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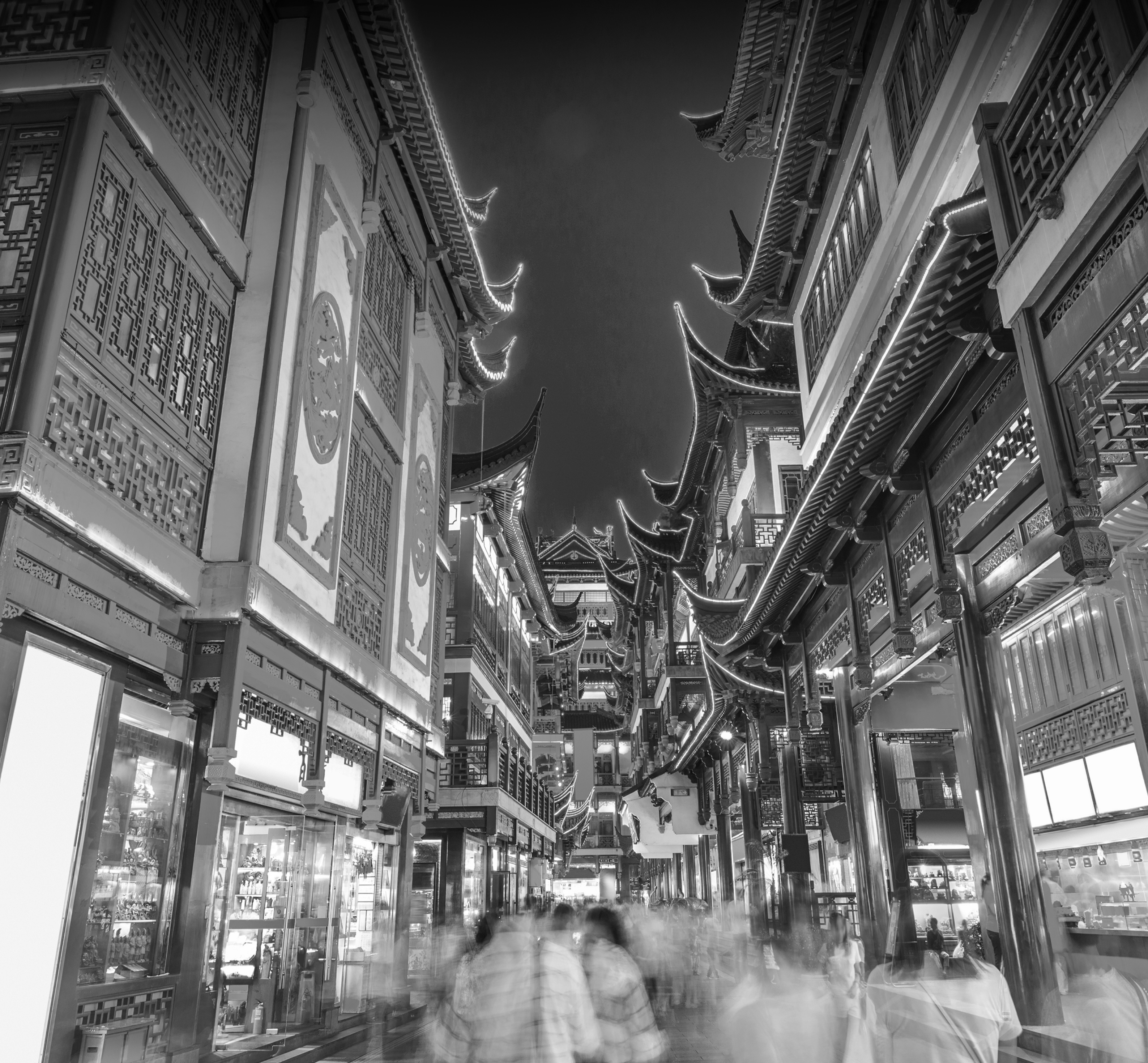
2020: Insurance regulation in Asia Pacific

Ten things to know about 20 countries



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2020: Insurance regulation in Asia Pacific

Ten things to know about 20 countries

A Norton Rose Fulbright guide
as at January 1, 2020

Preface

We are pleased to present the 2020, and the seventh edition of *Insurance regulation in Asia Pacific – Ten things to know about 20 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, 2020. 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.

Anna Tipping
Partner

Acknowledgements

The chapters on Australia, China, Hong Kong, Indonesia, Papua New Guinea, Singapore and Thailand have been provided by Norton Rose Fulbright. We gratefully acknowledge the assistance of the law firms who have contributed to the chapters on Cambodia, India, Japan, Macau, Malaysia, Mongolia, Myanmar, New Zealand, Philippines, South Korea, Sri Lanka, Taiwan and Vietnam. These firms are identified at the start of each section and further details on the contributors are given at the end of the guide.

Contents

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 licencee or rely on an exemption from the licensing 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 US registered life insurer 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$10 million
General insurer	A$5 million (A$2 million for captives)

A$1.42 = US$1.00 as at January 1, 2020

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 (Business Transfer and Group 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.

Cambodia

Contributed by: Bun & Associates

01 | The regulator

The Insurance and Pension Division of the General Department of Financial Industry, being a division of the Ministry of Economy and Finance (MEF) is the insurance regulator.

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 October 22, 2001, which remains in force. A new sub-decree implementing the Law on Insurance is being reviewed internally and is expected to come into force sometime in 2020.

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

Only insurance companies licensed in Cambodia may underwrite insurance business in Cambodia.

A reinsurer may operate 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, i.e. a branch of a foreign insurer is not permitted.

An insurance intermediary shall be registered as a Private Limited Company.

03 | FDI restrictions

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

04 | Control approvals

A change greater than ten per cent of the shareholding of an insurance company must be notified to the insurance regulator prior to the event. As the MEF 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.

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

05 | Minimum capital

Life or General Insurance company	SDR5 million*
Composite Insurance company	SDR10 million*
Micro-insurance company (life or non-life)	KHR600 million
Insurance broker	KHR200 million
Insurance agent	KHR20 million
Loss adjustor	KHR20 million

* SDR = IMF special drawing rights
* SDR = IMF special drawing rights. SDR 1 = USD1.39 as at January 1, 2020
* KHR 4,067.45= US$1.00 as at January 1, 2020

06 | Risk based capital

Insurance companies and intermediaries shall maintain a deposit to the National Treasury.

Insurance Company: 10 per cent of registered capital
Insurance Broker: US$50,000
Insurance Agent and Loss Adjustor: US$10,000

Insurance companies shall also maintain a solvency margin:

For the first year of operation: 50 per cent of the registered capital; thereafter

- KHR13.3 billion, where net premiums ≤ KHR66.5 billion.
- 20 per cent of total premium, where net premiums are between KHR66.5 billion and KHR332.5 billion.
- KHR66.5 billion plus 10 per cent of insurance surplus from the previous year where net premium is < KHR332.5 billion.

in each case assessed on the previous year's premiums.

Insurance brokers must maintain Professional liability insurance: US$500,000.

07 | Group supervision

No.

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 new 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 insurance regulator 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 insurance regulator has given its approval.

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 three in Cambodia).

China

Contributed by: Norton Rose Fulbright

01 | The regulator

The China Banking and Insurance Regulatory Commission (CBIRC)[1] regulates insurance companies and intermediaries, including agents, brokers, loss adjustors and their business operations

02 | Subsidiary/branch

Life and non-life insurer subsidiaries are permitted. Branches of non-life foreign insurers are permitted. Branches of life foreign insurers will also be permitted after the foreign ownership liberalisation in 2020 (see item 3 below). Licences are issued on a "province by province" basis.

03 | FDI restrictions

Yes.

- Non-life – 100 per cent by foreign investor.
- Life – 51 per cent by foreign investor, which will be fully released to 100 per cent in 2020.
- Health – in principle, 100 per cent by foreign investors within the Shanghai, Fujian, Tianjin and Guangdong free trade zones and Hainan Bo'ao Lecheng pilot zone[2] subject to further implementation rules. Nationwide FDI liberalisation to 100 percent is expected in 2020 upon the full liberalisation of the life insurance sector.

An insurer branch or subsidiary with ≥ 25 per cent 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 of no less than USD$5 billion for a greenfield investment or USD$ 2 billion for the acquisition in an existing insurance company.

04 | Control approvals

≥ 5 per cent – prior approval of CBIRC required.
< 5 per cent – filing with CBIRC required.

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

Directors and controllers must be approved by CBIRC as "fit and proper".

05 | Minimum capital

Insurer (life)

Nationwide

RMB200 million 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 RMB200 million for adding one more basic business above.

RMB1 billion 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.

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

Branches

RMB20 million for any single branch and RMB500 million max for multiple branches.

Insurer (non-life)

Nationwide

RMB200 million 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 RMB200 million for adding one more basic business above.

Branches

RMB20 million for any single branch and RMB500 million max for multiple branches.

CBIRC 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 6.97 = US$1.00 as at January 1, 2020

1 In March 2018, the First Session of the Thirteenth National People's Congress approved the combination of China Insurance Regulatory Commission (China's insurance regulator) and the China Banking Regulatory Commission (China's banking regulator) into one newly established governmental authority, i.e. the China Banking and Insurance Regulatory Commission (CBIRC).

2 A free trade zone or pilot zone is a special pilot area which is used to try and explore innovative policies in China. The policy applicable within each free trade zone or pilot zone may slightly vary.

06 | Risk based capital
Yes. China formally launched a Solvency II type regime in May 2013 and have fully implemented it since 2016, which 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, etc.) and support such risks with a comparable amount of capital. Categories of risks are open to expansion – for example, reputation risk was added in 2014. The regime keeps developing – a phase II update has started in late 2017 and plans to be completed by the end of June 2020.

07 | Group supervision
Yes. A group requires two or more insurance companies approved by CBIRC and then constitutes all member companies. CBIRC may approve the establishment of foreign invested insurance group companies in practice by applying the same rules.

08 | Policyholder protection
Yes, funded by industry levies.

In the event of insolvency or 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 losses up to RMB50,000 and thereafter, 90 per cent of losses for individual policyholders and 80 per cent for corporate policyholders.

In the event of insolvency or revocation of licence of a life insurer, the 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
Yes. Consent of CBIRC and individual policyholders is required for a voluntary portfolio transfer between contracting insurers. If a policyholder objects or fails to consent, CBIRC cannot compel the transfer of a policy. In the event of insolvency or revocation of licence of a life insurer, CBIRC 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). In principle, the insurer shall prudently select the outsource providers with attention to its qualification, financial status, and internal management system, etc. The outsourcing insurer generally shall submit a report of the outsourcing activities to the CBIRC within 20 working days before 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 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 policy holders.

An insurer must be authorised by the IA before it carries on insurance business in or from Hong Kong. Insurance brokers must be authorised by the IA. At present, all insurance brokers in Hong Kong are members of either one of the two approved broker bodies, namely, the Hong Kong Confederation of Insurance Brokers (HKCIB) and the Professional Insurance Brokers Association (PIBA). The Insurance Agents Registration Board (IARB) established under the Hong Kong Federation of Insurers was responsible for registering insurance agents. In September 2019, however, the Insurance Authority took over the responsibility for supervision and regulation of these SROs in that both insurance agents and brokers are now no longer self-regulated but are directly regulated under the IA. Under the Insurance Ordinance (Cap. 41), the IA now has regulatory and supervision powers in relation to the insurance industry or the promotion of the general stability of the insurance industry and for the protection of existing and potential policy holders.

As addressed by our previous editions, these changes are made pursuant to the Insurance Companies (Amendment) Ordinance and are implemented on a phased basis in three stages. The three stages are:

Stage 1: Establishment of the Provisional Insurance Authority
Stage 2: Replace OCI with an independent IA
Stage 3: To implement a statutory licensing regime and to take over regulation of insurance intermediaries from the three existing, self-regulatory (broker and agent) organisations (SROs).

All these changes have now occurred. The changes are intended to facilitate the transition from the OCI to the IA and to facilitate the transition from the self-regulatory regime for insurance intermediaries to the statutory licensing regime under the IA.

To further facilitate transition, insurance agents and brokers who were properly registered with a relevant SRO before the change will be treated as "deemed licensees" for a period of three years. Licence fee will also be waived for five (5) years.

In addition, the IA also released the Code of Conduct for Licensed Insurance Agents and the Code of Conduct for Licensed Insurance Brokers (together, the "Codes"). The Codes took effect on 23 September 2019. While the Codes are not statutory requirements and the IA has indicated that it will adopt a flexible approach in considering licensees' compliance with the Codes, licensees are expected to comply fully with the Codes from 1 January 2020 onwards.

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 of the IA must be obtained prior to any change to persons who are entitled to exercise or control the exercise of more than 15 per cent 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 and an appointed actuary in respect of insurers conducting long term business, must be pre-approved by the IA as "fit and proper" prior to appointment.

Under the previous self-regulatory regime, (i) an insurance broker had to obtain the confirmation of the IA, or either the HKCIB or PIBA before confirming the appointment of its chief executive; and (ii) an insurance agent had to obtain the confirmation of the IARB before confirming the appointment of its responsible officer.

As the new statutory licensing regime has now taken effect, both insurance agents and insurance brokers will now 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. Factors determining whether a responsible officer is fit and proper are listed under section 64ZZA of the Ordinance. In summary, more onerous criteria are imposed on responsible officers as higher education requirements and professional qualifications are required.

05 | Minimum capital

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

HKD 7.81 = US$1.00 as at January 1, 2020

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

No, the current framework is a rules-based capital adequacy framework. However, an insurer must 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$200 million plus 10 per cent of the amount by which the relevant premium income exceeds HK$200 million.
- 20 per cent of relevant outstanding claims up to HK$200 million plus 10 per cent of the amount by which the relevant outstanding claims exceed HK$200 million.

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

Life – the greater of

- HK$2 million.
- Generally 4 per cent of mathematical reserves plus 0.3 per cent of capital at risk.

There are proposals to introduce a risk-based capital framework by 2021. The former IA published consultation conclusions in September 2015 on the proposed introduction of a risk-based capital framework in line with core principles of the International Association of Insurance Supervisors (IAIS). It is proposed that the framework will comprise three pillars (Pillar 1: quantitative requirements that include assessments of capital adequacy and valuation; Pillar 2: qualitative requirements that include corporate governance, Enterprise Risk Management and Own Risk and Solvency Assessment; and Pillar 3: disclosure and transparency requirements) and will be introduced on a phased basis; the next step being the development of detailed rules which are tentatively expected to be ready for public consultation in 2020.

07 | Group supervision

Not currently. However, there are proposals to introduce group supervision as part of the risk-based capital framework. The IA has expressed an interest in being part of a transitional regime for third country equivalence under Solvency II, which requires group supervision. The proposals have regard to the core principles of the IAIS and similar group-wide supervision regimes introduced and proposed in other jurisdictions, including the EEA.

Key elements of the proposed regime will cover the nature of groups to be subject to group-wide supervision, as well as prudential, corporate governance, enterprise risk management and disclosure requirements at the group level.

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 for bodily injuries or death 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.

The consultation process for the establishment of a policyholder protection fund (PPF) concluded in January 2012 and the drafting of legislation is underway. The two funds under the proposed PPF are for

1. Direct general policies including term life policies, whole life policies, annuities, investment-linked policies and permanent disability policies (other than motor vehicle and employees' compensation claims which are covered by the existing schemes) (the "Non-life Fund").

2. life insurance policies (the "Life Fund").

It is proposed that there will be separate life and general policyholder protection schemes, which will be established on a statutory basis and administered by a statutory body under independent oversight of the PPF Board.

Policyholders have priority in the distribution of an insurer's assets in the event of its insolvency.

09 | Portfolio transfers

Yes. 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 of 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.

India

Contributed by: Cyril Amarchand Mangaldas

01 | The regulator

The Insurance Regulatory and Development Authority of India (IRDA) which is constituted under the Insurance Regulatory and Development Authority Act 1999, and which derives its powers from the Insurance Act 1938 (as amended) regulates entities which carry on insurance business and intermediary business (such as brokers, insurance surveyors, loss assessors, insurance agents and third party administrators) in or from India.

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. A foreign company is permitted to undertake reinsurance business in India by establishing a branch in India.

The IRDA has also issued the IRDA (Lloyd's India) Regulations, 2016 to facilitate Lloyd's of London to operate in the Indian market. Upon grant of a certificate of registration by the IRDA to transact reinsurance business, Lloyd's is 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.

Members of Lloyd's formed collectively as syndicates who delegate their authority to service companies located in India would need to be granted a certificate of registration by IRDA. IRDA also specifies net owned fund, solvency margin, credit rating and other conditions for Lloyd's India and its syndicate members.

The IRDA has also issued the IRDA (Registration and Operations of International Financial Service Centre Insurance Offices (IIO)) Guidelines, 2017 which lays down the process of registration and operations of insurers, reinsurers in International Financial Services Centre (IFSC) in Special Economic Zones (SEZ)[1]. Likewise, the IRDA recently issued the IRDA (International Financial Service Centre Insurance Intermediary Offices) Guidelines, 2019, with the objective of granting permission to intermediaries or insurance intermediaries registered by the IRDA to undertake operations in IFSC.

Further, in order to facilitate the equity fund/venture fund /alternative investment to purchase of stake/promote an insurance company either as investor or as promoter, the IRDA has issued the IRDA (Investment by Private Equity Fund or Alternate Investment Fund in Indian Insurance Companies) Guidelines, 2017. An investment of a private equity fund as an investor is subject to certain conditions including the condition that all Indian investors including the investment by the private equity funds jointly shall not hold more than 25 per cent of paid up equity share capital of the insurance company.

03 | FDI restrictions

Foreign direct investment up to 49 per cent of equity share capital of an Indian insurance company and 100 percent of equity share capital of insurance sector intermediaries[2] is permitted under extant Indian laws. Such foreign investment is under the automatic route i.e. without the prior approval of the concerned department of the Government of India, subject to approval/verification by the IRDA.

All Indian insurance companies with foreign investment shall ensure their "ownership and control" shall remain with resident Indian entities as determined by the Department of Financial Services (Ministry of Finance)/IRDA, at all times.

04 | Control approvals

Any transfer of shares by a transferor or group of transferors which jointly or severally exceeds 1 per cent of the paid up equity capital of an insurance company requires prior approval of the IRDA.

Prior approval of the IRDA is also required for any transfer where the shareholding of the transferee is likely to exceed 5 per cent of the paid up equity capital of the insurance company.

All other changes in shareholding must be notified toIRDA. In case of a private bank promoted insurance company (an insurance company owned by a bank) any foreign direct investment in the bank requires approval of the Reserve Bank of India in consultation with the IRDA.

1 IFSC are set up in the Special Economic Zones under the Special Economic Zones Act, 2005. The Special Economic Zones are established and developed for the promotion of exports and for matters connected therewith.

2 This change has been notified by way of an IRDA notification; and corresponding amendment in the foreign exchange regulations is awaited

In addition to the aforesaid, the Guidelines for Listed Indian Insurance Companies, 2016 (Listed Insurer Guidelines), which are applicable to all insurers who have listed their equity shares or are in the process of getting their shares listed on the stock exchanges in relation to transfer or proposed transfer of shares, provides that any transfer of the equity share capital of the concerned insurer shall be subject to the compliance of the lock-in period requirement specified by the IRDA. The Listed Insurer Guidelines also lay down that every person who intends to make any transfer/ make any arrangement or agreement for transferring 1 per cent or more but less than 5 per cent of the paid up equity share capital of the concerned insurer, may do so, subject to the compliance of Fit and Proper criteria mentioned in the Listed Insurer Guidelines. Such compliance to the Fit and Proper criteria is in addition to the approval of IRDA.

However, self-certification of the Fit and Proper criteria of the acquirer and filing with the same with the concerned insurer shall be considered as the deemed approval of the IRDA.

05 | Minimum capital

Minimum paid-up capital requirements

Insurer	INR1 billion
Reinsurer	INR2 billion
Direct broker	INR7.5 million
Reinsurance broker	INR40 million
Composite broker	INR50 million
INR 71.37 = US$1.00 as at January 1, 2020	

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. A foreign company carrying on reinsurance business through a branch in India is required to have net owned funds of INR50 billion. However, a foreign company engaged in the re-insurance business through a branch established in an IFSC in the SEZ is required to have net owned funds of not less than INR 10 billion.

06 | 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 life 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 and (b) 100 per cent of the Required Solvency Margin (RSM). "Control level of solvency margin" is specified to be a solvency ratio (ASM/ RSM) of 150 per cent.

"Control level of solvency margin" is specified to be a solvency ratio (ASM/RSM) of 150 per cent.

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 IRDA, which are, inter alia, maintenance of solvency margin/capital adequacy as stipulated by the home regulator of the CBR.

07 | Group supervision

No.

08 | Policyholder protection

The IRDA (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 Corporate Governance Guidelines for Insurance Companies 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 will directly report to the board of directors of the insurance companies.

09 | Portfolio transfers

Yes. A scheme for amalgamation must be submitted to, and approved in principle by, IRDA, then advertised to policyholders, following which IRDA will give final approval if the merger is in the best interests of the policyholders.

10 | Outsourcing

The Guidelines on Outsourcing of Activities by Insurance Companies has been superseded by IRDA (Outsourcing of Activities by Indian Insurers) Regulations, 2017 (Outsourcing Regulations) which applies to all insurers registered with IRDA 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 Outsourcing Regulations are applicable to all existing outsourcing arrangements. However, any existing outsourcing arrangement to which these Outsourcing Regulations become applicable must be appropriately amended to bring such arrangement in compliance with these Outsourcing Regulations within 180 days from the date of the Outsourcing Regulations coming into effect. All arrangements which do not comply with the Outsourcing Regulations within 180 days of the date of the Outsourcing Regulations coming into effect will be automatically treated as terminated and no compensation will be payable to the outsourcing service provider for continuance of such services beyond the period.

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 all the outsourcing arrangements where annual pay-out per outsourcing service provider is INR one crore or more, every year within 45 days from the close of the financial year.

Regulatory Sandbox

Furthering the fintech penetration in the insurance sector, the IRDA has created a ‘Regulatory Sandbox’ in order to use innovative ideas to foster growth and increase the pace of most innovative companies, in a way that provides flexibility in dealing with regulatory requirements and at the same time focusses on policyholder protection. Accordingly, IRDA has notified the IRDA (Regulatory Sandbox) Regulations, 2019, outlining the procedure to be followed in implementing the ‘innovation in insurance’ programme.

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).

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

Yes. 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. It was proposed in early 2016 that the foreign ownership limit would be reduced to 30 per cent. However, even after the issue of Indonesia's new Negative Investment List in May 2016, the foreign ownership limit remains at 80 per cent.

Government Regulation No. 14 of 2018 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. However, if the insurance company increases its paid up capital, it must comply with the 80 per cent limitation.

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 150 billion
Sharia insurer	IDR 100 billion
Reinsurer	IDR 300 billion
Sharia reinsurer	IDR 175 billion

IDR 13,892.59= US$1 as at January 1, 2020

TNB Note: *the above changes are based on OJK Regulation No. 67/POJK.05/2016 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/POJK.05/2016 on the Financial Soundness of Insurance Companies and Reinsurance Companies which was enacted in late December 2016.*

07 | Group supervision

No.

08 | Policyholder protection

Each insurance company must form its own protection fund to serve as a "last resort" to protect the interests of its policyholders. The protection fund must constitute at least 20 per cent of the insurer's own equity, which must be adjusted to the development of the insurance company's business volume. The funds representing the protection fund must be deposited with a bank. The Insurance Law mandates that the protection fund will be replaced by a policy assurance program by October 2017. However, as at the date of writing, the policy assurance program has not yet been launched. Once this program comes into effect, the protection fund requirement will no longer apply and all insurance companies must be a member of the program.

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. 1 of 2013 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 engagement of the providers.

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 ¥200 million 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	¥1 billion capital
SASTI insurers	¥10 million capital plus ¥10 million (or more) deposit
Licensed Foreign Insurers	¥200 million deposit
Insurance brokers	¥20 million (or more) deposited guarantee

JPY 109.50 = US$1.00 as at January 1, 2020

06 | Risk based capital

The IBA provides for calculation of a solvency margin ratio

$$\text{Solvency margin ratio (per cent)} : \frac{\text{Total amount of solvency margin}}{\text{Total amounts of risk} \times \tfrac{1}{2}} \times 100$$

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 issue a "business improvement order".
- 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.

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 addition, they may

- Provide financial assistance for the transfer or payment of insurance contracts of a bankrupt insurer.
- Assume insurance contacts of a bankrupt insurer.
- Purchase rights to insurance claims of a bankrupt insurer.
- The corporations are funded by industry levies.

The corporations are funded by industry levies.

09 | Portfolio 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

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

Nil.

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)	MOP30 million
Insurance companies (non-life)	MOP15 million
Reinsurance companies (life)	MOP150 million
Reinsurance companies (non-life)	MOP100 million
50 per cent to be paid in at the time of application, the remaining to be paid in within 180 days from the date of incorporation of the company	
Insurance broker companies	MOP25,000
Insurance agent companies	MOP25,000
MOP 8.04 = US$1.00 as at January 1, 2020	

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 thebranch funds in the amount of MOP7.5 million (life) and MOP5million (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
< MOP10 million	MOP5 million
= or > MOP10 million and < MOP20 million	50 per cent of the gross premium amount
= or > MOP20 million	MOP10 million plus 25 of the amount in excess of MOP20 million 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.

An insurance company solvency ratio must be composed by tangible unencumbered assets. AMCM publishes a yearly 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.

07 | Group supervision

No.

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 has also established the Arbitration Center for Insurance and Private Pension Funds Disputes, with the purpose of setting up an alternative dispute resolution forum for insurance related matters. The resolution of disputes under the Center is voluntary and free of charge.

Moreover, 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 | Portfolio transfers

Yes. 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

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 on the recommendation of the BNM. Brokers and financial advisers must be approved by BNM, and adjusters must be registered with BNM.

02 | Subsidiary/branch

Branches are not permitted. Insurers (other than professional reinsurers) must be public companies; adjusters must be incorporated, whereas BNM may specify the form of establishment of reinsurers, brokers and financial advisors.

There is currently a freeze on the issuance of new insurance licences by BNM, although BNM may be open to consider applications on a case by case basis. Prior consultation with BNM is encouraged.

03 | FDI restrictions

Yes: 70 per cent limit on foreign equity ownership.

> 70 per cent 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 the BNM or the Minister of Finance (as the case may be) is required for a person to

- Initially acquire an aggregate share interest of >5 per cent 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 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 > 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	RM100 million
Local reinsurer (life)	RM50 million
Local reinsurer (non-life)	RM100 million
Minimum surplus assets over liabilities	
Licensed foreign reinsurer	RM20 million
MYR 4.09 = US$1.00 at January 1, 2020	

06 | Risk based capital

Yes, the 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.

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

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

Yes. 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

Yes, by scheme approved by the 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: ELC LLP Advocates

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 licence 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 licence 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 licence.

When a foreign legal entity is carrying out reinsurance based on insurance agreement made with an insurer, no licence 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 stabilise the tax environment by issuing a "Stabilisation 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 USD$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 capital requirement

General insurance	MNT5 billion
Long term insurance	MNT6 billion
Reinsurance	MNT15 billion

MNT 2,739.29 = US$1.00 as at January 1, 2020

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 = (admitted assets)/(mandatory assets+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 = (admitted assets)/(debts and payments)*100

The Proper Ratio of Solvency shall be ≥ 125 per cent.

If the ratio is between 125 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 = admitted assets – debts and payments.

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

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

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 and Finance (MoPF), is responsible for licensing insurers, underwriting agents and insurance brokers. The Financial Regulatory Department of MoPF performs the work of the IBRB.

02 | Subsidiary/branch

Five foreign life insurance (100 per cent wholly owned subsidiaries) have been given a provisional license to operate in Myanmar through wholly owned subsidiaries.

Foreign non-life insurance providers are still not permitted to register 100 per cent wholly owned subsidiaries in Myanmar.

Foreign non-life and life insurance providers (only those having representative offices as on December 2018), are permitted to enter into a joint venture with a local non-life insurance provider (ratio being 35:65- local: foreign).

03 | FDI restrictions

The FDI restrictions have been partially lifted. Until recently, foreign insurers were limited to opening representative offices in Myanmar – registered offices of foreign companies were not allowed to conduct business.

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

On April 5, 2019 the MOPF 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 MoPF 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.

Based on the information from IBRB, Myanmar will allow foreign insurance companies to offer insurance services in the upcoming fiscal year.

04 | Control approvals

An insurer may not transfer its licence. It shall provide information about its shareholders when required by the IBRB.

05 | Minimum capital

Minimum paid up capital for domestic operators –

Life insurance	MMK6 billion
Non-life insurance	MMK40 billion
Mixed	MMK46 billion
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	
MMK 1,472.86 = US$1.00 as at January 1, 2020	

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

No.

08 | Policyholder protection

The IBRB has the power to establish a fund for the protection of life assurance policy-holders.

Policyholders get priority over an insurer’s assets in the event of insolvency (subject to certain preferential payments – section 391 Myanmar Companies Law of 2017 which became effective on August 1, 2018).

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, 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 licence from, and is regulated by, the RBNZ.

In addition, under proposed law reforms all insurers operating in the New Zealand retail market will need to hold a conduct licence issued by the Financial Markets Authority (FMA) covering their business generally and will need to comply with "fair treatment" requirements. The specific details of this regime and its timing are not yet known.

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. Licensing 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 before carrying on a business of providing or offering to provide such a service. From June 2020 those persons providing retail clients with advice on insurance products will need to hold, and be operating under, a licence from the FMA.

In 2017, the RBNZ commenced a comprehensive review of the Insurance (Prudential Supervision) Act 2010. The final recommendations from that review may result in changes to the licensing criteria and obligations for licensed insurers. Active work on the review was suspended in April 2018 although since that date the RBNZ has carried out some thematic reviews focusing on specific matters (such as conduct issues and the appointed actuary regime). The RBNZ has indicated that it intends to recommence work on the review during 2020.

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 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.

03 | FDI restrictions

Yes – consent of the Minister of the Crown is usually required for acquisition of rights or interests of 25 per cent or more of an entity worth more than NZ$100 million. Different rules (higher thresholds) apply for Australians, and proposals have been made to relax thresholds for other TPP countries (to NZ$200 million).

NZD 1.49 = US$1.00 as at January 1, 2020

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

Actual Solvency Capital (ASC)/Fixed Capital Amount –

Life insurer	ASC of NZ$5 million
General insurer	ASC of NZ$3 million (NZ$1 million for captives)

06 | Risk based capital

Solvency Margin is the excess of Actual Solvency Capital (ASC) over Minimum Solvency Capital (MSC), expressed as a dollar amount.

ASC is the total of capital less deductions from capital.

MSC = Total Solvency Requirement (TSR) less, in the case of life insurance, the aggregate of Policy Liabilities and Other Liabilities.

TSR = sum of capital charges for certain key business metrics including: insurance risk, catastrophe and asset risks (including credit, equity and property risk, foreign currency and interest rate risk, asset concentration risk and reinsurance recovery risk).

Policy Liabilities are valued on a best estimate basis and Other Liabilities are valued under NZ GAAP.

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

07 | Group supervision

Yes – 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.

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

Yes. 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. 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 no express restriction on outsourcing. However insurers must 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. In addition, the insurer must ensure that at all times it meets the conditions for entitlement to hold its licence.

Papua New Guinea

Contributed by: Norton Rose Fulbright

01 | The regulator

The two regulators of the insurance industry in Papua New Guinea are the Insurance Commissioner and the Bank of Papua New Guinea.

The regulator for general insurance business is the Insurance Commissioner who administers the Insurance Act 1995 and issues licences to insurers, brokers and loss adjusters. The Insurance Commissioner is responsible to the Ministry of Treasury.

The regulator of life insurance is the Bank of Papua New Guinea (Central Bank) which administers the Life Insurance Act 2000 and issues licences to life insurance companies and brokers.

The following entities/persons require authorisation: Insurers (life and general), reinsurers, insurance agents (persons who provide marketing, administration, management or any other services to any licensed insurer), insurance brokers and loss adjusters.

Insurers must reapply for their licences annually. Pursuant to section 64c of the Insurance Act insurers and brokers must pay an amount not exceeding 1 per cent of premium income to the Commissioner's Fund. Life insurers pay an annual licence fee only.

02 | Subsidiary/branch

A life insurer must be a locally incorporated corporation.

Likewise a general insurer must be a locally incorporated corporation with the exception of some insurers that were licensed as overseas branches under previous legislation.

In either case, if an insurer is foreign owned or controlled it must be certified under the Investment Promotion Act 1992 to carry on business in PNG.

03 | FDI restrictions

Nil, other than satisfying the Investment Promotion Authority requirements noted in two above.

04 | Control approvals

Section 36 of the Insurance Act provides that all risks situated in PNG are to be insured with PNG licensed insurers. The Insurance Commissioner has discretion to grant an exemption from this requirement. These restrictions apply to reinsurance as well. Practical issues can arise due to the limited capacity of the onshore reinsurance market.

No entity shall become a "shareholder controller" or "indirect shareholder controller" of a life insurer without the prior approval of the Central Bank as regulator. A person is a "shareholder controller" when that person accumulates more than a 15 per cent stake in a licence holder and an "indirect controller" means a person in accordance with whose directions the directors are accustomed to act.

Each corporate shareholder controller (and each of its executive officers and shareholder controllers and indirect shareholder controllers) and each executive officer of an insurer must satisfy fit and proper criteria.

05 | Minimum capital

Yes, which amounts must be deposited with the Central Bank –

General insurers	PGK2 million
Life insurers	PGK4 million plus, the Central Bank may require that the life insurer be entitled to the benefit of an approved guarantee of not less than PGK4 million
A life insurer shall also establish a statutory fund for all policyholder assets (separate funds for PNG policies and offshore policies).	
PGK 3.41 = US$1.00 as at January 1, 2020	

06 | Risk based capital

General Insurers have a risk based capital regime modelled on the Australian Prudential Supervisory Authority's risk based capital model as at 2008

- Minimum Capital Requirement = Liability Risk Charge + Asset Risk Charge + Excessive Exposure Risk Capital Charge.
- Life Insurers have a risk based capital regime.
- The Solvency Requirement is intended to ensure solvency in the event that a company ceases writing new business.
- The Capital Adequacy Requirement is intended to ensure solvency on a going concern basis for the next three years assuming future experience is in line with Best Estimate Assumptions.

07 | Group supervision

No. But the Central Bank may exercise its powers against any parent, controller or controller of any subsidiary of a life insurer.

08 | Policyholder protection

There are no separate policyholder protection funds.

Policyholders have the benefit of the deposits and guarantees.

Life insurance policyholders also have the benefit of the statutory fund relating to the life insurance business. The fund gives priority to the interest of the policyholders and has restrictions on its liabilities and expenditure.

09 | Portfolio transfers

Under the Insurance Act any licensed insurer wishing to transfer any insurance business is required to make an application to the Insurance Commissioner to approve the transfer scheme. The scheme must set out in detail how the transfer of insurance business is to be implemented.

Alternately, application may be made to the National Court.

10 | Outsourcing

There is no restriction on what activities an insurer may outsource and no requirement for regulatory approval for outsourcing. However formal agreements with agents are required and may be monitored by the Insurance Commissioner. Responsibility for the outsourced service remains with the insurer.

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

Risks can 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.[4]

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 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 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 of the Office of the President.

Where the value of a merger or acquisition 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 PHP5 billion and where the size of transaction (as this term is defined under the rules) exceeds PHP2 billion), 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. 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 according to the following schedule

By December 31, 2019	PHP900 million
By December 31, 2022	PHP1.3 billion

For existing domestic composite insurers (i.e. authorized to engage in 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	PHP1 billion
Non-Life	PHP1 billion
Composite	PHP2 billion

4 Provided that the corporation that will act as an insurance agent has a paid-up capital of at least US$200,000.

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 interests. The surplus fund must not be less than PHP100 million.

A new foreign insurer (life or non-life) must have unimpaired capital or assets and reserves of at least PHP1 billion. 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 PHP1 billion. 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 trusteed surplus of PHP550 million as of December 31, 2016. An increase is prescribed based on the following schedule

By December 31, 2019	PHP900 million
By December 31, 2022	PHP1.3 billion

The Insurance Commissioner may, in addition to the required unimpaired trusteed surplus, require a foreign insurer to have an additional fund of not less than PHP100 million.

The applicable minimum paid-up capital for a new micro-insurance company is PHP500 million.

A corporation applying for registration to act as an issuer of pre-need plans must have a minimum paid-up capital of PHP100 million.

PHP 50.71 = US$1.00 as at January 1, 2020

06 | Risk based capital

Yes. 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 shall register with the Insurance Commission. This registration is one-time only and is not recurring. 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 recently issued guidelines on related party transactions for institutions regulated by the Insurance Commission.

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 PHP5 million.

09 | Portfolio transfers

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

10 | Outsourcing

Activities regulated by the Insurance Code cannot be outsourced unless 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 (Cap 142) 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 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 of the voting rights of, a licensed insurer in Singapore.

The MAS' prior approval should also be obtained before obtaining effective control of a licensed insurer incorporated in Singapore.

All controllers must be approved by 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.

05 | Minimum capital

Licensed Insurer	S$10 million
Licensed Reinsurer	S$25 million
Licensed Insurer (writing specific lines of business)	S$5 million
An authorised reinsurer shall maintain a minimum deposit of S$2 million for each class of reinsurance business for which it is authorised.	
SGD 1.35 = US$1.00 as at January 1, 2020	

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: C1 – insurance risks, C2 – asset portfolio risks, including market and credit risks and C3 – asset concentration risks.

07 | Group supervision

The MAS will regulate 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

Yes. The transferor may apply to the court to confirm a scheme of transfer of whole or part of an insurance business, subject to MAS prior approval. 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 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

No.

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 newly 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: insurance risk, interest risk, credit risk, market risk and operational risk.

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

06 | Risk based capital

Yes, since April 1, 2011.

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 KRW1 billion, 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.

SGD 1.35 = US$1.00 as at January 1, 2020

08 | Policyholder protection

Yes. 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 KRW50 million per insurance policy.

09 | Portfolio transfers

Yes. 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 execution date of the policy transfer agreement. During this period, the transferor cannot sell new insurance policies.

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: solicitation and execution of insurance contracts, product disclosure, underwriting discretion, contractual matters relating to policies (e.g. termination and reinstatement), management of premium receipts, 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.

The Insurance Act imposes fit and proper criteria for all directors of insurers.

A director of one insurer cannot be a director for any other insurer unless it is a subsidiary or associate of the first insurer.

05 | Minimum capital

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

LKR 181.35 = US$1.00 as at January 1, 2020

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 LKR500 million (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 2017 Annual Report of the IRCSL this amount is invested in government securities and fixed deposits and the accumulated amount in the Fund as at December 31, 2017 was LKR4,1100 billion.

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$2 billion, 20 per cent to be paid in at the time of application
Insurance brokers plus reinsurance brokers	NT$10 million
Insurance agent companies	NT$5 million
Insurance adjustor companies	NT$2 million

TWD 29.92 = US$ 1.00 as at January 1, 2020

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

A branch of a foreign insurance broker or a foreign insurance agent company must have minimum operating funds of NT$5 million.

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

A branch of a foreign insurance enterprise applying to operate a reinsurance brokering business must have minimum operating funds of NT$10 million.

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$10 million.

06 | Risk based capital

Yes. An insurance company must maintain a ratio of total adjusted net capital to its risk-based capital requirement of at least 200 per cent. 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

No.

08 | Policyholder protection

Yes. 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

Yes. 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, provided the service provider is engaged in accordance with the self-regulatory rules promulgated by the FSC; (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.

Prior approval from the FSC is required to outsource any and all of the business operations identified above to a foreigner/foreign company. Branches of foreign insurance companies in Taiwan that outsource their operations to their head office or other overseas branches for internal division of labor shall also apply for the purpose of FSC's prior approval. However, such FSC's prior approval is waived where the insurance company engages an offshore institution to assist in the handling of claims, emergency rescue, investigation or assessment, the insurance company outsources the development and maintenance of its onshore information systems to an offshore institution, or others stipulated by Directions for Operation Outsourcing by Insurance Enterprises.

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 are permitted for an insurer; 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
Insurance and reinsurance companies

- Up to 25 per cent less one share permitted.
- Up to 49 per cent with approval of the OIC.
- Above 49 per cent with approval of the Minister of Finance.

On January 18, 2017, the Ministry of Finance issued a notification which sets out the requirements to be met when applying for an approval (ultimately issued at Ministerial discretion) to allow >49 per cent foreign shareholding. 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 (THB1 billion for non-life insurers and THB4 billion 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 must be notified after the event to the OIC. A change in directors must be approved by the OIC.

05 | Minimum capital

Life insurer/reinsurer	THB500 million (min registered capital)
General insurer/reinsurer:	THB300 million (min registered capital)

THB 29.69 = US$1.00 at January 1, 2020

06 | Risk based capital
Yes – Eligible Capital/Risk Capital Requirement x 100 per cent = risk based capital.

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 capital charges for insurance risk, market risk, credit risk and concentration risk.

Solvency margin: minimum capital requirement of 140 per cent of risk based capital.

07 | Group supervision
No.

08 | Policyholder protection
Yes. The General Insurance Fund and the Life Insurance Fund (funded by industry levies) assist policyholders of non- life and life insurers respectively in the event of revocation of an insurance licence. Payments are limited to THB1 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 include Internal audit, accounting, IT and advisory services in respect of claims and back office functions.

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 and insurance brokers. 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) and national laws, 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 companies where foreigner(s) own(s) more than 49 per cent of charter capital and to foreign individuals working in Vietnam.
- Reinsurance services.
- 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 there-from; and (ii) goods in international transit.
- Insurance broking and reinsurance broking services.
- Consultancy, actuarial, risk assessment and claim settlement services.

Qualified foreign brokers are entitled to provide cross-border brokerage services in Vietnam to Vietnamese insurers or foreign insurers' branches licensed to operate in Vietnam.

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

Life insurers established in Vietnam must operate through a locally established company and general insurers may operate through either a locally established company or as a branch of a foreign insurer. Institutional investors contributing to 10 per cent or more of the charter capital must have a profitable business in three consecutive years immediately preceding the year that the application for licensing is submitted. Foreign institutional members/shareholders of a newly-established insurer are required to have been operating for at least seven years in the sector of business intended to be engaged in Vietnam, to have total worth of assets of at least US$2 billion in the year immediately preceding the year that the application for licensing is submitted, and to have not seriously violated any laws on insurance business of the home country for three consecutive years immediately preceding the year that the application for licensing is submitted.

As a practical matter, the MOF treats the establishment of a branch by a foreign insurer similarly to the establishment of a subsidiary. In addition to the above-mentioned requirements, foreign general insurers establishing a branch in Vietnam must gain profit for three consecutive years immediately preceding the year that the application for licensing is submitted and have not incurred cumulative losses prior to the application for licensing.

Foreign organizations investing in the incorporation of an insurance broker are additionally required to have been operating for at least seven years in the sector of insurance brokerage and to have not seriously violated any laws on insurance brokerage of the home country for three consecutive years immediately preceding the year that the application for licensing is submitted.

To establish offices in cities or provinces in Vietnam other than the city or province where the company was established, companies must establish branches or representative offices in those other provinces and cities. Written approval from the MOF is needed for each branch or representative office.

Foreign insurers or brokers can establish representative offices in Vietnam. The foreign insurer or broker must have been operating for at least five years and must have "a co-operative relationship with the Vietnamese bodies and organisations". Representative offices are not permitted to conduct insurance business in Vietnam.

03 | FDI restrictions

Nil. All restrictions on the ability of foreign insurers to establish 100 per cent foreign-owned subsidiaries were removed on January 1, 2008 according to Vietnam's WTO Commitments. Some restrictions remain on the ability of foreign life insurers to establish branches in Vietnam.

04 | Control approvals

Divisions, splits, mergers, amalgamations, conversions of the form, transfers of ten per cent or more of the charter Capital or dissolution/shutdown of an insurer, insurance broker or foreign insurer'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; adjustment in charter or allocated capital; establishment and closure of branches and representative offices, conversion of a representative office into a branch; relocation of head office, branches, representative offices; 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 insurer's branch.

Establishment, closure and relocation of any business facilities need only be notified in writing to the MOF.

05 | Minimum capital

Businesses must have minimum legal capital of –

General insurers

(a) General insurance (except items (b) and (c) below) and health insurance	VND300 billion
(b) Item (a) plus either aviation insurance or satellite insurance	VND350 billion
(c) Item (a) plus both aviation and satellite insurances	VND400 billion

Life insurers

(a) Life insurance (excluding unit except linked and pension insurances) and health insurance	VND600 billion
(b) Item (a) plus either unit linked insurance or pension insurance	VND800 billion
(c) Item (a) plus both unit linked and pension insurances	VND1,000 billion

Health insurers

Health insurance	VND300 billion

Branch of a foreign insurer

(a) General insurance (except item (a) and (b) below) and health insurance	VND200 billion
(b) Item (a) plus either aviation insurance or satellite insurance	VND250 billion
(c) Item (a) plus both aviation and satellite insurances	VND300 billion

Reinsurer

Reinsurer (general insurance, or general and health insurances)	VND400 billion
Reinsurer (life insurance, or life and health insurances)	VND700 billion
Reinsurer (life, general and health insurances)	VND1,100 billion

Broker

Broker (either primary insurance or reinsurance brokerage)	VND4 billion
Broker (both primary insurance and reinsurance brokerage)	VND8 billion

Extra paid-up capital required

General insurer or foreign general insurer's branch wishing to add aviation insurance or satellite insurance	VND50 billion for each type of insurance
Life insurer wishing to add investment-linked insurance and pension insurance	VND200 billion for each type of insurance
Insurer with more than 20 branches and representative offices	VND10 billion for each additional branch or representative office
Broker (both primary insurance and reinsurance brokerage)	VND4 billion

VND 23,172.13 = US$1.00 at January 1, 2020

Idle capital may only be invested in Vietnam.

06 | Risk based capital

No – capital based.

The minimum solvency margin of a general insurer or a local branch of a foreign 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.

The minimum solvency margin of a 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 5 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.

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

Insurers, brokers, and branches of foreign insurers 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 or a broker, or allocated capital of a foreign general insurer's branch.

07 | Group supervision

No.

08 | Policyholder Protection of Insured Persons

Insurers and foreign general insurers' branches (except reinsurers) must contribute to the insured person protection fund 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. 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 | Portfolio transfer

The transfer 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) an insurer is in danger of becoming insolvent; (b) an insurer divides, splits, consolidates, merges or dissolves; or (c) pursuant to an agreement between insurers. In the case of an insurer in danger of becoming insolvent or upon dissolution, where agreement cannot be reached on the transfer of its insurance policies to another insurer, the MOF shall appoint an insurer to accept the transfer.

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 make a public announcement of the transfer on two daily newspapers in five consecutive issues and must notify the policyholders in writing, who will be entitled to terminate their policies within 15 days from the date of receipt of the notice of the transferor if they do not agree with the transfer plan.

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. 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.

Editor

Anna Tipping
Partner, Singapore
Tel +65 6309 5417
anna.tipping@nortonrosefulbright.com

Contacts

Australia

Ray Giblett
Partner, Sydney
Tel +61 2 9330 8531
ray.giblett@nortonrosefulbright.com

China

Lynn Yang
Partner, Shanghai
Tel +86 21 6137 7022
lynn.yang@nortonrosefulbright.com

Hong Kong

Declan McDaid
Partner, Hong Kong
Tel +852 3405 2563
declan.mcdaid@nortonrosefulbright.com

Indonesia (in association with TNB & Partners)

Vanda Kaonang
Senior associate
Tel +62 21 2965 1820
vanda.kaonang@nortonrosefulbright.com

Papua New Guinea

Karo Lelai
Partner, Port Moresby
Tel +675 320 3427
karo.lelai@nortonrosefulbright.com

Singapore

Mabelle Tay
Counsel, Singapore
Tel +65 6309 5416
mabelle.tay@nortonrosefulbright.com

Thailand

Tassanai Kiratisountorn
Partner, Bangkok
Tel +662 205 8527
tassanai.kiratisountorn@nortonrosefulbright.com

Contributing law firms

Cambodia
Antoine Fontaine
Partner
Bun & Associates
Tel +855 23 999 567
fontaine@bun-associates.com

India
Leena Chacko
Partner
Cyril Amarchand Mangaldas
Tel +91 22 2496 4455
leena.chacko@cyrilshroff.com

Japan
Shinichi Takahashi
Partner
Nishimura & Asahi
Tel +81 3 5562 8500
s_takahashi@jurists.co.jp

Macau
Rui Pinto Proença
Partner
MdME
Tel +853 2833 3332
rpp@mdme.com.mo

Malaysia
Idahani Ismas Ismail
Partner
Zaid Ibrahim & Co
a member of ZICOlaw
Tel +603 2087 9852
idahani.ismas@zicolaw.com

Mongolia
Bayar Budragchaa
Managing partner
ELC LLP Advocates
Tel +976 88105991
bayar@elclawoffice.mn

Myanmar
Nishant Choudhary
Partner, Deputy Managing Director
DFDL
Tel +95 1 526 180
nishant.choudhary@dfdl.com

New Zealand
Nick Summerfield
Partner,
Anthony Harper
Tel +64 9 984 4234
nick.summerfield@ah.co.nz

Philippines
Hiyasmin H. Lapitan
Partner
SyCip Salazar Hernandez & Gatmaitan
Tel +632 982 3500
hhlapitan@syciplaw.com

South Korea
Jay H. Ahn
Partner
Kim & Chang
Tel +82 2 3703 1058
jhahn@kimchang.com

Sri Lanka
Diluka Rodrigo
Partner
Julius & Creasy
Tel +9411 2422601-5, ext 271
diluka@juliusandcreasy.com

Taiwan
C.T. Chang
Partner
Lee and Li, Attorneys at Law
Tel +886 2 2715 3300
ctchang@leeandli.com

Vietnam
Luu Tien Ngoc
Partner
Vision & Associates Legal
Tel +84 4 3934 0629
lt.ngoc@vision-associates.com