

Japan

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MARKET TRENDS AND REGULATORY FRAMEWORK

1. Please give a brief overview of the insurance and reinsurance markets in your jurisdiction, identifying market trends.

Life insurance

There are 46 private life insurance companies in Japan which comprise:

- 42 domestic insurance companies (including Japan Post Insurance Co, Ltd which is held by the Japanese government through a holding company and whose privatisation is currently being reconsidered after the Democratic Party of Japan won the general election).
- Four branches of foreign insurers.

As there are many players in the market, the Japanese life insurance market is very competitive.

Various types of life insurance contracts are offered in Japan. Recently, due to the falling birth rate and the aging population, the demand for life insurance coverage has declined and the demand for individual annuities has increased.

The sales channels for insurance contracts have diversified. Traditionally sales were made face-to-face by employees of life insurance companies. However, the use of agents and direct marketing is becoming more common. In addition, bancassurance (that is, the selling of insurance products by a bank) in Japan was liberalised in December 2007 and many life insurance companies are now focusing on this channel in anticipation of an increase in sales.

Non-life insurance

There are 50 private non-life insurance companies in Japan which comprise:

- 31 domestic insurance companies.
- 19 branches of foreign insurers.

Due to the falling birth rate and the aging population, the non-life insurance market is shrinking and becoming more competitive. As a result, a reorganisation of the non-life insurance market is occurring among the top six domestic companies; these companies will eventually become three groups which will account for a large part of the non-life insurance market share.

Like the life insurance market, the sales channels are diverse and many insurance companies focus on the bancassurance channel.

Third-sector insurance

Third-sector insurance includes:

- Medical insurance.
- Long-term care insurance.
- Personal injury insurance.

As both life insurance companies and non-life insurance companies are permitted to sell third-sector insurance products, these companies compete in this market.

Small amount and short-term insurance providers (SASTI providers)

Small amount and short-term insurance refers to the business of underwriting insurance limited to insurance periods of two years or less, and insurance amounts not exceeding JPY10 million (about US\$115,683). Before April 2006, the Insurance Business Act (IBA) did not apply to entities that engaged in quasi-insurance business. However, since this business is similar to the insurance business, the definition of insurance business was reviewed and the IBA introduced provisions concerning SASTI providers. Currently, there are 66 SASTI providers.

Reinsurance

Due to the expansion, diversification and complication of risks, reinsurance is essential for the insurance market in Japan. In particular, Japan experiences many earthquakes and typhoons. Therefore, the insurance companies in Japan are required to re-insure risks with foreign reinsurers.

There are two domestic reinsurance companies and branches of some foreign reinsurers in Japan. Non-life insurance companies also underwrite reinsurance. Japanese non-life insurance companies play an important role in the world's reinsurance market.

2. What is the regulatory framework for insurance/reinsurance activities?

IBA

The IBA and related regulations provide for the supervision and regulation of the insurance and reinsurance business. The definition of insurance business under the IBA includes insurance and reinsurance activities. Therefore, the IBA regulates insurers and reinsurers in the same way.

The IBA consists of three parts:

- Provisions relating to the supervision and regulation of persons/entities which are engaged in insurance business.

- Provisions relating to the incorporation and organisation of mutual insurance companies.
- Provisions relating to the protection of policyholders and related persons.

Japanese insurance companies and SASTI providers must be stock companies or mutual companies with the following organs:

- A board of directors.
- A board of company auditors or committee.
- An accounting auditor.

In addition, Japanese insurance companies must hold:

- More than JPY1 billion (about US\$11.5 million) of stated capital (in the case of a stock company).
- The total amount of *Kikin*, including the reserve for redemption of *Kikin* (see below) (in the case of a mutual company).

Kikin refers to the funds held by a mutual insurance company and is equivalent to the capital held by stock companies. In the case of SASTI providers, the required amount is JPY300 million (about US\$3.5 million). In general, a branch of a foreign insurer (Licensed Branch) must deposit JPY200 million (about US\$2.3 million) of the statutory deposit amount with the deposit office. In addition, the IBA requires a Licensed Branch to hold and keep assets located in Japan with a value that is equivalent to the total sum of the statutory deposit amount, carried-in capital and certain reserves.

For the restrictions on business, see *Question 6*. In relation to other ongoing requirements, see *Question 12*.

The IBA also sets out special provisions concerning merger, transfers of business and company splits concerning insurance companies. These transactions require authorisation from the Financial Services Agency (FSA).

The IBA also regulates shareholders, insurance holding companies, and insurance solicitation.

In addition, the IBA stipulates the establishment of a policyholder's protection corporation system to protect policyholders if the insurance company collapses. Under these provisions, the Non-life Insurance Policy-holders Protection Corporation and the Life Insurance Policy-holders Protection Corporation were established in Japan.

Commercial Code (Insurance Act)

The Commercial Code (from 1 April 2010, the Insurance Act will replace the Commercial Code) regulates insurance contracts (see *Question 4*).

Other laws

The Financial Instruments Sales Act, the Consumer Contract Act and the Financial Instruments and Exchange Act (FIEA) also provide rules relating to the solicitation and sale of insurance contracts.

The Act on Prohibition of Private Monopolisation and Maintenance of Fair Trade (Anti-monopoly Law) and the Act Against Unjustifiable Premiums and Misleading Representations also apply to the insurance business and insurance contracts.

Governing authority

The FSA is the governing authority that regulates the insurance business and supervises the entities which conduct insurance business and related business. The Prime Minister of Japan delegates authority (excluding certain important powers such as granting or cancelling insurance business licences) to the commissioner of the FSA. The commissioner of the FSA further delegates a part of its authority to the directors of the Local Finance Bureau of the Ministry of Finance (LFB).

Under the IBA, the FSA and/or the LFB have the authority to:

- Demand reports from and inspect insurance companies, Licensed Branches, SASTI providers, subsidiaries, service providers, certain major shareholders, insurance holding companies, and insurance agents and brokers.
- Take administrative action against insurance companies, Licensed Branches, SASTI providers, certain major shareholders, insurance holding companies, and insurance agents and brokers.

The FSA stipulates the regulations under the IBA. Additionally, the Comprehensive Guidelines for the Supervision of Insurance Companies and SASTI providers (Guidelines) provide for basic concepts, evaluation items, and other guidelines relating to the supervision of insurance companies and SASTI providers.

CONTRACTS OF INSURANCE

3. What is a contract of insurance for the purposes of the law and regulation in your jurisdiction?

An insurance contract under the Insurance Act is defined as an insurance contract, a mutual aid contract or any other contract in whatever name under which one of the parties to it undertakes to pay financial benefits (which are limited to the payment of money in the case of a life insurance contract or a fixed benefit accident and health insurance contract) to the other party subject to the occurrence of a certain event and the other party undertakes to pay insurance premiums (including mutual aid premiums) according to the possibility of the occurrence of such certain event.

Although the Insurance Act defines a contract of insurance, there is no such definition in the Commercial Code or the IBA.

4. Are all contracts of insurance regulated in your jurisdiction?

Although the Commercial Code provides for the basic rules of private insurance contracts, some provisions are outdated and do not match the needs of today's society. As a result, the Diet passed the Insurance Act on May 2008, and provisions of the Commercial Code concerning contracts of insurance (excluding those for marine insurance) will be replaced by the Insurance Act. The Insurance Act will come into effect on 1 April 2010. Therefore after this date, the Insurance Act regulates insurance contracts generally (however, the Commercial Code will also apply in the case of marine insurance).

Under the Insurance Act, insurance contracts are classified into three types:

- Non-life insurance.
- Life insurance.
- Fixed benefit accident and health insurance.

In Japan, the government, local government and other public entities provide public insurance contracts, such as health insurance, care insurance, annuity insurance, worker's compensation insurance and trade insurance. Special laws regulate each type of insurance contract.

INSURERS AND REINSURERS

5. Are insurers and reinsurers regulated in the same way in your jurisdiction?

Insurers and reinsurers are regulated in the same way (see Question 2).

6. Can insurers or reinsurers carry on non-insurance business? Please summarise any restrictions on their business activities.

Insurance companies and Licensed Branches can carry out only the following three types of business under the IBA:

- Underwriting insurance and management of assets (Typical Business).
- Business related to Typical Business, for example:
 - representing the business or performing services on behalf of other insurance companies and other persons carrying out financial business;
 - guarantees of obligations;
 - handling private placements of securities; and
 - derivative transactions.
- Business permissible by the IBA and other laws (for example, certain securities trading business and trust business concerning secured bonds).

Insurance companies cannot hold subsidiaries other than those set out in the IBA, including, among others:

- Insurance companies.
- Banks.
- Securities companies.
- Companies which engage in businesses subordinate to financial business.
- Companies which engage in business incidental or related to financial business.
- Certain other companies.

Insurance companies or their subsidiaries cannot acquire or hold, on an aggregated basis, more than 10% of the total voting rights of all shareholders of any other company in Japan, except certain

companies listed in the IBA (*IBA*). The Anti-monopoly Law stipulates similar restrictions.

The IBA limits the types of investment which insurance companies and Licensed Branches can make and provides for the percentage of its total assets which can be invested in each type of investment. Additionally, the IBA limits the insurance company's (and, on an aggregated basis, an insurance company's group's) exposure to any one person/entity (including its affiliates).

The arm's-length rule applies to transactions between insurance companies (including Licensed Branches and SASTI providers) and the specific party (such as a subsidiary or affiliated company) and its customers. The arm's-length rule prohibits transactions that would be unduly favourable or detrimental to the insurance company in light of the insurance company's normal terms of trade.

SASTI providers can carry on small amount and small-term insurance business and its related business under the IBA. They can carry on certain other types of business with the LFB's approval. Although there are similar restrictions regarding subsidiaries and types of investment mentioned above, they are stricter.

7. Are there any statutory limits or other restrictions on, or requirements relating to, the transfer of risk by insurance or reinsurance companies?

The Guidelines require insurance companies to stipulate the policy and rules relating to ceding risks to reinsurers and underwriting reinsurance from other insurance companies, and require them to manage such risks properly.

Insurance companies must disclose their basic policy relating to ceding risks to reinsurers and underwriting reinsurance from other insurance companies in the disclosure document.

OPERATING RESTRICTIONS

8. Does the entity or person have to be authorised or licensed in your jurisdiction? If so, please outline the key steps involved in this process and the requirements that must be satisfied.

Insurance/reinsurance providers

Japanese insurance companies. Insurance companies must obtain from the Prime Minister either a:

- Life insurance business licence.
- Non-life insurance business licence.

The applicant must submit its application and attachments for a licence with the Prime Minister through the FSA. The attachments include, among others:

- The following four documents (known as the Basic Documents), the applicant's:
 - articles of incorporation;
 - statement of business procedures;
 - general policy conditions;

- statement of calculation procedures for insurance premiums and policy reserves.
- A business plan.
- Documents explaining the status of recent assets and profits and loss.
- Documents relating to the applicant's subsidiaries.

The Prime Minister may, for the protection of the public interest, impose conditions on the licence or revise the conditions.

SASTI providers. SASTI providers must register with the LFB. The application for registration and its attachments are similar to the application for a licence (*see above, Japanese insurance companies*).

Japanese branch of foreign insurers. For a foreign insurer to conduct insurance business in Japan, its Japanese branch must obtain from the Prime Minister either a:

- Life insurance business licence.
- Non-life insurance business licence.

The procedure concerning the application for a licence is similar to that for Japanese insurance companies (*see above, Japanese insurance companies*).

Syndicates of Lloyd's. Syndicates of Lloyd's can engage in insurance business in Japan through the general agent in Japan if the Lloyd's representative in Japan and its underwriting members file a notification relating to the members of the syndicates who engage in insurance business in Japan with the FSA.

Marketing insurance/reinsurance services

The persons/entities permitted to act as an agent or intermediary for the conclusion of an insurance contract are limited to the following (*IBA*):

- Life insurance agents.
- Officers and employees of non-life insurance companies; and non-life insurance agents and its officers and employees.
- Small amount and short-term insurance agents.
- Brokers.

Life insurance agents, non-life insurance agents and small amount and short-term insurance agents must register with the LFB. The applicant submits an application for registration with the LFB.

Other providers of insurance/reinsurance-related activities

Brokers must register with the LFB. The applicant must submit an application for registration with the LFB.

9. Please summarise the main exemptions or exclusions from authorisation or licensing that are available in your jurisdiction, if any.

Insurance/reinsurance providers

The IBA does not apply to the following types of business:

- Business which other laws regulate.

- Business transacted by certain groups such as local government, companies and labour unions, with its members as the other party.
- Business transacted within a limited group of 1,000 persons or fewer.

Marketing insurance/reinsurance services

The IBA does not require the officers and employees of non-life insurance companies to register when they act as agents or intermediaries for the conclusion of an insurance contract, while it requires those of life insurance companies to register as life insurance agents.

Other providers of insurance/reinsurance-related activities

For brokers, there are no available exemptions or exclusions.

10. Are there any restrictions on the ownership or control of insurance-related entities in your jurisdiction (for example, age, nationality, qualification or other restrictions)?

Insurance/reinsurance providers

For the restrictions on the ownership or control of insurance-related entities, see *Question 11*.

Marketing insurance/reinsurance services

There are no restrictions on ownership or control.

Other providers of insurance/reinsurance-related activities

There are no restrictions on ownership or control.

11. Do owners or controllers have to be pre-approved by or notified to the relevant authorities before taking, increasing or reducing their control or ownership of the entity?

Insurance/reinsurance providers

Insurance Business Act. A shareholder of an insurance company or insurance holding company that holds more than 5% of the total voting rights must file a notification with the LFB or (in certain cases) the FSA and file a report with regard to changes in the notification.

If the person/entity will acquire at least 20% of the total voting rights of a Japanese insurance company (or 15% in certain cases), they must obtain prior authorisation from the FSA.

The IBA provides for a certain review standard relating to the authorisation in relation to the sound and appropriate management of the insurance company's business.

For acquisitions of at least 20% of the total voting rights of SASTI providers (or 15% in certain cases), an acquirer must obtain pre-approval from the LFB.

The acquirer or holder must file an ex-post notification with either the FSA or LFB respectively, if either:

- The person/entity acquires more than 50% of the total voting rights of a Japanese insurance company or SASTI provider.

- The number of voting rights held becomes either:
 - equal to or less than 50%;
 - under 20% (or 15% in certain cases).

Holding company. The following must obtain prior authorisation from the Prime Minister:

- A company which intends to become a holding company having an insurance company as its subsidiary.
- A person who intends to establish such a holding company.

In the case of SASTI providers, pre-approval is required from the LFB. After becoming an insurance holding company, notification is necessary when the company makes an insurance company its subsidiary.

The holding company must file a notification if an insurance company or a SASTI provider ceases to be its subsidiary.

Other laws. In some cases, under the FIEA and/or the Foreign Exchange and Foreign Trade Act of Japan, the person/entity that acquires the shares of a Japanese insurance company must file a report in advance or an ex-post report.

Marketing insurance/reinsurance services

The IBA does not require authorisation, approval or notification when owners or controllers take, increase or reduce their control or ownership of these entities.

Other providers of insurance/reinsurance-related activities

This is the same as for marketing insurance/reinsurance services (see above, *Marketing insurance/reinsurance services*).

12. Please summarise the key ongoing requirements that the authorised or licensed entity must comply with.

Insurance/reinsurance providers

Disclosure requirements. For each business year, insurance companies must both:

- Submit an interim business report and business report to the FSA.
- Prepare explanatory documents pertaining to the status of its business and property and keep them for public inspection at its head office and branch offices.

Basic Documents. If an insurance company wishes to amend its Basic Documents other than its articles of incorporation, it must obtain prior authorisation from the FSA. However, certain amendments to these documents, such as matters relating to corporate insurance, require only filing.

The amendments to certain material matters of the articles of incorporation of insurance companies, such as the company's name and (in case of a mutual company) matters relating to redemption of *Kikin* and termination of membership, require authorisation from the FSA.

Notification requirements. The IBA requires insurance companies to file a notification relating to certain matters, such as:

- Amendments to the articles of incorporation (other than for matters which require authorisation).
- An increase in capital amount or the total amount of *Kikin*.
- If one shareholder acquires or holds not less than 5% of the voting rights of a concerned insurance company.
- A change of directors or auditors.
- Matters relating to its subsidiaries.

Solvency margin requirement. The IBA provides for a solvency margin ratio as a standard to assess the soundness of an insurance company's business. The solvency margin ratio is calculated by dividing the total amount of stated capital/*Kikin*, reserves, and other amounts by the amount available to cope with possible risks exceeding the standard predictions that may occur due to insurance accidents. Insurance companies must maintain not less than 200% of the solvency margin ratio. However, in practice, all insurance companies maintain a higher ratio.

The FSA plans to amend the calculation method of the solvency margin ratio and the new method will apply from the settlement term of March 2011. Under the new method, the solvency margin ratio of each insurance company is expected to decline dramatically.

Similar ongoing requirements apply to Licensed Branches and SASTI providers.

Marketing insurance/reinsurance services

The registering agents must file a notification when the basic matters on their application change or they cease to act as an agent or intermediary for the conclusion of an insurance contract.

Other providers of insurance/reinsurance-related activities

The registering brokers have the same filing obligations as those of registering agents (see above, *Marketing insurance/reinsurance services*).

13. Please outline the possible consequences of an entity failing to comply with applicable legal and regulatory requirements (including the disciplinary powers any relevant regulators have, as well possible customer remedies).

The IBA provides for imprisonment or fines for persons who violate certain provisions of the IBA.

Insurance/reinsurance providers

When the FSA finds it necessary to protect policyholders by ensuring the soundness in management of an insurance company due to the financial situation or the business of the company or assets of the company or its subsidiaries, it may:

- Issue a business improvement order.
- Issue a full or partial suspension order of the insurance company's business.
- Order the deposit of property of the insurance company.
- Take other necessary measures for supervision.

The FSA can also combine some of the above measures.

The FSA (in the case of rescission, the Prime Minister) can order the full or partial suspension of the insurance company's business or the dismissal of any of the directors, executive officers, accounting advisers or auditors, or rescind the licence, if an insurance company:

- Is in violation of laws and regulations, measures of the Prime Minister under laws and regulations, or particularly vital matters among those prescribed in its Basic Documents.
- Is in violation of the conditions attached to its licence.
- Commits acts prejudicial to the public interest.

In addition, the Prime Minister can rescind the insurance company's licence, when he finds that the financial situation of an insurance company is significantly worsening and that it is not appropriate to continue the insurance business from the viewpoint of protecting policyholders, and so on.

Marketing insurance/reinsurance services

The IBA can cancel the registration of an agent or take other administrative action.

If a customer incurs loss due to the improper action of an agent, the agent must indemnify the customer against such loss. If the loss is associated with the solicitation of insurance contracts, the insurance company also must indemnify the customer.

Other providers of insurance/reinsurance-related activities

The IBA can cancel the registration of a broker or take other administrative action.

If a customer incurs loss due to the improper action of a broker, the broker must indemnify the customer for the loss. Brokers are independent from insurance companies. Therefore, to ensure the resources to indemnify customers for loss, the IBA requires brokers to:

- Deposit a security deposit with the deposit office.
- Conclude a contract stipulating that a required amount of security deposit be lodged by the broker by order of the Prime Minister.
- Conclude a broker's liability insurance contract.

14. Are there any restrictions on the persons to whom insurance/reinsurance services and contracts can be marketed or sold?

There are no restrictions on the persons to whom insurance/reinsurance services and contracts can be marketed or sold.

If the insurance companies, agents and brokers conclude certain insurance contracts with market risk, they must not conduct the business in a manner that is found to be inappropriate in light of the customer's knowledge, experience, financial condition or the purpose of concluding the insurance contract, which results in or is likely to result in the insufficient protection of the customer.

In addition, foreign insurers not licensed under the IBA in Japan and without branch offices in Japan cannot conclude domestic risk insurance contracts (except certain insurance contracts,

such as reinsurance, insurance covering international freight, and overseas travel insurance, and insurance for which prior permission from the FSA has been received by the policy applicant). Domestic risk insurance refers to insurance contracts for persons resident or domiciled in Japan or with property located, or vessels and aircraft registered, in Japan. In addition, policy applicants cannot enter into any domestic risk insurance contract with a foreign insurer not licensed in Japan, albeit subject to the same exceptions above.

REINSURANCE

15. To what extent can/must a reinsurance company monitor the claims, settlements and underwriting of the cedant company?

A reinsurance company has no rights or obligations to monitor claims, settlements or the underwriting of a cedant company under the Commercial Code, the IBA or any other laws of Japan.

However, these rights and obligations can be stipulated in the reinsurance contract. Generally, a reinsurance company is granted a right to inspect the related records and documents of a cedant company under a reinsurance contract.

16. What disclosure/notification obligations does the cedant company have to the reinsurance company?

There are no specific regulations dealing with reinsurance under the Commercial Code, the IBA or any other laws of Japan. It is suggested that the articles of the Commercial Code (from 1 April 2010, the Insurance Act will replace the Commercial Code) related to non-life insurance, such as the duty of disclosure and notification (see *Question 19*), may also apply to reinsurance since reinsurance is a type of non-life insurance.

However, in practice, obligations of disclosure or notification are stipulated in a reinsurance contract. Generally, a cedant company is required by the terms of the reinsurance contract to notify the reinsurance company if an original insurance contract is executed or if the general policy provisions of the ceded insurance are changed by the ceded company, and so on.

INSURANCE POLICIES

17. Please outline the main general form and content requirements for insurance policies in your jurisdiction, including a description of the most commonly found clauses.

Policy conditions

Generally, insurance contracts are concluded with policy conditions (*hoken yakkan*) predetermined by the insurance company and approved by the FSA. A person who wants insurance coverage submits an insurance application form to an insurance company, and if the insurance company accepts his application, an insurance contract is concluded and the terms of the policy conditions become binding between them.

Policy conditions consist of:

- General policy conditions in which the basic terms of the insurance policy are stipulated.
- Special policy conditions by which the terms of the general policy conditions are amended or supplemented.

General policy conditions commonly include clauses relating to the following matters:

- Scope of the insurance.
- Limit of the insurance company's liability.
- Commencement and termination date of the insurance.
- Calculation of the amount of the insurance claim.
- Procedure for payment of insurance claim.
- Duty of disclosure.
- Duty of notification.
- Insurance subrogation.
- Invalidity, expiration or termination of the insurance contract.
- Resolution of disputes and governing law.

Insurance certificate

Under the Commercial Code, if an insurance contract is concluded, the insurance company must deliver an insurance certificate (*hoken shoken*) to the policyholder, which sets out basic information, such as the insurance premium, insurance period, risks covered, insured amount, policyholder's name and so on.

18. Please identify any terms found in insurance policies in your jurisdiction that are implied by law or regulation (identifying the applicable laws or regulations and any mandatory provisions).

The following terms are often stipulated in general policy conditions which are implied by the Commercial Code. However, an insurance company can determine the details of the policy conditions to the extent that the FSA approves these conditions. In addition, it is possible that terms other than those set out below may be stipulated in the policy conditions deriving from law or regulations.

Duty of disclosure

An insurance company can cancel an insurance contract if a policyholder has failed to disclose material facts or has misrepresented material matters in relation to insurance (an insurance company must specify material facts related to insurance under the Insurance Act) due to malicious intent or gross negligence at the time of concluding an insurance contract (*Article 644 and 678, Commercial Code; Article 4, 28, 37, 55, 66 and 84, Insurance Act*). However, if an insurance company knew of this fact, or did not know of the fact due to its own negligence, this does not

apply. In addition, the insurance company cannot terminate the insurance contract, if an insurance agent either:

- Prevents a policyholder from disclosing material facts.
- Advises a policyholder not to disclose material facts or to misrepresent material matters.

Duty of notification

If a policyholder acknowledges significant changes or increases in relation to risks covered by insurance after concluding an insurance contract, he must notify the insurance company without delay. If a policyholder or an insured fails to make this notification, the insurance company can terminate the insurance contract (*Article 657 and 683, Commercial Code; Article 29, 56 and 85, Insurance Act*). However, under the Insurance Act, it is a condition that the duty of notification must be stipulated in the insurance contract.

In relation to non-life insurance, a policyholder or an insured must inform his insurance company if he learns of the occurrence of loss caused by the insured event (*Article 658, Commercial Code; Article 14, Insurance Act*).

Duty of prevention of loss

In relation to non-life insurance, an insured (and parties to an insurance contract under the Insurance Act) must endeavour to prevent or minimise a loss. The insurance company is liable for necessary or useful expenses incurred by the insured for the endeavour, even if the aggregate of such expenses and the indemnity exceeds the insured amount (*Article 660, Commercial Code; Article 13 and 23, Insurance Act*).

Retrospective insurance

At the time of concluding an insurance contract, if a policyholder or an insured (an insurance beneficiary in relation to life insurance, and an insured or an insurance beneficiary in relation to fixed benefit accident and health insurance) is aware of the fact that any accident to be covered by the insurance has already occurred, or if an insurance company is aware of the fact that such accident would never occur, the insurance contract is null and void (*Article 642 and 683, Commercial Code; Article 5, 39 and 68, Insurance Act*).

Over insurance

In relation to non-life insurance, if the insured amount exceeds the value of the object insured, the insurance contract is null and void in so far as the excess is concerned (*Article 631, Commercial Code*). However, under the Insurance Act, a policyholder can cancel the excess part of the insurance contract unless such excess is caused by the malicious intent or gross negligence of the policyholder or the insured, and unless there is no agreement regarding the value of the object insured (*Article 9, Insurance Act*).

Insurance subrogation

In relation to non-life insurance, if an insured can claim against another person with respect to the loss covered by the insurance, if an insurance company has paid an insurance claim, the insurance company must be subrogated to the right held by the insured against the other person to the extent not to prejudice the right of the insured but only to the extent of the amount it paid (*Article 662, Commercial Code; Article 25, Insurance Act*).

19. What customer protections are generally included in insurance policies to supplement relief available under general law?

Generally, there are no provisions in insurance policies regarding customer protections in addition to the protections which the customer might be entitled to under the Commercial Code, or any other insurance related laws.

20. Please identify examples of standard policies or terms produced by trade associations or relevant authorities, if any, and explain how these can be obtained.

Some insurance companies disclose their policy conditions on their webpage.

The Non-Life Insurance Rating Organisation of Japan (*songai hoken ryoritsu santei kikou*) (NLIRO) has prepared samples of policy conditions of some types of non-life insurance, especially policy conditions relating to automobile liability insurance translated into English (www.nliro.or.jp/disclosure/index.html).

21. What must be established to trigger a claim under an insurance policy?

Procedures for the payment of an insurance claim are generally stipulated in the policy conditions. Under these conditions, if an insured (or an insurance beneficiary) makes an insurance claim, he must submit to the insurance company a written notice of claim, together with documents to prove the loss covered by the insurance and all other documents the insurance company deems necessary.

According to the litigation practice in Japan, if an insured (or an insurance beneficiary) files an action for an insurance claim, he must prove the following facts:

- Existence of a valid insurance contract.
- Occurrence of an insurance event during the insurance period.
- Occurrence and quantum of loss.
- Causal relationship between the insured event occurred and the loss.

22. Please provide brief circumstances in which third parties can claim under an insurance policy?

If a third party is designated as the insured (in relation to non-life insurance) or the insurance beneficiary (with respect to life insurance or fixed benefit accident and health insurance), he can claim under the insurance policy.

As to third-party liability insurance, a victim who has a right to claim compensation for damage against an insured cannot exercise the right to make an insurance claim against the insurance company unless the right of victims is stipulated in the

policy conditions. However, under the Commercial Code, there is a provision relating to bailee's liability insurance whereby the owner of the deposit can exercise the right to make an insurance claim against the insurance company. It is also possible that the victim can exercise the right to make an insurance claim against the insurance company by subrogation under Article 423 of the Civil Code.

In relation to automobile liability insurance, it is clearly stipulated in the Automobile Liability Security Act that a victim can exercise a right to claim for insurance against an insurance company.

In relation to nuclear energy liability insurance, a victim has a statutory lien on the insured's claim for insurance against an insurance company under the Act on Compensation for Nuclear Damage.

In addition, under the Insurance Act, a new provision gives a victim a statutory lien (*sakidori tokken*) on the insured's claim for insurance against an insurance company.

23. Is there a time limit outside of which the insured/reinsured is barred from making a claim?

Under the Commercial Code, the statute of limitations for insurance claims expires after two years. However, it is commonly stipulated in policy conditions that the statute of limitations for insurance claims expires after three years.

Under the Insurance Act, the statute of limitations for insurance claims was extended from two to three years.

24. Can the original policyholder or other third party enforce the reinsurance contract against a reinsurer?

In general, a policyholder and other third parties have no right to make an insurance claim directly against the reinsurance company. However, it may be possible for a policyholder, or other third party who is a creditor of the insurance company, to exercise the right to make an insurance claim against the reinsurance company by way of subrogation under Article 423 of the Civil Code.

If insolvency proceedings under any insolvency law are started against an insurance company, it is difficult to exercise a right against the reinsurance company under Article 423 of the Civil Code because the claims of the policyholders or other third parties are handled collectively in these proceedings.

25. What remedies are available for breach of an insurance policy?

If a party to an insurance contract breaches the contract, the other party (including a party who has a claim against the breaching party) may file an action for damages, specific performance or an injunction, depending on the case.

In addition, arbitration is available if the parties agreed in the insurance contract, or separately agree, to settle disputes by arbitration.

INSOLVENCY

26. Please outline the regulatory framework for dealing with distressed or insolvent insurance or reinsurance companies, or other persons or entities providing insurance or reinsurance related services.

Insurance/reinsurance companies

There are various kinds of insolvency proceeding for companies, such as:

- Bankruptcy proceedings (*hasan tetsuzuki*).
- Civil rehabilitation proceedings (*miji saisei tetsuzuki*).
- Company reorganisation proceedings (*kaisha kousei tetsuzuki*).
- Special liquidation proceedings (*tokubetsu seisan tetsuzuki*).

However, in the case of the failure of an insurance company (which is a Japanese company), special proceedings are provided because there are many policyholders requiring protection. The administrative procedure for the insolvency of an insurance company is set out under the IBA. In this procedure, the conditions of the insurance policies are amended to restructure the failed insurance company with the approval of a shareholder's meeting and the government authority.

In addition, special proceedings for bankruptcy (*hasan*) and company reorganisation (*kaisha kousei*) are set out in the Act on Special Treatment of Corporate Reorganisation Proceedings and Other Insolvency Proceedings of Financial Institutions. In many cases, special proceedings for a company reorganisation are selected.

Under the IBA, 80% to 100% of the policy reserve and any other reserve for payment of insurance claims are kept for the payment of insurance claims by the financial support (that is, funds) provided by the Insurance Policyholders Protection Corporation (*hoken keiyakusha hogo kikou*).

Insurance companies and reinsurance companies which are Japanese corporations and licensed under the IBA are not distinguished in the related regulations. However, the Insurance Policyholders Protection Corporation of Japan does not provide financial assistance in relation to reinsurance contracts.

Other persons or entities providing insurance/reinsurance-related services

There are no special proceedings established for providers of insurance or reinsurance-related activities.

TAX

27. Briefly describe the tax treatment for insurers, reinsurers, and other persons or entities providing insurance and reinsurance-related services in your jurisdiction.

Insurance/reinsurance companies

Under the Corporation Tax Act and any other related acts, Japanese companies are subject to around 40% corporate income

MAIN INSURANCE/REINSURANCE TRADE ORGANISATIONS

The Life Insurance Association (*seimei hoken kyokai*)

Main activities. The Life Insurance Association strives for the sound development and improvement of the life insurance industry.

W www.seiho.or.jp/index.html

The General Insurance Association (*nihon songai hoken kyokai*)

Main activities. The General Insurance Association promotes the sound development of the non-life insurance industry in Japan.

W www.sonpo.or.jp

The Foreign Non-life Insurance Association (*gaikoku songai hoken kyokai*)

Main activities. The Foreign Non-life Insurance Association represents its members in various matters concerning non-life insurance business.

W www.fnlia.gr.jp

The Non-Life Insurance Rating Organisation (*songai hoken ryoritsu santei kikou*)

Main activities. The main activities include:

- Calculation and provision of Reference Loss Cost Rates and Standard Full Rates.
- Investigation of CALI claims.
- Data bank function.

W www.nliro.or.jp/index.htm

tax (including corporate residence tax and corporate enterprise tax). This applies equally to Japanese insurance companies and reinsurance companies.

However, the reserve for policy dividends, policy reserves (generally, except for risk reserve) and reserves for outstanding claims, in principle, are treated as deductions for corporate income tax purposes to a certain extent approved by the authority, and that, in relation to corporate enterprise tax, a certain percentage of insurance premium revenue is the base of taxation.

There are no taxes on insurance premiums in Japan and it is not a transaction which is suitable for consumption taxation.

Other persons or entities providing insurance/reinsurance-related services

Providers of insurance or reinsurance-related activities are subject to personal income tax or corporate income tax in the same way as other Japanese persons and companies.

DISPUTE RESOLUTION

28. Are there special procedures or venues for dealing with insurance or reinsurance complaints or disputes in your jurisdiction?

There are no special procedures or venues for insurance or reinsurance complaints or disputes where the determination is binding on the parties in conflict without an agreement on settlement or arbitration.

However, there are some alternative dispute resolution forums for insurance complaints or disputes such as the following:

- The Arbitration Council (*saitei shinsakai*) established by the Life Insurance Association of Japan (*seimei hoken kyokai*).
- The Non-life Insurance Arbitration Committee (*songai hoken chotei iinkai*) established by the General Insurance Association of Japan (*nihon songai hoken kyokai*).
- The Japan Centre for the Settlement of Traffic Accident Dispute (*koutsuu jiko hunsou syori center*).
- The Automobile Liability Insurance and Mutual-aid Dispute-settlement Mechanism (*jibaisekihoken kyosai hunsou syori kikou*).
- The Dispute Resolution Committee (*hunsou kaiketsu iinkai*) established by the National Consumer Affairs Centre of Japan (*kokumin seikatsu center*).

In addition, a Financial ADR System will soon be introduced in Japan. The Diet passed the Act to revise the IBA in preparation for the introduction of the Financial ADR System in June 2009, which will come into effect in 2011.

29. Please give a brief overview of the main dispute resolution methods used to settle reinsurance claims.

There are no special methods used to resolve disputes regarding reinsurance. If a reinsurance company breaches a reinsurance

contract, a cedant company may file an action for damages, specific performance or an injunction, as the case may be.

In addition, arbitration in relation to disputes between cedant companies and reinsurance companies are often stipulated in the reinsurance contract.

REFORM

30. Please summarise any proposals for reform of the law, regulation or rules in your jurisdiction relating to the provision of insurance or reinsurance services.

See *Question 4* as to the reforms in relation to the Insurance Act, and *Question 28* as to the reform in relation to the Financial ADR System.

The Working Group for the Basic Issue of Insurance constituted under the Financial System Council (*kinyuu shingikai*) of the FSA released its interim report in June 2009, according to which it is necessary to totally reform the restrictions with regard to insurance soliciting, insurance products and the administration of payment from the viewpoint of protecting policyholders.

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