15
equivalence criteria 320–321
equivalence for (re)insurance groups 319–20
equivalence for third country solo firms 317–19
mutual recognition as policy principle 310–312
next steps 321
Solvency II 316–21, 323, 327
Swiss FINMA assessment 314–15
United States 322–3
IAIS principles and standard-setting 325–6
international developments 324–5
key methodologies 309–10
OECD codes of liberalisation 327
trends and future prospects 327–8
United States 308, 322–4
transparency rule 114–15, 117
Twitter 579, 595
unconscionability 112, 113, 148, 599
undue influence 785
unexpected terms, rule against 115–16, 117
unfair contract terms 95, 105, 113–16, 215, 216, 366–7, 368, 379
United Arab Emirates 541–2
United Kingdom 5–8, 12, 249, 297
closing books of business 167–8
commutation, reinsurance and share sales 168–9
portfolio transfers 170–184, 193–4
schemes of arrangement 184–94
Coalition government 415–16
conflict of laws 183, 373, 542, 590
choice of law: New York and English approaches see separate entry
contract terms: judicial approaches to interpretation 95
ambiguity doctrine (contra proferentem) 105
temporal reading 101
extrinsic evidence 101
meaning of terms 99, 100
objective and subjective 97
precedent 103
reasonable expectations doctrine 112
restriction, principle of 104
transparency rule 114
definition of insurance 35, 36, 37–41, 54, 55
disclosure duty 56, 57–8, 92, 125–6
consequences of non-disclosure 74–5
contours of 62–71
inducement 64–7, 69, 92
limits of 71–4
materiality of facts known to insured 67–71
misrepresentation 56, 65–6, 75–7, 78, 84, 92
moral hazard 67–70
nature of 60–61
physical hazard 70–71
reform 59–60, 83–90, 91, 358
s. 18(2): influence 63–4
e-commerce 574–5, 581, 587–8
jurisdiction 590
FRAG 35/94: timing risk 567
fraud 14–17, 126
good faith (*uberrimae fidei*) 366, 386

disclosure duty 57–8, 63, 74, 77, 83–4, 125–6, 159, 357, 358, 381

post-contract 126

reinsurance 159

historical overview 9, 10, 33

Lloyd’s 9, 34, 253, 260, 428–9, 456–62, 477

regulation see history of regulation in UK

insurable interest 17–18, 30

late payment 13

Law Commissions 18, 41, 59–60, 79, 80, 82, 84–7, 88, 89, 92, 358, 698

Lloyd’s see separate entry

regulation 34, 121, 240–241, 249, 440, 635

advice and relationships of trust 369

advice and suitability 376–7

anti-discrimination rules 14, 383–4

applicable law 373

application of COB rules 361–2, 363, 385

authorisation in UK of members of Lloyd’s 429–38

claims management and complaints 381–2

classification of products 370–372

client money and assets 369–70, 412–13

communications with clients 367, 368

Competition Commission 380

conduct of business regulation: UK regime plus US, German and Hong Kong approaches see separate entry

conflicts of interest 368, 378

cooling off periods 377

Financial Conduct Authority (FCA) 275, 358, 415, 430, 456

financial promotion rules 372

FSA see Financial Services Authority

FSO see Financial Ombudsman Service

high level principles 364–5, 366–7, 368, 369–70, 387

history of see separate entry

information about firm 375

legal effect of COB rules 385–6

long-term insurance contracts 378

mandatory rules 379, 380

Pool Re 237

product information 373–4

Prudential Regulation Authority (PRA) 275, 358, 415, 430, 456

solvency see under solvency/prudential regulation

treating customers fairly 366–7, 386

with-profits policies 378–9, 382

reinsurance 147, 148, 165–6, 262, 363

claims conditions 158–62

finality, economic 169

finite 567

implication of terms 149–50

information rights 162–5

proof of loss 150–155

scope of coverage 155–8

solicitors 363

takaful insurance 528, 542

terrorist acts 545

warranties 57


UNCITRAL 572, 573–4, 577, 578

United States 282, 297, 301, 647, 700

adverse selection 26, 27

Alabama 58, 131, 394

anti-trust 34

automobile insurance 32, 222, 669

bad faith tort see separate entry

California 13, 58, 243, 247, 394, 661

bad faith tort 126, 127, 128, 129, 130, 139

definition of insurance 41

earthquake insurance 24, 548, 551

judicial interpretation 102, 108, 110, 111

large deductible policies 565

captive insurance 557–62

choice of law 597–9

New York see choice of law: New York and English approaches

conditions precedent 159, 161

Connecticut 140, 212, 222, 236, 394, 670

contract terms: judicial approaches to interpretation 94–5

ambiguity doctrine (*contra proferentem*) 105, 106, 107, 108, 359

extrinsic evidence 101–2, 107

meaning of terms 100–101

objective and subjective 98

parties’ intentions 98, 107

reasonable expectations doctrine 109–13, 359

restriction, principle of 104

unexpected terms 116

credit default swaps (CDSs) 555–6, 557

deductibles 24, 563–5

definition of insurance 41–4, 54–5

disclosure duty 56–7, 58, 74, 92, 126

e-commerce 572–3, 575–6, 579, 580–581

copyright 587

data protection and information security 583–4, 585–6

jurisdiction 588–90

fiduciary relationship 61

Financial Accounting Standards Board (FASB) 567

Florida 243, 322, 394, 395, 443, 576, 598, 671, 672

windstorm coverage 549, 551
Index 815

takaful insurance 528
taxation 557, 558–60, 561
terrorist acts 546
Terrorism Risk Insurance Act 2002 226, 236, 546–8, 659
Texas 102, 152, 207, 322, 394, 669
Vermont 395, 561, 656
Virgin Islands 441, 443

vending machines 110
Virgin Islands 441, 443
voidable contracts 785
misrepresentation 75–7, 82, 89, 113, 687, 784, 785
non-disclosure 74–5, 78, 82, 84, 87, 90, 92, 685, 687

waivers 112, 690, 726–7
disclosure duty 728
Australia 81–2
United Kingdom 72–3, 83
portfolio transfers 180
war, risks of 24
warranties 13, 74, 147, 160, 688, 726–7, 736, 789
basis clauses and 57, 75, 687
disclosure of breach of 15
industry loss (ILWs) 554
product 249–50, 763
Williston 106, 108
with-profits bonds or pensions 372, 378–9, 382
Financial Stability Board 298, 300
G20 297
IAIS standards 303