



**COUNTRY
COMPARATIVE
GUIDES 2021**

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Israel

INSURANCE & REINSURANCE

Contributing firm

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This country-specific Q&A provides an overview of insurance & reinsurance laws and regulations applicable in Israel.

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ISRAEL INSURANCE & REINSURANCE



1. How is the writing of insurance contracts regulated in your jurisdiction?

According to the Insurance Contract Law, 1981 (hereinafter: **The Insurance Law**), an insurance contract can be made only in writing. The Insurance Law incorporates many regulations and stipulations concerning the drafting of an insurance contract, ie: policy.

The Insurer shall provide the Insured with the insurance policy, specifying the rights and obligations of the parties. For so long as the policy has not been delivered to the Insured, the conditions customary with an Insurer in the class of insurance concerned, as submitted to the Commissioner of Insurance under section 40 of the Supervision of Financial Services (Insurance) Law-1981 (hereinafter: **The Supervision Law**), shall be regarded as agreed between the parties unless a deviation from those conditions has been agreed upon between them in writing.

For example, any condition or exclusion which limits the Insurer's liability shall be specified in the policy close to the subject to which it relates or be indicated therein with special prominence. The Insurer is not entitled to rely on a condition or exclusion in respect of which this provision is not complied with. In addition, where the contract refers to an answer given by the Insured to Insurer's question, a copy of such answer shall be attached to the policy.

There are several types of insurance, in which a new insurance contract or an amendment of an existing contract is subject to the approval of the Commissioner of Insurance Business.

2. Are types of insurers regulated differently (i.e. life companies, reinsurers?)

In general, the Insurance Law and the Supervision Law apply to all types of Insurers and insurance policies, with the exception of maritime insurance. However, there are types of insurance contracts, such as motor vehicle

insurance, or life insurance, that are governed also by specific laws, regulations and instructions issued by the Commissioner.

For example, insurers are obliged to operate a separate accounting system for life insurance business, and accordingly to have separate reinsurance agreements for reinsurance of life insurance business. The insurers' rights under such reinsurance agreement should first be used to fulfill its obligations under the life insurance policies, and only if money is left after fulfilling these obligations, it can be used to for other purposes.

3. Are insurance brokers and other types of market intermediary subject to regulation?

The Insurance Law and the Supervision Law include provisions, which regulate the standpoint of insurance agent, his duties and obligations. An insurance agent is defined as the person who carries out the business of insurance brokerage between the insurer and insured. An insurance agent must be licensed.

Unless a specific written request is made by the insured, the insurance agent shall be regarded as the agent of the insurer, for the purposes of negotiations for the conclusion of an insurance contract and for the purposes of the conclusion of the contract.

In addition, for the purposes of the duty of disclosure at the conclusion of the insurance contract, the insurance agent's knowledge of the true facts concerning a material point shall be regarded as the Insurers' knowledge thereof. For the purposes of the receipt of the insurance premium, the insurance agent who acted as broker or is indicated in the policy as the insurance agent shall be regarded as the agent of the Insurer, unless the Insurer has notified the insured in writing that the premium shall not be paid to that agent.

For the purposes of notice by the Insured or the beneficiary to the Insurer, the Insurance agent who acted as broker or is indicated in the policy as the Insurance agent shall be regarded as the agent of the

Insurer unless the Insurer has notified the Insured and the beneficiary, in writing, that notices shall be sent to another address.

There are no specific regulations concerning those insurance consultants who are not agents or brokers.

4. Is authorisation or a licence required and if so how long does it take on average to obtain such permission? What are the key criteria for authorisation?

The Supervision Law requires an insurance agent to obtain a license. An insurance agent must be an Israeli resident, must pass examinations and complete an internship. Regulations require an internship for a period of six months for each separate insurance field. A corporation can obtain an insurance agency license, if all of its members are licensed agents.

An insurance agent's request for a license can be denied if he was convicted of a felony that according to its essence, severity or circumstances will be regarded by the Commission as a felony that deems the agent as unfit. The Supervision Law also precludes an agent to be insolvent, legally incompetent, investment consultant or pension consultant.

5. Are there restrictions or controls over who owns or controls insurers (including restrictions on foreign ownership)?

According to the Supervision Law, an entity cannot control an insurance company or agency without a permit issued by the Commissioner. Before granting such permit, that can include different stipulations and conditions, the Commissioner can take into consideration a wide variety of factors, including the financial means and business background of the entities requesting the permits, their business plan, and the suitability of their senior managers. In addition, the Commissioner can take into consideration public policy factors, including government financial policy and market competition. The Commissioner is also bound to prevent potential conflict of interest, as well as issues of money laundering, including the transparency of information about the potential investor.

Moreover, according to the Supervision Law, the control of more than 5 per cent of any type of means of control of an insurer is conditioned upon receiving a permit from the Commissioner of Insurance.

There is no restriction regarding foreign investors,

however the identity of the investor will be taken into account before granting such permit, and such request will be subject to the same considerations as stated above.

6. Is it possible to insure or reinsure risks in your jurisdiction without a licence or authorisation? (i.e. on a non-admitted basis)?

The Supervision Law prohibits any insurer from engaging in insurance business (including solicitation, negotiating or issuing policies and handling claims) in Israel without a license. An insurer can only practice those insurance fields stated in its license. The Commissioner of Insurance, at his discretion, can grant a company an Israeli insurer license, or a foreign-insurer license for a corporation which practices insurance and is subject to the supervision of foreign country.

However, the law does not include any prohibition against an Israeli insured to approach on its own a foreign non-admitted insurer for purchasing an insurance policy outside Israel, nor is there any restriction that forbids a non-admitted insurer to insure a local venture or asset or risk, and in fact, many Israeli businesses are insured with non-registered insurers directly or through a fronting insurance policy issued by a local insurer.

Nonetheless, in 2017 the Israeli Supreme Court ruled that a foreign non-registered insurer does not have the right to submit a subrogation claim in Israel.

7. Is a branch of an overseas insurer, insurance broker and/or other types of market intermediary in your jurisdiction subject to a similar regulatory framework as a locally incorporated entity?

Yes. A foreign insurer or insurance agent/broker is subject to the same regulations and provisions as stated above.

8. What penalty is available for those who operate in your jurisdiction without appropriate permission?

The penalty for engaging in insurance business without a license can be 3 years of imprisonment or a substantial fine. The fine differs between insurers, insurance agencies and agents.

9. How rigorous is the supervisory and enforcement environment? What are the key areas of its focus?

The Commissioner of Insurance in Israel is very active and the supervision over entities operating in the insurance field (including insurers, insurance agencies, agents and consultants) is rigorous. Staff on his behalf perform reviews and non-coordinated inspections of insurance companies and agents. The staff investigate all entities and if necessary is authorized to impose substantial financial sanctions and revoke licenses.

The Commissioner issues different circulars and notices on a weekly basis. Over a thousand circulars and notices had been issued over the years that concern a wide variety of issues. The majority of them deal with pension and provident funds and institutional bodies. Such circulars have been given by the Israeli Supreme Court a legislative status. Such is the case, for example, regarding a well-known circular that requires an insurers to specify in writing all of its allegations and reasons when denying coverage, otherwise the insurer is generally not allowed to raise further allegations in a later stage.

10. How is the solvency of insurers (and reinsurers where relevant) supervised?

The Supervision Law grants the Commissioner of Insurance in Israel wide supervision powers in order to ensure that insurers meet their obligations and maintain proper management and stability. To do so the Commissioner can issue circulars that address issues on a broad spectrum or can issue specific notices to different insurers, such as with regard to loss reserves, loans, investments, etc.

Moreover, the Supervision on Financial Services (Insurance) (Minimum Capital Required of Insurer) – 1998 Regulations specify the minimum capital required by insurers in order to minimize the risk of insolvency.

The Commissioner supervises each insurer's adherence to the capital requirements. If an insurer does not meet the required capital requirements or conducts its business in an improper manner, the Commissioner, after consulting with an advisory committee, can instruct the insurer to abstain from certain actions, deny it from distributing dividends or order it to decrease its level of operation.

The Supervision Law also enables the Commissioner to appoint a manager and/or supervisor for an insurer when there is a substantial risk for insolvency.

11. What are the minimum capital requirements?

Currently, the minimum nominal capital for new insurers is NIS 40 million for handling general insurance, NIS 35 million for life insurance, and NIS 60 million for handling both.

12. Is there a policyholder protection scheme in your jurisdiction?

There is no protection scheme for a policyholder when an insurer becomes insolvent, as opposed to other jurisdictions such as UK. Nevertheless, the Supervision Law Regulations which deal with such issues give priority to debts towards insureds over other debtors. The only exception being persons who suffer bodily injury due to a road accident and who are entitled to compensation. In this case, a special Fund will compensate them if an insurer becomes insolvent.

13. How are groups supervised if at all?

Many circulars issued by the Commissioner of the Insurance protect the interests of group insureds. The majority of them concern life and health insurances. Such group insurances policies, terms and prices are subject to strict supervision. For example, each health maintenance organization (HMO) in Israel contracts with different insurers in order to offer their insureds Long-Term Care Group Insurances, and a circular issued by the Commissioner protects the interests of group insureds if they decide to switch HMO in order to ensure insurance continuity.

The Supervision of Financial Services (Insurance) (Health Group Insurance)-2009 regulations concerns health group insurances, and among others determines certain obligations on both group insured and insurers. For example, a group insurer must provide the policy wording to each member of the group.

14. Do senior managers have to meet fit and proper requirements and/or be approved?

According to the Supervision Law, senior managers must be pre-approved by the Commissioner of the Insurance, who can object to such appointment after hearing arguments. The Commissioner will take into consideration the manager's previous experience, his integrity and connections, of any kind, with the insurer and other senior officials.

The Supervision Law and the Supervision Law Regulations (the Board of Directors and its Committees)-2007 also contain many provisions and requirements concerning Israeli insurers' directors.

The Commissioner can object within 60 days to any director or officer appointment before the appointment takes effect.

The said Regulations address the requirements of the Board of Directors in Insurance Companies. Each director must be a person who fulfills at least one of the following:

- holds an academic degree in one of the following: insurance, law, economy, accountancy, statistics, business management, actuary, international auditing or any other field approved by the Commissioner;
- is qualified to serve as an actuary or risk manager in an insurance company;
- has relevant managerial experience or operated as an accountant, pension adviser, investment adviser, portfolio manager or an insurance broker for at least three years; or
- possesses such education and experience that the Commissioner deems as relevant even if he or she does not fulfill any of the above terms.

The Regulations prohibit the appointment of a director if:

- his or her other business activities do not leave sufficient time to fulfill the duties of a director;
- he or she is an employee of the insurer;
- he or she serves as a director or officer of another institutional body, unless the Commissioner confirms that no conflict of interest exists; or
- he or she has been convicted of a criminal felony as described in the regulations.

Moreover, at least one-third of the board members must be external directors, and at least half of the external directors must have proven expertise in the insurance field or three years' experience as a CEO, or have held another senior officer's position in a financial institution. In addition, at least half of the external directors must have expertise in accounting and finance.

15. To what extent might senior managers be held personally liable for regulatory

breaches in your jurisdiction?

Senior managers can be held personally liable for their actions. However, one must demonstrate specific cause and actions done personally by the manager, rather than the company's actions.

16. Are there minimum presence requirements in order to undertake insurance activities in your jurisdiction (and obtain and maintain relevant licences and authorisations)?

As stated above, according to the Supervision Law, an admitted insurer or an agent must operate fully in Israel, whereas foreign insurers operate via fronting admitted local fronting insurers. The Supervision Law and the Supervision Law Regulations concerning Israeli insurers' senior managers and directors does not apply to foreign insurers.

17. Are there restrictions on outsourcing services relating to the business?

After several drafts, in June 2018 the Commissioner of Insurance issued a circular concerning "Outsourcing in Institutional Entities" which applies also to insurers. All Insurers' activities can be outsourced, subject to the said circular. Commonly used outsourcing activities include operations matters, data-base systems and customer services. However, such outsourcing does not release the insurers' liability for the tasks outsourced.

In essence, the said circular stipulates what considerations such institutional entity should take into account before outsourcing and in order to inspect the outsourcing vendor. The board of directors must review and confirm what the activities that should be outsourced are. The Board needs to review the risks deriving from outsourcing activities and will approve any outsourcing of substantial activity as well as its outsourcing policy. Also, control measures need to be established in order to review outsourced activities.

18. Are there restrictions on the types of assets which insurers or reinsurers can invest in or capital requirements which may influence the type of investments held?

Since 2017 Israel upholds the EU Directive "Solvency II". According to the directive, insurers and re-insurers are free to invest in any kind of asset they wish and they do

not require any pre-approval to do so. However, the directive addresses the issue in order to ensure proper and safe investment policy. For example, the investment portfolio must comprise assets in respect of which the risks thereof can be identified, measured and monitored. In practice, most of the Israeli insurers' nostro accounts consist of bonds.

19. How are sales of insurance supervised or controlled?

Insurance Policies sales are subject to all of the restrictions specified under the Insurance Law and regulations, such as the requirement to sell an insurance contract in writing, when all terms must be provided to the insured, all policies must be sold directly to the insured or via a licensed agent, etc.

Moreover, the Commissioner of Insurance closely supervises the market and from time to time issues certain circulars that specify different requirements, for instance, in order to ensure fair rates to insureds or to avoid misrepresentation of the policy terms.

20. To what extent is it possible to actively market the sale of insurance into your jurisdiction on a cross border basis and are there specific or additional rules pertaining to distance selling or online sales of insurance?

The Supervision Law prohibits any insurer from engaging in insurance business in Israel without a license and foreign insurers must be admitted. Nevertheless, insureds are free to insure their own self-risks and liability by using Captive Insurance overseas. Usually Israeli insureds will purchase re-insurers policies via fronting admitted local fronting insurers.

21. Are consumer policies subject to restrictions? If so briefly describe the range of protections offered to consumer policyholders

The Insurance Law favors consumers and Consumer Policies are subject to many restrictions in order to offer protections for policyholders, that ranges from certain information that insurer must provide to its insureds, to different restrictions so that insurers will handle claims in a just manner. For example:

- An insurance contract must be made in writing and all terms must be provided to the

insured. Any condition or exclusion which limit the Insurer's liability must be in the policy close to the subject to which it relates or be indicated therein with special prominence.

The Insurer is not entitled to rely on a condition or exclusion in respect of which this provision is not complied with. In addition, where the contract refers to an answer given by the Insured to Insurer's question, a copy of such answer shall be attached to the policy.

- The proposal form must be attached to the policy and sent to the Insured and questions included in it must be explicated. Failing to do so will prevent the Insurer from relying on such form.
- Even if a policy holder did not provide the insurer a complete and honest answer during the process of issuing the policy, or essential information that could impact the exposure to the insurer during the insurance period, the insurer is not allowed to deny coverage, but rather only pay relatively reduced insurance benefits (unless the insurer proves that the insured had intent of fraud, or that any reasonable insurer was not willing to issue such policy if it was aware of the true facts).
- Once an insured notifies the insurer of an occurrence, the insurer is required to specify in its response when the period of limitation ends, and inform that limitation does not stop merely when a claim is brought to the insurer.

Many of the provisions in the Insurance Law are mandatory and are not subject to the parties' consent.

In certain types of insurances, such as Household (Property), Travel or Motor Vehicle Insurances, the terms of the Policy is dictated by the Regulator.

In addition, many of the circulars issued by the Commissioner of Insurance are intended to ensure consumer policyholders' rights, such as the circular that requires an insurer to specify in writing all of its allegations and reasons when denying coverage, otherwise the insurer is generally not allowed to raise further allegations in a later stage.

22. Are the courts adept at handling complex commercial claims?

Yes. In general, specific experienced judges are nominated for handling complex commercial claims. In 2010 a specific commercial division in the Tel-Aviv District Court was established which consists of permanent judges who deals solely with commercial

claims. Due to its success, in 2018 a similar division was established in the Haifa District Court.

23. Is alternative dispute resolution well established in your jurisdictions?

Alternative dispute resolution, including mediation and arbitration, is well established in Israel and has been a common practice for many years.

Furthermore, for over a decade the regulator made it mandatory in certain cases, such as in family law cases and financial disputes (over a certain value), for the parties to meet once, free of charge, with a Court-appointed mediator, soon after all parties submitted their pleadings, in order to examine their willingness for mediation. Data shows that this process gained much success over the years in reaching mediation settlements.

24. Is there a statutory transfer mechanism available for sales or transfers of books of (re)insurance? If so briefly describe the process.

In Israel there is a Court-based mechanism, with input from the commissioner of insurance, in order to approve an Insurance Portfolio Transfer (hereinafter: **"ITP"**). There are no specific provisions dealing with ITP. Both the transfer of insurance business and reinsurance business are subject to the general legal provisions and principles under Israeli contract law. The Court has broad discretion while examining ITP and will ensure that no objection will be raised by the relevant regulators, primarily by the commissioner of insurance and in certain cases the anti-trust regulator. Essentially the Court and the commissioner will ensure that the transferee is licensed, that its financial condition is sufficient, and that the transaction is not to the detriment of the insureds.

25. What are the primary challenges to new market entrants?

There are about 12 well-known insurers in Israel, but the market is generally and traditionally dominated by the largest in the field, and the naturally competition is intense. Furthermore, due to high-level regulation insurers must possess substantial financial stability and conduct proper management to comply with such regulation. However, recently new types of insurers joined the insurance market with new alleged consumer-value strategy, as well as new digital insurers.

26. To what extent is the market being challenged by digital innovation?

The regulator and the Commissioner of Insurance fully and explicitly support the digitization process in the insurance field. For this purpose, several new companies, mainly digitally innovative based, has emerged in the market and increased competition in the field. For example, one, who is digitally based, offers its' customers "tailor-made" insurance success. In addition, several High Tech companies are constantly developing various products in order to implement them in insurance companies.

27. How is the digitization of insurance sales and/or claims handling treated in your jurisdiction, for example is the regulator in support (are there concessions to rules being made) or are there additional requirements that need to be met?

A circular issued by the Commissioner of Insurance dated 8.6.2016, under the Supervision of Financial Services (Insurance) Law-1981, enables insures to offer information and deliver relevant documents to insurance candidates via E-mail or Cellular, and also once the policy is issued in order to send the Schedule and the terms of the Policy. Another circular issued by the Commissioner of Insurance dated 8.12.2005 enables insures to deliver periodic reports, signed by electric signature, to insureds.

As far as claims handling, recently the Civil Procedure Regulations-1984 undertook major reform and were replaced by the Civil Procedure Regulations-2018. The said regulations, inter alia, emphasize the need for the Courts to adapt to the digital world. The new regulations address common practices that were yet legislated, such as the recognition that legal documents can be formally delivered to parties via email. The regulations also enable submitting statements or evidence by way of media, etc.

28. To what extent is insurers' use of customer data subject to rules or regulation?

The Privacy Protection Law-1981 (hereinafter: **"The Privacy Protection Law"**) and its regulations contain many requirements applicable to entities which possess customer data base, such as insurance companies. The Privacy Protection Law prohibit the use of personal data

other than for its legal and declared purpose and require that such data base must be licensed.

The Privacy Protection (Information Security) - 2018 regulations stipulate all the requirements in order to protect such data base, including the requirement to appoint a data protection officer. The law enables the use of services of an outside vendor to that affect. Regulation 5 of the said regulations requires a risk assessment to be carried out in order to ensure data security, and other provisions require actions to ensure secure access to data, monitor user activity, manage privileged employees, reduce third-party risks, encrypt data, ensure proper documentations when safety incidents occur, conduct periodic inspections, and etc. Regulation 20 of the said regulations stipulates that in order to uphold the requirement under the law, the company must follow information security guidelines in an official Israeli Standard or foreign Standards or other security guidelines that will be accepted by the appointed regulator.

For example, it is common practice in Israel for insurers to use a "Safe" system, which is a secure network that enables to send and receive data between authorized parties, including agents, attorneys and vendors.

29. To what extent are there additional restrictions or requirements on sharing customer data overseas/on a cross-border basis?

As stated above, according to the Supervision Law, no

person can function as an agent or broker to foreign entities or in any way deal in such matters, without a proper license to do so, and in such case all other regulations and restrictions applies.

Sharing customer data overseas is subject to all of the aforementioned Privacy Protection Law, regulations and circulars issued by the regulator, which essentially requires entities such as insurers to ensure that sensitive information will be protected and also be processed and handled in a certain location.

30. Over the next five years what type of business do you see taking a market lead?

We expect to see the market continue its digitization process and developing direct marketing channels to insureds, agents etc, including effective comparison between proposed rates.

Due to Covid-19 we assume that many developments and adjustments to the market will gradually take place. For example, we expect LOP Insurance Policies will have to produce solutions and also life and health insurances will also be bound to take actions with this regard.

We expect to see the market continues to introduce new technological ideas for the insurance products. For example, in the past years some insurance companies are offering Motor Vehicle Insurance that varies the premium on a mileage basis.

We can also expect more participants in the Cyber Insurance market, due to increased risks in that area.

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