

Insurance regulation in Asia Pacific 2024



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Acknowledgements

The chapters on Australia, China, Hong Kong, Indonesia, Singapore and Thailand have been provided by Norton Rose Fulbright.

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Preface

We are pleased to present the 2024, and the eleventh edition of Insurance regulation in Asia Pacific – Ten things to know about 19 countries. Thank you to our clients, contacts and regulators for your continued support and contribution.

The purpose of this guide is to provide an overview and practical checklist of ten common regulatory issues for insurance companies upon which we frequently are asked to advise for the key Asia Pacific jurisdictions where most of our clients operate or into which they are interested in expanding. It identifies the regulator and whether branches of foreign insurance companies are permitted or only locally incorporated companies. Any restriction on foreign direct investment is highlighted along with the controller regimes (shareholders and management) and whether a notification or approval from the regulator is required upon proposed or actual change of control and the thresholds thereof. Also addressed is the nature of the regulatory capital regime, whether there is group supervision and policyholder protection, and whether outsourcing is subject to regulatory oversight. We aim for this guide to be a useful first stop for generic advice on the topics covered.

The information is up to date as at January 1, 2024. It is not a substitute for considered legal advice.

If you would like further information on any of the matters covered here, please do get in touch with me or the relevant contributor.



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Australia

Contributed by: Norton Rose Fulbright

01 The regulator

The Australian Prudential Regulation Authority (APRA) is the prudential regulator, and the Australian Securities and Investments Commission (ASIC) is the consumer protection regulator, for the insurance industry.

General (including health insurers) and life insurers and reinsurers carrying on business in Australia must be authorised by, or registered with, APRA.

Insurers, insurance brokers, agents and other distributors must hold an Australian financial services licence (AFSL) issued by ASIC, be appointed as a representative of a licensee or rely on an exemption from the licensing requirements. Claims administrators also need to comply with these requirements.

A reinsurer may operate from abroad without registering with APRA or holding an AFSL.

02 Subsidiary/branch

A foreign life insurer may establish a locally incorporated subsidiary to carry on life insurance business in Australia. Alternatively, a registered life insurer in the United States, New Zealand, Japan, Korea and China may seek to operate in Australia through a branch as an Eligible Foreign Life Insurance Company (EFLIC).

A foreign general insurer may establish a locally incorporated subsidiary to carry on insurance business in Australia (foreign-owned subsidiary) or it may establish a branch (branch of foreign insurer).

EFLIC, foreign-owned subsidiaries and branches of foreign insurers are subject to the same APRA requirements as Australian insurers but have different governance requirements.

03 FDI restrictions

Generally, approval of the Foreign Investment Review Board must be obtained prior to any foreign person acquiring a direct or indirect interest of 20 per cent or more in an Australian company through the acquisition of shares or assets in the Australian company or any offshore parent of that company.

04 Change of control approvals

In addition to the foreign direct investment restrictions, an entity that holds an AFSL must notify ASIC of any change in control within ten business days after the change occurs. "Control" includes having more than 50 per cent of the votes or shares in the entity or having the capacity to appoint its directors or determine its financial operating policies.

05 Minimum capital

The APRA prescribed minimum capital amounts for insurers are –

Life insurer	A\$10m
General insurer	A\$5m (A\$2m for captives)

A\$1.47 = US\$1.00 as at January 1, 2024.

There are no minimum capital requirements for insurance brokers, agents and financial advisers.

06 Risk-based capital – insurers

An insurer must have capital in excess of its Prudential Capital Requirement (PCR).

The PCR is the prescribed capital amount plus any supervisory adjustments made by APRA in respect of each insurer.

The prescribed capital amount can be calculated using either APRA's "Standard Method" or an internal model approved by APRA. The Standard Method calculates the capital amount based on insurance risk, asset risk, asset concentration risk and operational risk.

Life insurers additionally have a separate solvency requirement. Under the solvency requirements, a life insurer's statutory fund must have a capital base that exceeds 90 per cent of the fund's prescribed capital amount.

07 Group supervision

APRA has the power to authorise (in the case of a general insurer) or register (in the case of a life insurer) an Australian incorporated non-operating holding company (NOHC) which owns at least one Australian authorised/registered insurer.

An "insurance group" exists if an Australian insurer has controlled entities or is itself the subsidiary of an authorised/registered NOHC. This

provides APRA with some level of control over the group that the insurer or NOHC manages.

Most of APRA's powers that apply to an insurer, also apply to a NOHC. APRA can impose directions on the insurer or NOHC to take specified actions in relation to their subsidiaries.

APRA has supervisory powers over Australian established non-APRA-regulated institutions that are part of a conglomerate group carrying on insurance business in Australia. APRA has direct oversight of all such entities within those groups in the areas of group governance, risk management and aggregate risk exposures. This means that APRA has direct oversight of all of the Australian subsidiaries of an insurer or NOHC.

08 Policyholder protection

Life insurer

Life insurers are required to maintain statutory funds, which act as a mechanism for quarantining the life insurance business of the company from any other business of the company.

General insurer

APRA administers the Financial Claims Scheme (FCS), which makes payments to certain policyholders with valid claims on an insolvent general insurer. The Australian Government funds the payments made under the scheme and then seeks recovery from the general insurer in the winding up process. Any shortfall may be recovered through a levy on the general insurance sector.

09 Portfolio transfers

Court approval

The transfer of life or general insurance business within Australia must be carried out by a scheme confirmed by the Federal Court of Australia.

The insurer must provide a copy of the scheme to APRA and ASIC and an approved summary of the scheme to each affected policy owner. A notice of intention to make the application must also be published in the Federal Government Gazette and advertised in the one or more newspapers approved by APRA.

APRA approval

Alternatively, two registered life insurers may apply to APRA for approval of a transfer of business between them under the Financial Sector (Transfer and Restructure) Act 1999 (Cth).

10 Outsourcing

If an insurer outsources any material business activity, it must implement a written policy, approved by its board of directors, to monitor and manage the outsourcing arrangement. A "material business activity" is one that may, if disrupted, have a significant impact on the insurer's business operations or its ability to manage risks effectively. Generally, material outsourcing arrangements must be documented in a legally binding agreement, which must include terms relating to the services to be provided, fees, liability, as well as review and audit procedures. Outsourcing to offshore service providers may be permitted after consultation with APRA.

All business activities that are outsourced, including those that are not a "material business activity", need to comply with APRA's data security and reporting obligations.

From 1 July 2025, these requirements will be extended to all of an insurer's material service providers following APRA's release of Prudential Standard CPS 230 (Operational Risk Management).

Cambodia

Contributed by: ANANT Law Firm

01 The regulator

The Insurance Regulator of Cambodia (“IRC”), which is a division of the Non-Banking Financial Services Authority (“NBFSA”), is the insurance regulator in Cambodia.

Anyone carrying out insurance activities (undefined) in Cambodia is subject to the Law on Insurance, promulgated on August 4, 2014, replacing that of July 25, 2000 and the Sub-Decree on Insurance adopted on December 30, 2021, replacing that of October 22, 2001.

Insurers, Micro-insurers, Insurance Intermediaries (Insurance brokers and Insurance agents), actuaries and loss adjusters, Insurance Claim Management Company must be licensed by the IRC.

Only insurance companies licensed in Cambodia may underwrite insurance business in Cambodia, with very few exceptions to this principle.

A reinsurer may operate in Cambodia from abroad without a licence.

02 Subsidiary/branch

An insurance company shall be registered as a Public Limited Company. A foreign insurer may not carry on business in Cambodia without establishing a locally incorporated company meeting this requirement, however a branch of a foreign insurer is permitted through a licensing procedure from the IRC.

An insurance intermediary shall be registered as a Private Limited Company, public or private.

03 FDI restrictions

Nil – local insurance companies may be 100 per cent owned by foreign investors.

04 Change of control approvals

Both changes below or higher than fifty per cent of the shareholding of an insurance company must be requested for the approval from the IRC prior to the event. As the IRC may withdraw or not renew a licence if the licence requirements are not met, it is prudent to obtain prior approval to any change of control taking effect. In practice, such approval is required whatever modifications of the status.

Management individuals are subject to agreement from the IRC based on their diploma and experience.

05 Minimum capital

Life or General Insurance company	SDR5m*
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Composite Insurance company	SDR10m*
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Micro-insurance company (life or non-life)	KHR600m
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Insurance Broker	KHR***400m
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Insurance Agent	KHR***80m
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Loss Adjustor	KHR***80m
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Actuarial Company	KHR***80m
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Insurance Claim Management Company	KHR***200m
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SDR 0.75 = US\$1.00, and
KHR 4083.46 = US\$1.00
as at January 1, 2024.

06 Risk-based capital

Insurance companies and intermediaries shall maintain a deposit to the IRC’s bank account, also known as INSURANCE BUSINESS DEPOSIT.

Insurance Company: 10 per cent of registered capital;

Micro-Insurance Company: US\$50,000;

Insurance Broker: US\$50,000;

Insurance Agent, Loss Adjustor, Actuary, Claim Management Company: US\$10,000

A new *prakas* (ministerial order) on solvency margin requirements for insurance companies was adopted on 14 December 2022.

Solvency margin of the insurance company is a ratio of the company’s net assets and required solvency. The insurance company must maintain its solvency margin at no less than 120% during the business operations.

In case the company’s quarterly or annual solvency margin is less than

120% but above or equal to 100%, the insurance company shall prepare a solvency margin recovery plan with the approval from the company's board of directors and submit to the IRC for approval within 30 days after the submission of quarterly or annual report.

In case the company's quarterly or annual solvency margin is less than 100%, the insurance company must replenish the solvency margin immediately and shall be subject to the following disciplinary sanctions:

- Cease to issue new insurance policies;
- Withhold approval for any new business activities or other sales and purchases;
- Cease other activities of the insurance company;
- Restrict the disposal of company assets;
- Transfer all or parts of the unexpired insurance policies of the insurance company;
- Terminate the appointment of the general manager or chief executive officer of the insurance company;
- Appoint a temporary director to restore the company;
- Revoke the company's insurance license and liquidate the company.

Insurance brokers must maintain Professional liability insurance: US\$500,000. Upon the renewal of Professional Liability Insurance certificate, it is also required to notify to the IRC within three days.

07 Group supervision

None.

08 Policyholder protection

Apart from the solvency margin requirement and the mandatory deposit, there is no protection fund for policyholders (that is the purpose of the deposit).

On liquidation of a life insurance company there is no priority for policyholders, however there is statutory provision for the policies and the reserve fund to be transferred to another life insurance company. This provision has never been used, so no details of its practical application are available.

The Law on Insurance provides for a priority of repayment of debt in case of liquidation of a non-life insurance company. The priority of repayment of debt is determined as follows:

- Remuneration and other expenses related to the provisional governance and the liquidation.
- Claim for the insurance indemnity.
- Claim by the insurance policy holder.
- Salary of employee and worker, administrative fees, court fees and other taxes of the court proceeding.
- Secured claim.
- Tax duty of the state without deposit of the notification.
- Recognised unsecured claim.

09 Portfolio transfers

A Cambodian insurance company may apply to the IRC for approval to transfer all or part of its insurance business to another Cambodian

insurance company. The transfer is effected by agreement between the transferor and the transferee, once the IRC, the Ministry of Commerce, and the General Department of Taxation have given their approvals.

10 Outsourcing

There is no restriction for outsourcing activities that are not subject to licensing. Any company/insurer may need to outsource part of their activity and may require others to provide services. For instance, an insurance company may use:

- Lawyers to assess their right facing the payment of a claim.
- A service provider to design its marketing tools.
- An HR firm to recruit insurance sellers (employees).
- An advertisement company, media and websites to disseminate their advertisement and information to the public.
- An IT company to design the data and claim processing tools, etc.

However, claims investigation, assessment and quantification must be undertaken by duly registered loss adjusters (of which there are currently only two in Cambodia) and insurance claim management companies (none registered yet, to our knowledge).

China

Contributed by: Norton Rose Fulbright

01 The regulator

The National Administration of Financial Regulation (NAFR)¹ regulates insurance companies and intermediaries, including agents, brokers, loss adjusters and their business operations.

02 Subsidiary/branch

Life and non-life insurer subsidiaries and branches are permitted. Licences are issued on a “province by province” basis.

03 FDI restrictions

No restrictions on foreign shareholding².

However, an insurer with a 25 per cent or more foreign investment is “foreign funded” and different administrative regulations apply to those that apply to locally funded insurers. For example, the foreign investor must have total assets in the latest financial year prior to the application, i.e.:

- in the case of a foreign insurer or insurance group company³, no less than US\$5bln; or

- in the case of other foreign financial institution, no less than US\$2bln,

for either a greenfield investment or an acquisition in an existing insurance company.

04 Control approvals

5 per cent or more – prior approval of NAFR required.

Less than 5 per cent – filing with NAFR required.

In practice, NAFR will require prior approval of any change of foreign shareholder(s) of a foreign funded insurer notwithstanding the above statutory thresholds.

Directors, supervisors and senior management personnel must be approved by NAFR as “fit and proper”.

05 Minimum capital

Insurer (life)

Nationwide

RMB200m for any one of the following three basic businesses: (i) life and annuity insurance, (ii) health insurance and (iii) accident injury insurance, and an extra RMB200m for

adding one more of the basic business above.

RMB1bln for carrying on all three basic businesses above, plus one category of the following two additional basic businesses: (i) participating insurance and (ii) universal life insurance.

RMB1.5bln for carrying out all five basic businesses above.

Branches

Additional RMB20m for any single branch outside the province where the insurer is registered and maximum RMB500m for multiple branches.

Insurer (non-life)

Nationwide

RMB200m for applying one of the following basic businesses: (i) motor insurance (including mandatory and commercial), (ii) enterprise/household property insurance and engineering insurance (excluding special risk insurance), (iii) liability insurance, (iv) marine hull/ cargo insurance and (v) short term health/accident injury insurance, and an additional RMB200m for adding one more of the basic business above.

¹ The China Banking and Insurance Regulatory Commission (CBIRC) was superseded by the National Administration of Financial Regulation (NAFR) in May 2023. NAFR is positioned to regulate all financial institutions and their businesses, except for those regulated by the China Securities Regulatory Commission (CSRC).

² China officially lifted the foreign shareholding restriction on the life insurance companies from January 1, 2021 and thus the maximum foreign shareholding in a life insurance company in China can be up to 100%.

³ According to the Amended Implementation Rules of the Administration Regulations on Foreign-invested Insurance Companies

becoming effective from March 10, 2021, the sole foreign shareholder or the major foreign shareholder of a foreign funded insurer shall be a foreign insurer or a foreign insurance group company.

Branches

Additional RMB20m for any single branch outside the province where the insurer is registered and a maximum of RMB500m for multiple branches.

NAFR may also impose higher capital requirements from time to time on specific types of insurance products.

Carrying on extended life businesses (such as unit-linked insurance and variable annuity insurance) or extended non-life businesses (such as agricultural insurance, special risk insurance, credit warranty insurance and investment linked insurance) will subject insurers to higher qualification requirements such as having engaged in requisite basic business, average net asset value requirement, etc.

CNY 7.09 = US\$1.00 as at January 1, 2024.

06 Risk-based capital

China's Solvency II type regime has been fully implemented since 2016 and includes a three-pillar structure. One of the three pillars is the requirement of capital quantification, which obliges an insurer to identify and quantify categories of risks (such as insurance risks, market risks, credit risks, reputation risks, etc.) and support such risks with a comparable amount of capital. The regime keeps developing – a phase II update on the Solvency II type regime commenced from late 2017 and officially completed by the end of 2021 at the time when the *Solvency Regulatory Rules II* was issued. On September 10, 2023, NAFR further issued the *Notice on Optimizing the Solvency Supervision Standards of Insurance Companies* to optimize the supervision standards.

07 Group supervision

A group requires two or more controlled insurance companies

approved by NAFR and which constitutes all member companies. New Regulations supervising insurance group companies (implemented from November 24, 2021) apply equally to locally funded and foreign invested insurance group companies.

08 Policyholder protection

Policyholder protection is funded by industry levies. The latest amended rules regulating the policyholder protection fund were issued on October 26, 2022.

In the event of insolvency or the revocation of licence of a non-life insurer whose assets are insufficient to pay benefits, a non-life policyholder protection fund covers 100 per cent of policy interest (including the insurance premiums entitled to be returned, cash value and/or entitled insurance compensations) up to RMB50,000 and thereafter, 90 per cent of policy interest for individual policyholders and 80 per cent for corporate policyholders.

In the event of insolvency or revocation of licence of a life insurer, policies are required to be transferred to a new insurer and the policyholder protection fund will make up the shortfall in supporting assets to 90 per cent of individual policyholder liabilities and 80 per cent of corporate policyholder liabilities.

09 Portfolio transfers

Consents from both NAFR and individual policyholders are required for a voluntary portfolio transfer between contracting insurers. If a policyholder objects or fails to consent, NAFR cannot compel the transfer of a policy.

Notwithstanding the above, in the event of insolvency or revocation of licence of a life insurer, NAFR can compel a portfolio transfer without policyholder consent.

10 Outsourcing

There is no unified law on outsourcing applicable to insurance operations. Individual laws address individual areas. For example, there is an express prohibition on outsourcing the management of the security of information systems. Non-core back-office functions may be outsourced to qualified outsource providers (e.g., call centres, customer service and book-keeping). Measures on risk control of insurers' IT outsourcing were introduced on December 30, 2021, which provide regulatory guidelines on various aspects of IT outsourcing.

In principle, the insurer must establish internal policies to effectively manage its outsourcing activities and shall prudently select service providers having regard to their qualification, financial status, and internal management system, etc. Subject to NAFR's requirements on various outsourcing activities, the outsourcing insurer may also need to submit a report of the outsourcing activities to NAFR within 20 working days before the execution of the outsourcing agreement.

Hong Kong

Contributed by: Norton Rose Fulbright

01 The regulator

The Insurance Authority (IA), which is an independent statutory body, administers the Insurance Ordinance (Cap. 41) (Ordinance) which has provisions governing the regulation of insurers and insurance intermediaries (agents and brokers) in Hong Kong. Insurance agents act as agents for authorized insurers and insurance brokers act as agents for policyholders.

Under the Ordinance, the IA now has regulatory and supervision powers in relation to the insurance industry (including over 115,000 insurance intermediaries) and the promotion of the general stability of the insurance industry and for the protection of existing and potential policy holders.

The statutory regulatory regime for insurance intermediaries came into effect in September 2019 to replace the previous self-regulatory regime. The IA has issued a number of rules, codes and guidelines to outline the professional standards expected of insurance intermediaries.

02 Subsidiary/branch

Both Hong Kong incorporated entities (including subsidiaries of foreign insurers) and branches of foreign insurers are permitted to conduct insurance business in or from Hong Kong if they satisfy the relevant requirements and are granted a licence by the IA.

A foreign insurer wishing to open a branch is required to satisfy the IA that it: (a) is a company incorporated in a country where there is comprehensive company law and insurance law; (b) is

an insurer under effective supervision by the relevant authority(ies) of its home country; and (c) is a well-established insurer with international experience and of undoubted financial standing.

03 FDI restrictions

None.

04 Change of control approvals

Approval by the IA must be obtained prior to any change to persons who are entitled to exercise or control the exercise of 15 per cent or more of the shareholding or voting power of an insurer.

The managing director, chief executive, shareholder controllers (as described above), directors, key persons in control functions of the insurer, an appointed actuary in respect of insurers conducting long term business and administrator(s) and directors of a special purpose insurer must be pre-approved by the IA as “fit and proper” prior to as “fit and proper” prior to their appointment.

Both insurance agents and insurance brokers will need the confirmation of the IA before confirming the appointment of its responsible officer. Under the Ordinance, the IA has power to reject or impose conditions it considers appropriate on the approval. In cases where the IA considers the responsible officer is no longer “fit and proper”, it may also revoke the approval previously given.

Additionally, approval by the IA must also be obtained prior to any change

to shareholder controllers of the designated insurance holding company (DIHC), who are also subject to ongoing fitness and proprietary requirements as described above.

Under Section 64Q of the Ordinance an authorized insurer, a licensed agency, or a licensed insurance broker company should notify the IA at least 14 days before the appointment of an agent or a broker to carry on regulated activities in one or more lines of business.

On July 6, 2023, the Legislative Council passed the Insurance (Amendment) Ordinance 2023 (Amendment Ordinance) which introduces a distinction between minority shareholder controllers (entitled to exercise or control the exercise of 15 per cent or more but less than 50 per cent of the shareholding or voting power of an insurer) and majority shareholder controllers (entitled to exercise or control the exercise of 50 per cent or more of the shareholding or voting power of an insurer). Under the current framework, once a shareholder controller is approved by the IA, no further approval is required, regardless of whether or not the shareholder controller subsequently becomes a majority shareholder controller. Under the Amendment Ordinance, if a minority shareholder controller is proposed to become a majority shareholder controller, further IA approval will be required. The Amendment Ordinance is expected to become effective in the second half of 2024.

05 Minimum capital

- Composite insurers and insurers writing statutory classes (e.g., third-party motor and employee compensation) – HK\$20m.
- Captive insurers – HK\$2m.
- General and life insurers – HK\$10m.

HKD\$7.81 = US\$1.00 as at January 1, 2024.

Branches of overseas insurers have no capital deposit requirement, but, if carrying on general business, must maintain assets in Hong Kong equal to 80 per cent of net liabilities and the applicable solvency margin.

06 Risk-based capital

The Amendment Ordinance provides the legal framework for the implementation of a risk-based capital regime in Hong Kong (replacing the existing rules-based capital regime). The new regime will impose capital requirements on authorized insurers which are commensurate with the risks they bear, in line with core principles of the International Association of Insurance Supervisors (IAIS). The regime adopts a three-pillar approach covering:

1. quantitative requirements, such as capital adequacy and valuation assessments;
2. qualitative aspects, such as corporate governance and risk management; and
3. disclosure requirements.

Pillar 2 (qualitative aspects) has already been implemented pursuant to the IA's Guideline on Enterprise Risk Management (GL21) which took effect on January 1, 2020. This imposes a requirement for insurers to

submit to the IA an annual Own Risk and Solvency Assessment report.

Pillars 1 and 3 are targeted to be effective in the second half of 2024. Until then, an insurer must continue to maintain an excess of assets over liabilities of not less than a required solvency margin:

General – the greater of

- 20 per cent of relevant premium income up to HK\$200m plus 10 per cent of the amount by which the relevant premium income exceeds HK\$200m; or
- 20 per cent of relevant outstanding claims up to HK\$200m plus 10 per cent of the amount by which the relevant outstanding claims exceed HK\$200m.

Subject to a minimum of HK\$10m (HK\$20m for certain statutory classes).

Life – the greater of

- HK\$2m; or
- Generally, 4 per cent of mathematical reserves plus 0.3 per cent of capital at risk.

The Amendment Ordinance also provides for the designation of an authorized insurer outside Hong Kong that carries on a majority of its insurance business in Hong Kong, so that requirements imposed on such insurer are aligned with those imposed on an authorized insurer incorporated in Hong Kong.

The new supervisory framework for multinational insurance groups (see Q7), the Insurance (Group Capital) Rules (Cap.410) also prescribe group capital adequacy requirements, supervisory reporting and public disclosures following the three-pillar approach.

07 Group supervision

The IA has expressed an interest in being part of a transitional regime for third country equivalence under Solvency II, which requires group supervision, with a view to establishing Hong Kong as a preferred base for large insurance groups in Asia Pacific.

The new supervisory framework for multinational insurance groups became effective on March 29, 2021. The IA, as the group supervisor appointed to regulate and supervise insurance groups, has direct regulatory powers over the DIHCs to conduct more effective group-wide supervision (GWS). The IA has designated three insurance holding companies to be subject to the GWS by the IA in May 2021.

The IA issued the Guideline on Group Supervision (GL32) which sets out the principles and standards for DIHCs on areas including enterprise risk management, corporate governance, capital requirements and public disclosure.

08 Policyholder protection

There is currently no compensation scheme for life insurance policies and certain types of general insurance policies. However, there are two funds to protect the interests of policyholders or claimants of certain statutory general business in the event of insurer insolvency: (a) the Insolvency Fund operated by the Motor Insurers' Bureau of Hong Kong is available to meet bodily injuries or death claims arising from motor accidents; and (b) the Employees Compensation Insurer Insolvency Scheme operated by the Employees Compensation Insurer Insolvency Bureau is available to meet employees' compensation claims.

However, policyholders have priority in the distribution of an insurer's assets in the event of its insolvency.

On December 30, 2022, the Financial Services and the Treasury Bureau published a consultation paper on 'Establishing a Policy Holders' Protection Scheme' which aims to strengthen safeguards for the interest of policyholders by providing compensation or securing the continuity of insurance contracts in case an insurer becomes insolvent. The paper sets out three options for the compensation limit under the proposed scheme.

09 Portfolio transfers

All or part of portfolios of life business must be transferred under a court-sanctioned scheme of transfer. The transferor or transferee insurer may apply to court to approve a scheme for the transfer, which also involves engagement with the IA. The IA, policyholders and interested parties may object to the proposed transfer but the court ultimately has discretion to approve the scheme.

General business portfolios may be transferred contractually or alternatively under the statutory provisions with approval by the IA upon application of the transferor. Policyholders and other interested parties may object to the transfer, but the IA has ultimate discretion to approve the scheme.

Notification by Gazette/newspaper advertisement is required as a minimum.

10 Outsourcing

Outsourcing by insurers is generally permitted, subject to compliance with IA guidance (GL14) which applies to all outsourcing arrangements of authorised insurers incorporated or based in Hong Kong and for the Hong

Kong operations of overseas insurers. An authorised insurer must notify the IA at least three months before entering into, or significantly varying, any material outsourcing arrangement. Essential issues to consider when outsourcing (regardless of materiality) include having a documented, board-approved outsourcing policy in place, conducting a risk and materiality assessment and entering into a written agreement with the service provider. The IA must be satisfied that all essential issues have been properly addressed. Within 30 days of entering into a material outsourcing arrangement, further details must be submitted to the IA together with a copy of the outsourcing agreement.

The group supervision framework permits the supervised group and its members to enter into outsourcing arrangements, but all material outsourcing arrangements of its supervised group must comply with the principles in the outsourcing module in GL32. A DIHC should consult the IA for any proposed material group outsourcing arrangements of its supervised group, including any significant variation of the implemented arrangements. The IA may provide comments on the outsourcing arrangement, which the DIHC should take into account in the implementation or variation of the outsourcing arrangement.

India

Contributed by: Cyril Amarchand Mangaldas

01 The Regulator

The Insurance Regulatory and Development Authority of India (IRDAI) which is constituted under the Insurance Regulatory and Development Authority Act 1999, and which derives its powers from the Insurance Act, 1938 (as amended) (Insurance Act) regulates entities which carry on insurance business and intermediary business (such as brokers, corporate agents, insurance surveyors, loss assessors, agents, web aggregators and third-party administrators) in or from India. The IRDAI is responsible for regulating, promoting and ensuring orderly growth of the insurance sector in India and to protect the interests of policyholders. Additionally, the Department of Financial Services, Ministry of Finance, Government of India (DFS) also has the power to amend the provisions of the Insurance Act and the rules and regulations framed thereunder.

02 Subsidiary/branch

Performance of any commercial activity in the insurance sector requires the establishment of a duly licensed local entity. A local insurer must be a public company or a co-operative society or a statutory body established under an Act of Parliament. A foreign company is permitted to undertake reinsurance business in India by establishing a branch in India.

The IRDAI had also issued the IRDAI (Lloyd's India) Regulations, 2016 (Lloyd's Regulations) to facilitate Lloyd's of London to operate in the Indian market. Pursuant to the Lloyd's Regulations, Lloyd's was permitted to

establish a branch office in India to facilitate a market and associated structures for conduct of reinsurance business both within and outside India.

In terms of the Lloyd's Regulations, members of Lloyd's formed collectively as syndicates can delegate their authority to service companies located in India. Such service companies would need to be granted a certificate of registration by IRDAI. IRDAI also specifies net owned fund, solvency margin, credit rating and other conditions for Lloyd's India and its syndicate members (for setting up service companies).

The International Financial Service Centres Authority (IFSCA) has been constituted to regulate and develop India's first International Financial Service Centre (IFSC). The IFSC is being developed as a global financial and information technology services hub on the lines of globally benchmarked financial centres. The IFSCA has notified the IFSCA (Registration of Insurance Business) Regulations, 2021 to put in place the process of registration and operations of insurer and re-insurer in an IFSC. The IFSCA has also notified the IFSCA (Insurance Intermediary Regulations, 2021 on October 18, 2021).

03 Registration of Indian Insurance Companies

The IRDAI has notified the IRDAI (Registration of Indian Insurance Companies) Regulations, 2022 (Registration Regulations) which consolidate various prescriptions

relating to registration of Indian insurance companies and the transfer of shares of such entities. Previously, such prescriptions were dispersed across multiple regulations, circulars, and guidelines such as the IRDAI (Listed Indian Insurance Companies) Guidelines, 2016, and the IRDAI (Investment by PE Funds in Indian Insurance Companies) Guidelines, 2017. With the Registration Regulations coming into effect, not only has the regulatory regime undergone an overhaul but there have also been various measures to liberalise the industry and increase ease of doing business.

One of the key features of the Registration Regulations is the ease of regulatory regime for private equity participants. The previous regime only permitted private equity participants to invest in an insurer through a Special Purpose Vehicle (SPV). The Registration Regulations has removed the mandatory SPV requirement for a private equity fund to invest in an insurer. The promoter threshold has been raised from the erstwhile 10% of the paid-up capital of an insurer to 25% of the insurer's paid-up capital and consequently, the investor threshold has increased from "up to 10%" of the insurer's paid-up capital to "up to 24.99%" of the insurer's paid-up capital.

Further, under the Registration Regulations the minimum collective promoter holding has been set at 50% of the paid-up share capital of an insurer, which can be further reduced to 26% in case of a listed insurer having a satisfactory solvency record for the preceding five years. pattern among insurance companies.

The Registration Regulations also allows for multiple investments in a single class of insurance business. An investor holding 10-25% of equity capital can invest in two insurers of each class of insurance business and has the right to nominate director(s) on the board of such insurers and an investor holding less than 10% of the share capital has no cap on the number of investments in the same class of insurance business.

04 FDI Restrictions

The FDI in insurance companies is capped at 74 percent of the paid-up equity share capital of insurance companies and 100 per cent of equity share capital of insurance sector intermediaries. Such foreign investment is under the automatic route i.e., without the prior approval of the concerned department of the Government of India. However, the investment is subject to approval of the IRDAI.

All insurance companies having foreign investment are required to ensure that (i) a majority of its directors; (ii) a majority of its key management persons; (iii) at least one among the chairperson of its board of directors/managing director/chief executive officer are resident Indian citizens. Similarly, all insurance intermediaries with majority foreign investment are required to, inter alia (i) take prior permission of the IRDAI for repatriating dividend; (ii) not make payments to the foreign group or promoter or subsidiary or interconnected or associate entities, beyond what is necessary or permitted by the IRDAI; and (iii) ensure that the composition of the board of directors and key management persons is as specified by the concerned regulators.

05 Control approvals

Section 6A(4)(b) of the Insurance Act prescribes the requirement of

obtaining prior approval of the IRDAI for:

- any acquisition of 5 per cent or more of the paid-up share capital of an insurance company by a transferee; and
- any transfer of 1 per cent or more of the paid-up share capital of an insurance company by any individual, firm, group, constituents of a group, or body corporate under the same management, either jointly or severally.

Further, the Registration Regulations also laid down specific provisions that have to be complied with for a transfer of shares in a listed insurance company:

- In case of a transfer of 1% - 5% of the paid-up equity capital of a listed insurance company, the transferor has to immediately intimate the IRDAI, upon the execution of the transfer.
- Prior approval of the IRDAI required for any transferor acquisition of more than 5% of the paid-up equity capital or any acquisition that takes the aggregate holding of such person to 5% or more of the listed insurance company by a transferor or the acquirer respectively.

06 Minimum capital

Minimum requirements-	paid-up capital
Insurer	INR1bln
Reinsurer	INR2bln
Direct broker	INR7.5m

Reinsurance broker	INR40m
Composite broker	INR50m
INR 83.27 = US\$1.00 as at January 1, 2024.	

A foreign company carrying on reinsurance business through a branch in India is required to have net owned funds of INR 500m. However, a foreign company engaged in the reinsurance business through a branch established in an IFSC in the SEZ is required to have net owned funds of not less than INR 100m.

Equity shares having a single face value and other forms of capital as may be specified by regulations are allowed. However, voting rights of shareholders are restricted to equity shares only.

07 Risk-based capital

Every insurer and re-insurer shall at all times maintain an excess of value of assets over liabilities of not less than 50 per cent of the amount of minimum capital that such insurer or re-insurer is required to bring.

Available Solvency Margin (ASM) i.e., excess of the value of assets over the value of insurance liabilities and other liabilities of policyholders' funds and shareholders' funds, shall not be less than the higher of (a) 50 per cent of the amount of minimum capital prescribed under the Insurance Act and (b) 100 per cent of the Required Solvency Margin (RSM). An insurer is required to maintain a control solvency margin as stipulated by the IRDAI, which currently is a solvency ratio of 150%. In this regard, the Insurance Act prescribes that if at any time the insurer is not able to maintain the required control level of solvency margin, without prejudice to taking any other action as deemed fit by the IRDAI, the IRDAI may require such

insurer to submit a financial scheme indicating a plan of action to correct the deficiency within a specified period not exceeding six months.

Indian insurers are permitted to place reinsurance business with cross border reinsurers (CBRs) not having a physical presence in India and doing reinsurance business with Indian insurance companies, who comply with the eligibility criteria specified by IRDAI, which are, inter alia, maintenance of solvency margin/capital adequacy as stipulated by the home regulator of the CBR.

08 Policyholder protection

The IRDAI (Protection of Policyholders' Interests) Regulations, 2017 (Policyholders' Regulations) provides for protection of the interest of the policyholders. Pursuant to the Policyholders' Regulations, every insurer is required to have in place a board approved policy for protection of policyholders' interests which shall prescribe certain minimum parameters and procedures as mentioned in the Policyholders' Regulations.

The Guidelines for Corporate Governance for Insurers in India dated May 18, 2016 require each insurer to, inter alia, form a Policyholder Protection Committee except reinsurance companies and branches of foreign reinsurers in India.

The committee is responsible for addressing the various compliance issues relating to protection of the interests of policyholders and keeping the policyholders well informed of, and educated about, insurance products and complaint- handling procedures. The committee directly reports to the board of directors of the insurance companies.

09 Portfolio transfers

The insurance business of an insurer can be transferred to or amalgamated with the insurance business of any other insurer in accordance with a scheme submitted to, and approved in principle, by the IRDAI. The IRDAI is also accorded with the power to prepare a scheme of arrangement for amalgamation of one insurer with another insurer (referred to as transferee insurer under section 37A of the Insurance Act). Such scheme cannot be prepared without the consent of the transferee insurer (thus only an existing insurer can provide such a consent and not a proposed new entity). Additionally, the provisions under section 37A of the Insurance Act rule out the possibility of mandatory creation of a new entity for the purpose of amalgamation and reflects that one entity can be an existing transferor insurer and the other insurer can be an existing transferee insurer.

10 Outsourcing of activities

The Guidelines on Outsourcing of Activities by Insurance Companies dated February 1, 2011, has been superseded by IRDAI (Outsourcing of Activities by Indian Insurers) Regulations, 2017 (Outsourcing Regulations) which applies to all insurers registered with IRDAI excluding those engaged in reinsurance business. If an insurer is engaged in both direct insurance as well as reinsurance business, these regulations are applicable only in respect of direct insurance business of such insurers.

An insurer is prohibited from outsourcing the following activities in any manner whatsoever:

- Investment and related functions.

- Fund Management including NAV calculations.
- Compliance with AML and KYC.
- Product designing, all actuarial functions and enterprise- wide risk management.
- Decision making in Underwriting and Claims functions, excluding procedural activities related to payment of Survival Benefit claims in Life Insurance.
- Decision to appoint Insurance Agents, Surveyors and Loss Assessors.
- Approving advertisements.
- Policyholders Grievances Redressal.

The board of directors of the insurer shall put in place an outsourcing policy governing the framework for inter alia (i) assessment of risks in outsourcing, (ii) parameters for determining materiality, cost benefit analysis of each of the outsourced activities, and (iii) conflict management policy that ensures adherence to the provisions on related party transactions as envisaged in the Companies Act, 2013.

The board of directors of the insurer shall constitute an outsourcing committee comprising of key management persons of the insurer, and shall at the minimum include the Chief Risk Officer, Chief Financial Officer and Chief of Operations. The regulations also provide the responsibilities of the outsourcing committee.

The outsourcing contracts shall have in place certain clauses or conditions listed below, as may be applicable:

- Information and asset ownership rights, information technology,

data security and protection of confidential information.

- Guarantee or indemnity from the outsourcing service provider.
- Contingency planning of the outsourcing service provider.
- Express clause that the contract shall neither prevent nor impede Insurer from meeting its respective regulatory obligations, nor the regulator from exercising its regulatory powers of conducting inspection, investigation, obtaining information from either the insurer or the outsourcing service provider.
- Termination clause specifying orderly handing over of data, assets, etc.

The insurer is required to ensure that the outsourcing service provider shall not sub-contract the whole or a substantial portion of any of the outsourced activity.

Insurers shall report to the IRDAI all the outsourcing arrangements where annual pay-out either per outsourcing service provider or per activity is INR 10m or more, every year within 45 days from the close of the financial year.

Miscellaneous

IRDAI Information and Cyber Security Guidelines, 2023.

In order to prevent misuse of data and increase security against cyber-attacks, the IRDAI on April 24, 2023, issued the new Information and Cyber Security Guidelines 2023 (Cybersecurity Guidelines) for ensuring the security of all insurers' information assets through implementation of up-to-date security mechanisms and their governance of information security related activities.

The Cybersecurity Guidelines require every organisation to have a board-approved information and cybersecurity policy (IS policy) as well as other related policies/guidelines/plans. The Cybersecurity Guidelines also provide for organisations to set standards for the storage, transfer, movement tracking, labelling and deletion requirements for each data risk category.

IRDAI (Expenses of Management of Insurers transacting General or Health Insurance business) Regulations, 2023 and the (Expenses of Management of Insurers transacting Life Insurance Business) Regulations, 2023 (collectively, "EOM Regulations")

The EOM Regulations, prescribe the limit and scope of the expenses of the management in insurance business, i.e., all operating expenses including commission/brokerage payable to intermediaries. The EOM Regulations prescribe that insurers carrying on general insurance business in India shall incur expenses of management up to 30% of gross premium written in India in a financial year while insurers carrying on standalone health insurance business in India shall incur expenses of management up to 35% of gross premium written in India in a financial year. The insurers are required to formulate a business plan in advance on an annual basis, which shall be approved by the respective board of directors.

The EOM Regulations allow the IRDAI to grant forbearance to an insurer up to 5 years and if an insurer has actual expenses of management more than the allowable expenses of management for the financial year 2022-23, the IRDAI after taking into account the business model of the insurer and subject to the confirmation by its board that it shall bring its actual expenses within the allowable limits,

within a period of 3 years i.e., by financial year 2025-26.

IRDAI (Payment of Commission) Regulations, 2023

These regulations prescribe the mode, manner and limits for payment of commission to insurance agents and insurance intermediaries. Every insurer is required to adopt a board approved policy with respect to payment of commission or remuneration or reward to insurance agents and insurance intermediaries. These regulations specify that the total amount of commission payable under general insurance products, including health insurance products offered by general insurers, health insurance products offered by standalone health insurers and life insurance products offered by life insurers shall not exceed the expenses of management limits specified under EOM Regulations as amended from time to time.

Insurance Regulatory and Development Authority of India Circular on Use & file (U&F) procedure for life insurance products & riders dated June 20, 2023 (Use and File Circular)

The IRDAI had previously permitted life insurers to introduce new products in the market and subsequently, file the particulars of the product with the IRDAI. The Use and File Circular was applicable in the cases of only individual non-linked pure term products, individual non-linked term products with return of premium, individual non-linked health products, individual unit-linked products which are offered with the existing approved funds only, group non-linked term insurance products, group non-Linked superannuation product, group non-linked gratuity product, group non-linked gratuity product, group post-retirement medical product, group non-linked credit life insurance products, group non-linked health

products and all riders for individual & group business.

Now, this list has been expanded to include group unit-linked insurance products, individual unit linked insurance products which are offered with new funds and combi products in which the life insurer acts as the lead.

Insurance Regulatory and Development Authority of India (Bima Vahak) Guidelines, 2023 (Bima Vahak Guidelines)

The main objective of Bima Vahak Guidelines is to establish women centric dedicated distribution channel that is focused on enhancing insurance inclusion and creating awareness in every village/gram panchayat, and thus, improving accessibility and availability of insurance in every nook and corner of the country.

Under the Bima Vahak Guidelines, “Bima Vahak” is an individual or a legal person engaged for soliciting insurance. In this regard, every insurer is required to have a board approved policy in respect of matters related to ‘Bima Vahaks’ which are required to be deployed in each Gram Panchayat before December 31, 2024.

IRDAI has also announced its plans to launch ‘Bima Sugam’ by July, 2024 which is an online platform where customers can choose a suitable scheme from multiple options given by various insurance companies. All insurance requirements, including those for life, health, and general insurance (including motor and travel) will be met by Bima Sugam. This platform will help in the settlement of claims in a paperless manner on the basis of policy numbers. The proposed platform is expected to help customers identify the right scheme from a maze of hundreds of products and services, with reduced paperwork.

Proposed IRDAI Reforms

The IRDAI is working on reforms that will lead to the objective of “insurance for all” by 2047, a vision plan to increase insurance penetration and facilitating sustainable growth of the industry. These reforms, among others, include promoting ease of doing business by encouraging new insurance players, allowing niche players in insurance, relaxing renewal norms for intermediaries, product certification by insurers, time-bound approvals, administrative flexibility, fast-track approvals for investment proposals, change in minimum capital requirement for insurers, shift to a risk based solvency regime, establishment of ‘captive’ insurance companies and ‘composite’ insurance companies, enabling provisions in the insurance regulatory framework to allow insurance companies to have subsidiaries or strategic investments and provide value added services, facilitating InsurTech and distribution agility.

A Regulations Review Committee (RRC) was set up by General Insurance Council and Life Insurance Council on September 6, 2022 at the instance of the IRDAI to review various regulations governing the insurance sector. The RRC has been working towards a liberalised and a simplified insurance regulatory regime. The proposed reforms are still under discussion and various working groups represented by industry officials have been constituted to suggest the changes in the existing regulatory framework and the compliance requirements.

Indonesia

Contributed by: TNB & Partners, in association with Norton Rose Fulbright Australia

01 The regulator

The Financial Services Authority (Otoritas Jasa Keuangan “OJK”) supervises all financial institutions. Law No. 40 of 2014 on Insurance which was enacted on October 17, 2014 is the principal legislation relating to insurance business (Insurance Law) some provisions of which have been amended by Law No 4 of 2023 on The Financial Sector Strengthening Program effective on 12 January 2023 (**Financial Sector Omnibus Law**).

02 Subsidiary/branch

Branches of foreign insurers are not permitted. Only an Indonesian incorporated legal entity can apply for a licence to engage in business as an insurer.

03 FDI restrictions

A foreign insurance company (or, as the case may be, any of its shareholders) engaged in similar insurance activities to those of the proposed company in Indonesia may hold up to 80 per cent of its shares at establishment.

Government Regulation No. 14 of 2018 which has been amended through Government Regulation no. 3 of 2020 provides a grandfathering clause for an insurance company exceeding the current 80 per cent limit of foreign ownership at the time of the enactment of this regulation.

04 Control approvals

Any transfer of shares in an insurance company requires approval from the OJK.

All key parties must pass the OJK “fit and proper” test before being appointed or acquiring shares. Key parties include controlling shareholders, controllers, members of the Board of Directors, Board of Commissioners, Sharia Supervisory Board, the Internal Auditor and the Company’s Actuaries.

A controlling shareholder is a shareholder (a legal entity, a person and/or a group of businesses that holds either 25 per cent or more interest in the company, or less than 25 per cent but can be proven to have control over the company, either directly or indirectly. A “controller” is a party which directly or indirectly has power to nominate members of the Board of Directors and the Board of Commissioners and/or can influence the decisions of the Board of Directors and the Board of Commissioners (including a controlling shareholder, a shareholder which is determined by the company to be a controller, and/ or a non-shareholder which is determined by OJK to be a “controller”). An insurance company must have at least one controlling shareholder determined by the general meeting of shareholders, who will require approval for ceasing to be a controller from the OJK. A party (other than the Indonesian Government) may only be a controlling shareholder in one life insurance company, general insurance company, reinsurance company, sharia life insurance company, sharia general insurance company or sharia reinsurance company. Controlling shareholders have three years to comply with this requirement under the Insurance Law.

05 Minimum capital

OJK has set higher minimum paid-up capital requirements for an establishment of insurance company, as follows –

Insurer	IDR 150bln
Sharia Insurer	IDR 100bln
Reinsurer	IDR 300bln
Sharia reinsurer	IDR 175bln

IDR 15,479.35 = US\$1.00 as at January 1, 2024.

TNB Note: the above changes are based on OJK Regulation No. 67 of 2016 on the Business Licensing and Organization of Insurance Companies, Sharia Insurance Companies, Reinsurance Companies and Sharia Reinsurance Companies which was enacted in late December 2016.

06 Risk-based capital

Specific risk factors which must be taken into account include credit risk, liquidity risk, market risk, insurance risk and operational risk.

TNB Note: the above changes are based on OJK Regulation No. 71 of 2016 on the Financial Soundness of Insurance Companies and Reinsurance Companies which was enacted in late December 2016 as amended by OJK Regulation No 5 of 2023.

07 Group supervision

None.

08 Policyholder protection

To protect the interests of the insured, the government has recently introduced its policy assurance program (*program penjaminan polis*) as regulated under the newly issued Financial Sector Omnibus Law. The implementation of the policy assurance program will commence in 5 years after the effective date of the Financial Sector Omnibus Law (i.e., January 2028). Prior to the implementation of this policy assurance program, each insurance company is required to form its own providential fund with an amount of at least 20 per cent of the insurer's equity. The policy assurance program will be implemented under the auspices of the Indonesia Deposit Insurance Corporation (IDIC) (*Lembaga Penjamin Simpanan*). Insurance companies that meet certain financial capabilities must be enrolled as members of the program and must pay contributions which consist of (i) initial contribution; and (ii) annual contributions which are to be paid every 6 months. Even those the insurance companies which do not meet certain financial capabilities are still required to maintain the protection fund.

As at the date of this update, the government has yet to issue further criteria and requirements regarding the policy assurance program. The government will issue implementing regulations to set out these criteria and requirements within 2 years after the effective date of the Financial Sector Omnibus Law.

All insurance companies must also be a member of a mediation institution for resolving disputes between insurance companies and their policyholders.

The Insurance Law gives policyholders preferential rights in liquidation ahead of secured and

unsecured creditors, but behind preferred creditors (as well as tax liabilities and employee compensation).

OJK Regulation No. 6 of 2022 gives a policyholder the right to report a complaint to the OJK over a dispute between an insurance company and the policyholder and/or an alleged violation of the financial laws and regulations. Insurance companies must implement an annual customer and/or public education program to promote financial (insurance) literacy.

09 Portfolio transfers

The consent of the OJK is required. If the transfer involves all portfolios, the shareholders of the transferor must submit an application to OJK for the return of its insurance business licence after the transfer has been completed.

The policyholders must be informed of the transfer in writing. Announcements in national circulated newspapers must also be made by the transferor. Any policyholders may submit their objections to the transfer within one month from the announcement date. If there is any objection to the transfer, the transferor must return all entitlements of the policyholders and the insurance protection will cease.

A report to the OJK on the result of the transfer must be submitted by the transferor upon completion of the transfer.

10 Outsourcing

Except for underwriting, actuarial and claim settlement functions, insurance companies may outsource their functions to third party service providers which meet certain regulatory requirements (such as an Indonesian legal entity holding a valid business license which has no conflict

of interest with the insurance company outsourcing the functions).

Any outsourcing to foreign service providers is only allowed for limited functions, which include product research, information system and other services which cannot be provided by Indonesian service providers. An outsourcing to foreign service providers must also be reported to the OJK 14 days prior to the cooperation agreements with the providers being signed.

Japan

Contributed by: Nishimura & Asahi

01 The regulator

Under the Insurance Business Act (IBA) the Prime Minister of Japan has overarching authority as the insurance regulator. Except for certain important powers such as granting and cancelling insurance business licences, most powers have been delegated to the Commissioner of the Financial Services Agency of the Japanese Government (FSA) and to the directors of the Local Finance Bureau and the Local Finance Branch Bureau of the Ministry of Finance (collectively LFB).

Insurers and reinsurers must be licensed by the Prime Minister. There is a separate category of registration for entities that only carry-on small amount and short-term insurance business (SASTI).

Insurance brokers (Nakadachi-nin) must be registered.

Insurance agents must be registered and, for life insurance, every officer and employee of a corporate agent who individually acts as an agent must also be registered.

02 Subsidiary/branch

Japanese incorporated entities with a licence are Licensed Insurance Companies.

Branches of foreign insurers and reinsurers may also be licensed and are known as Licensed Foreign Insurers. Every Licensed Foreign Insurer must deposit at least ¥200m with the government office.

A Foreign Insurer without an insurance business licence in Japan is

prohibited from concluding insurance contracts regarding Japanese risks, except for certain types of insurance contracts, such as reinsurance contracts or insurance contracts that have been approved by the FSA.

03 FDI restrictions

None.

04 Control approvals

Prior authorisation (ninka) from the FSA is required to:

- Acquire 20 per cent or more (or 15 per cent or more together with substantial influence on financial and business policy decisions) of the voting rights of a Licensed Insurance Company (Major Shareholder Threshold) –

the ultimate controller as well as the direct controllers must apply.

- Become an “insurance holding company” (a company (i) of which more than 50 per cent of its total assets consists of Japanese subsidiaries’ shares and (ii) which holds the majority of voting rights in a Licensed Insurance Company).

The acquisition of 5 per cent or more of the voting rights in an insurer must be notified to the FSA.

05 Minimum capital

Licensed Insurance Companies	¥1bln capital
SASTI insurers	¥10m capital plus ¥10m (or more) deposit
Licensed Foreign Insurers	¥200m deposit
Insurance brokers	¥20m (or more) deposited
JPY¥142.37 = US\$1.00 as at January 1, 2024.	

06 Risk-based capital

The IBA provides for calculation of a solvency margin ratio.

Solvency margin ratio (per cent):	
Total amount of solvency margin	x100
Total amount of risk x ½	

The total amount of risk is calculated using different formulas for life and non-life insurance, taking into account potential volatility or deviations in claims, interest rates, asset valuations, credit risk, business risks, minimum guarantee risk and catastrophe risks.

A solvency margin of:

- 200 per cent or more: sound condition, no intervention by the FSA.

- Less than 200 per cent and no less than 100 per cent: the FSA will order the establishment and execution of an improvement plan.
- Less than 100 per cent and no less than 0 per cent: the FSA will order measures to improve capability to pay claims, e.g., suspension of dividends to shareholders and/ or policyholders, change of terms for new business, or prohibition on directors' bonuses.
- Less than 0 per cent: the FSA will order partial or total suspension of business for a period at its discretion.

The FSA plans to introduce an economic value-based solvency framework. After publishing and implementing the relevant regulations and notices, etc, in 2025, the FSA will require insurance companies calculate and report their economic value-based ratios from the fiscal year ending March 31, 2026.

07 Group supervision

From the fiscal year ending March 2012, a group solvency margin requirement applies to the group (the insurance holding company and its subsidiaries or the insurance company and its subsidiaries).

08 Policyholder protection

There are two policyholder protection corporations: Life Insurance Policyholders Protection Corporation of Japan and the Non-Life Insurance Policyholders Protection Corporation of Japan. There is no such corporation covering SASTI.

They will protect the policy reserves depending on the type of insurance.

Basically, up to 90 per cent (life insurance) or 80 per cent (non-life insurance) of the policy reserves will be protected.

In order to provide such protection, the corporations may:

- Provide funds to the insurer which will assume insurance contracts from the bankrupt insurer.
- Assume, directly or through a subsidiary, insurance contracts from the bankrupt insurer.
- Provide funds to the bankrupt insurer.
- Purchase rights to insurance claims from the policyholders of the bankrupt insurer.

The corporations are funded by industry levies.

09 Policyholder transfers

Permitted as a portfolio transfer. Insurance contracts can be transferred to another insurance company subject to certain conditions and procedures, including public notice, the absence of more than one-tenth (or one-fifth in the case of transfer of all insurance contracts) of the policyholders objecting and prior authorisation (ninka) from the FSA.

10 Outsourcing

Insurers may only in very limited circumstances (usually limited to insolvency) delegate discretionary powers with respect to their substantial business or administration of their assets with prior authorisation (ninka) from the FSA. Insurers may outsource “clerical functions” to a service provider without restriction. If the service provider is another insurer, the service provider must obtain prior

authorisation (ninka) from the FSA, provided that where the outsourcing insurer is an affiliate (as defined in the IBA) of the insurer providing the service, the insurer providing the service is required to file an ex-ante notification (todokede) to the FSA instead of obtaining prior authorisation.

Macau

Contributed by: MdME Lawyers

01 The regulator

Macau is officially known as the Special Administrative Region of the People's Republic of China (Macau SAR). The Macau SAR insurance regulator is the Monetary Authority of Macau, known by its Portuguese acronym "AMCM", which operates under the authority of Macau SAR's Chief Executive. The Insurance Supervision Department is AMCM's dedicated insurance unit.

Insurers and Reinsurers that intend to provide services in Macau on a regular basis must be previously licensed to do so and will be either life or non-life. Composite licences are not granted.

A company carrying on business as an insurance broker or insurance agent must be approved by AMCM and at least one individual must be appropriately qualified.

02 Subsidiary/branch

Both Macau incorporated entities (including subsidiaries of foreign insurers) and branches of foreign insurers are permitted.

A foreign insurer must be licensed and have been in operation for more than five years in its country or territory of origin, must have sound business and financial ability and have no record of material violation of laws and regulations in order to be permitted to establish a branch.

A foreign insurer will only be permitted to carry on in Macau, through its authorised branch, the class of insurance for which it is licensed and which it effectively operates in its jurisdiction.

03 FDI restrictions

There are no FDI restrictions, but residency requirements are imposed on the composition of the board and branch responsible officers.

04 Control approvals

Prior approval from AMCM is required to directly or indirectly acquire more than 10 per cent of the share capital or of the voting rights in a Macau incorporated insurance company.

Any subsequent and cumulative increase of more than 5 per cent must similarly be approved by AMCM. Voting rights held by nominees and related parties are aggregated for the purpose of assessing whether the limits have been reached.

05 Minimum capital

Minimum paid-up capital requirement –

Insurance companies (life)	MOP60m
Insurance companies (non-life)	MOP30m
Reinsurance companies (life)	MOP150m
Reinsurance companies (non-life)	MOP100m
50 per cent to be paid in at the time of incorporation/formation of the subsidiary/branch, the remaining to	

be paid in within 180 days from that date

Insurance broker companies	MOP25,000
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Insurance agent companies	MOP25,000
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MOP 8.06 = US\$1.00 as at January 1, 2024.

In order to be permitted to establish a branch, a foreign insurer/reinsurer must have a paid-up capital at least equal to the minimum capital requirement of a Macau incorporated insurance/reinsurance company and allocate to the branch an establishment fund in the amount of MOP15m (life) and MOP10m (non-life).

06 Risk-based capital

Non-life insurance companies must maintain a solvency ratio determined in accordance with the total amount of gross written premiums of the previous year, as follows –

Gross written premiums	Solvency ratio
= or < MOP40m	50% of the gross premium amount or at least MOP10m
> MOP40m	MOP20m plus 25% of the amount in excess of MOP40m of gross premiums

Life insurance companies must maintain a solvency ratio determined by a set of formulas that take into account the mathematical reserves of the main technical provisions and the risk-based capital, with the minimum requirement being MOP15m.

An insurance company solvency ratio must be composed by tangible unencumbered assets. AMCM publishes a list of assets which are excluded from incorporating the solvency ratio of authorised insurers.

Currently the control measures for failure to maintain the requisite solvency ratios are determined by AMCM as follows –

Solvency ratio	Regulatory control measures
More than 150%	Life insurance companies must proceed with periodic stress-tests related to their solvency capacity, to identify potential risks and respective consequences.
Between 100% and 150%	Life insurance companies are required to submit a financial recovery plan to AMCM and report the performance periodically.
Between 70% and 100%	AMCM will take necessary supervisory measures to guarantee the rights of the policy holders.

Less than 70%	AMCM will take necessary measures to interfere the operation of the life insurance companies.
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07 Group supervision

AMCM must carry out its supervision of Macau incorporated insurers and reinsurers in a consolidated manner with the respective subsidiaries in which they hold more than a 50% interest.

08 Policyholder protection

Two public funds have been set up to protect policyholders' rights: the Automobile and Recreational Boats Guarantee Fund (FGAM) and the Employment Credits Guarantee Fund (FGCL).

FGAM is a public organisation, financed by insurance companies, established to safeguard the interests of insured parties and beneficiaries of the mandatory motor vehicle and recreational boats insurances. FGAM may advance claims payments to beneficiaries in case an insurance company is declared bankrupted or in case the responsible party does not hold a valid policy at the time damage is caused.

FGCL is a public organisation mainly financed by the Macau Social Security Fund. FGCL guarantees employee's credits arising from employment related accidents in the event an employer has not purchased the relevant mandatory insurance. FGCL also guarantees several other credits arising from an employment relationship.

AMCM, the Macau Consumer Council and the World Trade Center Macau Arbitration Center (WTCMAC) have launched the "Mediation Scheme for Financial Disputes" which aims to provide more channels for dispute resolution in the area of financial consumption (including insurance).

When financial consumption disputes arise within the scope of the scheme, mediation services provided by the World Trade Center Macau Arbitration Center will be adopted as the first priority to resolve them.

09 Policyholder transfers

An insurance company and/or a branch of a foreign insurer may apply to AMCM for approval to transfer all or part of its insurance business to another Macau insurer or Macau branch of a foreign insurer. In practice, prior notice is often given to policyholders to give them the opportunity to object. The transfer of life insurance policies will not be authorized if 20 per cent or more of the policyholders object to such transfer.

10 Outsourcing

The outsourcing of business operations by an insurer is currently not expressly regulated. The existing regulatory practice is that AMCM reviews outsourcing requests on a case-by-case basis. The insurer is required to provide details of the types of activities to be outsourced, the party to whom the activities are to be outsourced, the control measures in place and the contingency plans and monitoring procedures to be set out.

Malaysia

Contributed by: Zaid Ibrahim & Co (in association with KPMG Law)

01 The regulator

Bank Negara Malaysia (BNM) regulates entities which carry on insurance business, insurance broking, adjusting and financial advisory. Insurers are licensed by the Minister of Finance (MOF) on the recommendation of BNM. Brokers and financial advisers must be approved by BNM, and adjusters must be registered with BNM.

02 Subsidiary/branch

Branches are not permitted. All licenced insurers (other than professional reinsurers) must be public companies incorporated in Malaysia under the Malaysian Companies Act 2016; adjusters must be incorporated, whereas BNM may specify the form of establishment of reinsurers, brokers and financial advisors.

BNM has issued new guidelines on the application procedure for new insurance and reinsurance licenses on December 27, 2019, such applications will be considered by BNM on a case-by-case basis. Prior consultation with BNM is encouraged.

03 FDI restrictions

There exists a 70 per cent limit on foreign equity ownership.

Greater than 70 per cent is considered on a case-by-case basis for players who can facilitate consolidation and rationalisation of the industry.

04 Control approvals

Prior written approval of BNM or the Minister of Finance (MOF) (on the

recommendation of BNM) (as the case may be) is required for a person to:

- Initially acquire an aggregate share interest of 5 per cent or greater in a licensed insurer.
- Subsequently hold an aggregate share interest in a licensed insurer equal to or exceeding each multiple of 5 per cent, or the trigger for a mandatory general offer (i.e., 33 per cent).
- Hold more than an aggregate of 50 per cent interest in share in a licensed insurer.
- Have “control” over a licensed insurer, regardless of shareholding level.
- Dispose of shares resulting in shareholding below 50 per cent or a change in “control”.

In addition, a company holding greater than 50 per cent interest in shares in a licensed insurer must be approved by BNM as a “financial holding company”.

For an approved insurance broker or financial adviser, ≥ 5 per cent shareholding requires notification to BNM and any change of control requires prior written approval of BNM.

05 Minimum capital

Minimum paid-up share capital –

Insurer	RM100m
Local reinsurer (life)	RM50m

Local reinsurer (non-life)	RM100m
Minimum surplus assets over liabilities	
Licensed foreign reinsurer	RM20m
MYR 4.63 = US\$1.00 at January 1, 2024.	

06 Risk-based capital

Risk-Based Capital Framework applies to all insurers, including reinsurers, licensed under the Financial Services Act 2013, for business generated within and (subject to limited exceptions) outside Malaysia. The Framework was first implemented with effect from January 1, 2009.

$$CAR = \frac{\text{Total Capital Available}}{\text{Total Capital Required}} \times 100$$

Total capital available (TCA) is the aggregate of Tier 1 capital (such as issued and paid-up ordinary shares) and Tier 2 capital (such as cumulative irredeemable preference shares) less deductions from capital (such as goodwill, deferred tax assets and investment in subsidiaries). The total amount of Tier 2 capital must not exceed the amount of Tier 1 capital.

Total capital required (TCR) is the aggregate of capital charges for each insurance fund and assets in the shareholders fund/working fund. Capital charges are fixed for credit risk, market risk, insurance liability risk

and operational risk or surrender value capital charges.

BNM has set a Supervisory Target Capital Level of 130 per cent.

Each insurer must set its own Individual Target Capital Level to reflect its own risk profile. The Individual Target Capital Level must be higher than the Supervisory Target Capital Level.

07 Group supervision

Under the Financial Services Act 2013, BNM is empowered to exercise oversight over financial groups for the purposes of promoting the safety and soundness of a licensed insurer. In general, the prudential requirements applicable to licensed insurers also apply to financial holding companies, and BNM may specify standards on prudential matters to a subsidiary of a financial holding company if it is of the opinion that the activities of such subsidiary may pose risks to the licensed insurer or its financial group. BNM also has the power to issue directions to a financial holding company, its subsidiary or the director, CEO or senior officer of such financial holding company or such subsidiary.

08 Policyholder protection

The Malaysia Deposit Insurance Corporation (MDIC) administers the Deposit Insurance System (DIS) and the Takaful and Insurance Benefits Protection System (TIPS) which protects specific benefits under life and general insurance, subject to specific limits for different classes of coverage.

09 Portfolio transfers

Portfolio transfers are permitted by scheme approved by BNM and confirmed by the Court. Court

approval has the effect of vesting all of a transferor's right and title in the assets transferred by the scheme on the transferee and making the transferee fully responsible for the liabilities transferred by the scheme without further actions or consents required.

10 Outsourcing

The Outsourcing Guidelines issued by BNM on October 23, 2019 set out the requirements applicable to an outsourcing arrangement entered into by financial institutions as well as branches of locally incorporated financial institutions located outside Malaysia in respect of such branch operations.

Financial institutions are required to have strong oversight and control over outsourcing arrangements. The board and senior management shall be accountable for ensuring effective oversight and governance of outsourcing arrangements, supported by a robust outsourcing risk management framework to manage outsourcing risks and ensure compliance with relevant laws, regulations and prudential requirements in relation to outsourced activities.

A financial institution must obtain BNM's written approval before entering into a new material outsourcing arrangement (as defined in the guidelines) or making a significant modification to an existing material outsourcing arrangement.

Mongolia

Contributed by: Snow Hill Consultancy LLP

01 The regulator

The Financial Regulatory Commission (FRC) is the regulatory and supervisory body of the insurance market in Mongolia. The FRC implements and enforces the insurance legislation, including the Law of Mongolia on Insurance (2004) and the Law on Insurance Intermediaries (2004).

Insurers, insurance brokers, insurance agents, intermediaries and loss adjusters must be licensed by the FRC.

Once issued, a license is valid until it is suspended or revoked by FRC.

No person may advertise or promote any insurance business or establish a place of business for that purpose or establish or maintain a representative office or branch without the prior written approval of the FRC.

02 Subsidiary/branch

A license is required to carry on insurance business in or from Mongolia or conduct insurance intermediary activities in Mongolia. Either a company established in Mongolia or in another jurisdiction may apply for a license.

When a foreign legal entity is carrying out reinsurance based on insurance agreement made with an insurer, no license from the FRC is required.

Foreign insurers and insurance intermediaries established outside Mongolia may open a representative office or a branch in Mongolia with the prior written approval of the FRC.

There is a prohibition on cross holdings between insurance brokers and insurance agents and insurers and insurance brokers and their directors.

03 FDI restrictions

Investment, including foreign investment, in Mongolia is regulated primarily through the Law on Investment which was enacted on October 3, 2013. One aim of this law is to support and encourage investors and to attract more investment into Mongolia.

The main objective is to protect the legal rights and interests of investors in Mongolia without any distinction as a foreign investor or as a domestic investor and to stabilize the tax environment by issuing a "Stabilization Certificate" for up to 18 years to a business entity whose project to be carried out meets the legal criteria.

A business entity established in Mongolia where more than 25 percent of the total issued shares are owned by a foreign investor and at least US\$100,000 by each foreign investor is considered a foreign invested entity.

Where a foreign state-owned entity proposes to hold 33 per cent or more of the total issued shares of a Mongolian legal entity operating in the banking, finance, media and communication sector, it shall obtain approval from the state central administrative body in charge of investment affairs.

04 Control approvals

Prior written approval from the FRC is required for any person to acquire 10 per cent or more of the ordinary shares of an insurer.

Any persons applying to hold 10 per cent or more of the ordinary shares in an insurer, and their controllers (being persons holding 10 per cent or more of the applicant) must be approved by the FRC as fit and proper to carry out an insurance business.

Persons owning or holding 10 per cent or more of the ordinary shares of an insurer solely or collectively shall not transfer, sell or pledge such shares without the prior written approval of the FRC.

05 Minimum capital

The capital of an insurance company may consist only of share capital and may not be accumulated through loans.

Minimum paid-up share capital –

General insurance	MNT5bln
Long term insurance	MNT6bln
Reinsurance	MNT15bln
MNT 3,423.35 = US\$1.00 as at January 1, 2024.	

06 Risk-based capital

No. The Solvency Requirement (SR) is determined as below, subject to the FRC's discretion.

Ordinary Insurers

- Proper Ratio of Solvency = $(\text{admitted assets})/(\text{mandatory assets} + \text{debts and payments}) * 100\%$
- If the Proper Ratio of Solvency is < 100 per cent the insurer will be considered insolvent.

Long Term Insurers

- Proper Ratio of Solvency = $(\text{admitted assets})/(\text{debts and payments}) * 100\%$
- The Proper Ratio of Solvency shall be ≥ 110 per cent.
- If the ratio is between 110 per cent – 100 per cent, the insurer will be presumed to become insolvent.
- If the ratio is less than 100 per cent the insurer will be considered insolvent.

Solvency Margin = $(\text{admitted assets} - \text{debts and payments}) * 100\%$

The Solvency Margin shall be \geq the Minimum Solvency Requirement (MSR).

The MSR = actuarial percentage of the reserve fund + valuation percentage of risk of insurance policies.

If the sum does not reach the mandatory assets, it shall be calculated from the insurer's minimum capital requirement set by the FRC.

07 Group supervision

Where an insurer is a member of a group of companies, the FRC may require it to submit financial statements for any other members of the group and consolidated group accounts.

Each insurer holding a licence to carry out compulsory insurance activity is obliged to join the Union of Compulsory Insurers (the "Union"). The Union shall submit an annual activity report and the FRC shall publish a brief financial statement of the Union to the public press.

08 Policyholder protection

There are statutory funds designed to protect policyholders. These are the long-term funds, the insurance reserve funds and the reinsurer's protection funds.

09 Portfolio transfers

Transfer or amalgamation of an insurer's business may only take place with the prior written consent of the FRC. The FRC may investigate the desirability of the transfer and require the provision of documents and information from the insurer before granting permission.

Transactions aimed to transfer and amalgamate the insurance business without the prior written consent of the FRC are deemed to be invalid.

10 Outsourcing

No activities constituting insurance activities may be outsourced except to an entity that has the appropriate authorisation to perform those activities. Outsourcing to an entity outside of Mongolia is only permitted with the prior written consent of the FRC.

Myanmar

Contributed by: DFDL

01 The regulator

The Insurance Business Regulatory Board (IBRB), which reports to the Ministry of Planning Finance and Industry (MOPFI), is responsible for licensing insurers, underwriting agents and insurance brokers. The Financial Regulatory Department (FRD) of MOPFI performs the work of the IBRB.

02 Subsidiary/branch

Locally incorporated companies (domestic insurers) and branches of foreign insurance companies (foreign insurers) are permitted to be licensed and carry on business in Myanmar. In addition to this, Myanmar has liberalized its insurance sector.

Five foreign life insurance providers (100 per cent wholly owned subsidiaries) have been given a provisional license to operate in Myanmar. They will be issued insurance business licenses upon meeting the stipulated pre-licensing criteria. Foreign non-life insurance providers are still not permitted to register 100 per cent wholly owned subsidiaries in Myanmar.

Additionally, the MOPFI has allowed 3 foreign non-life and 3 foreign life insurance providers to enter into a joint venture with a local non-life insurance provider (ratio being 35:65-local: foreign) to provide services in Myanmar.

03 FDI restrictions

The FDI restrictions have been partially lifted. Up until 2018, foreign insurers were limited to open representative offices in Myanmar –

registered offices of foreign companies were not allowed to conduct business.

Since January 2019, 100% foreign investment is permitted in life insurance companies. Non-life insurance companies are permitted to operate as joint venture local companies. The foreign investment is routed through a Request for Proposal (RFP) published by the FRD.

In January 2019, the FRD published an RFP for 100 per cent foreign life insurance and Expression of Interest (EOI) letters for life and non-life insurance joint ventures.

On April 5, 2019 the MOPFI published the list of foreign insurers as “preferred applicants” to operate as a life insurance company through a wholly owned subsidiary. Further on July 31, 2019, the MOPFI announced the successful applicants for life insurance joint ventures and non-life insurance joint ventures.

Previously, three foreign insurance companies were licensed to sell insurance in the Thilawa Special Economic Zone. There are up to 25 other overseas insurance companies which are carrying out indirect insurance activities in Myanmar by opening representative offices.

From October 1, 2020, foreign insurance companies may provide reinsurance services after obtaining a reinsurance license in Myanmar.

04 Control approvals

An insurer (both domestic and foreign) may not transfer its licence. It shall provide information about its

shareholders when required to by the IBRB.

The insurers, underwriters, and brokers must inform the IBRB of any changes in shareholding pattern or directors or principal officers. Such changes must also be registered with the company regulator – Directorate of Investment and Company Administration (DICA)

Foreign insurance companies which operate as a representative office must notify and register with the IBRB and the DICA on any changes in management of their parent company.

05 Minimum capital

Minimum paid up capital for domestic operators –

Life insurance	MMK6bln
Non-life insurance	MMK40bln
Mixed	MMK46bln

10 per cent of the paid up capital must be deposited at the Myanmar Economic Bank

30 per cent of the paid-up capital must be used to purchase Government Treasury Bonds.

In addition to the minimum paid up capital, a fee of MMK 3m must be paid for an insurance business license. An annual fees of MMK 1m has to be paid by a licensee.

MMK 2,102.36 = US\$1.00 as at January 1, 2024.

06 Risk-based capital

No – capital requirements are based on a solvency margin.

A separate fund for each class of general business and for life assurance must be established.

07 Group supervision

None.

08 Policyholder protection

The IBRB has the power to establish a fund for the protection of life assurance policyholders.

Policyholders get priority over an insurer's assets in the event of insolvency (subject to certain preferential payments – as per Section 199 read with Section 196 of the Insolvency Law 2020).

09 Portfolio transfers

The insurance laws are silent as to portfolio transfers.

10 Outsourcing

The insurance laws are silent as to outsourcing.

New Zealand

Contributed by: Anthony Harper

01 The regulator

The Reserve Bank of New Zealand (RBNZ), which gains its authority under the Insurance (Prudential Supervision) Act 2010 (IPS Act), is the prudential regulator of the insurance sector.

Any entity that is formed or is resident or carries on business in New Zealand, and assumes liabilities to New Zealand policyholders as an insurer under a contract of insurance, requires a prudential licence from, and is regulated by, the RBNZ.

In addition, under the Financial Markets (Conduct of Institutions) Amendment Act 2022 (CoFI Act) insurers operating in the New Zealand retail market will be required to hold a conduct licence issued by the Financial Markets Authority (FMA). The conduct licencing regime will require insurers to comply with a fair conduct principle which will be operationalised through a fair conduct programme. The regime is currently scheduled to be fully in force by early 2025. However, during campaigning the now-elected National Party announced that it would repeal the CoFI Act. There is broad industry and consumer support for elements of the CoFI Act, so whether the CoFI Act will be fully or partially repealed is unclear.

The provision of insurance broking services and other insurance intermediation services (such as the provision of advice in relation to insurance products) is regulated by the FMA. For the most part licensing or authorisation is currently not required under New Zealand legislation in order to provide these services, although entities with a place

of business in New Zealand are usually required to be registered as a financial services provider before carrying on a business of providing or offering to provide such a service. In addition, those persons providing retail clients with advice on insurance products need to hold, or be operating under, a licence from the FMA.

The CoFI Act will introduce prohibitions on volume or value target-based sales incentives as part of insurance broking services. However, the now-elected National Party's proposal to repeal the CoFI Act makes the implementation of these prohibitions unclear.

In 2017, the RBNZ commenced a comprehensive review of the IPS Act. In October 2023, the RBNZ published an omnibus consultation which proposes changes to the licensing criteria and obligations for licensed insurers. In particular, one of the proposals is expanding the scope of the licensing criteria by amending the definition of 'carrying on insurance business in New Zealand'. It is expected that the proposed definition will include all New Zealand-incorporated insurers, whether or not they issue contracts to New Zealand policyholders. However, overseas-incorporated captive insurers and overseas companies that only act as reinsurers in New Zealand would be explicitly excluded from the proposed definition.

The Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 requires insurers with more than \$1bn in total assets or \$250m in annual gross premium revenue to include reporting on climate-related matters in their

annual reports. Climate-related disclosures are required for accounting periods that start after 1 January 2023 with disclosures being made in 2024 at the earliest. Disclosures must be made in accordance with the Aotearoa New Zealand Climate Standards.

02 Subsidiary/branch

Insurers:

- An insurer may be a local entity or a branch of a foreign insurer.
- The directors and other relevant officers must be "fit and proper".
- An insurer must normally hold a current financial strength rating from an approved rating agency.

Brokers, financial advisers and insurance agents may be a local entity, branch of a foreign broker or insurer, or individuals. "Fit and proper" requirements apply to financial advisers that fall within the scope of licensing requirements.

As part of the current review of the IPS Act the RBNZ proposes imposing a duty of due diligence to ensure that the insurer complies with the IPS Act's prudential obligations on an insurer's directors or, where a branch structure is used, the Chief Executive Officer of the New Zealand branch.

03 FDI restrictions

Government consent is usually required for acquisition of rights or interests of 25 per cent or more of an entity worth more than NZ\$100m. Different rules (higher thresholds) apply for Australians, and at times proposals have been made to relax

thresholds for other countries. In addition to this, any investment in a "strategically important" business is required to be notified to the Overseas Investment Office and may be called in for review by the Government. The decision to call in a transaction is determined by whether it poses a risk to New Zealand's national security and public order. The current definition of strategically important businesses does not include insurers but does include registered banks and financial market infrastructure businesses.

NZD 1.59 = US\$1.00 as at January 1, 2024.

04 Control approvals

Consent of the RBNZ must be obtained for any change of control of a licensed insurer: control means ≥ 50 per cent of the company's voting rights.

05 Minimum capital

The minimum capital requirement is 80% of the Prescribed Capital Requirement (PCR). The PCR represents the minimum capital a licensed insurer is expected to maintain in normal circumstances. See section 6 below for how this is determined.

06 Risk-based capital

During 2020, the RBNZ commenced a review of the solvency standards that apply to licensed insurers and has published an interim solvency standard which came into force on 1 January 2023. It has since been amended to address minor and technical issues and further amendments are proposed.

For individual insurers, the interim solvency standard applies from the start of their first accounting period under NZ IFRS 17 (the accounting

standard for insurance contracts). A final solvency standard will follow.

The PCR is the sum of Capital Charges (CC) for the underlying risks and is subject to a minimum of the Fixed Capital Amount (FCA) appropriate to the nature of the insurance business, determined as follows:

$$PCR = \text{Max} (FCA, \sum_i CC_i)$$

(Note that it has been proposed that this formula be modified so that the CC must not be negative).

FCA is determined by the nature of the insurance contract:

Long-term insurance contracts	NZ\$5m
Short-term insurance contracts	NZ\$3m (NZ\$1m for captives)

CC_i reflects a risk-based capital model where i ranges across five areas of risk: insurance, market, credit, operational, and other.

Any likely breach over the next three years must be reported.

07 Group supervision

Group supervision is required for subsidiaries of NZ insurers. Insurer subsidiaries must be consolidated and the solvency standards applied to the consolidated group. Non-insurance subsidiaries are treated as related party equity investments, subordinated loans or other obligations.

As part of the current IPS Act review, the RBNZ proposes expanding the scope of group supervision, including an ability to require licensing of non-

operating holding companies for corporate insurance groups headquartered in New Zealand.

08 Policyholder protection

Life Insurers must maintain and keep distinct and separate from other assets, one or more statutory funds into which all amounts received by the insurer in respect of the business of that fund must be credited. Investments made are assets of the fund. There is no legislative requirement to maintain a protection fund for non-life policyholders.

Overseas insurers are required to disclose the nature and extent of any overseas policyholder preferences in relation to recognition and priorities of claims in the event of the insurer's insolvency.

Any provision in a licensed insurer's constitution that permits a director of the insurer to act in a manner believed to be in the interests of the insurer's holding entity, even though it may not be in the interests of the insurer, is of no effect.

On liquidation of an insurer (other than from a life insurer's statutory fund), there is no priority for policyholders and the Court has the power to reduce the value of contracts of insurance.

09 Portfolio transfers

The RBNZ may on application approve a transfer of all or part of an insurer's NZ business to another insurer that meets the licensing requirements. The RBNZ can impose additional requirements or conditions on its approval. Should an insurer cease to hold a licence, the RBNZ may direct the insurer to arrange an assignment of any remaining insurance contract liabilities to other licensed insurers.

The RBNZ must have regard to the policyholders' interests when approving any transfer, and may request an actuarial report. The transfer takes effect as a novation of each policy.

On insolvency, a liquidator or administrator may apply to the High Court for approval of a scheme of transfer of insurance business.

10 Outsourcing

There is currently no express restriction on outsourcing. However, licensing requirements under the CoFI Act (if it proceeds) will include a standard condition to the effect that outsource providers must be capable of performing the service to the standard required for that insurer to meet their licensee obligations.

In addition, the RBNZ proposes introducing an outsourcing standard to ensure identification of the prudential and business continuity risks presented by outsourcing arrangements.

Insurers must also have a risk management policy and, depending on the nature and scope of the activity to be outsourced, such outsourcing may need to be disclosed by way of a modification to the risk management policy. An insurer must also ensure that at all times it meets the conditions for entitlement to hold its RBNZ licence.

The Philippines

Contributed by: SyCip Salazar Hernandez & Gatmaitan

01 The regulator

The Insurance Commissioner is the insurance regulator. The position is the head of the Insurance Commission, a government agency under the Department of Finance.

The Commission supervises and regulates the operations of insurers, reinsurers, mutual benefit associations, health maintenance organisations, and rating organisations, all of which need to be authorised.

Pre-need companies – companies that provide pre-need contracts, being contracts for the provision of future payments or services including life, pension, education, and interment – must also be licensed by the Insurance Commission.

Insurance agents, general agents, resident agents, underwriters, insurance brokers, adjusters, actuaries, and trustees for charitable uses must be licensed.

Authorisations and licences must be renewed every three years.

02 Subsidiary/branch

Locally incorporated corporations (domestic insurers) and branches of foreign insurers and reinsurers (foreign insurers) are permitted to be licensed and carry on business in the Philippines as an insurer.

A domestic insurer is deemed to be a corporation vested with public interest and as a result, is required to have independent directors constituting at least 20 per cent of the composition of

the Board of Directors, and must appoint a compliance officer.

Risks can generally be ceded offshore to a non-resident foreign reinsurer or non-resident foreign reinsurance broker, provided such entity has a resident agent licensed by the Insurance Commissioner.

03 FDI restrictions

There is no limit on foreign equity ownership in a domestic insurer, insurance agent, insurance broker, or in an adjustment company provided that the corporation that will act as an insurance agent has a paid-up capital of at least US\$200,000.

04 Control approvals

No person, other than an authorised domestic insurer, may acquire control of any domestic insurer without giving 20 days' prior written notice to the domestic insurer of its intention to acquire control, and without obtaining the prior written approval of the Insurance Commissioner.

Control means the power to direct or cause the direction of the management and policies of the domestic insurer, and is presumed to exist when one person owns, controls or holds, 40 per cent or more of the voting shares of the domestic insurer.

Directors and officers must satisfy the fit and proper criteria. Investors should be mindful of the Philippine Competition Act (PCA) and its implementing rules and regulations which are primarily implemented by the Philippine Competition Commission (PCC), an attached agency to the Office of the President.

Where the value of a merger or acquisition (including a joint venture) breaches the thresholds set by the PCA and its implementing rules (particularly where the size of the party (as this term is defined under the rules) exceeds PHP7bn and where the size of transaction (as this term is defined under the rules) exceeds PHP2.9bn), the parties are required to notify the PCC within 30 days from the execution of the definitive agreements relating to the transaction but before any consummation of such agreements. The 30-day notification period is currently waived during the community Quarantine based on the Interim Guidelines During Periods of Community Quarantine dated 25 May 2021, which allows parties to notify at any time after the signing of definitive agreements relating to their transaction but prior to any acts of consummation. The PCC is expected to lift such waiver soon.

Parties to transactions subject to this notification requirement are prohibited from closing or consummating the transaction until the PCC clears the transaction or unless the applicable review periods had lapsed without the PCC taking any action.

05 Minimum capital

Existing domestic insurers (life or non-life) must increase their net worth to PHP1.3bn by December 31, 2022.

For existing domestic composite insurers (i.e., authorized to engage in both life and non-life business), the net worth stated above must be compiled for each of its life and non-life units.

A new domestic insurer (life and non-life) must meet the following minimum paid-up capital –

Life	PHP1bn
Non-Life	PHP1bn
Composite	PHP2bn

Further, the Insurance Commissioner may require the stockholders of a domestic insurer to contribute to a surplus fund, in an amount proportionate to their subscription or interests. The surplus fund must not be less than PHP100m.

A new foreign insurer (life or non-life) must have unimpaired capital or assets and reserves of at least PHP1bn.

It must also deposit with the Insurance Commissioner, for the benefit of policyholders and creditors of the foreign insurer in the Philippines, securities which have a market value of not less than PHP1bn. The securities have to be acceptable to the Insurance Commissioner and at least 50 per cent of them have to be bonds or other instruments of debt of the Government of the Philippines.

A foreign insurer is also required to have an unimpaired trustee surplus of PHP1.3bn as of December 31, 2022.

The Insurance Commissioner may, in addition to the required unimpaired trustee surplus, require a foreign insurer to have an additional fund of not less than PHP100m.

The applicable minimum paid-up capital for a new micro-insurance company is PHP500m.

A corporation applying for registration to act as an issuer of pre-need plans

must have a minimum paid-up capital of PHP100m.

PHP 55.63 = US\$1.00 as at January 1, 2024.

06 Risk-based capital

For life and non-life insurers, RBC takes into account credit risk, insurance risk, market risk, operational risk, and catastrophe risk. For life insurers, RBC additionally takes into account surrender risk. Each insurance company must maintain a minimum RBC ratio of 100 per cent.

07 Group supervision

The Insurance Commissioner has rights of examination in respect of any holding company of an insurer/reinsurer and any related party transactions.

Every insurer authorized to do business in the Philippines and which is a part of a holding company system has to register with the Insurance Commission. A holding company is defined as any person who directly or indirectly owns, controls an insurance company authorized to do insurance business in the Philippines.

The Insurance Commissioner has also provided guidelines on related party transactions for entities regulated by it.

08 Policyholder protection

Each insurer contributes to a Security Fund, depending on whether it is engaged in life or non-life insurance business. The Security Fund has a Life Account and Non-Life Account. The contribution of each insurer to the Security Fund is in direct proportion to the ratio that that insurer's net worth bears to the total net worth of the life/non-life industry.

The aggregate contribution of all relevant insurers to each account is PHP5m.

09 Portfolio transfers

Portfolio transfer is permissible with prior approval of the Insurance Commissioner and of the policyholders.

10 Outsourcing

Activities directly related to doing or transacting insurance business cannot be outsourced; other activities regulated by the Insurance Code can be outsourced, provided that the contractor has the requisite licence. Generally, “backroom activities” such as claims administration services, intermediary servicing and contact centre services, and mailing services may be outsourced.

Singapore

Contributed by: Norton Rose Fulbright

01 The regulator

The Monetary Authority of Singapore (MAS) is the central bank of Singapore. It administers the Insurance Act 1966 which has provisions governing the regulation of insurance business in Singapore, insurers (including, reinsurers), insurance intermediaries (agents and brokers) and related institutions in Singapore.

02 Subsidiary/branch

Both Singapore incorporated entities (including subsidiaries of foreign insurers) and branches of foreign insurers are permitted to carry on insurance business in Singapore if they satisfy the relevant licensing requirements.

Insurers and reinsurers with an establishment in Singapore must be “licensed”.

Reinsurers without an operating presence in Singapore may become “authorised” which allows them to solicit business and collect premiums in Singapore.

Foreign insurers which are approved under the law of another country/territory to carry on insurance business in that country/territory may carry on business in Singapore under a foreign insurer scheme established by the MAS.

Representative offices must be “registered”.

03 FDI restrictions

None.

04 Control approvals

Prior approval of the MAS must be obtained before obtaining an interest in 5 per cent or more of the voting shares of, or entering into any agreement to act in concert with any other person in relation to the exercise of rights in relation to 5 per cent or more of the voting rights of, a licensed insurer incorporated in Singapore.

The MAS’ prior approval should also be obtained before obtaining effective control (20 per cent or more of the issued shares or the voting shares) of a licensed insurer incorporated in Singapore.

All controllers must be approved by the MAS as fit and proper. A licensed insurer must have a Board chairman, chief executive and an appointed actuary (life) or certifying actuary (non-life) and such other positions as are prescribed.

The chairman, all directors and key executives must satisfy the MAS fit and proper criteria and be approved by the MAS prior to appointment.

05 Minimum capital

Licensed Insurer	S\$10m
Licensed Reinsurer	S\$25m
Licensed Insurer (writing specific lines of business)	S\$5m

An authorised reinsurer shall maintain a minimum deposit of S\$2m for each class of reinsurance business for which it is authorised.

SGD\$1.32 = US\$1.00 as at January 1, 2024.

06 Risk-based capital

Every licensed insurer shall establish and maintain a separate insurance fund for each class of business carried on by that insurer, and this applies to both Singapore policies as well as offshore policies. A life insurer shall also have separate funds for investment-linked, participating and non-participating policies.

An insurer must hold capital against its risk exposures, known as Total Risk Requirements (TRR), for each insurance fund and the insurer in aggregate.

TRR is calculated in three components: (i) C1 – insurance risks; (ii) C2 – market and credit risks; and (iii) operational risk requirements of the insurer.

07 Group supervision

The MAS regulates insurance groups headquartered in Singapore as well as sub-groups domiciled in Singapore that are significant to the Singapore financial system unless there is adequate group-wide supervision by another regulator.

A “group” arises where a parent entity (non-operating financial holding company) holds an insurance subsidiary in Singapore or a Singapore licensed insurer has subsidiaries, whether within or outside of Singapore.

08 Policyholder protection

The Policy Owners' Protection Scheme (PPF Scheme) provides 100 per cent coverage to individuals for guaranteed benefits of life insurance policies (subject to caps), to all insureds for compulsory general insurance policies and to individuals with Singapore policies of specified personal lines policies.

09 Portfolio transfers

The transferor may apply to the court to confirm a scheme of transfer of whole or part of an insurance business, subject to the prior approval of the MAS. An independent actuarial report may be required. Notification to policyholders by Gazette/newspaper advertisement is required before an application is made to the Court. The Court has ultimate discretion whether to confirm the scheme.

10 Outsourcing

Outsourcing is permitted, including to an offshore service provider.

The Outsourcing Guidelines (updated on October 5, 2018) set out the regulatory framework for outsourcing. An insurer must adopt a sound and responsive risk management framework for its outsourcing arrangements, conduct due diligence on service providers and implement sound internal processes and controls to evaluate and manage the risks thereof. There are no exemptions for outsourcing within a group.

All outsourcing arrangements must be agreed in writing and contain minimum specified terms including: confidentiality and security, business continuity, audit and inspection and notification of adverse developments. Material outsourcing arrangements have additional contractual requirements including a mandatory

right of audit and a right to access to information that can be exercised by the regulator. Outsourcing of all or substantially all of an insurer's risk management or internal control functions, including compliance, internal audit, financial accounting and actuarial is considered material.

An insurer must maintain a register of its outsourcing arrangements and submit it at least annually or on request. An insurer must notify the MAS of any adverse development arising from its outsourcing arrangements.

South Korea

Contributed by: Kim & Chang

01 The regulator

The Financial Services Commission (FSC) oversees the establishment of financial policies, enactment and amendment of insurance related laws and regulations and the grant of insurance business licences. The Financial Supervisory Service (FSS), which is the executive arm of the FSC, conducts day to day supervision of the operations and financial status of insurance related institutions (insurers, brokers and agents) and supplemental activities for the FSC.

An “insurance product” is defined as a contract that stipulates the payment of money and other benefits to the insured in connection with the occurrence of a contingency, for the purpose of guaranteeing risk and in exchange for consideration. Insurance products fall into three categories: life, non-life and agreed benefits payable in respect of accident, disease or nursing services.

Insurance business includes underwriting insurance products, collecting premiums and distribution of insurance payments. All insurers and reinsurers must be licensed by the FSC.

Insurance brokers must be registered with the FSS having met certain training and other requirements.

Individual insurance solicitors and insurance agents must register with the insurance association after meeting certain training requirements.

02 Subsidiary/branch

Both Korean incorporated entities and branches of a foreign insurer or reinsurer are permitted.

03 FDI restrictions

None.

04 Control approvals

“Large” shareholders (≥ 10 per cent of total shares) must meet the financial soundness and other requirements and be pre-approved by the FSC. Requirements depend on the nationality and the type of proposed shareholder.

Any subsequent increase or reduction of shareholding by ≥ 1 per cent by a large shareholder must be notified to FSS by the insurer.

Further, under the ongoing review system introduced on August 1, 2016, the FSC will conduct a regular review to confirm that the largest shareholder (i.e., individual) satisfies certain eligibility qualification requirements every two years.

05 Minimum capital

An insurance company must maintain a solvency margin that is at least equal to the solvency margin standard, i.e., 100 per cent.

The solvency margin ratio is the ratio of solvency margin to solvency margin standard. The solvency margin is calculated by aggregating contributed capital, retained earnings, capital surplus and other items recognised as capital.

The solvency margin standard is intended to be a reflection of the risk borne by an insurance company including insurance risk, credit risk, market risk, operational risk, longevity risk, surrender risk, expense risk and catastrophe risk.

If the solvency margin drops below 100 per cent then the FSC may intervene.

06 Risk-based capital

Risk-based capital has been required since April 1, 2011. The new Korea Insurance Capital Standard are effective from January 1, 2023.

07 Group supervision

Some of the regulatory restrictions on insurance companies’ asset management relate to transactions between insurance companies and their affiliates (e.g., if an insurance company acquires bonds or stock issued by an affiliate in an amount not less than 0.1 per cent of shareholders’ equity or KRW1bln, whichever is less, the insurance company is required to report the transaction to the FSC and issue a public disclosure on its website).

Further, insurance companies held by holding companies are subject to regulations on incorporation, acquisition of new subsidiaries, management and other matters under the Financial Holding Companies Act.

A law regulating a financial company group is being implemented since June of 2021. The law imposes certain duties concerning internal control, risk management and capital adequacy requirement for the financial company

group designated by the regulatory authorities.

KRW 1,261.91 = US\$1.00 as at January 1, 2024.

08 Policyholder protection

The Korea Deposit Insurance Corporation (KDIC) maintains a deposit insurance fund that is dedicated to protecting policyholders and other customers in the event of insurer default. Coverage is capped at KRW50m per insurance policy.

09 Portfolio transfers

Policies that share the same basis for liability reserve calculation may be transferred together. Prior approval of the FSC is required, and public notice of the proposed transfer must be issued and policyholders must be given at least one month's notice to object. The transfer is effected by agreement between the transferor and the transferee, subject to FSC approval. In the event more than 10 per cent of the total policyholders (in terms of either number of policyholders or insured amount) object to the intended policy transfer, the transfer will not be allowed.

In case of a policy transfer, there will be a "black-out" period starting on the date when a general meeting of shareholders resolves to transfer the policies. During this period, the transferor cannot sell new insurance policies with few exceptions, including the conversion from a branch of a foreign insurer to a subsidiary.

10 Outsourcing

The Regulations on the Delegation of Business of a Financial Institution (the Delegation Regulation) prohibit a financial institution from delegating its "core" business activities to a third party.

Core business activities include: execution of insurance contracts underwriting discretion, contractual matters relating to policies (e.g., termination amendment and reinstatement), cession and assumption of reinsurance contracts, determination and payment of insurance claims.

In principle, any outsourcing of non-core activities must be notified to the FSS at least seven days prior to the execution of the outsourcing agreement.

However, the IT outsourcing by financial institutions is separately governed by the Regulations for Outsourcing of Data Processing by Financial Institutions (the IT Outsourcing Regulations).

The IT Outsourcing Regulations provide different reporting requirements to the FSS for the outsourcing of financial transaction information (i.e., information collected from a customer in the course of a financial transaction or produced as a result of a financial transaction). There must be a report to the FSS: (i) 30 business days prior to the date of the commencement of the outsourced information processing activity in case of the offshore outsourcing, where there will be processing of identifiable individual customer financial transaction information; (ii) 7 business days prior to the date of the commencement of the outsourced information processing activity in case of the onshore outsourcing, where there will be processing of identifiable individual customer financial transaction information; or (iii) within ten business days from the commencement of the outsourced information processing activity in case of offshore or onshore outsourcing where the outsourcing of financial transaction information processing does not include identifiable individual customer information.

Under the IT Outsourcing Regulations, the outsourcing of non-financial transaction information processing is subject to after-the-fact semi-annual reporting to the FSS.

Sri Lanka

Contributed by: Julius & Creasy

01 The regulator

The Insurance Regulatory Commission of Sri Lanka (IRCSL) is responsible for the development, supervision and regulation of the insurance industry.

The Regulation of Insurance Industry Act, No. 43 of 2000 (as amended) (Insurance Act) governs inter alia the licensing and regulation of insurance companies, brokers, agents and loss adjusters.

The IRCSL is a member of the International Association of Insurance Supervisors (IAIS) and adopts some of the core principles for effective supervision and monitoring of the insurance industry.

02 Subsidiary/branch

Only companies incorporated in Sri Lanka may be registered to carry on business as an insurer or insurance broker. An insurer may register either to conduct general insurance business or long-term insurance business.

All insurance companies must be listed on the Sri Lankan stock exchange, unless exempted, within three years of obtaining a licence to operate.

There is a prohibition on cross holdings and common directorships between insurers and broking companies.

03 FDI restrictions

None. Foreign equity participation in insurance companies is permitted up to 100 per cent.

04 Control approvals

Any change in the shareholders of an insurance company must be notified to the IRCSL immediately after the event. This is on account of the statutory requirement under the Insurance Act to submit, to the IRCSL, a full authenticated statement of any change in the statement submitted to the IRCSL on registration, of the insurance company, which statement sets out prescribed particulars relating to the shareholders of the company. However, the IRCSL has directed that insurers must only notify the IRCSL of a proposed change in ownership or control of 50 per cent or more of its issued shares/financial instruments or voting rights of issued shares/financial instruments, immediately upon becoming aware of the same. The insurer is also required to obtain IRCSL approval in the aforesaid circumstances.

05 Minimum capital

The minimum capital requirement is LKR500*m per class of insurance business.

LKR 321.48 = US\$1.00 as at January 1, 2024.

06 Risk-based capital

Currently a solvency margin (risk-based capital) model applies to insurance companies whereby every insurance company must maintain:

- A capital adequacy ratio (CAR) of a minimum of 120 per cent, (calculated in line with a prescribed formula).

- A total available capital (TAC) of a minimum of LKR500m (calculated in line with a prescribed formula).

07 Group supervision

The IRCSL does not supervise the parent of an insurance company, or any subsidiaries of an insurance company, not engaged in the business of insurance.

08 Policyholder protection

The Minister of Finance has levied a “Cess” on the annual net premium income of insurers for the creation of the Policyholders Protection Fund. 0.2 per cent of the annual net premium of long-term insurance business and 0.4 per cent of the annual net premium of general insurance business is credited to the Policyholders’ Protection Fund.

As per the 2022 Annual Report of the IRCSL, this amount is invested in government securities and fixed deposits of government banks.

09 Portfolio transfers

An insurance company may apply to Court to approve a transaction relating to any transfer and amalgamation of insurance business. The insurer must first have approached the IRCSL and have obtained its observations thereon.

The Court has the discretion to approve or decline the application if the IRCSL does not support the proposal and/or policyholders object.

10 Outsourcing

The IRCSL may grant permission to an insurer to keep assets outside Sri Lanka upon IRCSL being satisfied that the value of assets permitted to be kept outside of Sri Lanka (i) will not exceed 20 per cent of the total assets of the insurer at any given time, and (ii) (of any single person) will not exceed 5 per cent of the value of assets permitted to be kept outside Sri Lanka at any given time; and upon the insurer providing a written assurance that documents evidencing the insurer's title to such assets are kept safe in Sri Lanka.

There are no statutory restrictions on using a service company for "back office" operations such as human resources, photocopying and claims processing (excluding the activities of a loss adjuster).

Taiwan

Contributed by: Lee and Li, Attorneys at Law

01 The regulator

Taiwan is officially known as the Republic of China (ROC). The ROC insurance regulator is the Financial Supervisory Commission (FSC).

Insurers must be licensed and will be either life or non-life. Composite licences are not granted to insurers, but are available for reinsurers.

A company carrying on business as an insurance broker, insurance agent or loss adjuster must be approved by FSC and at least one individual must be appropriately qualified.

02 Subsidiary/branch

Both Taiwanese incorporated entities (including subsidiaries of foreign insurers) and branches of foreign insurers are permitted.

A foreign insurer that has been in operation for more than three years must have sound business and financial ability and have no record of material violation of laws and regulations in order to be permitted to establish a branch.

A foreign insurer that has been in operation for less than three years must establish a representative office within ROC for at least one year before establishing a branch.

03 FDI restrictions

Nil.

04 Control approvals

Prior approval from the FSC is required to acquire more than each of 10 per cent, 25 per cent or 50 per cent

of the voting shares in an insurance company.

Any person who acquires more than 5 per cent of an insurance company's shares must notify the FSC within ten days of such acquisition. Any subsequent and cumulative increase or decrease of more than 1 per cent must similarly be notified to the FSC.

Shares held by nominees and related parties are aggregated for the purpose of assessing whether the limits have been reached.

05 Minimum capital

Minimum paid-up capital requirement –

Insurance companies	NT\$2bln, 20 per cent to be paid in at the time of application
Insurance brokers plus reinsurance brokers	NT\$30m
Insurance agent companies	NT\$10m
Insurance adjustor companies	NT\$2m

TWD 31 = US\$ 1.00 as at January 1, 2024.

A branch of a foreign insurer must have minimum operating funds of NT\$50m. If the foreign insurer has been in operation for less than three years, it must have minimum paid-up capital of NT\$2bln or meet the FSC's credit rating requirements.

A branch of a foreign insurance broker must have minimum operating funds of NT\$20m.

A branch of foreign insurance agent company must have minimum operating funds of NT\$10m.

A branch of a foreign insurance adjustor company must have minimum operating funds of NT\$2m.

A branch of a foreign insurance enterprise applying to operate a reinsurance brokering business must have minimum operating funds of NT\$20m.

A branch of a foreign insurance enterprise applying to simultaneously operate insurance broker business and reinsurance brokering business must have minimum operating funds of NT\$30m.

06 Risk-based capital

An insurance company must maintain a ratio of total adjusted net capital to its risk-based capital requirement of at least 200 per cent and a net worth ratio (calculated as owner's equity divided by total assets excluding separate accounts for investment-linked insurance specified in the financial report audited by a certified public accountant) of at least 3 per cent in at least one of the last two periods. The risk-based capital requirement is determined by a formula that takes into account asset risk, insurance risk, interest rate risk and business risk.

07 Group supervision

None.

08 Policyholder protection

The Stabilization Fund is a private organisation, sponsored by insurance companies, established to stabilise the market and safeguard the interests of insured parties. The Stabilization Fund may provide loans to insurers experiencing business difficulties, advance claims payments to insureds or beneficiaries if an insurer is unable to make payments, and make other payments approved by the FSC.

09 Portfolio transfers

An insurance company and/or a branch of a foreign insurer may apply to the FSC for approval to transfer all or part of its insurance business to another Taiwanese insurer or Taiwanese branch of a foreign insurer. In practice, prior notice is often given to policyholders to give them the opportunity to object. If no objection is received within the specified period, consent is deemed.

10 Outsourcing

The outsourcing of business operations by an insurer is limited to the following: (1) logistical support for data processing; (2) conducting investigations relating to insurance contracts and consumer opinion surveys; (3) forms and documents relating to the performance of insurance contracts; (4) overseas emergency assistance and roadside assistance services provided under the insurance contract; (5) distribution of sales advertisements and consumer publications; (6) collection of premiums, principal and interest payments on policy loans or other loans, and other payments relating to insurance contracts; (7) collection of debts; (8) electronic customer services; (9) real estate related activities; (10) locating cars with auto loan default and sale at car auction, but excluding the determination of

floor price for auction; (11) valuation, classification, bundling and sale of non-performing loans; and (12) other operations approved by the competent authority.

Prior approval from the FSC is required to outsource the business operations identified in items (7) and/or (12) to a local person/company.

In terms of outsourcing business operations to foreigners/foreign companies, to the extent that the business operations involve “material information system for customer’s personal data”, prior approval from the FSC is required. Branches of foreign insurance companies in Taiwan that outsource their operations to their head office or other overseas branches for internal division of labour shall also apply for the purpose of FSC’s prior approval, except for certain circumstances, including without limitation to (i) where the insurance company engages an offshore institution to assist in the handling of claims, emergency rescue, investigation or assessment, and (ii) where the insurance company outsources the development and maintenance of its onshore information systems to an offshore institution.

Thailand

Contributed by: Norton Rose Fulbright

01 The regulator

The Office of Insurance Commission, under the supervision of the Ministry of Finance (OIC) regulates insurers, brokers and agents.

02 Subsidiary/branch

Both Thai-incorporated public limited company (including subsidiaries of foreign insurers) and branches of foreign insurers are eligible to apply for an insurance licence; however, the OIC's current policy is not to grant new licences for either on the basis that the insurance company market requires consolidation.

Brokers can be individuals or a legal entity in Thailand.

Only individuals can be insurance agents.

03 FDI restrictions

Foreigners (i.e., non-Thai individuals/entities) can hold the total issued shares of insurance and reinsurance companies as follows:

- Up to 25 per cent less one share is permitted, without any specific regulatory approval;
- Above 25 per cent but only up to 49 per cent with approval from the OIC; and
- Above 49 per cent with approval from the Minister of Finance (with the recommendation of the OIC).

On December 8, 2016, the Ministry of Finance issued a notification (which was published in the Royal Gazette on

January 18, 2017) which sets out the requirements to be met when applying for an approval (ultimately issued at Ministerial discretion) to allow a foreign shareholding greater than 49%. These include the following: (i) demonstrating a sufficient capital adequacy ratio; (ii) having in place a business plan for promoting stability for insurance companies or the insurance industry; and (iii) establishing minimum credentials of the proposed foreign shareholder (including industry experience and financial position). Any approval is additionally subject to prescribed minimum capital requirements (THB1bln for non-life insurers and THB4bln for life insurers), a requirement for prior Ministerial approval for subsequent transfer of shares by the majority foreign in certain circumstances, a requirement for prior Ministerial approval for the majority foreign shareholder to have more than a single life or non-life insurance presence, and any other condition the Minister sees fit.

04 Control approvals

A change of shareholdings 5 per cent or more must be notified after the event to the OIC. A change in directors must be approved by the OIC.

05 Minimum capital

Minimum requirement –	paid-up	capital
Life insurer/reinsurer		THB500m (min registered capital)

General insurer/reinsurer:	THB300m (min registered capital)
THB 34.25 = US\$1.00 at January 1, 2024.	

06 Risk-based capital

Insurance companies are required to maintain capital funds in proportion to risks at the rate prescribed by the OIC, which can be calculated using the following formula:

Risk-based capital = Eligible Capital/Risk Capital Requirement x 100 per cent.

“Eligible Capital” is equity, share premium, retained profits, issued price of preference shares, etc. less certain deductions. Assets are valued at market value with adjustments.

“Risk Capital Requirement” is as follows:

- for life insurer: capital charges for insurance risk, market risk, credit risk, concentration risk, surrender risk and operational risk.
- for non-life insurer: capital charges for insurance risk, market risk, credit risk, concentration risk and operational risk.

Solvency margin: minimum capital requirement of 140 per cent of risk-based capital from January 1, 2022 onwards.

07 Group supervision

None.

include internal audit, accounting, IT and advisory services in respect of claims and back-office functions.

08 Policyholder protection

Under the Thai regulatory regime, the "General Insurance Fund" and the "Life Insurance Fund," funded by industry levies, have been established to provide protection for policyholders of non-life and life insurers. In this scenario, policyholders are considered creditors with the right to receive payment. These funds are in place to provide protection in the event of the revocation of an insurance license, and payments to policyholders are limited to THB one million.

Following revocation of an insurance licence and prior to commencement of bankruptcy/liquidation proceedings, any insured with a claim under a policy will be entitled to payment firstly from securities placed by the insurer with the OIC, and secondly from the relevant fund. In insolvency proceedings, the policyholder will have priority over other creditors against any securities and unearned premiums reserves of the relevant insurer placed with the OIC.

09 Portfolio transfers

No regime.

10 Outsourcing

Insurer may not outsource "core" functions, which include: risk underwriting and issue of policy, collecting premiums, accepting or rejecting claims and loss adjustment. With specific approval of the OIC, insurer may outsource certain "support" functions, which include: paying claims in limited circumstances. Insurer may freely outsource "other" non-core administrative functions, which

Vietnam

Contributed by: Vision & Associates Legal

01 Regulator

The Ministry of Finance (MOF) is responsible for supervising the insurance market in Vietnam. The MOF has the power to grant and withdraw licences and has authority to issue legal documents (circulars/decisions) which provide guidelines for the operation and other activities of insurers/reinsurers/ insurance agents/ insurance brokers and insurance auxiliary services providers. The Insurance Supervisory Authority (ISA, which is part of the MOF) assists the MOF in supervising the insurance business and market in Vietnam.

02 Service supply modes

Pursuant to the Schedule of Specific Commitments in Services annexed to the Protocol of Accession of Vietnam to WTO (Vietnam's WTO Commitments), other international treaties to which Vietnam is a contracting party as well as national laws (the backbone of which is the Insurance Business Law passed on 16 June 2022, with a majority thereof to be in force from 1 January 2023 while certain provisions to be in force from 1 January 2028, the implementation of which is guided by Decree 46/2023/ND-CP, dated 1 July 2023) (LI 2022, collectively), qualified offshore insurers are permitted to provide (cross-border) into Vietnam via a broker licensed to operate in Vietnam:

- Insurance services (excluding life and health insurances) to foreign invested companies and

to foreign individuals working in Vietnam.

- Reinsurance services (and retrocession services for foreign services providers from the EU countries due to the EU-Vietnam Free Trade Agreement (EVFTA).
- Insurance services in international transportation, including insurance of risks relating to: (i) international maritime transport and international commercial aviation with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods and any liability arising therefrom; and (ii) goods in international transit.
- Insurance broking and reinsurance broking services.
- Insurance auxiliary services (Consultancy, actuarial, risk assessment and claim settlement services).

Qualified foreign brokers are permitted to provide (cross-border) brokerage services in Vietnam to Vietnamese insurers or foreign general insurers' branches licensed to operate in Vietnam only.

Foreign insurers, brokers, organizations with legal entity status and individuals are entitled to provide insurance auxiliary services (i) directly to Vietnamese insurers, re-insurers, brokers, mutuals providing micro insurance products, and foreign insurers, reinsurers' and their branches in Vietnam; and (ii) indirectly

to organisations and individuals in Vietnam other than the above said users, through cooperation with organizations providing insurance auxiliary services legally established and operating in Vietnam. As a part of the insurance auxiliary services, foreign individuals may provide only advisory services to the above said users. With respect to broking services, foreign brokers may also provide insurance auxiliary services to organizations and individuals other than the above said users.

Insurers, foreign general insurers' branches and mutuals established and operating in Vietnam can provide micro insurance products in Vietnam.

Except as provided above, no person may use insurance services provided by offshore insurers into Vietnam.

A foreign insurer or broker providing cross-border services in Vietnam must meet:

- a. General requirements, including:
 - i. Possessing license(s) awarded by state authorities managing overseas insurance in its home country for operating cross-border services that it intends to provide in Vietnam, as well as evidence of the enterprise having legally operated for at least 10 years up to its provision of cross-border services in Vietnam; and
 - ii. Having written permission(s) and confirmation(s) by state authorities managing overseas insurance in its home country for operating cross-border

services that it intends to provide in Vietnam and of the enterprise having not violated foreign laws and regulations in 03 consecutive years preceding the year that cross-border services are provided in Vietnam.

b. Requirements on financial capacity, including:

- i.** Having total worth of assets of at least US\$2bln and being ranked at least “BBB” by Standard & Poor’s or Fitch, “B++” by A.M. Best, “Baal” by Moody’s or earning an equivalent rank given by other experienced ranking organisations in case of a foreign insurer; or having at least US\$100m in case of a broker enterprise; in the fiscal year preceding the year that cross-border services are provided in Vietnam; and
- ii.** Having carried out profitable business for 03 years immediately preceding the year that cross-border insurance services are provided in Vietnam.

c. Requirements on settlement of adversity:

- i.** Foreign insurers must:
 - deposit at least VND 100bln in a bank licensed to operate in Vietnam and have a letter of guarantee from such bank that undertakes to make payments when liabilities under cross-border insurance contracts in Vietnam exceed the mandatory deposit. The deposit shall only be used to deliver on commitments to insurance buyers upon the foreign insurer’s

insolvency as determined by foreign government authorities in its home country. The deposit shall yield interest according to the agreement with the bank retaining the deposit. The foreign insurer can withdraw the entire deposit upon the termination of its liabilities under the contracts for its provision of cross-border services in Vietnam;

- implement a procedure of claim settlement, which specifies formalities, steps and time for settling damage and claims for insurance buyers in Vietnam. In all circumstances, foreign insurers or their authorized representatives must be present at the site where damage has taken place in 48 hours upon the receipt of the notice of damage.

Upon occurrence of an insured event, the insurer must pay the insurance proceeds or indemnity within the time-limit stated in the insurance contract; if the insurance contract does not contain any such provision, the insurer must pay the insurance proceeds or indemnity within 15 days from the date of receipt of a complete and proper application requesting payment of the insurance proceeds or indemnity;

- ii.** Foreign brokers must purchase the insurance of liabilities for the provision of cross-border brokerage services in Vietnam.

Life insurers established in Vietnam must operate through a locally established company (which may be either a limited liability company (LLC) or a joint stock company (JSC)), while general insurers, reinsurers may operate through either a locally established company (either LLC or JSC) or as a branch of a foreign insurer or reinsurer established and operating in Vietnam.

In all cases, to be a founding member of an insurance/reinsurance LLC, a capital-contributing entity established under foreign laws must:

- (i)** be a foreign insurer, reinsurer, or finance and insurance corporation;
- (ii)** obtain certification from a foreign competent regulatory authority that it has not committed any serious offence against domestic legislation on insurance business of the country where their head office is located during three consecutive years preceding the f applying year;
- (iii)** have business lines in which it is applying for the license or permit to get involved in Vietnam comprising business activities that it is directly performing, or their subsidiaries are performing, within the latest seven consecutive years;
- (iv)** own the minimum total asset of USD 2bln in the year preceding the applying year; and
- (v)** be committed to offering financial, technological, corporate management, risk management, governance and operational support for the insurer or reinsurer to be incorporated in Vietnam; must ensure that such insurer or reinsurer complies with provisions on compliance with the statutory requirements on

financial prudence and risk management.

Similar requirements are applicable to a foreign founding shareholder of an insurance or reinsurance JSC. The only differences are that at the date of incorporation, there must be among shareholders, at least two institutional founding shareholders in the JSC, and each of them must hold at least 10 per cent of its charter capital.

For a foreign investor which invests and holds over 10 per cent of the charter capital of a company (either LLC or JSC), in addition to the above said requirements, it must:

- a. have a profitable business in three consecutive years preceding the applying year;
- b. maintain financial safety and satisfy all requirements of the laws of the country where such investor is headquartered, and be permitted to establish an insurer/reinsurer in Vietnam by a competent authority of the country where such investor is headquartered. If such permission is not required by such country, the investor shall obtain a statutory written confirmation of such non-requirement by a competent authority under the law of such country; and
- c. have financial statements made, which must be audited without any unqualified opinions, in three consecutive years preceding the applying year.

As a practical matter, the MOF treats the establishment of a branch by a foreign insurer or reinsurer similarly to the establishment of a subsidiary. In short, foreign general insurers or reinsurers establishing a branch in Vietnam must:

- (i) have their head office in a country which is member to an international treaty with Vietnam on the establishment of foreign insurance branches in Vietnam (the foreign state insurance authority must also be member to the international agreement with the MOF on management and supervision of operations of the branch);
- (ii) obtain certification from the foreign state insurance authority that (i) permits the investor to establish a branch in Vietnam that can provide regulated insurance services (if such permission is not required by such country, the investor shall obtain a statutory written confirmation of such non-requirement by a competent authority under the law of such country), (ii) the investor maintain financial safety and satisfy all requirements of the laws of the country where such investor is headquartered, and (iii) the investor has not committed any serious offence against domestic legislation on insurance business of the country where their head office is located during three consecutive years preceding the applying year;
- (iii) acquire at least seven years' experience in the proposed business activities that it is applying for the license or permit to perform in Vietnam;
- (iv) own the minimum total asset of USD 2bln in the year preceding the applying year;
- (v) gain profit for three consecutive years preceding the applying year and meet the financial conditions prescribed in the Government's regulations; and
- (vi) provide guarantee and bear responsibility for all obligations

and commitments of their branch in Vietnam.

A foreign general insurer or reinsurer's branch to be established and operate in Vietnam must meet the following conditions:

- (i) The capital must be allocated in Vietnamese Dong and not be less than the minimum limit prescribed in the Government's regulations;
- (ii) Funding for establishment of the branch must be legitimate and not include borrowed funds or investment funds held in trust in any form;
- (iii) The branch's nominated Director and actuaries must meet managerial competency and professional qualification conditions and standards as prescribed.

A foreign general insurer or reinsurer's branch to be established and operate in Vietnam may have different management positions. However, in all cases, it must keep concurrently at least two positions, including General Director/ Director (CEO) and Actuary, and any change thereof must be approved by the MOF.

For insurance brokerage, the LIB 2022 provides more requirements to foreign organizations which invest and hold 10 per cent or more of charter capital. In short, when contributing capital to establish, purchasing shares or capital contribution portions representing ten per cent or more of charter capital of a broker a foreign organization must:

- a. be directly involved in or has their subsidiary providing insurance brokerage services during five consecutive years preceding the applying year that the application for licensing is submitted;

- b. obtain certification from a foreign competent regulatory authority that (i) permits the investor to establish a broker in Vietnam (if such permission is not required by such country, the investor shall obtain a statutory written confirmation of such non-requirement by a competent authority under the law of such country), (ii) the investor maintains financial safety and satisfy all requirements of the laws of the country where such investor is headquartered (if the investor is a parent company of a broker) or the investor is active in insurance brokerage business (if the investor is a broker), and (iii) the investor has not committed any serious offence against domestic legislation on insurance business of the country where their head office is located during three consecutive years preceding the applying year;
- c. have a profitable business in three consecutive years preceding the applying year; and
- d. make the financial statement, which must be audited without any unqualified opinions, in three consecutive years preceding the applying year.

Except for the requirement for financial statement, which must be audited without any unqualified opinions, in the year (but not three consecutive years) preceding the applying year, foreign organizations will be free from all above said requirements if they invest and hold less than 10 per cent of charter capital of a broker established and operating in Vietnam.

To establish offices in cities or provinces in Vietnam other than the city or province where the company or branch was established, insurers or reinsurers must establish their

branches, representative offices or business facilities, while branches of foreign insurers or reinsurers in Vietnam must establish their business facilities in those other provinces and cities.

Written notification to (but not approval from) the MOF within 15 days after the establishment is needed for each branch, representative office or business facility.

Foreign insurers, reinsurers, finance and insurance corporations, or brokers can establish representative offices in Vietnam. The parent company must have been operating for at least five preceding years and obtain permission to establish representative offices in Vietnam from the insurance regulatory authorities in the foreign countries where their head offices are located. Representative offices are not permitted to conduct insurance business in Vietnam. The life of a foreign representative office in Vietnam shall not be longer than five years and may be extended.

03 FDI restrictions

Nil. All restrictions on the ability of foreign insurers, brokers and reinsurers to establish 100 per cent foreign-owned subsidiaries were respectively removed on January 1, 2008 according to Vietnam's WTO Commitments, on April 1, 2001 according to Law on Insurance Business 2000 (as amended), and on January 1, 2023 according to the LIB 2022. Among others, some key restrictions remain on the ability of (i) foreign life insurers to establish branches in Vietnam, and (ii) foreign non-financial institutions to provide cross-border insurance auxiliary services in Vietnam from State members of the Regional Comprehensive Economic Partnership (RCEP) Agreement, which took effect on January 1, 2022.

04 Control approvals

Divisions, splits, mergers, amalgamations, conversions of the form; transfers of shares or ownership interests that help shareholders/members contributing capital to own at least ten per cent or more of the charter capital or less than ten per cent of the charter capital; or dissolution/shutdown of an insurer, reinsurer, broker or foreign insurer or reinsurer's branch require prior written approval of the MOF. Written approvals from MOF are also required for a wide range of changes including a change of name or headquarters address; adjustment in charter or allocated capital; outbound investment, including the establishment of new branches, representative offices and other types of commercial establishment of an insurer, reinsurer or broker in foreign countries; revision to the content, scope and duration of operations; appointment or change of the Chairperson of the Board of Directors, Chairperson of the Members' Council, Chairperson of the Company, General Director/Director (CEO), Appointed Actuary of life and/or health insurer, or Reserving Appointed Actuary of general insurer, reinsurer, or foreign general insurer or reinsurer's branch.

An insurer or broker wishing to establish a branch or representative office or convert a representative office to a branch must satisfy certain statutory requirements, including, among others: (i) the owner's equity in the nearest financial statement is not lower than the legal capital level; (ii) it has not been imposed any administrative sanction within 12 months before the application dossier for opening its branch/ representative office is submitted; (iii) it has made organization and operation regulations of the branch/ representative office/ another form of commercial presence; and (iv) an application file is submitted to the

MOF (which shall within 14 days upon receiving the valid and adequate application, issue its approval or provide explanations for rejection of the application in writing).

Any changes in the charter of the insurer, reinsurer or insurance broker, or rules and regulations for operations of the foreign insurer or reinsurer's branch in Vietnam; establishment, closure and relocation of any branches and representative offices and business facilities of an insurer, reinsurer or broker, or any business facilities of foreign insurer or reinsurer's branches; and any change of beneficial owners of the insurer or reinsurer need only be notified in writing to (but not approval from) the MOF within 15 days as from the date of the change.

05 Minimum capital

Businesses must have minimum legal capital of –

General insurers	
(a) General insurance (except items (b) and (c) below) and health insurance	VND400bln
(b) Item (a) plus either aviation insurance or satellite insurance	VND450bln
(c) Item (a) plus both aviation and satellite insurances	VND500bln

Life insurers		Pension insurers	
(a) Life insurance (excluding unit linked and pension insurances) and health insurance	VND750bln	Voluntary pension insurance fund	VND200bln
(b) Item (a) plus either unit linked insurance or pension insurance	VND1,00bln	Reinsurer	
(c) Item (a) plus both unit linked and pension insurances	VND1,0300bln	Reinsurer (general insurance, or general and health insurances)	VND500bln
Health insurers		Reinsurer (life insurance, or life and health insurances)	VND900bln
Health insurance	VND400bln	Reinsurer (life, general and health insurances)	VND1,400bln
Mutual micro-insurance providers		Branch of a foreign reinsurer	
Micro-insurance	VND10bln	Reinsurer (general insurance, or general and health insurances)	VND400bln
Branch of a foreign insurer		Reinsurer (life insurance, or life and health insurances)	VND450bln
(a) General insurance		Reinsurer (life, general and health insurances)	VND700bln
(except items (a) and (b) below) and health insurance	VND250bln	Broker	
(b) Item (a) plus either aviation insurance or satellite insurance	VND300bln	Broker (either primary insurance or	VND5bln
(c) Item (a) plus both aviation and satellite insurances	VND400bln		

reinsurance brokerage)	
Broker (both primary insurance and reinsurance brokerage)	VND810bln

Expansion of contents, scope and/or duration of operations

- a. Life insurers providing pension insurance:
 - Having the solvency margin higher than the minimum solvency margin by VND300bln;
 - Extracting at least VND200bln from the owner's equity to generate the voluntary pension fund;
- b. For life insurers providing unit-linked insurance: Having the solvency margin higher than the minimum solvency margin by VND 200bln;
- c. For providers of general linked insurance: Having the solvency margin higher than the minimum solvency margin by VND 100bln.
- d. For providers of insurance products prescribed by the Government (GOV) or decided by the Prime Minister of Government (PM): Abiding by guiding documents

VND 24,463.15 = US\$1.00 at January 1, 2024.

06 Risk-based capital

No – capital based.

Until December 31, 2027:

- a. The minimum solvency margin of a general insurer or a local branch of a foreign general insurer is the greater of either (a) 25 per cent of the total premiums actually retained or (b) 12.5 per cent of the total primary insurance premiums plus reinsurance premiums, at the time of determination of the solvency margin.
- b. The minimum solvency margin of a life or health insurer or a local branch of a foreign life or health insurer is:
 - 1.5 per cent of the insurance reserves plus 0.3 per cent of the sums insured which carry risks for unit-linked insurance policies.
 - 4 per cent of insurance reserves plus 0.3 per cent of the sums insured which carry risks, for universal life insurance and pension insurance policies.
 - 4 per cent of the insurance reserves plus 0.1 per cent of the sums insured which carry risks, for other life insurance policies and health policies with a term of five years or less; and 4 per cent of the insurance reserves plus 0.3 per cent of the sums insured which carry risks, for other life insurance policies and health policies with term of over five years.
 - Throughout the period it provides unit-linked or pension insurance, a life insurer must maintain a solvency margin high than the minimum solvency margin of VND 200 bln for unit-linked insurance or

VND300 bln for pension insurance.

The minimum solvency margin of a reinsurer is the total of those applicable to a general insurer and a life or health insurer.

Insurers, reinsurers, brokers, and branches of foreign insurers or reinsurers must also establish a mandatory reserve fund to ensure their solvency. The annual contribution is 5 per cent of after-tax profits up to a maximum of 10 per cent of charter capital of an insurer, reinsurer or a broker, or allocated capital of a foreign insurer or reinsurer's branch.

07 Group supervision

Insurers, reinsurers and branches of foreign insurers or reinsurers are prohibited from:

- (a) making investment accounting for 30% of the portfolio of investments in companies belonging to the same group of companies having mutual ownership relationship. This prohibition shall not apply to deposits made at credit institutions and outward investment funds existing in the form of establishment of companies or establishment of foreign branches in the receiving foreign countries; and
- (b) making investments in return for those of shareholders or members contributing capital or persons associated with these shareholders or members contributing capital are not allowed, except in case of deposits made at transaction offices of shareholders or members that are credit institutions.

08 Policyholder protection

Insurers and foreign general insurers' branches (except reinsurers) must contribute to the insured person protection fund till January 1, 2023 to protect insured persons in the event that the insurer becomes insolvent or bankrupt. The rate of appropriation for this fund will be announced by the MOF annually, but will not exceed 0.3 per cent of the total premium revenue retained from primary insurance contracts in immediately- preceding financial year. Contributions will be made biannually on a 50/50 basis, and will be required until the accumulated fund amounts to 5 per cent of total assets of a general insurer, a health insurer or a foreign general insurer's branch, or to 3 per cent in the case of a life insurer.

09 Policyholder transfers

A policy holder is entitled to transfer an insurance policy, but: (i) in order to transfer a life insurance contract, the written consent from the insured or the insured's legal representative must be obtained; and (ii) the transfer shall only come into effect when a written notice of such transfer has been sent by a policy holder to, and written consent is obtained from, the insurer or foreign general insurer's branch, except when the transfer is made according to international practices or as agreed upon in the insurance policy.

The transfer by an insurer or foreign general insurer's branch of insurance policies, which includes all policies within one or a number of types of insurance products, may be conducted in one of the following cases:

(a) at the request of the MOF for transfer of portfolios of insurance

contracts or in case where the MOF designates another insurer or foreign general insurer's branch to acquire the transferred portfolio of insurance contracts of the insurer or the foreign general insurer's branch put under control;

(b) service or business shrinking;

(c) split-up, split-off, merger, amalgamation, dissolution, closing or termination of business;

(d) others:

(i) application for the business license or permit contains fraudulent information provided with the aim of satisfying licensing conditions;

(ii) their business activities are not the same as those specified in the business license or permit that they are holding;

(iii) the foreign general insurer or reinsurer that has their branches established in Vietnam goes bankrupt or has their business license or permit withdrawn or revoked.

The transferor must apply for the MOF's written approval before conducting the transfer. Within 30 days from the date of MOF's approval, the transferor must (i) make a public announcement of the transfer on their websites (ii) notify the policyholders in writing with a brief plan on the transfer; and (iii) send written agreements to the policyholders and the insured persons on the reduction of the sum insured or insurance benefits and other obligations under the insurance policies in the case where the transfer of insurance policy portfolio is required by the MOF where the value of assets is lower than that of the technical reserve of the transferred insurance policy portfolio.

Upon the signing of a contract for transfer of insurance policies, the transferor must not enter into new insurance policies under the insurance line(s) transferred.

All works related to the transfer must be finished within 60 days from the date of MOF's approval.

10 Outsourcing

There are no specific regulations restricting outsourcing of particular functions of a Vietnamese insurer or reinsurer, or foreign insurer or reinsurer in Vietnam, except: (a) internal control; (b) internal audit; (c) risk management; (d) insurance product consulting, launching, offering and marketing; arranging for conclusion of insurance policies. The outsourcing supplier must perform at least 75 per cent of the outsourced amount of work by itself; to hire any subcontractor, the outsourcing supplier must obtain prior written approval from the insurer, reinsurer or foreign general insurer' branch in Vietnam. An outsourcing contract must be made in writing and contain at least mandatory main contents. Payments from Vietnam for outsourcing are subject to regulations on foreign exchange control and withholding tax. If the outsourcing is to a group company and if payment is to be made by the Vietnamese subsidiary or branch, for taxation purposes and as a matter of prudence, a written contract should be entered into and the contract price should be based on market price.



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