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CHAMBERS GLOBAL PRACTICE GUIDES

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# Insurance & Reinsurance 2023

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Definitive global law guides offering  
comparative analysis from top-ranked lawyers

**Japan: Law & Practice**  
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## Law and Practice

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## 1. Basis of Insurance and Reinsurance Law

### 1.1 Sources of Insurance and Reinsurance Law

The Insurance Business Act is the basis for the regulation of insurance businesses in Japan, providing a contractual relationship surrounding insurance products. Although Japan is not a common law country, the judicial precedent, especially that established by the Supreme Court, should be referred to when interpreting insurance contracts.

## 2. Regulation of Insurance and Reinsurance

### 2.1 Insurance and Reinsurance Regulatory Bodies and Legislative Guidance

The Financial Services Agency (FSA) is the regulatory authority for insurance and reinsurance businesses in Japan. Life and non-life insurers are regulated by the Insurance Business Act. Reinsurers are regulated in the same way as non-life insurers. Based on the Insurance Business Act, the regulatory authorities have the power to issue administrative dispositions to insurance companies, including orders for business improvement, orders for suspension of business, and/or orders for cancellation of licences.

In fact, broad discretion is given to the regulatory authorities, and those administrative dispositions against insurance companies invoked by the regulatory authorities are not necessarily based on the assumption that violations of law by insurance companies have taken place.

Against this background, entities targeted for supervision not only have to make sure that laws and regulations are being observed but must also follow the guidelines officially promulgated by the regulatory authorities (Comprehensive Guidelines for the Supervision of Insurers).

### Underwriting Life and Non-life Insurance

Underwriting life insurance and non-life insurance entails obtaining the necessary business licences from the regulatory authorities. Such licences for life insurance and non-life insurance business cannot be acquired by the same company, and companies are prohibited from running both businesses concurrently. However, both life insurers and non-life insurers are at liberty to offer insurance such as medical care insurance, accident insurance, or overseas travel accident insurance, ie, insurance from the so-called “third sector” insurance market.

Nevertheless, life insurance companies – whether operating in the form of a *kabushiki kaisha* or mutual company – must have board of directors’ meetings, auditors’ meetings, audit and other committee meetings, and meetings such as nominating committee meetings, and accounting auditors. Foreign companies intending to enter into the Japanese market through their subsidiaries are required to acquire the licences mentioned above. Foreign companies planning to enter through their branch offices must obtain foreign insurer’s licences.

During the licence application procedure, the “basic documents” (articles of incorporation, business plan, standard policy provisions and documents showing the method to calculate insurance premiums and policy reserves) must be submitted to the regulatory authorities. Furthermore, insurance companies cannot operate their businesses while being in violation of

the basic documents, and, in order to develop and offer new insurance products, must procure approval for corresponding changes to the basic documents from the regulatory authorities (“Insurance Product Approval” – regular processing takes 90 days, standardised 45 days). However, regarding certain types of insurance, such as fire insurance where there is little concern of insufficient policyholder protection, a notification system to the regulatory authorities has been adopted; nevertheless, notification may not be required in cases where insurance companies state in the statement of business procedures that special provisions related to business insurance are to be established or modified without notifications (“Flexible Provision System”).

### **Other Business and Subsidiaries**

Insurance companies are not permitted to conduct any business other than the insurance business (underwriting insurance) and business incidental thereto (restriction on other business). Furthermore, insurance companies are not allowed to own subsidiaries that perform businesses other than as legally stipulated, or obtain voting rights in domestic companies in excess of 10% of their total voting rights. However, with the approval of the regulatory authorities, insurance holding companies may have companies as their subsidiaries that insurers themselves may not own.

With respect to prescribed matters (which are quite extensive), such as customer explanations, or information control, insurance companies are obligated to have a system in place to secure soundness of operations and appropriate management. The minimum amount of capital of an insurance company is JPY1 billion.

### **Policy Reserves**

Insurance companies are required to accumulate policy reserves and appoint an insurance administrator with a predetermined actuary’s licence to be involved in work related to actuarial science. In 1996, regulations on the solvency margin ratio were introduced. The solvency margin index has become an assessment standard for the supervisory authorities to execute early corrective actions with broad supervisory reach against targeted companies, including orders to submit an improvement plan.

At present, the solvency margin ratio on a consolidated basis has been introduced. In March 2016, the European Union announced the adoption of the equivalence recognition between Solvency II with temporary equivalence and the Japanese reinsurance supervision and group solvency. In June 2020, the Advisory Council on the Economic Value-Based Solvency Framework, which was established at the Financial Services Agency, published a report in light of which the FSA is currently deliberating the Economic Value-Based Solvency Regulation ahead of its implementation in 2025. On 30 June 2022, the FSA published a report on “The Tentative Decisions on the Fundamental Elements of the Economic Value-Based Solvency Regulation” to help prepare for the implementation of the insurers’ organisational restructuring.

## **2.2 The Writing of Insurance and Reinsurance**

See 2.1 Insurance and Reinsurance Regulatory Bodies and Legislative Guidance.

## **2.3 The Taxation of Premium**

This is not applicable in Japan.

## 3. Overseas Firms Doing Business in the Jurisdiction

### 3.1 Overseas-Based Insurers or Reinsurers

Under the Insurance Business Act, the regulations that apply to Japanese insurance companies also apply to local subsidiaries of overseas-based insurers. Nevertheless, the Act allows foreign insurance companies to conduct insurance business without establishing such local subsidiaries.

Foreign insurance companies may conduct insurance business in Japan only if they have opened a branch in Japan and obtained the applicable licence from the FSA, the body overseeing insurance companies (Article 185-1 of the Insurance Business Act). This requirement allows the FSA to effectively execute administrative power over such foreign insurers. With some exceptions, Article 185-6 of the Insurance Business Act requires such licensed foreign insurers to conclude insurance contracts with persons having an address or residence in Japan, property located in Japan, or vessels or aircrafts with Japanese nationality inside Japan. The procedure to apply for the licence is mostly the same as that for Japanese insurance companies. Since foreign insurance companies do not have capital inside Japan, they are required to deposit a minimum of JPY200 million to the deposit office to protect policyholders.

### Restrictions on Unlicensed Foreign Insurance Companies

Unlicensed foreign insurance companies may not conclude insurance contracts with persons having an address or residence in Japan, property located in Japan, or vessels or aircrafts with Japanese nationality (Restriction on Foreign Direct Insurance; Article 186-1 of the Insurance

Business Act) other than the insurance contracts listed below:

- reinsurance contracts;
- marine insurance contracts pertaining to objects such as vessels with Japanese nationality used for international maritime transportation;
- aviation insurance contracts pertaining to aircrafts with Japanese nationality used for commercial aviation;
- insurance contracts pertaining to launching into outer space;
- certain insurance contracts covering cargo located within Japan which is in the process of being shipped overseas; and
- overseas travel insurance.

### *Exceptions and permissions*

The restriction does not apply when an applicant wishing to purchase insurance from unlicensed insurance companies has obtained a permission from the FSA in advance of their applications for insurance as set forth in Article 186-2 of the Insurance Business Act. This exception is provided for to enable policyholders to purchase insurance products that are most beneficial to them. That permission may not be provided in the following cases:

- the insurance product in question violates laws or is unfair;
- it is easy to conclude insurance contracts with licensed Japanese or foreign insurers for comparable insurance products on equal or more advantageous conditions;
- the terms and conditions of the insurance product in question are significantly unbalanced compared to the typical terms and conditions of the same type of insurance products with licensed Japanese or foreign insurers;

- concluding such insurance contracts would unjustly deprive the insured and other related persons of their benefits; and
- concluding such insurance contracts would likely negatively impact the development of the Japanese insurance business or be harmful to the public interest.

In a recent trend, the government of Tokyo is pursuing a policy to attract overseas financial business providers to the Japanese market by providing assistance to cope with complicated financial regulations in Japan, such as opening a one-stop service centre for financial start-ups. It is expected that such a move will attract more overseas insurance companies and revitalise the Tokyo financial markets.

### 3.2 Fronting

Fronting is not expressly prohibited nor permitted in Japan and there are no explicit expectations with regard to the cedent's retention.

## 4. Transaction Activity

### 4.1 M&A Activities Relating to Insurance Companies

Existing insurance businesses may be acquired in several ways, such as through obtaining shares of Japanese insurance companies, a merger of insurance companies, or sale and purchase of insurance business. The Insurance Business Act provides a regulatory framework for these M&A activities of insurance businesses.

#### Obtaining Shares

Under the Japanese regulatory framework, shareholders who own a certain percentage of voting rights in insurance companies are subject to oversight of the regulator.

- A shareholder with more than 50% voting rights in an insurance company is required to obtain an approval from the Financial Services Agency (FSA) in advance of acquisition of such voting rights (Insurance Holding Company; Article 271-18-1 of the Insurance Business Act). Insurance holding companies are subject to strict regulations including those regulating the scope of business and imposing subsidiary restrictions, and, in certain instances, reporting obligations. As of 1 August 2022, 15 insurance holding companies have been approved by the FSA.
- Except for insurance holding companies, a shareholder with 20% or more voting rights in an insurance company needs approval from the FSA in advance of acquisition of such voting rights (Major Shareholder of Insurance Companies; Article 271-10-1). Such approval is required even if the investor resides overseas. The FSA oversees major shareholders of insurance companies by imposing reporting obligations and taking administrative dispositions.
- A shareholder with more than 5% voting rights in an insurance company is required to report such acquisition of voting rights within five days (in case of foreign investors, one month) to the FSA (Shareholders with Large Voting Rights in Insurance Company; Article 271-3-1 of the Insurance Business Act). The shareholder has to submit a report if the shareholder's percentage of voting rights changes by 1% or more (either as an increase or decrease). The FSA may take administrative dispositions against shareholders with large voting rights in an insurance company if the FSA finds the report submitted includes false information or lacks important or necessary information, thus causing potential misunderstanding.

## Mergers

A merger with an insurance company requires approval by the FSA. Article 167-2 of the Insurance Business Act provides the following standards/checkpoints that the FSA could use in determining whether to give an approval:

- the merger is appropriate in light of the protection of policyholders;
- the merger will not hinder fair competition among insurance companies; and
- it is certain that the surviving insurance company after the merger will be capable of operating the insurance business appropriately, fairly and effectively.

## Sale and Purchase

A sale and purchase of insurance business also requires approval from the FSA, pursuant to Article 142 of the Insurance Business Act. Purchasers of insurance businesses must be licensed insurance companies. Such sale and purchase also requires a separate approval to transfer insurance contracts from the FSA, pursuant to Article 139 of the Insurance Business Act. Petitions for approval to transfer insurance contracts are reviewed according to the following standards/checkpoints:

- the transfer of insurance contracts is appropriate in light of the protection of policyholders;
- it is certain that the transferee will be capable of operating the insurance business precisely, fairly and effectively; and
- the transfer does not unjustly affect the benefit of the creditors of the transferor.

The Insurance Business Act does not require policyholders' approvals for transfers of insurance contracts to another insurance company. Instead, the transferor must make a public

notice and notify each policyholder, and provide policyholders a chance to file objections to the transfer.

## 5. Distribution

### 5.1 Distribution of Insurance and Reinsurance Products

Unless otherwise allowed by any other law, the Insurance Business Act prohibits any person from acting as an agent or intermediary to conclude insurance contracts, an activity that falls within the definition of "insurance solicitation" under the Act.

In the case of a life insurance company, only registered life insurance agents (officers and employees of a life insurer; life insurance agencies (agents) as well as their officers, employees and other personnel) may conduct "insurance solicitation." A characteristic feature of Japanese selling channels is for life insurance companies to utilise a large number of salespeople who have long belonged to those companies (mostly female employees known as "Sei-ho ladies") among their overall salespersons. Put simply, every person selling insurance contracts has to be registered to do so. In principle, in the current legal system, life insurance agents may deal with insurance products of only one insurance company. In other words, they operate within the so-called one-company exclusive system. However, by fulfilling the prescribed legal requirements (such as enrolling two or more life insurance agents) it is possible to deal with insurance products of multiple insurance companies – in fact, quite a number of independent agencies currently do this.



## Non-life Insurance Companies

The situation involving non-life insurance companies (including a reinsurance company) is as follows.

- It is recognised that officers (other than auditors) and employees of a non-life insurer may engage in “insurance solicitation,” not only without being registered but also, similarly to officers and employees of below-mentioned non-life insurance agencies, without any obligation to give notice thereof. In many cases, employees of a non-life insurance company engage in “non-face-to-face” offerings of their products (by such means as telephone, mail or internet) and tend to transfer business opportunities with large-scale companies to their head office for handling.
- Registered non-life insurance agencies, their officers (with the exception of auditors) and their employees may engage in “insurance solicitation”. No officers or employees of non-life insurance agencies are required to be registered, however, they are required to give notice of such a fact.

The majority of non-life insurance sales are made by agencies, which account for 90.7% of total sales on a direct-net-premiums-written basis, while sales by officers and employees of insurance companies (through their direct sales) and insurance brokers account for only around 8.6% and 0.7% respectively.

Dedicated insurance agencies account for 18% (based on the number of entities involved) of all non-life insurance agencies. Around 55% of non-life insurance agencies which are involved in another business are automobile dealers and repair shops, and around 10% of them are entities within the real estate industry – with both figures standing at high percentage rates.

## Insurance Brokers

Registered insurance brokers may also engage in “insurance solicitation” (limited to mediating conclusions of insurance contracts). The Insurance Business Act has assigned special duties to such insurance brokers, including:

- the duty to deposit a security guarantee (JPY20 million at the time of commencement of their business, which can be exchanged for an insurance broker’s liability insurance policy);
- the duty to disclose fees and commissions;
- the duty to prepare bought and sold notes;
- the duty of loyalty (the duty of “best advice”); and
- other special duties that have not been imposed on insurance agents.

There are only 54 insurance brokers in Japan, which is comparatively low. While most of them focus on large-scale businesses, handling products for individual consumers is extremely rare.

## Sales Through Banking Channels

Insurance sales through banking channels in Japan commenced in 2001 but the number of products they could sell was severely restricted. The range of insurance products available for sale by banks has since expanded multiple times, and the restrictions were totally removed in 2007.

Banks function as insurance agents in the selling process. In this respect, it is worth mentioning that additional special regulations have been applied to banks in order to avoid circumstances of insufficient consumer protection, which could result from improper use of the banks’ information-gathering ability in relation to customers’ funds or their improper influence over customers.

Strict regulations have been imposed on banks, including measures/regulations for the protection of non-public information (pursuant to which customer information obtained through their banking business cannot be used in connection with insurance solicitation without customers' consent) or the regulations concerning soliciting of borrowers (where certain types of insurance products cannot be sold to customers who are granted business loans). While these additional regulations have been imposed for the protection of consumers, they essentially function to protect the traditional channels of insurance distribution.

Recently, "open-for-visitor" agencies have strengthened their presence. Out of the insurance products of multiple insurance companies, these agencies make – on their own initiative – proposals of insurance products that conform to customers' actual needs, which open-for-visitor agencies call consultative selling.

## 6. Making an Insurance Contract

### 6.1 Obligations of the Insured and Insurer

The Insurance Business Act imposes on a policyholder or the insured a duty to disclose material matters regarding risks requested to be disclosed by the insurer (the duty of answering the question).

This is a unilaterally mandatory provision (a provision that makes void those agreements that, contrary to this provision, adversely affect policyholders); however, in the field of non-life insurance – for example, maritime insurance contracts, aviation insurance contracts, nuclear energy insurance contracts and non-life insurance contracts – the coverage of damages

arising from business activities conducted by a juridical person or some other organisation or an individual who operates a business is excluded from the scope of the application of the foregoing provision.

### 6.2 Failure to Comply With Obligations of an Insurance Contract

If a policyholder or the insured violates the aforementioned duty, the insurance company may cancel the insurance contract and, except for damages not arising from violation of the duty of disclosure, will be discharged from liability for making insurance payments. An insurance company's right of cancellation will be extinguished one month after it learns the cause of the cancellation, or five years after the conclusion of the contract.

### 6.3 Intermediary Involvement in an Insurance Contract

While insurance agents act on behalf of insurance companies, insurance brokers act on behalf of customers independent from insurance companies (buyer's agents).

### 6.4 Legal Requirements and Distinguishing Features of an Insurance Contract

Insurance contracts may be concluded verbally but, in practice, it is commonly done in writing so that the conditions of the contracts are clarified. The existence of insured benefits (economic benefits that may be disadvantaged by the occurrence of insured events) is required as a condition to effectuate a non-life insurance contract. The insured is the person to whom the insured benefit belongs.

The reason for the existence of insured benefits is to prohibit gambling and prevent moral hazards. However, this requirement for the existence

of insured benefits tends to be applied fairly moderately and flexibly.

## 6.5 Multiple Insured or Potential Beneficiaries

In non-life insurance, only the insureds may be the beneficiaries of an insurance contract. Insurance benefits are paid to the insureds and/or parties authorised by the insureds to receive the benefits.

## 6.6 Consumer Contracts or Reinsurance Contracts

This is not applicable in Japan.

## 7. Alternative Risk Transfer (ART)

### 7.1 ART Transactions

Based on the content of the product, it should be determined whether such product is subject to Japanese regulation. Certain products may be subject to regulation as reinsurance products.

### 7.2 Foreign ART Transactions

This is not applicable in Japan.

## 8. Interpreting an Insurance Contract

### 8.1 Interpretation of Insurance Contracts and Use of Extraneous Evidence

There are no laws or regulations on how to interpret contracts specific to insurance contracts.

In general, the courts interpret insurance contracts objectively, taking into account their comprehensibility by average, reasonable customers. Nonetheless, the courts tend to recognise agreements between insurance companies and customers that differ from explicit policy condi-

tions, taking into consideration the way in which insurance companies and customers negotiated and concluded their insurance contracts, and seek reasonable solutions while ordering compensation for damages.

At the time of solicitation of an insurance contract, the Insurance Business Act requires insurance companies to deliver documents (contract outline) containing the following items to fulfil their obligation to provide information:

- the structure of the insurance policy/coverage;
- matters concerning insurance benefits (including giving typical examples of payment conditions of insurance benefits and explaining cases where insurance benefits are not paid);
- duration of the insurance policy;
- the amount of insurance and other conditions for underwriting of insurance contracts;
- the payment of insurance premiums;
- cancellation of insurance contracts and refunds thereof;
- cooling-off procedures;
- matters concerning the notification to be made by the policyholder or the insured;
- the timing of commencement of insurance liability;
- the grace period for payment of insurance premiums; and
- the invalidation and reinstatement of insurance contracts after their expiration.

### 8.2 Warranties

This is not applicable in Japan.

### 8.3 Conditions Precedent

This is not applicable in Japan.

## 9. Insurance Disputes

### 9.1 Insurance Disputes Over Coverage

Insurance disputes are generally resolved in district courts or summary courts, depending on the value of the dispute. There are no special courts for resolving commercial insurance disputes and, therefore, the same procedure is applicable to both consumer contracts and reinsurance contracts. In practice, a jurisdiction clause in an insurance policy determines which court will hear disputes in relation to the insurance policy.

### 9.2 Insurance Disputes Over Jurisdiction and Choice of Law

See 9.1 Insurance Disputes over Coverage.

### 9.3 Litigation Process

Generally, a first hearing date is scheduled around one month after the filing of a lawsuit. It usually takes six months to one year to reach a judgment.

The losing party may appeal to the upper court based on any grounds if it is not satisfied with the decisions of the court of first instance. There are two stages of appeal.

### 9.4 The Enforcement of Judgments

A foreign judgment is required to be recognised in Japanese courts. To be capable of recognition and enforcement, a foreign judgment must satisfy the requirements of Article 118 of the Code of Civil Procedure. Whether these requirements are satisfied will be determined by the court in an action for “execution judgment” under Article 24 of the Civil Execution Act.

### 9.5 The Enforcement of Arbitration Clauses

This is not applicable in Japan.

### 9.6 The Enforcement of Awards

The Arbitration Act provides that an arbitration agreement must be in writing but does not require any specific wording. Parties to the arbitration may not appeal to the courts regarding the decision of the arbitral tribunal. However, the Arbitration Act provides that the parties may file a petition to set aside the arbitral award to the court in some situations, such as invalidity of the arbitration award due to the limited capacity of a party.

Japan is party to the New York Convention, and arbitration awards received in the member countries can be enforced in Japan.

### 9.7 Alternative Dispute Resolution

Insurance alternative dispute resolution (ADR) is common, especially in the field of consumer contracts. An increasing number of insurance-related disputes are resolved through ADR.

### 9.8 Penalties for Late Payment of Claims

Japan has not introduced the concept of punitive damages. Late payment interest is recoverable in respect of claims. Before 31 March 2020, the rates for late payment interest were 5% per annum for non-commercial claims and 6% per annum for commercial claims. As of 1 April 2020, the amendment of the Civil Code became effective and a new structure for late payment interest was introduced, ie, 3% per annum with subsequent reviews every three years to reflect market interest rates.

### 9.9 Insurers’ Rights of Subrogation

For non-life insurance, Article 24 of the Insurance Act provides that, where insured property is totally lost or destroyed, an insurer that has paid an insurance proceeds payment shall be subrogated to ownership and any other real right that the insured holds over the insured property,

in accordance with the ratio of the amount of the insurance proceeds payment thus paid to the insured value (or the agreed insured value if there is any such amount).

Article 25 of the Act provides that, when an insurer has made an insurance proceeds payment, the insurer shall be subrogated with regard to any claim acquired by the insured due to the occurrence of any damages arising from an insured event up to the smaller of:

- the amount of the insurance proceeds payment made by the insurer; or
- the amount of the insured's claim.

## 10. Insurtech

### 10.1 Insurtech Developments

In Japan, the emergence of fintech was, at first, most pronounced in the banking sector. Indeed, the Japanese government first responded to fintech by amending the Banking Act so that banks could own technology companies as their subsidiaries, which was previously restricted to some extent (the "Amended Banking Act"). The Amended Banking Act came into force on 1 April 2017. In 2021, the Insurance Business Act was amended in the same way for insurance companies to own subsidiaries that provide IT and other technology to enhance insurance activities and benefit the insurance companies' customers.

#### Adoption of New Technologies

Japanese insurance companies are gradually adopting new technologies such as IoT (Internet of Things), big data and artificial intelligence to their services. For example, Tokio Marine & Nichido Anshin Life Insurance Co Ltd has introduced a medical insurance policy where an

insured might obtain cash back of insurance fees if they walked certain average number of steps, daily. The insured would be required to use wearable technology to monitor their activities and record their health data.

Another example is Sony Assurance Inc's automobile insurance, where an insured has a "driving counter" installed in their car to monitor the insured's driving. If it shows safe driving on the part of the insured, the insurer will provide cash back towards the insurance fees.

#### Alliance with Tech Companies

Insurance companies alone may not be able to create new insurtech products because they do not have enough resources/knowledge to develop new technology. An alliance with tech companies or telecoms companies is therefore necessary. Another question has been whether insurance companies are allowed to own tech companies or telecoms companies as their subsidiaries to take full control of the new technologies.

#### The Fintech Support Desk

The FSA regards the fintech trend quite positively. One example of the positive attitude of the FSA is the Fintech Support Desk, which was established to provide a streamlined process for fintech businesses. Indeed, the FSA appears to be watching developments regarding insurtech with a high degree of interest.

### 10.2 Regulatory Response

See 10.1 Insurtech Developments.

## 11. Emerging Risks and New Products

### 11.1 Emerging Risks Affecting the Insurance Market

Cyber-attacks have come to pose a severe and present risk, which Japanese companies have to cope with. Even though countermeasures are being introduced, they can easily be rendered ineffective. The Ministry of Economy, Trade and Industry of Japan (the METI) issued the Cybersecurity Management Guideline, which establishes that cybersecurity is a business challenge and that Japanese companies have to take appropriate protective actions.

To respond to such situations, insurance companies have developed insurance products to cover the costs of information leakage or damages caused by a cyber-attack. However, considering the survey conducted by the General Insurance Association of Japan in 2020 showing that only 6.7% of SMEs respondents have purchased cyber-insurance, the cyber-insurance market in Japan still has significant room to grow.

### 11.2 New Products or Alternative Solutions

With advancements in autonomous car technology, the question of who should bear legal responsibility in the case of accidents involving self-driving cars is being debated. The Study Group on Liability for Damages in Autonomous Driving that was established by the Ministry of Land, Infrastructure, Transport and Tourism (the MLIT) published its report in March 2018. In the report, the Study Group concluded that, in the transition period where autonomous technology from level 0 to level 4 exist intermixedly, while drivers should basically bear legal responsibility for the damage arising from car accidents, it is appropriate to establish a framework for insur-

ance companies to recover from automobile manufacturers effectively.

Tokio Marine & Nichido Fire Insurance Co Ltd has added protection to cover accidents arising from malfunctions in autonomous driving systems in order to provide prompt relief to victims of such accidents.

Increased longevity may affect the strategy of insurance companies. Recently, the Institute of Actuaries of Japan published the Standard Longevity Table 2018 (previously amended in 2007), indicating significant decreases of projected death rates. With this trend, it is reported that insurance companies will lower fees for life insurance by 5%-10% for newly entered insurance contracts. It is also reported that demand is gradually shifting away from life insurance to products covering living costs when the insureds become unable to work, reflecting increased longevity.

## 12. Recent and Forthcoming Legal Developments

### 12.1 Developments Impacting on Insurers or Insurance Products COVID-19

On 10 April 2020, as the impact of COVID-19 continued to expand, the FSA requested that the insurance industry consider, from the viewpoint of protecting policyholders, a more flexible interpretation and application of policy conditions regardless of any precedents.

Since then and until recently, the insurance companies' policy was to pay insurance benefits by taking that request into consideration. For example, insurance companies paid hospitalisation benefits to COVID-19 patients with mild or no symptoms who were given treatment at various

lodging facilities or at home in order to secure the availability of the hospital system to severely ill patients.

However, on 1 September 2022, the FSA took steps toward facing the new reality of living with COVID-19 by announcing a policy to limit the scope of hospitalisation payments to persons at a high risk of becoming severely affected by COVID-19, including:

- persons aged 65 or older;
- persons in need of hospitalisation;
- persons with COVID-19 who are likely to suffer severely from it and thus are in need of receiving a therapeutic agent or oxygen; and
- pregnant women.

For the most part, all insurance companies have been applying this limitation to persons diagnosed with COVID-19 from 26 September 2022 onwards.

On 5 June 2020, the “Act on Sales, etc, of Financial Instruments” was amended and renamed the “Act on the Provision of Financial Services;” this Act came into effect on 1 November 2021, as a part of the legislation on cross-sectional financial services intermediaries.

## **New Intermediary Business Category**

The new law introduces a new category of “Financial Services Intermediary Businesses,” a category which entails a registration system that allows for a one-stop mediation service in all financial areas for a single registration, covering banking, securities, insurance, and loans (ie, cross-sectional legislation for the provision of financial services).

Today, while the employment and the household arrangements have diversified, the progress of

information and communications technology has enabled the provision of various financial services online. In this context, the new law puts emphasis on allowing users of financial services more freedom of choice in obtaining financial services that satisfy their individual needs.

## **Belonging to Financial Institutions**

Belonging to a specific financial institution is not required to start a financial services intermediary business. However, a security deposit is mandatory to secure financial resources to pay potential compensation in the future. Furthermore, a financial services intermediary is not allowed to accept users’ assets, handle certain types of services, or concurrently run an insurance agency or a brokerage business.

## **Scope of Insurance Products**

The scope of insurance products that can be handled by financial services intermediaries is stipulated by a government decree, but financial service intermediaries are not allowed to handle insurance policies with strong investment potential, fire insurance, reinsurance, business-oriented insurance, group insurance, and non-life insurance with insurance amounts exceeding JPY20 million.

## **Insurance Brokers**

Each individual insurer has to decide how to deal with financial services intermediaries and what attitude to adopt towards this new sales channel. The insurance sector already has a long-standing market player in the form of an insurance broker which is independent from insurers. To determine what stance to take towards financial services intermediaries, insurers are advised to analyse their own relationships with brokers, bearing in mind the different functions served by brokers and intermediaries.

## 13. Other Developments in Insurance Law

### 13.1 Additional Market Developments General Principles of Customer-Centric Business Operation (Comparable Common KPIs for Foreign-Currency-Denominated Insurance)

On 30 March 2017, the FSA published the “General Principles of Customer-Centric Business Operation.” If financial undertakers running a financial company attempt to adopt these general principles (while it is up to financial undertakers whether they adopt them, in practice, it is difficult for insurers to choose not to), they are required, for example, to develop and make public clear guidelines to achieve the customer-centric business operation and regularly make public announcements on how their efforts in relation to such guidelines are progressing.

The FSA’s strategic priorities for the fiscal year 2022 are as follows.

- Based on the reports on the policy for initiatives, etc, the list of financial business operators is to be updated and disclosed on a regular basis. Also, with regard to the reports on common KPIs at investment trusts, the figures should be compiled and analysed, and the results thereof disclosed.
- With regard to common KPIs for foreign currency-denominated insurance policies, the analytics must also be disclosed in the same manner as in the case of investment trusts. Furthermore, the dissemination and penetration of common KPIs for foreign currency-denominated insurance policies should be promoted, and financial institutions should be encouraged to disclose such KPIs.
- Financial institutions’ policies for initiatives that are considered to be well-designed should be collated and used as case studies.
- Financial institutions’ specific initiatives on customer-centric business operations should be monitored to verify that they are clearly stated in the policies for initiatives and firmly adopted by front-line sales staff.
- Financial institutions’ organisational structures should be monitored to ensure that they are positioned to create, sell and manage products that contribute to the formation of customers’ assets. In particular, with regard to financial institutions that handle specially structured bonds, their structures should be monitored to see if the management considers the continuation of such business from the above-mentioned viewpoint and, if the management chooses to continue, whether it has considered the target customers and the content of the explanation for the target customers from the viewpoint of realising sales that would meet true customer needs.
- With regard to sales of foreign currency-denominated insurance, the status of penetration and establishment with respect to the initiatives of insurance companies and other financial institutions selling insurance products on their behalf (eg, solicitation management and after-sales follow-up) must be followed up through dialogue with such companies and agents and questionnaires.
- The idea of the “visualisation” measures should be widely disseminated to those keen on asset building, through magazine articles or lectures.
- Discussions with the insurance industry should continue with the aim of enabling the provision of easy-to-understand information by way of the Important Information Sheet. The JSA must also continue monitoring the status of the introduction and use of the



Important Information Sheet among major financial companies.

## Policy for Insurance Supervision

On 31 August 2022, the FSA announced the “The JFSA Strategic Priorities July 2022–June 2023—Overcoming Challenges Confronting the Financial System and Building Foundation for Sustainable Growth.” Based on these JFSA Strategic Priorities, the policy of insurance supervision administration for fiscal year 2022 was formulated as follows.

- In view of the change in medium- and long-term business climate, such as the aging society, intensifying natural disasters, and the shrinking automobile insurance market, insurance companies are required to:
  - (a) conduct efficient business operations through digitalisation;
  - (b) build sustainable business models; and
  - (c) develop products catering to the changing customer needs.
- As the insurance companies continue to expand their business overseas, it is important that they clarify their strategies to incorporate the growth from overseas expansion and enhance the sophistication of their group governance.
- The FSA will facilitate the steady progress of these initiatives through dialogue, in co-operation with overseas authorities.
- The frequent occurrence of natural disasters over recent years has resulted in increased payments of insurance claims, causing a rise in the fire insurance premium rates. In particular, in view of the growing interest in the risks associated with surging floods, the FSA will hold dialogues with the parties concerned regarding risk-based segmentation of the water disaster insurance premium rates, as well as collaborate with them in disseminating risk information to promote water disaster insurances and in combating fraudulent business capitalising on disasters.
- In response to the environmental changes referred to above, the FSA will examine the details of the economic value-based solvency regulations while monitoring the progress of organisational development within insurance companies, with a view to achieving seamless transition to a new policy of soundness based on the regulations mentioned above.
- In order to prevent product development and solicitation activities that deviate from the original intent of insurance, such as the sale of insurance products with the primary objective of tax saving (tax avoidance), the FSA will conduct workable product screening and monitoring of insurance solicitation through closer co-operation with the National Tax Agency (NTA).
- In light of the recurrent misconduct by in-house sales representatives, the JSA will encourage insurance companies to build a workable system for managing sales representatives.
- In co-operation with the local finance bureaus, the JSA will hold dialogues with the parties concerned regarding the promotion of insurance solicitation by taking the public insurance system into consideration or sophistication of the insurance agency management system, so that insurance services catering to the diverse needs of customers are readily available.
- With regard to small-amount and short-term insurance providers, the JSA will work with local finance bureaus to review their monitoring methods, identify problems related to their financial strength and appropriateness of their business operations, and take measures in respect thereof at an early stage.

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**Chuo Sogo Law Office P.C.** specialises in the following insurance matters: legal advice and opinions relating to insurance laws and regulations; incorporations, mergers and acquisitions, company restructurings and liquidations for insurance companies; and litigation, mediation, ADR and other dispute resolution remedies related to insurance claims and insurance products. Since 2005, the firm has been loaning

its attorneys to work at the Financial Services Agency (FSA) – an agency overseeing the insurance sector in Japan. This experience has given Chuo Sogo insights into and a better understanding of the workings of this complex governmental agency, allowing it to better deal with complex insurance-related regulations to the benefit of its clients.

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