



The Legal 500 & The In-House Lawyer
Comparative Legal Guide
Japan: Insurance & Reinsurance

This country-specific Q&A gives a pragmatic overview of the law and practice of insurance & reinsurance law in the Japan.

It addresses topics such as contract regulation, licensing, penalties, policyholder protection, alternative dispute resolution as well as personal insight and opinion as to the future of the insurance market over the next five years.

This Q&A is part of the global guide to Insurance & Reinsurance. For a full list of jurisdictional Insurance & Reinsurance Q&As visit <http://www.inhouselawyer.co.uk/index.php/practice-areas/insurance-reinsurance>

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1. How is the writing of insurance contracts regulated in the jurisdiction?

Writing of insurance contracts is regulated by the Insurance Business Act and the Financial Services Agency (the “FSA”) supervises insurance companies. Offering new insurance products requires approval from the FSA, (“Insurance Product Approval” – regular processing takes 90 days, standardised 45 days). However, regarding certain types of insurance where there is little fear of insufficient policyholder protection, such as fire insurance, a notification system to the regulatory authorities has been adopted, although 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”).

2. **Are types of insurers regulated differently (i.e. life companies, reinsurers)?**

Life insurers and non-life insurers are both regulated by the Insurance Business Act. Reinsurers are regulated in the same way as non-life insurers. Engaging in the underwriting of life insurance and non-life insurance entails obtaining from the regulatory authorities a life insurance business licence and a non-life insurance business licence, respectively. Companies may not run both businesses concurrently.

3. **Are insurance brokers and other types of market intermediary subject to regulation?**

Unless otherwise permitted by any other laws, the Insurance Business Act prohibits any person from acting as an agent or intermediary to solicit insurance contracts, an activity which falls under the definition of “insurance solicitation” under the Act.

In the case of a life insurance company, only registered life insurance agents (ie, officers and employees of a life insurer; or life insurance agencies (agents) as well as their officers, employees and other personnel) may conduct “insurance solicitation.” In principle, in the current legal system, life insurance agents operate within the so-called “one-company exclusive system”, meaning they may deal with the insurance products of only one insurance company. However, by fulfilling the prescribed legal requirements (such as enrolling two or more life insurance agents), it is possible to deal with the insurance products of multiple insurance companies, with quite a number of independent agencies currently doing so.

The situation involving non-life insurance companies (including reinsurance companies) is as follows:

- Officers (other than auditors) and employees of a non-life insurer may engage in “insurance solicitation” without being registered nor any notice thereof.
- Registered non-life insurance agencies as well as their officers (with the exception of auditors) and employees may engage in “insurance solicitation.” No officers or

employees of non-life insurance agencies are required to be registered, but they are required to give notice of such a fact.

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 payment can be exchanged for an insurance brokers' 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.

4. Is authorisation or a licence required and if so, how long does it take on average to obtain such permission?

Engaging in the underwriting of life insurance and non-life insurance entails obtaining from the regulatory authorities a life insurance business licence and a non-life insurance business licence, respectively. The FSA endeavors to complete its review of license application procedures within 120 days after a license application reaches to the FAS (which is a standard processing period under Article 246 of the Order for the Enforcement of the Insurance Business Act). An insurers who lay out a plan for obtaining a license, however, cannot normally rely on this standard processing time, first, because it only obligates the FSA to make an effort to meet that deadline, and second, because their negotiations with the FSA begin by an exchange of drafts preceding in the formal filling of documents for the license application – in fact, it is common that no formal documents for the license application are filed before obtaining an acknowledgement from the FSA.

5. Are there restrictions over who owns or controls insurers (including restrictions on foreign ownership)?

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

- A shareholder with more than 50% voting rights in an insurance company is required to obtain approval from the FSA in advance of acquiring 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.

- Apart from Insurance Holding Companies, a shareholder with 20% or more voting rights in an insurance company requires approval from the FSA in advance of acquiring such voting rights (Major Shareholder of Insurance Companies; Article 271-10-1), even if such 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 the acquisition of such voting rights to the FSA within five days (or one month in the case of foreign investors) (Shareholders with Large Voting Rights in Insurance Company; Article 271-3-1 of the Insurance Business Act). That shareholder has to submit a report if their 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 it finds that the submitted report includes false information, or lacks important or necessary information, thus causing a potential misunderstanding.

6. Is it possible to insure risks without a licence or authorisation? (i.e. on a non-admitted basis)?

For the following insurance contracts, foreign insurers may conclude insurance contracts without obtaining the applicable license:

1. Reinsurance contracts;
2. Marine insurance contracts pertaining to objects such as vessels with Japanese nationality used for international maritime transportation;
3. Aviation insurance contracts pertaining to aircrafts with Japanese nationality used for commercial aviation;
4. Insurance contract pertaining to launching into outer space;
5. Certain insurance contracts covering cargo located within Japan which is in process of being shipped overseas; and

6. Overseas travel insurance.

7. What penalty is available for those who operate without appropriate permission?

A person who engages in the business of insurance without a license is subject to punishment by imprisonment with work for not more than three years or a fine of not more than 3,000,000 yen (cumulative imposition thereof as the case may be) (Article 315, item 1 of the Insurance Business Act).

8. How rigorous is the supervisory and enforcement environment?

Based on the Insurance Business Act, the regulatory authorities have the power to issue administrative dispositions to insurance companies, including orders to change the basic documents, orders for business improvement, orders for suspension of business, or orders for cancellation of a licence. In fact, a broad discretion has been 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. With that as a 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; the "Guidelines").

9. How is the solvency of insurers (and reinsurers where relevant) supervised?

Insurance companies are required to accumulate policy reserves and appoint an insurance administrator with a predetermined actuary's license, who gets involved in work related to actuarial science. Regulations on the solvency margin ratio were introduced in 1996, and 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. The solvency margin ratio has been introduced on a consolidated basis.

Field tests of economic value-based solvency regimes have been conducted three times in the past, and the most recent field test – the results of which were announced in March 2017 – was conducted in accordance with the ICS field test specifications of IAIS (as of June 2016). In March 2016, the European Union announced its adoption of the equivalence recognition between Solvency II with temporary equivalence and the Japanese reinsurance supervision and group solvency.

10. **What are the minimum capital requirements?**

The minimum amount of capital of an insurance company is 1,000,000,000 yen (Article 6 of the Insurance Business Act, Article 2-2 of Order for Enforcement of the Insurance Business Act).

11. **Is there a policyholder protection scheme?**

The following policyholder protections are available:

1. Procedures allowing to change insurance policy terms by voluntary agreement between an insurance company and a policyholder in cases where it would be difficult for such insurance company to continue its insurance business.
2. Procedures allowing the Prime Minister to order (a) an insurance company to take necessary measures, such as suspending its business or consulting on the transfer of insurance contracts, or (b) the management of an insurance company's business and property by an insurance administrator in cases where it would be difficult for such insurance company to continue its insurance business.
3. Procedures allowing the Prime Minister to designate another insurance company and recommend that such insurance company accept consultations on the transfer, etc. of insurance contracts in the event of a bankruptcy of an insurance company.
4. Procedures allowing the Life Insurance Policyholders Protection Corporation of Japan to provide financial assistance for the transfer, etc. of insurance contracts or underwrites insurance contracts for an insurance company in the event of a bankruptcy of such insurance company.

12. **How are groups supervised, if at all?**

An Insurance Holding Company and an insurance company's major shareholders (i.e., shareholders holding 20% or more of the insurance company's voting rights) are required to obtain approval from, and the large holders of the insurance voting rights (i.e., holders holding 5% or more of the insurance company's voting rights) are required to make notification to, the FSA supervising such regulations.

The scope of business that subsidiaries of insurance companies may engage is restricted and is stipulated by law. Provided, however, that an insurance holding company's subsidiary may, with the approval of the FSA, engage in any business that is not prescribed by law.

The arm's length rule applies to inter-group transactions of an insurance company.

Supervision of the FSA for an insurance company group is based on laws and regulations as well as the Guidelines and the Financial Conglomerate Supervision Guidelines.

13. **Do senior managers have to meet fit and proper requirements and/or be approved?**

Article 8-2 of the Insurance Business Act requires directors who are engaged in the business of running an insurance company to have the knowledge and experience to appropriately, fairly, and efficiently manage such business and to have adequate social trust ("Fit and Proper Principle"). These matters are dealt in more detail in the Guidelines.

14. **Are there restrictions on outsourcing parts of the business?**

In principle, outsourcing of insurance companies' business is not restricted. However, the Guidelines govern the management of outsourcees.

Moreover, when an insurance company receives business outsourced by another

insurance company, it is necessary to obtain approval from the FSA (Article 98, Paragraph 2 of the Insurance Business Act), and in the case of a group company, a notification must be submitted.

Furthermore, it is generally accepted that the core business of an insurance company, such as deciding whether to pay insurance claims, cannot be outsourced due to the licensing system of the insurance business.

15. How are sales of insurance supervised or controlled?

Solicitation of insurance is subject to a registration as well as various regulations, such as the duty to provide information and the duty to check the customer's intent. In addition, the Insurance Business Act has introduced other measures, such as the Cooling-off System, or the Financial ADR System.

Apart from those regulations, the Insurance Act – which deals with insurance-related contract law (private law) – contains several mandatory provisions designed for the protection of consumers, which insurers cannot remove by agreement.

16. Are consumer policies subject to restrictions? If so, briefly describe the range of protections offered to consumer policyholders.

Consumer policies are restricted pursuant to several laws. For example, mandatory or unilaterally mandatory provisions in the Insurance Act (the latter is a series of provisions making void any agreement that, contrary to such provisions, adversely affects policyholders); and invalid provisions under the Consumer Contract Act.

For example, Article 10 of the Consumer Contract Act provides that:

“Any consumer contract clause that restricts the rights or expands the duties of the consumer beyond the application of provisions unrelated to public order in the Civil Code, the Commercial Code (Act No. 48 of 1899) and any other laws and regulations, and that unilaterally impairs the interests of the consumer in violation of the fundamental principle provided in the second paragraph of Article 1 of the Civil Code, is

void”.

17. **Are the courts adept at handling complex commercial claims?**

There are no special courts for resolving commercial insurance disputes. Commercial insurance disputes are generally resolved in district courts or summary courts depending on the value of the dispute. In general, Japanese courts are adept at handling commercial claims even they are complex.

18. **Is alternative dispute resolution well established in the jurisdiction?**

A financial ADR system introduced in 2010 to encourage fast, simple and flexible dispute resolutions. ADR institutions have been established with the designation and supervision of the FSA. Mediators in the ADR institutions are selected from the professionals in the financial sectors. A financial ADR system obligates insurance companies to cooperate the dispute resolution, wherein insurance companies are required to appear at hearing and provide certain information requested by the mediators unless reasonable grounds. As such, a financial ADR system is advantageous to customers compared to lawsuits in the courts. The number of ADRs handled through financial ADR systems remains stable in recent years.

19. **What are the primary challenges to new market entrants?**

Obtaining required license from the FSA is the primary challenges to new market entrants. As it may take long time to complete the license procedure, new market entrants are better to commence the discussion with the FSA 1.5-2 years before the launch of business.

20. **To what extent is the market being challenged by digital innovation?**

In Japan, the emergence of digital innovation in the financial sector, so-called FinTech, was most pronounced in the banking sector at first. Indeed, the Japanese government

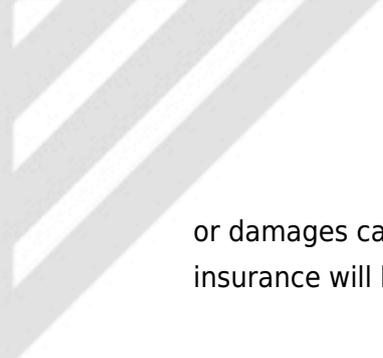
first responded to FinTech by amending the Banking Act so that banks could own technology companies as their subsidiaries – something which was previously restricted to some extent (the “Amended Banking Act”).

Japanese insurance companies are gradually adopting new technologies to their services, such as IoT (Internet of Things), Big Data and Artificial Intelligence. For example, Sony Assurance’s automobile insurance, where an insured has a “driving counter” installed into their cars, which would monitor their driving; if it shows safe driving on the part of the insured, the insurer will give the insured cash back towards insurance fees. This technology was developed in collaboration with OPTEX Co, a Japanese sensor producing company. As seen in this example, insurance companies alone cannot create new insurtech products because they do not have any resources/knowledge to develop new technology, so an alliance with tech companies or telecom companies is therefore necessary.

The remaining question is whether insurance companies are allowed to own tech companies or telecom companies as their subsidiaries in order to take full control of the new technologies. Technology development and telecoms are not included in the list contained in the Insurance Business Act regarding the scope of business in which a subsidiary of insurance companies may engage. As stated above, the Amended Banking Act allows banks to own subsidiaries that provide IT and other technology to enhance banking activities and benefit the banks’ customers. However, the Insurance Business Act was not amended to introduce similar modification of allowable activities. Therefore, it is questionable whether insurance companies may own tech companies or telecom companies under the current regulatory system.

21. **Over the next five years what type of business do you see taking a market lead?**

Cyberattacks have come to pose a severe and present risk that Japanese companies have to cope with, as they are capable of rendering any countermeasures ineffective. The Ministry of Economy, Trade and Industry of Japan issued the Cybersecurity Management Guideline in December 2015, which clarifies that cybersecurity is a business challenge and that managements of Japanese companies have to take appropriate actions to protect their companies. To respond to such situations, insurance companies have developed insurance products to cover the costs of information leakage



or damages caused by a cyberattack. Indeed, it is reported that the sales of cyberattack insurance will be four times of the sales in 2017.

In relation to cyberattacks, the virtual currency exchange business is currently under big debate in Japan. The FSA recently started regulatory oversight for the virtual currency exchange business operators. With this regulatory move, the virtual currency market is actively expanding, and, at the same time, posing concerns that purchased virtual currency may be lost if the virtual currency exchange business-provider becomes a subject of a cyberattack, operational mistake or wrongdoing. In fact, in January 2018, one large virtual currency exchange business operator was cyberattacked and lost around USD 550 million of its customers' virtual currencies. It is expected that such insurance products will provide a sense of security to the virtual currency market and make the market more active.

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 in projected death rates. With this trend of further increasing people's longevity, it is reported that insurance companies will lower the fees for life insurance by 5% to 10% for newly entered insurance contracts. It is also reported that demands are gradually shifting from life insurance to products covering living costs when the insureds become unable to work, reflecting the increased longevity.