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Law and Practice

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Chuo Sogo Law Office 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; litigation, mediation, ADR and other dispute resolutions involving insurance claims and insurance products. Each year since 2005, the firm has been loan-

ing its attorneys to work at the Financial Service 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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1. Basis of Insurance and Reinsurance Law

1.1 Sources of Insurance and Reinsurance Law

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

dispositions to insurance companies, including orders for business improvement, orders for suspension of business, and/or orders for cancellation of a license.

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).

2. Regulation of Insurance and Reinsurance

2.1 Regulatory Bodies and Legislative Guidance

The regulatory authority for insurance and reinsurance businesses in Japan is the Financial Services Agency (FSA). 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

Underwriting life insurance and non-life insurance entails obtaining the necessary business license from the regulatory authorities. Such licenses 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 (i) board of directors’ meetings, (ii) auditors’ meetings, audit and other committee meetings, and meetings such as nominating committee meetings, and (iii) accounting auditors. Foreign companies intending to enter into the Japanese market through their subsidiaries are required to acquire the licenses mentioned above. Foreign companies planning to enter through their branch offices must obtain foreign insurer’s licenses.

During the license application procedure, the so-called “basic documents” (articles of incorporation, business plan, standard policy provisions and documents showing the method to calculate insurance premiums and policy reserves) are required to be submitted to the regulatory authorities. Furthermore, insurance companies cannot operate their businesses whilst 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 fear 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”).

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 own voting rights in domestic companies other than those subsidiaries in excess of 10%. However, with the approval of the regulatory authorities, insurance holding companies may have companies as their subsidiaries that insurers may not own as their subsidiaries. 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.

Insurance companies are required to accumulate policy reserves and it is necessary for them to appoint an insurance administrator with a predetermined actuary’s license who

gets 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. Field tests of economic value-based solvency regime 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). The European Union announced in March 2016 an adoption of the equivalence recognition between Solvency II with temporary equivalence and the Japanese reinsurance supervision and group solvency.

2.2 The Writing of Insurance and Reinsurance See 2.1 Regulatory Bodies and Legislative Guidance.

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 license 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 license 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.

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.

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 policyholders' benefit 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 would attract more overseas insurance companies and revitalise the Tokyo financial markets.

3.2 Fronting

Fronting is not expressly prohibited nor permitted in Japan, thus 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.

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 (the 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 April 2017, 11 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). Such 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, or lacks important or necessary information, thus causing potential misunderstanding.

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 precisely, fairly and effectively.

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 violate the benefit of the creditors of the transferor unjustly.

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 laws, 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 ((i) officers and employees of a life insurer; (ii) 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 high rate of salespeople who have long belonged to those companies (mostly women 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.

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 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; however, they are required to give notice of such a fact.

The majority of non-life insurance sales are carried out by agencies, which account for 91.5% of the total 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 7.9% and 0.6% respectively.

Dedicated insurance agencies account for 19% (based on the number of entities involved) of non-life insurance agencies. Around 51% of non-life insurance agencies involved in another business are automobile dealers/repair shops, and around 11% are entities within the real estate industry – with both figures indicating high ratios.

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. The number of insurance brokers in Japan is comparatively low (48 companies). While most of them focus on large-scale businesses, handling products for consumers is extremely rare.

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, in essence they 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. In order to regulate such a business scheme, the "comparative recommendation" regulation has been introduced.

6. Making an Insurance Contract

6.1 Obligations of the Insured and Insurer

The Insurance Act imposes on a policyholder or the insured a duty of disclosure of 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 are excluded from the scope of the application of the foregoing provision.

6.2 Failure to Comply With Obligations

If a policyholder or the insured violates the aforementioned duty, the insurance company may cancel the insurance con-

tract 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

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 in verbal but, in practice, it is common that it is made in writing so that the conditions of the contracts is 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

Where there are multiple insureds in a non-life insurance contract, the Insurance Act does not stipulate the superiority/inferiority between each insured.

7. Alternative Risk Transfer

7.1 ART Transactions

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

In June 2018, an interim report of the Financial System Study Group was published, indicating the need to consider a functional financial regulatory system. In this report, it was pointed out that "Credit guarantees, derivative transactions and insurance have functionally similar aspects. However, there are no special business regulations for credit guarantees, and engagement in derivative transactions business are subject to registration. On the other hand, insurance businesses are subject to license requirement and are required to obtain approval on each insurance product from the competent authorities." It is possible that function-based regulations will be introduced in the future, and attention should be paid to future discussions.

8. Interpreting an Insurance Contract

8.1 Contractual Interpretation 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 conditions, 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, 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.

9. Disputes

9.1 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 would hear disputes in relation to the insurance policy.

9.2 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 such party is not satisfied with the decisions of the court of first instance. There are two stages of appeal.

9.3 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.

9.4 The Enforcement of Awards

The Arbitration Act provides that an arbitration agreement must be in writing but does not require that any specific words be put into writing. Parties to the arbitration may not appeal to the courts from the decision of an 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.

9.5 Alternative Dispute Resolution

Insurance ADRs are common especially in the field of consumer contracts. An increasing number of insurance related disputes are resolved through ADRs.

9.6 Penalties for Late Payment of Claims

Japan has not introduced the concept of punitive damages. Late payment interest is recoverable in respect of claims; 5% per annum for non-commercial claims and 6% per annum for commercial claims. A revision of those interest rates to 3% per annum with subsequent reviews every three years to reflect market interest rates will be introduced from 1 April 2020.

10. InsurTech

10.1 InsurTech Developments

In Japan, the emergence of 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, which was previously restricted to some extent (the “Amended Banking Act”). The Amended Banking Act came into force on 1 April 2017.

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 he/she walked a certain number of steps on average. The insured would be required to use a wearable instrument 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 into their car. Such driving counter monitors the insured's driving and, if it shows safe driving on the part of the insured, the insurer will give the insured cash back toward insurance fees.

Insurance companies alone cannot create new InsurTech products because they do not have the resources/knowledge to develop new technology. 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 to take full control of the new technologies. Whereas the Insurance Business Act lists the scope of business in which a subsidiary of insurance companies may engage, technology development or telecoms is not included. 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 has not been amended to introduce similar modification of allowable activities. Therefore, it remains questionable as to whether insurance companies may own tech companies or telecoms companies under the current regulatory system.

Meanwhile, the FSA regards the fintech trend quite positively. One example of such positive attitude of the FSA can be seen in 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

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 clarifies that cybersecurity is a business challenge and that 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 cyber-attack. Indeed, it is reported that sales of cyber-attack insurance have increased from the previous year.

The risk of terrorism is another emerging risk that Japanese companies have to pay close attention to. In particular, companies with overseas operations need to purchase insurance products which, for example, compensate for damages arising from the suspension of operations due to terrorism or cover the cost of employees' evacuation. Domestically, although Japan has not been attacked by organised terror groups, the fear of terrorism may increase as the Tokyo 2020 Olympic and Paralympic Games approach, while boosting demand for insurance products to cover the risk of terrorism.

11.2 New Products or Alternative Solutions

With advancements in autonomous car technology, it is being debated who should bear legal responsibilities in case of accidents involving self-driving cars. A project team of the General Insurance Association of Japan published a paper discussing legal responsibilities involving autonomous driving in June 2016. In the paper, the project team gave its opinion that the current legal framework is basically applicable to level 3 autonomous driving, where an automated driving system performs entire driving tasks with the expectation that human drivers will respond appropriately to a driving system's request to intervene. 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

A recent revision of the Insurance Business Act (which came into force in May 2016) has significantly impacted the practice of sales and solicitation of sales of insurance products by insurance companies or insurance agents. What follows outlines sequentially the newly enacted duties that have been

imposed on or become applicable to insurance agents as a result of that revision, with the most influential ones being the duty to confirm a customer's intent, the duty to give "comparative recommendation," and the duty to establish a management system of insurance agents.

When soliciting sales of insurance products to customers, insurance agents are legally required, as part of the "duty to confirm customer's intent," to (i) confirm the customer's intent, (ii) make sale proposals in light of such intent, (iii) explain the details of the insurance products in light of that intent, and (iv) offer the customer a chance to confirm whether the contents of the insurance product matches their intent at the time of the conclusion of an insurance contract. The methods to confirm customers' intent are, depending on the form of the offer and the product, within the province entrusted to the ingenuity of insurance companies and insurance agents, and are provided by the law as general obligation provisions ("principles"), while concrete methods in connection with the performance of their "duty to confirm customer's intent" are governed in more detail by the "Comprehensive Guidelines for Supervision of Insurance Companies." In fact, the practical operations of soliciting sales of insurance are bound by those Guidelines. With the introduction of said duty, insurance agents are required to provide a personalised response concerning the intention of consumers at each stage of solicitation of sales of insurance products, which in turn led to changes in their practical operations with respect to solicitation of sales and the forms they obtained from customers such as insurance applications, etc. In order to conduct subsequent verification of appropriate responses in line with the regulations mentioned above, it became more important to deliberately record details of the solicitation of sales.

The "comparative recommendation" regulation applies in cases where insurance agents select and offer certain insurance products from a number of comparable and similar insurance products belonging to multiple insurers. Typical subjects of the regulation are independent agencies that utilise consultative selling of insurance products.

(a) The content of said regulation varies depending on whether to go along with the customer's intent in selecting the insurance products mentioned above. In other words, the selection of products is determined either through consultative sales or by considering factors other than the customer's specific intent, such as the agent's convenience.

(b) In the latter case, insurance agents are obligated to explain the reasons why they recommend such product, for example, capital connections with an insurance company developing the product or business policy. However, the degree of explanation required in accordance with the regulation is not necessarily very high. With proper and reasonable justification of their position, insurance agents are

allowed to select insurance products based on their business policy and not the customer's intent.

(c) In the former case, on the other hand (taking into account the customer's intent in the selection of an insurance product), insurance agents are required to (i) show outlines of insurance contracts that are comparable and similar as well as compatible with the customer's intent from among the available product range, and (ii) provide an explanation of reasons for the recommendation.

(d) Regarding item (i), in particular, each pamphlet of an insurance product needs to show a product outline column, and for that purpose appropriate choices of insurance products must be presented to customers to give them freedom to make their own choice.

(e) Regarding item (ii), it is legally required for insurance agents to go beyond explanations of the insurance product during the selling process and to offer customers advice on why to choose a particular product. Insurance agents engaged in consultative sales have traditionally given explanations of reasons for their recommendations of products as their "service;" nowadays, however, this is required by the regulation in order to ensure the quality and accuracy in a more systematic manner.

Recently, there have emerged insurance agents that have large-scale agencies with hundreds of locations that can suggest in their discretion insurance products relevant to their customers' needs from among products of multiple insurance companies. In such a situation, it becomes increasingly difficult for a single insurance company to grasp and control the entire scope of duties of insurance agents, which was the traditional assumption behind the Insurance Business Act, which may not necessarily be adequate any more. Based on the diversification relating to such insurance companies and insurance agents, a duty to establish a management system has been imposed on insurance agents in connection with insurance solicitation to ensure business soundness and proper management. The goal of such a duty is to provide information to customers, handle customer information, manage consignees, give explanations in connection with comparative-recommendation sales, and educate, supervise and coach franchisee agencies by franchisor agencies. The introduction of such duty entails the self-checking function of insurance agents, such as maintaining proper governance within agents (decision-making, enactment of internal regulations, etc), following the PDCA cycle, or conducting internal audits. Furthermore, how to make this management system function efficiently and properly to its fullest extent and according to its characteristics has become a question of practical concern.

13. Other Developments

13.1 Additional Market Developments

General principles of customer-centric business operation (trend of disclosure of agency fees).

On 30 March 2017, the Financial Services Agency published the “General Principles of Customer-Centric Business Operation.” If financial undertakers running a financial company attempt to adopt these general principles (it is up to financial undertakers whether to adopt them; however, in practice, it is difficult for insurers to choose not to adopt them), they are required, for example, to develop and make public clear guidelines to achieve the customer-centric business operation and then regularly make public announcements on how their efforts in relation to such guidelines are progressing. These general principles contain an item that requires the provision of information relating to the “concrete contents (including fees received from third parties and other information) of any possible conflict of interest with a customer in connection with financial products or services to be sold, suggested or otherwise presented to the customer as well as the resulting impact on its trade and business.” As a result, the question as to whether insurers or insurance agencies will end up publishing their agency fees has drawn considerable attention. Although at present nothing suggests that they will, many banking channels (financial institutions) have disclosed the agency fees relating to insurance products with strong investment characteristics on a voluntary basis since around the summer of 2016.

Impact of amendment to the Civil Code on Liability Insurance.

The amended laws of the Civil Code, which contains private general laws of Japan, were enacted on 26 May 2017 and publicly announced on 2 June of the same year. The amended Civil Code is to come fully into force on 1 April 2020. Previously, a 5% statutory interest rate was adopted in the Civil Code. In the amended Civil Code, however, a fluctuating rate is applicable, in which the rate of 3% applies the first year and the subsequent rate is subject to change every three years on the basis of the short-term loan rate. In the case of compensation for damages suffered in traffic accidents or similar events, the amount of interest accrued at a given point in time is deducted from the loss of prospective profits when the damages for death or secondary diseases

are calculated. In civil matters, a statutory rate of interest was established by the Supreme Court of Japan and has been adopted. It is predicted that the lower rate effectuated by the amendment of the Civil Code will increase the amount of damages. Note that the amended Civil Code makes it clear that the statutory rate of interest at the time of the emergence of the right to seek damages is adopted as the rate for interim interest deduction. After the enforcement of the amended Civil Code, it is expected that claims paid under damage liability insurance will increase and the management of non-life insurers will be affected by the amendment by, among other things, the necessity to raise insurance premiums.

Policy for insurance supervision

According to the publication entitled “For Providing Better Financial Services in the Era of Transition Financial Services Policy: Assessments and Strategic Priorities 2018” published by the Financial Services Agency on 26 September 2018, the summary of the policy for insurance supervision in 2018 programme year is as follows:

- The FSA will enter into discussions with insurance companies to pursue best practices for providing appropriate information to customers at the time of sales of savings-type insurance (especially foreign currency-denominated insurance), stressing the importance of developing an environment that includes a “visualisation” of the offered insurance so that customers may choose appropriate insurance that suits their needs.
- With the profit environment becoming increasingly severe due to the continuation of lowering interest rates policies and other factors, business risks surrounding insurance companies are changing at an accelerating pace. This includes fluctuations in domestic and foreign economies and markets, the intensification of natural disasters, and the emergence of new risks in the insurance underwriting, including damages caused by cyber-attacks. In these circumstances, it is important to establish a risk management system in response to these changes. To further that goal, the FSA will promote the sophistication of risk management of insurance companies, and incorporate the concept of asset and liability valuation based on the economic value into its inspection and supervision, and upgrade the monitoring of insurance underwriting risks and asset investment management systems related to natural disasters and other incidents.
- In terms of responding to changes in the business environment, such as the possibility of contraction of the domestic insurance market, the increase in the burden of medical and nursing care due to increased life expectancy, and the emergence of new insurance needs due to advancements in digitalisation and automated driving technology, the FSA will discuss with the management of each insurance company the construction of a sustainable business model that responds to changes in the business environment and its governance in overall management.

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