

Insurance Regulation in Asia Pacific 2023



Contents

Contacts	03
Contributing law firms	04
Preface	05
Australia	06
Cambodia	07
China	10
Hong Kong	12
India	16
Indonesia	22
Japan	24
Macau	26
Malaysia	30
Mongolia	32
Myanmar	34
New Zealand	36
Papua New Guinea	40
The Philippines	42
Singapore	44
South Korea	46
Sri Lanka	48
Taiwan	50
Thailand	52
Vietnam	54

Contacts

Australia

Ray Giblett

Partner, Sydney

Tel +61 2 9330 8531

ray.giblett@nortonrosefulbright.com

Indonesia

(in association with TNB & Partners)

Shamim Razavi

Partner, Sydney

Tel +62 2 9330 8806

shamim.razavi@nortonrosefulbright.com

Thailand

Tassanai Kiratisountorn

Partner, Bangkok

Tel +662 205 8527

tassanai.kiratisountorn@nortonrosefulbright.com

China

Ai Tong

Partner

Tel +86 1851 613 8802

ai.tong@nortonrosefulbright.com

Hong Kong

Etelka Bogardi

Partner, Hong Kong

Tel +852 3405 2578

etelka.bogardi@nortonrosefulbright.com

Singapore

Dexter Tan

Senior Associate, Singapore

Tel +65 6309 5317

dexter.tan@nortonrosefulbright.com

Acknowledgements

The chapters on Australia, China, Hong Kong, Indonesia, 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, Papua New Guinea, 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 on the following page.

Editor

Anna Tipping

Partner, Singapore

Tel +65 6309 5417

anna.tipping@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

Indranath Bishnu
Partner
Cyril Amarchand Mangaldas
Tel +91 22 2496 4455
indranath.bishnu@cyrilshroff.com

Japan

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

Macau

Carlos Coelho
Partner
MdME Lawyers
Tel +853 2833 3332
carlos.coelho@mdme.com

Papua New Guinea

John Leahy
Principal
Leahy PNG Law
Tel +675 3266225
john@leahypnglaw.com

Malaysia

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

Mongolia

Nyamtseren Bataa
Managing Partner
Snow Hill Consultancy LLP
Tel +976 88098122
nyamtseren@snowhill.mn

Myanmar

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

New Zealand

Nick Summerfield
Partner
Anthony Harper
Tel +64 21 242 7686
nick.summerfield@ah.co.nz

Philippines

Hiyasmin H. Lapitan
Partner
SyCip Salazar Hernandez &
Gatmaitan
Tel +632 8982 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

Dang Trong Hieu
Partner
Vision & Associates Legal
Tel +84 24 3934 0629
dt.hieu@vision-associates.com

Preface

We are pleased to present the 2023, and the tenth 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, 2023. 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

Australia

Contributed by: Norton Rose Fulbright

01 The regulator

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

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

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

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

02 Subsidiary/branch

A foreign life insurer may establish a locally incorporated subsidiary to carry on life insurance business in Australia. Alternatively, a 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\$10m
General insurer	A\$5m (A\$2m for captives)

A\$1.47 = US\$1.00 as at January 1, 2023.

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

06 Risk based capital – insurers

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

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

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

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

07 Group supervision

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

An “insurance group” exists if an Australian insurer has controlled entities or is itself the subsidiary of an authorised/registered NOHC. This provides APRA with some level of control over the group that the insurer or NOHC manages.

Most of APRA’s powers that apply to an insurer, also apply to a NOHC.

APRA can impose directions on the insurer or NOHC to take specified actions in relation to their subsidiaries.

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

08 Policyholder protection

Life insurer

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

General insurer

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

09 Portfolio transfers

Court approval

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

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

APRA approval

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

10 Outsourcing

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

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

Cambodia

Contributed by: Bun & Associates

01 The regulator

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

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

Insurers, insurance brokers, insurance agents, reinsurance brokers, actuaries and loss adjusters must be licensed by the IRC.

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

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

02 Subsidiary/branch

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

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

03 FDI restrictions

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

04 Change of control approvals

A change greater than ten per cent of the shareholding of an insurance company must be notified to the IRC prior to the event. As the IRC may withdraw or not renew a licence if the licence requirements are not met, it is prudent to obtain prior approval to any change of control taking effect. In practice, such approval is required whatever modifications of the status.

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

05 Minimum capital

The APRA prescribed minimum capital amounts for insurers are:

Life or General Insurance company	SDR5m**
Composite Insurance company	SDR10m**
Micro-insurance company (life or non-life)	KHR600m**
Insurance broker	KHR***400m*
Insurance agent	KHR***80m*
Loss adjustor	KHR***80m*

* SDR = IMF special drawing rights. SDR 1 = US\$1.33 as at January 1, 2023.

** KHR 4,118.50 = US\$1.00 as at January 1, 2023.

06 Risk based capital – insurers

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:

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

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

A new *prakas* (ministerial order) on solvency requirements for insurance companies is expected to be adopted by early 2023.

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

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

09 Portfolio transfers

A Cambodian insurance company may apply to the IRC for approval to transfer all or part of its insurance business to another Cambodian insurance company. The transfer is effected by agreement between the transferor and the transferee, once the IRC 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 two in Cambodia).

China

Contributed by: Norton Rose Fulbright

01 The regulator

The China Banking and Insurance Regulatory Commission (CBIRC) regulates insurance companies and intermediaries, including agents, brokers, loss adjusters and their business operations.

02 Subsidiary/branch

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

03 FDI restrictions

No restrictions on foreign shareholding¹.

However, an insurer 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, i.e.:

- in the case of a foreign insurer or insurance group company², no less than US\$5bn; or
- in the case of other foreign financial institution, no less than US\$2bn,

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

04 Change of 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, supervisors and senior management personnel must be approved by CBIRC as “fit and proper”.

05 Minimum capital

Insurer (life)

Nationwide

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

RMB1bn 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.

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

Branches

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

Insurer (non-life)

Nationwide

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

Branches

Additional RMB20m for any single branch outside the province where the insurer is registered and RMB500m 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)

1. On December 6, 2019, CBIRC promulgated the Notice on the Point in Time of Explicitly Lifting Restrictions on Foreign Ownership Ratio in Joint-venture Life Insurance Companies (In Chinese: 关于明确取消合资寿险公司外资股比限制时点的通知), which stipulated that the foreign shareholding restriction on the life insurance companies would be cancelled from January 1, 2021 and thus the maximum foreign shareholding in a life insurance company in China can be up to 100%.

2. According to the Amended Implementation Rules of the Administration Regulations on Foreign-invested Insurance Companies becoming effective from March 10, 2021, the sole foreign shareholder or the major foreign shareholder of a foreign funded insurer shall be a foreign insurer or a foreign insurance group company.

will subject insurers to higher qualification requirements such as having engaged in requisite basic business, average net asset value requirement, etc.

CNY 6.90 = US\$1.00 as at January 1, 2023.

06 Risk based capital – insurers

Yes. China's Solvency II type regime has been fully implemented 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, reputation risks, etc.) and support such risks with a comparable amount of capital. The regime keeps developing – CBIRC officially implemented a phase II update on the Solvency II type regime from late 2017. The amended *Solvency Measures on Insurance Companies* was implemented by CBIRC effective from March 1, 2021, which has been long awaited by the market. Also, on December 30, 2021, CBIRC officially issued the *Solvency Regulatory Rules II*, which signalled a successful completion of the phase II update.

07 Group supervision

Yes. A group requires two or more controlled insurance companies approved by CBIRC and which constitutes all member companies.

CBIRC implemented new regulations supervising insurance group companies on November 24, 2021, which applies equally to locally funded and foreign invested insurance group companies.

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.

Notwithstanding the above, CBIRC is currently in the process amending the rules on the policyholder protection fund. In January 2022, a draft regulation on this topic was published by CBIRC for market comments.

09 Portfolio transfers

Yes. Consents from both CBIRC and individual policyholders are 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.

Notwithstanding the above, 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). CBIRC also implemented measures on risk control of insurers' IT outsourcing on December 30, 2021, which provide regulatory guidelines on various aspects of IT outsourcing.

In principle, the insurer shall prudently select the outsource providers with attention to its qualification, financial status, and internal management system, etc. Subject to CBIRC practice on various outsourcing activities, the outsourcing insurer may need to submit a report of the outsourcing activities to CBIRC within 20 working days before the execution of the outsourcing agreement.

Hong Kong

Contributed by: Norton Rose Fulbright

01 The regulator

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

Under the Insurance Ordinance (Cap. 41), the IA now has regulatory and supervision powers in relation to the insurance industry (including over 129,000 insurance intermediaries) and the promotion of the general stability of the insurance industry and for the protection of existing and potential policy holders.

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

02 Subsidiary/branch

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

A foreign insurer wishing to open a branch is required to satisfy the IA that it: (a) is a company incorporated in a country where there is comprehensive company law and insurance law; (b) is an insurer under effective supervision by the relevant authority(ies) of its home country; and (c) is a well-established insurer with international experience and of undoubted financial standing.

03 FDI restrictions

None.

04 Change of control approvals

Approval 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, an appointed actuary in respect of insurers conducting long term business and administrator(s) and directors of a special purpose insurer must be pre-approved by the IA as "fit and proper" prior to appointment.

Both insurance agents and insurance brokers will need the confirmation of the IA before confirming the appointment of its responsible officer. Under the Ordinance, the IA has power to reject or impose conditions it

considers appropriate on the approval. In cases where the IA considers the responsible officer is no longer "fit and proper", it may also revoke the approval previously given.

Additionally, approval of the IA must also be obtained prior to any change to shareholder controllers of the designated insurance holding company (DIHC), who are also subject to ongoing fitness and proprietary requirements as described above.

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

05 Minimum capital

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

HKD\$7.80 = US\$1.00 as at January 1, 2023.

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 – insurers

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

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

Life – the greater of

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

A risk-based capital regime is being introduced under which capital and solvency requirements are commensurate with the risks borne by insurers, in line with core principles of the International Association of Insurance Supervisors (IAIS). The regime adopts a three pillar approach covering: quantitative aspects, qualitative aspects, and regulatory reporting and disclosures respectively.

A public consultation is expected on the draft capital rules in respect of the quantitative aspects (Pillar 1) in 2023. For Pillar 2 (qualitative aspects), the IA's Guideline on Enterprise Risk Management (GL21) took effect on January 1, 2020, with a new requirement for insurers to submit to the IA their first Own Risk and Solvency Assessment report for the financial year ending on or after December 31, 2020, with transitional arrangements in place until Pillar 1 takes effect. A consultation on the disclosure requirements (Pillar 3) started in 2021. The target is to implement the risk-based capital regime in the first half of 2024.

As part of the new supervisory framework for multinational insurance groups (see Q7), the Insurance (Group Capital) Rules (Cap.41O) also prescribe group capital adequacy requirements and supervisory reporting and public disclosures following the three pillar approach.

07 Group supervision

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

The new supervisory framework for multinational insurance groups became effective on March 29, 2021. The IA, as the group supervisor appointed to regulate and supervise insurance groups, has direct regulatory powers over the DIHCs to conduct

more effective group-wide supervision (GWS). The IA has designated three insurance holding companies to be subject to the GWS by the IA in May 2021.

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

08 Policyholder protection

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

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

The long-awaited bill to establish a policyholder protection scheme covering most types of direct life and non-life policies is expected

to be introduced during the 2022-23 Legislative Council term. Under the scheme, if an insurer becomes insolvent, the scheme would pay the first HK\$100,000 of any claim and 80 per cent of the remaining balance, up to HK\$1m per policy, per claim or per insured event, whichever is applicable.

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.

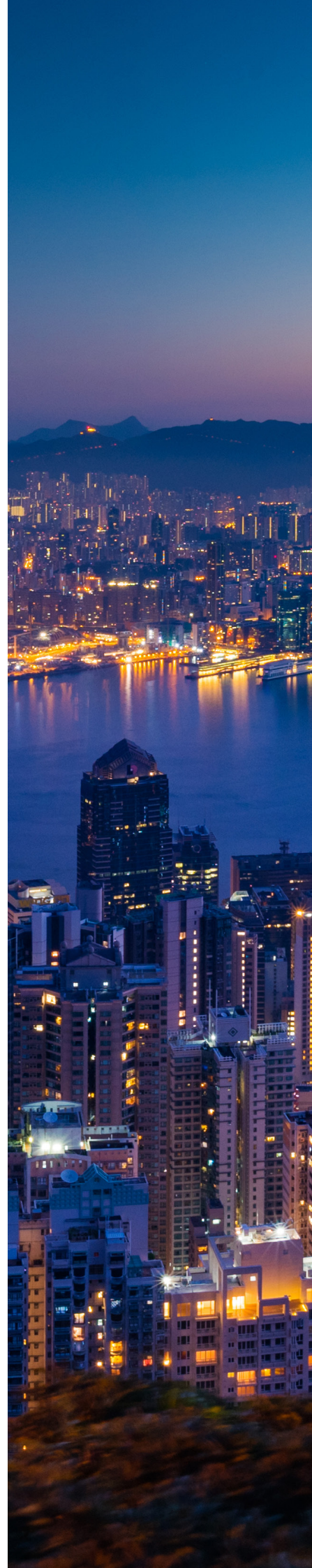
Notification by Gazette/newspaper advertisement is required as a minimum.

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.

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





India

Contributed by: Cyril Amarchand Mangaldas

01 The regulator

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

02 Subsidiary/branch

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

The IRDAI had also issued the IRDAI (Lloyd's India) Regulations, 2016 (Lloyd's Regulations) to facilitate Lloyd's of London to operate in the Indian market. Pursuant to the Lloyd's Regulations, Lloyd's was permitted to establish a branch office in India to facilitate a market and associated structures for conduct of reinsurance business both within and outside India.

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

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

03 FDI restrictions

The DFS has notified the Indian Insurance Companies (Foreign Investment) (Amendment) Rules, 2021 (2021 FI Rules) on May 19, 2021, which amended the existing foreign investment limits to 74 per cent of the paid-up equity share capital of insurance companies and 100 per cent of equity share capital of insurance sector intermediaries. Such foreign investment is under the automatic route i.e. without the prior approval of the concerned department of the Government of India. However the investment is subject to approval of the IRDAI.

The IRDAI has formally withdrawn its guidelines on Indian ownership and control dated October 19, 2015 (IOC Guidelines), with effect from July 30, 2021. The withdrawal of the IOC Guidelines marks the removal of the requirement that Indian companies with foreign investment must remain "Indian owned and controlled". Therefore, several governance-related restrictions for Indian insurance companies with foreign investment are now no longer applicable. However, all insurance companies having foreign investment are required to ensure that (i) a majority of its directors; (ii) a majority of its key management persons; (iii) at least one among the chairperson of its board of directors/ managing director/ chief executive officer are resident Indian citizens. Similarly, all insurance intermediaries with majority foreign investment are required to, inter alia (i) take prior

permission of the IRDAI for repatriating dividend; (ii) not make payments to the foreign group or promoter or subsidiary or interconnected or associate entities, beyond what is necessary or permitted by the IRDAI; and (iii) ensure that the composition of the board of directors and key management persons is as specified by the concerned regulators.

04 Change of control approvals

Section 6A(4)(b) of the Insurance Act prescribes the requirement of obtaining prior approval of the IRDAI for:

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

Pursuant to Section 6A(4)(b) of the Act, the IRDAI issued the IRDAI (Transfer of Equity Shares of Insurance Companies) Regulations, 2015 on April 23, 2015. These regulations prescribe the procedure to be followed by Indian insurance companies for obtaining the approval of the IRDAI for a transfer of shares which triggers the thresholds set out in Section 6A(4)(b) of the Insurance Act.

Further, IRDAI by way of a circular dated July 22, 2020 clarified the following position specifically in case of listed insurance companies:

- In case of a transfer of shares by a transferor or group of transferors of more than 1 per cent and up to 5 per cent of the paid up equity capital of a listed insurance company, the transferor shall immediately, upon execution of the transaction inform the insurance company.
- Prior approval of the IRDAI required for any transferor acquisition of more than 5 per cent of the paid up equity capital of the listed insurance company by a transferor or the acquirer respectively.

All other changes in shareholding must be notified to IRDAI. 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 IRDAI.

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 IRDAI. The Listed Insurer

Guidelines also lay down that every person who intends to acquire 1 per cent or more but less than 5 per cent of the paid up equity share capital of the listed insurance company, may do so, subject to the compliance of Fit and Proper criteria mentioned in the Listed Insurer Guidelines.

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

05 Minimum capital

Minimum paid-up capital requirements

Insurer	INR1bn
Reinsurer	INR2bn
Direct broker	INR7.5m
Reinsurance broker	INR40m
Composite broker	INR50m

INR 82.75 = US\$1.00 as at January 1, 2023.

A foreign company carrying on reinsurance business through a branch in India is required to have net owned funds of INR50bn. 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 10bn.

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.

06 Risk based capital – insurers

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

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

Indian insurers are permitted to place reinsurance business with cross border reinsurers (CBRs) not having a physical presence in India and doing reinsurance business with Indian insurance companies, who

comply with the eligibility criteria specified by IRDAI, which are, inter alia, maintenance of solvency margin/ capital adequacy as stipulated by the home regulator of the CBR.

07 Group supervision

No.

08 Policyholder protection

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

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

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

09 Portfolio transfers

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

10 Outsourcing

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

regulations are applicable only in respect of direct insurance business of such insurers.

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

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

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

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

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

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

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

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

IRDAI (Surety Insurance Contracts) Guidelines, 2022

The IRDAI has issued the IRDAI (Surety Insurance Contracts) Guidelines, 2022 on January 3, 2022 (Surety Guidelines) to regulate the business of surety insurance in view of the unique risks and features of surety insurance. The Surety Guidelines regulates the surety insurance business and surety bonds market. The Surety Guidelines prescribes different kinds of bonds such as payment bond, bid bond, contract bonds, customs and court bond, performance bonds and retention money. The insurers are required to have a board-approved underwriting philosophy for surety insurance business. As per the Surety Guidelines, the surety insurance products shall be subject to all provisions and relevant procedures of File & Use as stipulated under the Guidelines on Product Filing Procedures for General Insurance Products. The insurers can market the surety insurance products only after the same has been filed and noted by the IRDAI.



Miscellaneous

Master Guidelines on Anti-Money Laundering/Counter Financing of Terrorism (AML/CFT), 2022

On August 1, 2022, the IRDAI issued Master Guidelines on Anti-Money Laundering/Counter Financing of Terrorism (AML/CFT), 2022 for all general/life/health insurers (Master Guidelines on AML). These Master Guidelines on AML were effective from November 1, 2022 (for life insurers) and from January 1, 2023 (for general insurers and health insurers) and repeal inter alia the guidelines issued by the IRDAI pertaining to anti-money laundering and counter- financing of terrorism to be followed by life insurance companies on September 28, 2015. The Master Guidelines on AML inter alia lay down the adoption of AML/CFT Program in order to discharge the statutory responsibility through internal policies, procedures and controls, recruitment and training of employees/agents on AML, and internal controls to combat any possible money laundering attempts. Further, it prescribes the requirement of adequate screening mechanism for personnel recruitment and requirement of compliance with extant policies, procedures and controls related to money laundering activities on the basis of overall risk assessment.

Insurance Regulatory and Development Authority of India Circular on Use & file (U&F) procedure for life insurance products & riders dated June 10, 2022 (Use and File Circular)

The IRDAI has permitted life insurers

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

Guidelines on Establishment and Closure of Liaison Office in India by an Insurance Company registered outside India dated October 17, 2022 (Guidelines for Liaison Office)

An overseas insurer applying for an opening of a liaison office in India is required to have a financially sound track record during the immediately preceding three financial years in the home country and net worth of not less than USD\$65m shall be the minimum requirement for applying for opening of a liaison office in India. The overseas insurer is required to make an application to the IRDAI along with certain requisite documents. As per the Guidelines for Liaison Office, the IRDAI may reject the application or grant the approval after exercising due

diligence in respect of the background of the overseas insurer and after satisfying itself of the adherence to the eligibility criteria for establishing a liaison office in India.

Key Policy Initiatives of the IRDAI

IRDAI's Open House for increasing insurance penetration in India

The IRDAI announced, via a press release dated April 12, 2022, that an open house shall be held for all regulated entities on the fifteenth day of every month and shall be chaired by the chairperson of the IRDAI. The purpose of such open house will be to invite suggestions and have a discourse on achieving the overall objective of increasing insurance penetration in the country and to work towards resolution of impediments hindering the process.

Proposed IRDAI Reforms

The IRDAI is working on reforms that will lead to the objective of "insurance for all" by 2047, a vision plan to increase insurance penetration and facilitating sustainable growth of the industry. These reforms, among others, include promoting ease of doing business by encouraging new insurance players, allowing niche players in insurance, relaxing renewal norms for intermediaries, product certification by insurers, time-bound approvals, administrative flexibility, fast-track approvals for investment proposals, change in minimum capital requirement for insurers, shift to a risk based solvency regime,

establishment of 'captive' insurance companies and 'composite' insurance companies, enabling provisions in the insurance regulatory framework to allow insurance companies to have subsidiaries or strategic investments and provide value added services, facilitating InsurTech and distribution agility. The reforms are still under discussion and various working groups represented by industry officials have been constituted to suggest the changes in the existing regulatory framework and the compliance requirements.

Indonesia

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

01 The regulator

The Financial Services Authority (Otoritas Jasa Keuangan "OJK") supervises all financial institutions. Law No. 40 of 2014 on Insurance which was enacted on October 17, 2014 is the principal legislation relating to insurance business (Insurance Law).

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.

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

04 Change of 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 150bn
Sharia Insurer	IDR 100bn
Reinsurer	IDR 300bn
Sharia reinsurer	IDR 175bn

IDR 15,538.50 = US\$1.00 as at January 1, 2023.

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 – insurers

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 cooperation agreements with the providers being signed.

Japan

Contributed by: Nishimura & Asahi

01 The regulator

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

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

Insurance brokers (Nakadachi-nin) must be registered.

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

02 Subsidiary/branch

Japanese incorporated entities with a licence are Licensed Insurance Companies.

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

A Foreign Insurer without an insurance business licence in Japan is prohibited from concluding insurance contracts regarding Japanese risks, except for certain types of insurance contracts, such as reinsurance contracts or insurance contracts that have been approved by the FSA.

03 FDI restrictions

None.

04 Change of 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	¥1bn capital
SASTI insurers	¥10m capital plus ¥10m (or more) deposit
Licensed Foreign Insurers	¥200m deposit
Insurance brokers	¥20m (or more) deposited

JPY¥130.92 = US\$1.00 as at January 1, 2023.

06 Risk based capital – insurers

The IBA provides for calculation of a solvency margin ratio.

Solvency margin ratio (per cent):

$$\frac{\text{Total amount of solvency margin} \times \frac{1}{2}}{\text{Total amount of risk}} \times 100$$

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

07 Group supervision

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

08 Policyholder protection

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

covering SASTI.

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

In order to provide such protection, the corporations may:

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

The corporations are funded by industry levies.

09 Portfolio transfers

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

10 Outsourcing

Insurers may only in very limited circumstances (usually limited to insolvency) delegate discretionary powers with respect to their substantial business or administration of their assets with prior authorisation (ninka) from the FSA. Insurers may outsource "clerical functions" to a service provider without restriction. If the service provider is another insurer, the service provider must obtain prior authorisation (ninka) from the FSA, provided that where the outsourcing insurer is an affiliate (as defined in the IBA) of the insurer providing the service, the insurer providing the service is required to file an ex-ante notification (todokede) to the FSA instead of obtaining prior authorisation.

Macau

Contributed by: MdME Lawyers

01 The regulator

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

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

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

02 Subsidiary/branch

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

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

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

03 FDI restrictions

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

04 Change of control approvals

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

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

05 Minimum capital

Minimum paid-up capital requirement:

Insurance companies (life)	MOP60m
Insurance companies (non-life)	MOP30m
Reinsurance companies (life)	MOP150m
Reinsurance companies (non-life)	MOP100m

50 per cent to be paid in at the time of incorporation/formation of the subsidiary/branch, the remaining to be paid in within 180 days from that date

Insurance broker companies	MOP25,000
Insurance agent companies	MOP25,000

MOP 8.03 = US\$1.00 as at January 1, 2023.

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

06 Risk based capital – insurers

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

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

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

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

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

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

Between 70% and 100%	AMCM will take necessary supervisory measures to guarantee the rights of the policy holders.
Less than 70%	AMCM will take necessary measures to interfere the operation of the life insurance companies.

07 Group supervision

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

08 Policyholder protection

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

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

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

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

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

09 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.

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

03 FDI restrictions

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 Change of 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 an aggregate of 50 per cent interest in share in a licensed insurer.
- Have "control" over a licensed insurer, regardless of shareholding level.
- Dispose of shares resulting in shareholding below 50 per cent or a change in "control".

In addition, a company holding > 50 per cent interest in shares in a licensed insurer must be approved by BNM as a "financial holding company".

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

05 Minimum capital

Minimum paid-up share capital:

Insurer	RM100m
Local reinsurer (life)	RM50m
Local reinsurer (non-life)	RM100m
Minimum surplus assets over liabilities	
Licensed foreign reinsurer	RM20m

MYR 4.40 = US\$1.00 at January 1, 2023.

06 Risk based capital – insurers

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.

CAR=

Total Capital Available	x100
Total Capital Required	

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: Snow Hill Consultancy LLP

01 The regulator

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

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

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

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

02 Subsidiary/branch

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

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

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

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

03 FDI restrictions

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

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

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

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

04 Change of control approvals

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

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

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

05 Minimum capital

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

Minimum paid-up share capital:

General insurance	MNT5bn
Long term insurance	MNT6bn
Reinsurance	MNT15bn

MNT 3,448.89 = US\$1.00 as at January 1, 2023.

06 Risk based capital – insurers

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

Ordinary Insurers

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

Long Term Insurers

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

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

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

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

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

07 Group supervision

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

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

08 Policyholder protection

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

09 Portfolio transfers

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

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

10 Outsourcing

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

Myanmar

Contributed by: DFDL

01 The regulator

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

02 Subsidiary/branch

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

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

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

03 FDI restrictions

The FDI restrictions have been partially lifted. Up until 2018, foreign insurers were limited to open representative offices in Myanmar – registered offices of foreign companies were not allowed to conduct business.

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

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

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

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

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

04 Change of control approvals

An insurer (both domestic and foreign) may not transfer its licence. It shall provide information about its shareholders when required to by the IBRB.

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

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

05 Minimum capital

Minimum paid up capital for domestic operators:

Life insurance	MMK6bn
Non-life insurance	MMK40bn
Mixed	MMK46bn
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 2,100.17 = US\$1.00 as at January 1, 2023.

06 Risk based capital – insurers

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 – as per Section 199 read with Section 196 of the Insolvency Law 2020.

09 Portfolio transfers

The insurance laws are silent as to portfolio transfers.

10 Outsourcing

The insurance laws are silent as to outsourcing.



New Zealand

Contributed by: Anthony Harper

01 The regulator

The Reserve Bank of New Zealand (RBNZ), which gains its authority under the Insurance (Prudential Supervision) Act 2010, 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 the Markets (Conduct of Institutions) Amendment Act 2022 (CoFI Act) insurers operating in the New Zealand retail market will be required to hold a conduct licence issued by the Financial Markets Authority (FMA). The conduct licencing regime will require insurers to comply with a fair conduct principle which will be operationalised through a fair conduct programme. The regime is currently expected to be fully in force by early 2025.

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

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

The CoFI Act will introduce prohibitions on volume or value target-based sales incentives as part of insurance broking services.

In 2017, the RBNZ commenced a comprehensive review of the Insurance (Prudential Supervision) Act 2010. The final recommendations from that review are expected to result in changes to the licensing criteria and obligations for licensed insurers. RBNZ has conducted a number of consultations on various topics and more are expected. The current timetable for the review extends into 2023 with any legislation being drafted after this.

In October 2021 the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 came into force. This Act creates the legal framework to require insurers with more than \$1bn in total assets or \$250bn in annual gross premium revenue to include reporting on climate-related matters in their annual reports. The New Zealand External Reporting Board has so far issued three consultations on areas that insurers will be expected to report on in relation to climate-related disclosures.

These three areas are:

- governance and risk management;
- strategy, metrics and targets; and
- climate-related disclosures.

The final consultation closed on September 27, 2022, and the final reporting framework was published on December 15, 2022. Climate-related disclosures will be required for accounting periods that start after January 1, 2023.

02 Subsidiary/branch

Insurers:

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

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

03 FDI restrictions

Yes – Government consent is usually required for acquisition of rights or interests of 25 per cent or more of an entity worth more than NZ\$100m. Different rules (higher thresholds) apply for Australians, and at times proposals have been made to relax thresholds for other countries. In addition to this, any investment in a “strategically important” business is required to be notified to the Overseas Investment Office and may be called in for review by the Government. The decision to call in a transaction is determined by whether it poses a risk to New Zealand’s national security and public order. The current definition of strategically important businesses does not include insurers but does include registered banks and financial market infrastructure businesses.

NZD 1.57 = US\$1.00 as at January 1, 2023.

04 Change of control approvals

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

05 Minimum capital

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

06 Risk based capital – insurers

During 2020, the RBNZ commenced a review of the solvency standards that apply to licensed insurers and has published an interim solvency standard which came into force on January 1, 2023. For individual insurers, the interim solvency standard will begin to apply from the start of their first accounting period under NZ IFRS 17 (the incoming accounting standard for insurance contracts). A final solvency standard will follow.

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

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

FCA is determined by the nature of the insurance contract:

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

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

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

07 Group supervision

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. The RBNZ can impose additional requirements or conditions on its approval. Should an insurer cease to hold a licence, the RBNZ may direct the insurer to arrange an assignment of any remaining insurance contract liabilities to other licensed insurers.

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

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

10 Outsourcing

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

In addition, 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. An insurer must also ensure that at all times it meets the conditions for entitlement to hold its RBNZ licence.

Papua New Guinea

Contributed by: Leahy PNG Law

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 Change of 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, the following amounts must be deposited with the Central Bank:

General insurers	PGK2m
Life insurers	Life insurers PGK4m plus, the Central Bank may require that the life insurer be entitled to the benefit of an approved guarantee of not less than PGK4m

A life insurer shall also establish a statutory fund for all policyholder assets (separate funds for PNG policies and offshore policies).

PGK 3.52 = US\$1.00 as at January 1, 2023.

06 Risk based capital – insurers

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.

11 Specific LNG project arrangements

The Insurance Act 1995 was amended several times to provide project specific arrangements for the PNG LNG Project, the Papua LNG Project and the P'nyang LNG Projects respectively. The amendments can be summarised as follows:

- the insertion of new definitions to identify the specific projects;
- technical amendments related to certain offences;
- the insertion of a new sections to allow the projects to place insurance with offshore (i.e. non-PNG licensed) insurers; and
- as a corollary, to the previous point, the insertion of new subsections at section 36 which expand the risks for which insurance, including re-insurance, is not required to be supplied by a licensed 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 insurers) and branches of foreign insurers and reinsurers (foreign insurers) are permitted to be licensed and carry on business in the Philippines as an insurer.

A domestic insurer is deemed to be a corporation vested with public interest and as a result, is required to have

independent directors constituting at least 20 per cent of the composition of the Board of Directors, and must appoint a compliance officer.

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

03 FDI restrictions

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

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

Where the value of a merger or acquisition (including a joint venture) breaches the thresholds set by the PCA and its implementing rules (particularly where the size of the party (as this term is defined under the rules) exceeds PHP6.1bn and where the size of transaction (as this term is defined under the rules) exceeds PHP2.5bn), 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 to PHP1.3bn by December 31, 2022.

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

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

Life	PHP1bn
Non-Life	PHP1bn
Composite	PHP2bn

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

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

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

A foreign insurer is also required to have an unimpaired trusted surplus of PHP550m as of December 31, 2016. An increase is prescribed based on the following schedule:

By December 31, 2019	PHP900m
By December 31, 2022	PHP1.3bn

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

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

A corporation applying for registration to act as an issuer of pre-need plans must have a minimum paid-up capital of PHP100m.

PHP 55.68 = US\$1.00 as at January 1, 2023.

06 Risk based capital – insurers

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 has to register with the Insurance Commission. A holding company is defined as any person who directly or indirectly owns, controls an insurance

company authorized to do insurance business in the Philippines.

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

08 Policyholder protection

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

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

09 Portfolio transfers

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

10 Outsourcing

Activities 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 1966 which has provisions governing the regulation of insurance business in Singapore, insurers (including, reinsurers), insurance intermediaries (agents and brokers) and related institutions in Singapore.

02 Subsidiary/branch

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

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

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

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

Representative offices must be "registered".

03 FDI restrictions

None.

04 Change of 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 incorporated in Singapore.

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

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

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

05 Minimum capital

Licensed Insurer	S\$10m
Licensed Reinsurer	S\$25m

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

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

SGD\$1.34 = US\$1.00 as at January 1, 2023.

06 Risk based capital – insurers

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 – market and credit risks and operational risk requirements of the insurer.

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 the prior approval of the MAS. An independent actuarial report may be required. Notification to policyholders by Gazette/newspaper advertisement is required before an application is made to the Court. The Court has ultimate discretion whether to confirm the scheme.

10 Outsourcing

Outsourcing is permitted, including to an offshore service provider.

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

All outsourcing arrangements must be agreed in writing and contain minimum specified terms including: confidentiality and security, business continuity, audit and inspection and notification of adverse developments. Material outsourcing arrangements have additional contractual requirements including a mandatory right of audit and a right to access to information that can be exercised by the regulator. Outsourcing of all or substantially all of an insurer’s risk management or internal control functions, including compliance, internal audit, financial accounting and actuarial is considered material.

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

South Korea

Contributed by: Kim & Chang

01 The regulator

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

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

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

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

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

02 Subsidiary/branch

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

03 FDI restrictions

No.

04 Change of control approvals

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

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

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

05 Minimum capital

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

06 Risk based capital – insurers

Yes, since April 1, 2011. The new Korea Insurance Capital Standard came into force on January 1, 2023.

07 Group supervision

Some of the regulatory restrictions on insurance companies’ asset management relate to transactions between insurance companies and their affiliates (e.g. if an insurance company acquires bonds or stock issued by an affiliate in an amount not less than 0.1 per cent of shareholders’ equity or KRW1bn, 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.

KRW 1,261.91 = US\$1.00 as at January 1, 2023.

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 KRW50m 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 date when a general meeting of shareholders resolves to transfer the policies. During this period, the transferor cannot sell new insurance policies with few exceptions, including the conversion from a branch of a foreign insurer to a subsidiary.

10 Outsourcing

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

Core business activities include: execution of insurance contracts underwriting discretion, contractual matters relating to policies (e.g. termination amendment and

reinstatement), cession and assumption of reinsurance contracts, determination and payment of insurance claims.

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

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

The IT Outsourcing Regulations provide different reporting requirements to the FSS for the outsourcing of financial transaction information (i.e. information collected from a customer in the course of a financial transaction or produced as a result of a financial transaction). There must be a report to the FSS: (i) 30 business days prior to the date of the commencement of the outsourced information processing activity in case of the offshore outsourcing, where there will be processing of identifiable individual customer financial transaction information; (ii) 7 business days prior to the date of the commencement of the outsourced information processing activity in case of the onshore outsourcing, where there will be processing of identifiable individual customer financial transaction information; or (iii) within ten business days from the commencement of the outsourced

information processing activity in case of offshore or onshore outsourcing where the outsourcing of financial transaction information processing does not include identifiable individual customer information.

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

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, credit risk, market risk and operational risk.

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

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 Change of control approvals

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

05 Minimum capital

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

LKR 367.53 = US\$1.00 as at January 1, 2023.

06 Risk based capital – insurers

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

- A capital adequacy ratio (CAR) of a minimum of 120 per cent, (calculated in line with a prescribed formula).
- A total available capital (TAC) of a minimum of LKR500m (calculated in line with a prescribed formula).

07 Group supervision

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

08 Policyholder protection

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

This amount is generally invested in government securities and fixed deposits. However, since the latest Annual Report of the IRCSL is not yet available to the public, we are not in a position to quantify any

amounts that have been so invested or the accumulated amount in the Policyholders' Protection Fund.

09 Portfolio transfers

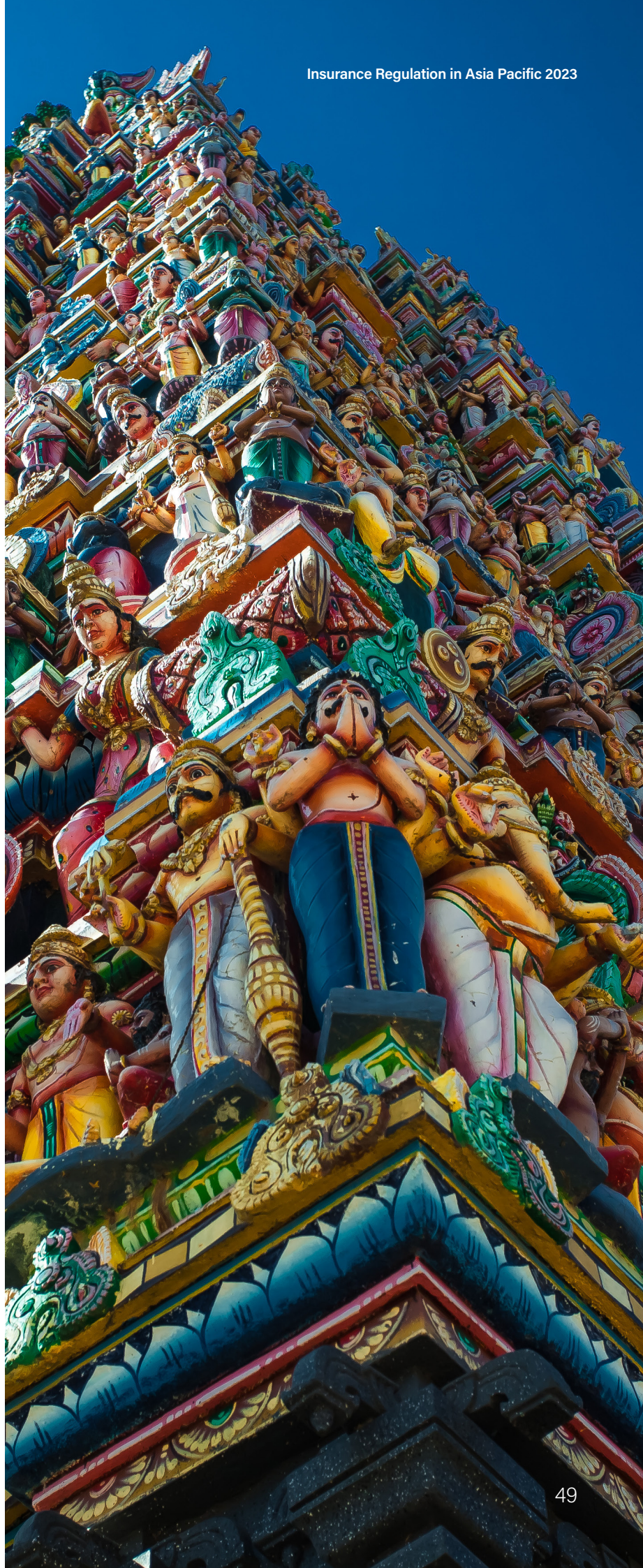
An insurance company may apply to Court to approve a transaction relating to any transfer and amalgamation of insurance business. The insurer must first have approached the IRCSL and have obtained its observations thereon.

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

TWD 30.66 = US\$1.00 as at January 1, 2023.

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

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

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

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

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

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

06 Risk based capital – insurers

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 and a net worth ratio (calculated as owner's equity divided by total assets excluding separate accounts for investment-linked insurance specified

in the financial report audited by a certified public accountant) of at least 3 per cent in at least one of the last two periods. The risk-based capital requirement is determined by a formula that takes into account asset risk, insurance risk, interest rate risk and business risk.

07 Group supervision

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, and other payments relating to insurance contracts; (7) collection of debts; (8) electronic customer services; (9) real estate related activities; (10) locating cars with auto loan default and sale at car auction, but excluding the determination of floor price for auction; (11) valuation, classification, bundling and sale of non-performing loans; and (12) other operations approved by the competent authority.

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

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 (THB1bn for non-life insurers and THB4bn 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 Change of control approvals

A change of shareholdings \geq 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

Minimum paid-up capital requirement:

Life insurer/ reinsurer	THB500m (min registered capital)
General insurer/ reinsurer:	THB300m (min registered capital)

THB34.60 = US\$1.00 at January 1, 2023.

06 Risk based capital – insurers

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 as follows:

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

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

07 Group supervision

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 THB1m.

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 The regulator

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

02 Service supply modes

Pursuant to the Schedule of Specific Commitments in Services annexed to the Protocol of Accession of Vietnam to WTO (Vietnam's WTO Commitments), other international treaties to which Vietnam is a contracting party as well as national laws (the backbone of which is the Insurance Business Law passed on June 16, 2022, with a majority thereof to be in force from January 1, 2023, while certain provisions to be in force from January 1, 2028), 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 (and retrocession services for foreign services providers from the EU countries due to the EU-Vietnam Free Trade Agreement (EVFTA).
- Insurance services in international transportation, including insurance of risks relating to: (i) international maritime transport and international commercial aviation with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods and any liability arising therefrom; and (ii) goods in international transit.
- Insurance broking and reinsurance broking services.
- Insurance auxiliary services (Consultancy, actuarial, risk assessment and claim settlement services).

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

Foreign insurers, brokers and organizations with legal entity status are entitled to provide insurance auxiliary services to Vietnamese insurers, re-insurers, brokers, mutuals providing micro-insurance products, and foreign insurers or reinsurers' branches in Vietnam – through cooperation with organizations providing insurance auxiliary services legally established and operating in Vietnam. As a part of the insurance auxiliary services, foreign individuals may provide only advisory services

to the above said users. With respect to broking services, foreign brokers may also provide insurance auxiliary services to organizations and individuals other than the above said users.

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

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

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

- a. General requirements, including:
 - i. Possessing license(s) awarded by state authorities managing overseas insurance in its home country for operating cross-border services that it intends to provide in Vietnam, as well as evidences of the enterprise having legally operated for at least 10 years up to its provision of cross-border services in Vietnam;
 - ii. Having written permission(s) and confirmation(s) by state authorities managing overseas insurance in its home country for operating cross-border services that it intends to provide in Vietnam and of the enterprise having not violated foreign laws and regulations in three consecutive years prior to the year that cross-border services are provided in Vietnam.

b. Requirements on financial capacity, including:

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

c. Requirements on settlement of adversity:

i. Foreign insurers must:

- deposit at least VND100bn in a bank licensed to operate in Vietnam and have a letter of guarantee from such bank that undertakes to make payments when liabilities under cross-border insurance contracts in Vietnam exceed the mandatory deposit. The deposit shall only be used to deliver on commitments to insurance buyers upon the foreign insurer’s insolvency as determined by foreign government authorities in its home country. The deposit shall yield interest according to the agreement with the bank

retaining the deposit. The foreign insurer can withdraw the entire deposit upon the termination of its liabilities under the contracts for its provision of cross-border services in Vietnam;

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

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

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

Life insurers established in Vietnam must operate through a locally established company and general insurers may operate through either a locally established company or as a branch of a foreign insurer.

Foreign reinsurers may establish branches in Vietnam as of January 1, 2023.

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\$2bn 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 of January 1, 2023, to be a founding member of an insurance/reinsurance limited liability company, a capital-contributing entity established under foreign laws must:

- be a foreign insurer, reinsurer, or finance and insurance corporation;
- obtain certification from a foreign competent regulatory authority that it has not committed any serious offence against domestic legislation on insurance business of the country where their head office is located during three consecutive years immediately before the time of applying for such license or permit;

- be operating for at least seven consecutive years in the proposed business lines for which it is applying for the license or permit;
- own the minimum total asset of US\$2bn in the year immediately preceding the application year; and
- be committed to offering financial, technological, corporate management, risk management, governance and operational support for the insurer or reinsurer to be incorporated in Vietnam; ensuring that such insurer or reinsurer complies with the statutory requirements on financial prudence and risk management.

As a practical matter, the MOF treats the establishment of a branch by a foreign insurer or reinsurer similarly to the establishment of a subsidiary. In addition to the above-mentioned requirements, as of January 1, 2023, foreign general insurers or reinsurers establishing a branch in Vietnam must:

- have their head office in a country which is member to an international treaty with Vietnam on the establishment of foreign insurance branches in Vietnam; in addition, the foreign state insurance authority must have signed a cooperation agreement with the MOF on the management and supervision of operations of the branch;

- obtain permission from the foreign state insurance authority to establish a branch in Vietnam that can provide regulated insurance services;
- acquire at least seven years' experience in the proposed business activities that it is applying for the license or permit to perform in Vietnam;
- own the minimum total asset of USD2bn in the year immediately preceding the applying year;
- be profitable for the three consecutive years immediately preceding the year of application and meet the financial conditions prescribed in the Government's regulations; and
- provide a guarantee and bear responsibility for all obligations and commitments of their branch in Vietnam.

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

- the minimum allocated amount of Vietnamese Dong funds must not be less than the minimum limit prescribed in the Government's regulations;
- funding for establishment of the branch must be legitimate and not include borrowed funds or investment funds held in trust in any form; and

- the branch's nominated Director and actuaries must meet managerial competency and professional qualification conditions and standards as prescribed.

A foreign general insurer or reinsurer's branch established and operating in Vietnam may have different management positions. However, in all cases, it must maintain at least two positions – a general director/director (CEO) and an actuary – and any changes must be approved by the MOF.

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 be certified not to have seriously violated any laws on insurance brokerage of the home country for three consecutive years immediately preceding the year of application. Foreign organizations contributing capital by purchasing shares or capital contribution portions representing ten per cent or more of the charter capital of a broker must be directly involved in (or has their subsidiary directly involved in) providing insurance brokerage services during the five consecutive years immediately preceding the year of application.

To establish offices in cities or provinces in Vietnam other than the city or province where the company was established, companies must obtain written approval from the MOF to establish a branch or representative office.

Foreign insurers, reinsurers, finance and insurance corporations, or brokers can establish representative offices in Vietnam. The foreign insurer or broker must have been operating for at least five preceding years. Representative offices are not permitted to conduct insurance business in Vietnam.

03 FDI restrictions

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

04 Change of control approvals

The following require prior written approval of the MOF: divisions, splits, mergers, amalgamations, conversions of form, transfers of shares or ownership interests that result in shareholders/members contributing capital owning at least ten per cent or more of the charter capital or less than ten per cent of the charter capital, and dissolution/shutdown of an insurer, reinsurer, insurance broker or foreign insurer or reinsurer's branch.

Written approvals from MOF are also required for a wide range of changes including a change of name or headquarters address; adjustment in charter or allocated capital; establishment of new branches, representative offices and other types of commercial establishment of an insurance broker in foreign countries, revision to the content, scope and duration of operations; appointment or change of the Chairperson of the Board of Directors, Chairperson of the Members' Council, Chairperson of the Company, General Director/ Director (CEO), Appointed Actuary of life and/or health insurer, or Reserving Appointed Actuary of the general insurer, reinsurer, or foreign general insurer's branch.

An insurer or broker wishing to establish a branch or representative office, or convert a representative office to a branch, must satisfy certain statutory requirements, including, among others: (i) the owner's equity in the most recent financial statement must not be lower than the legal capital level; (ii) the regulations on solvency margin must be adhered to; (iii) the total sum of fines for any administration violations regarding the insurance business (if any) incurred in 12 months prior to the application, does not exceed VND400m; and (iv) an application file is submitted to the MOF (which shall within 14 working days upon receiving the valid and complete application, either issue its approval or provide a written explanation for rejecting the application).

As from January 1, 2023, the following need only be notified in writing to the MOF: any changes in the charter of the insurer, reinsurer or insurance broker; rules and regulations for operations of the foreign insurer's branch in Vietnam; establishment, closure and relocation of any business facilities of branches and representative offices of an insurer, reinsurer or insurance broker; and any change of beneficial owners of the insurer or reinsurer.

05 Minimum capital

Businesses must have minimum legal capital of:

General insurers

(a) General insurance (except items (b) and (c) below) and health insurance	VND300bn
---	----------

(b) Item (a) plus either aviation	
-----------------------------------	--

insurance or satellite insurance	VND350bn
----------------------------------	----------

(c) Item (a) plus both aviation and satellite insurances	VND400bn
--	----------

Life insurers

(a) Life insurance (excluding unit linked and pension insurances) and health insurance	VND600bn
--	----------

(b) Item (a) plus either unit linked insurance or pension insurance	VND800bn
---	----------

(c) Item (a) plus both unit linked and pension insurances insurance or satellite insurance	VND1,000bn
--	------------

Health insurers

Health insurance	VND300bn
------------------	----------

Mutual micro-insurance providers

Micro-insurance	VND10bn
-----------------	---------

Branch of a foreign insurer

(a) General insurance (except items (a) and (b) below) and health insurance	VND200bn
---	----------

(b) Item (a) plus either aviation	
-----------------------------------	--

insurance or satellite insurance	VND250bn
----------------------------------	----------

(c) Item (a) plus both aviation and satellite insurances	VND300bn
--	----------

Reinsurer

Reinsurer (general insurance, or general and health insurances)	VND400bn
---	----------

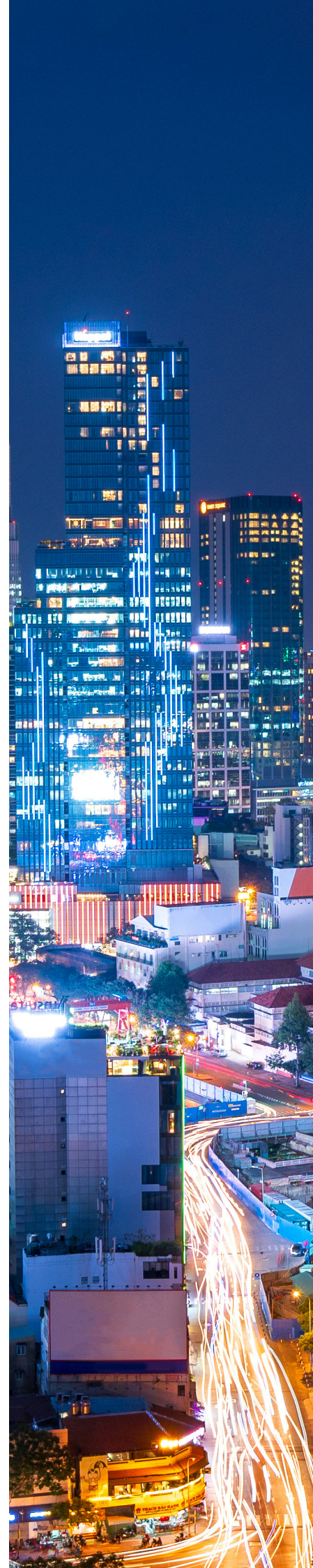
Reinsurer (life insurance, or life and health insurances)	VND700bn
---	----------

Reinsurer (life, general and health insurances)	VND1,100bn
---	------------

Broker

Broker (either primary insurance or reinsurance brokerage)	VND4bn
--	--------

Broker (both primary insurance and reinsurance brokerage)	VND8bn
---	--------





Expansion of contents, scope and/or duration of operations

- a. Providers of pension insurance:
 - Having the solvency margin higher than the minimum solvency margin by VND300bn;
 - Extracting at least VND200bn from the owner's equity to generate the voluntary pension fund;
- b. For providers of unit-linked insurance: Having the solvency margin higher than the minimum solvency margin by VND200bn;
- c. For providers of general linked insurance: Having the solvency margin higher than the minimum solvency margin by VND100bn.
- d. For providers of insurance products prescribed by the Government (GOV) or decided by the Prime Minister of Government (PM): Abiding by guiding documents.

VND 23,635 = US\$1.00 as at January 1, 2023.

Idle capital may only be invested in Vietnam.

06 Risk based capital – insurers

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 five years or less; and 4 per cent of the insurance reserves plus 0.3 per cent of the sums insured which carry risks, for other life insurance policies and health policies with term of over five years.

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

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

07 Group supervision

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

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

08 Policyholder protection

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

09 Policyholder transfers

A policy holder is entitled to transfer an insurance policy, but the transfer shall only come into effect when a written notice of such transfer has been sent to, and written consent is obtained from, the insurer or foreign general insurer's branch, except when the transfer is made according to international practices or as agreed upon in the insurance policy.

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

- a. an insurer is in danger of becoming insolvent;
- b. an insurer divides, splits, consolidates, merges or dissolves;
- c. pursuant to an agreement between insurers;

or as from January 1, 2023:

- d. at the request of the MOF;
- e. service or business shrinking;
- f. split-up, split-off, merger, amalgamation, dissolution, closing or termination of business; and
- g. cases where:
 - i. an application for the business license or permit contains fraudulent information provided with the aim of satisfying licensing conditions;
 - ii. the insurer's business activities are not the same as those specified in the business license or permit that they are holding;
 - iii. the foreign general insurer or reinsurer that has their branches established in Vietnam goes bankrupt or has their business license or permit withdrawn or revoked.

In the event an insurer, reinsurer, or branch of foreign insurer or reinsurer in danger of becoming insolvent or upon dissolution fails to formulate a correction plan, the MOF shall appoint an insurer to accept the transfer.

The transfer of insurance policies must entail the transfer of relevant property put up as technical provisions for all of insurance policies to be transferred.

Rights and obligations agreed upon in an insurance policy to be transferred shall remain unchanged until that insurance policies expires. In the case of a transfer requested by the MOF, if the value of property is less than the value of technical provisions for the insurance policies to be transferred, the insurer or foreign general insurer's branch as the transferee shall agree with the policyholder or the insured on reduction in the sum insured or insurance benefit and other obligations under the insurance policy.

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 (a) in two daily newspapers in five consecutive issues, or (b) on their websites as from January 1, 2023, and must notify the policyholders in writing, who will be entitled to unilaterally terminate their policies within 15 days from the date of receipt of the notice 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 or reinsurer, or foreign insurer or reinsurer in Vietnam, except: (a) internal control; (b) internal audit; (c) risk management; (d) insurance product consulting, launching, offering and marketing; arranging for conclusion of insurance policies as from January 1, 2023. The outsourcing supplier must perform at least 75 per cent of the outsourced amount of work by itself. To hire any subcontractor, the outsourcing supplier must obtain prior written approval from the insurer, reinsurer or foreign general insurer' branch in Vietnam. 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.

NORTON ROSE FULBRIGHT

Norton Rose Fulbright is a global law firm. We provide the world's preeminent corporations and financial institutions with a full business law service. We have more than 3700 lawyers and other legal staff based in Europe, the United States, Canada, Latin America, Asia, Australia, Africa and the Middle East.

Law around the world

nortonrosefulbright.com

Norton Rose Fulbright Verein, a Swiss verein, helps coordinate the activities of Norton Rose Fulbright members but does not itself provide legal services to clients. Norton Rose Fulbright has offices in more than 50 cities worldwide, including London, Houston, New York, Toronto, Mexico City, Hong Kong, Sydney and Johannesburg. For more information, see nortonrosefulbright.com/legal-notices. The purpose of this communication is to provide information as to developments in the law. It does not contain a full analysis of the law nor does it constitute an opinion of any Norton Rose Fulbright entity on the points of law discussed. You must take specific legal advice on any particular matter which concerns you. If you require any advice or further information, please speak to your usual contact at Norton Rose Fulbright.

© Norton Rose Fulbright LLP. Extracts may be copied provided their source is acknowledged.
49011_EMEA - 02/23