

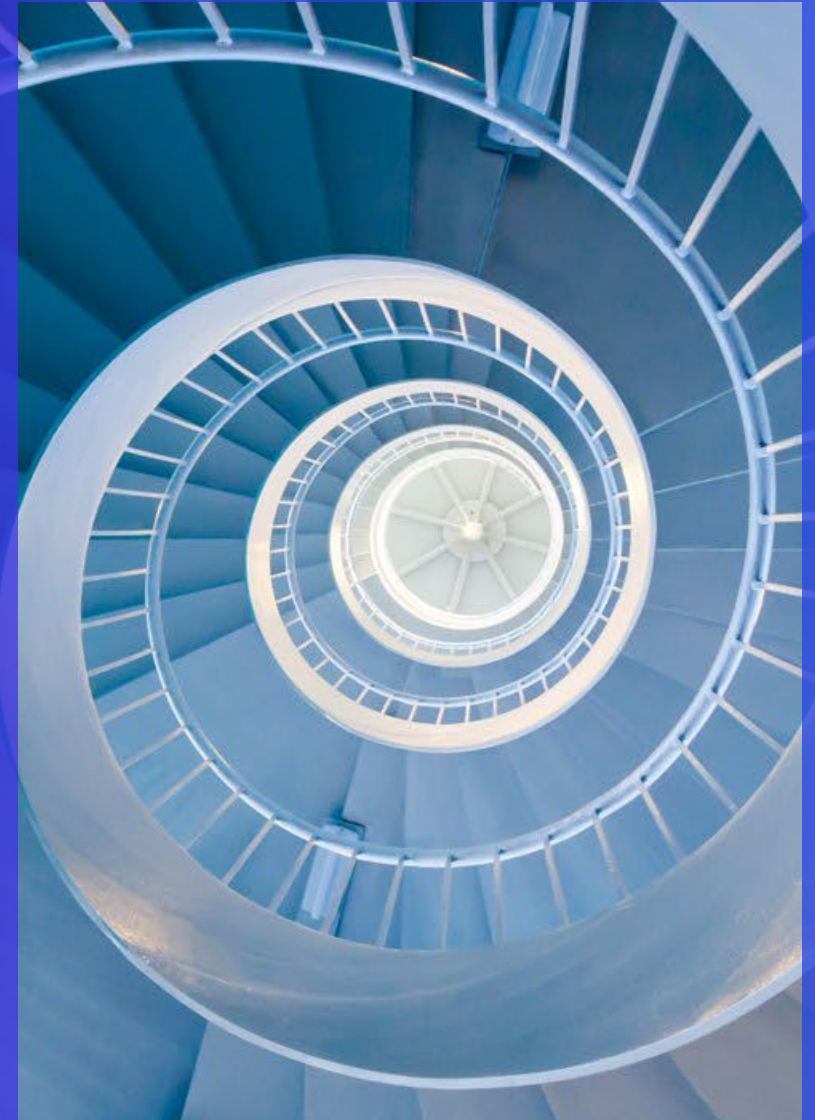


Insurance Regulatory Atlas

Overview of selected rules and
requirements around the world

KPMG Law Global Legal
Insurance Network

March 2024



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1 | Preface



Preface

In today's interconnected world, the insurance landscape is a reflection of the diversity of the countries and territories it serves. The global insurance industry holds a vital role in protecting individuals, businesses and societies from emerging risks and helping to ensure the smooth running of enterprises. However, navigating the complex web of regulatory requirements that vary from location to location can be a demanding challenge.

This Atlas on Insurance Regulatory Requirements aims to be your guide to **navigate** this intricate global terrain. KPMG Law professionals have compiled a selection of insights on the insurance regulatory frameworks, presented in a concise and accessible format. Each section of this Atlas delves into the insurance landscape of a specific country or territory, highlighting the key regulatory provisions, supervisory authorities, and key compliance considerations. We have dedicated a special section to **ESG** (Environmental, Social and Governance) to provide a regulatory overview and to look ahead, as it has become a new central focus not only in the financial sector but the global economy.

In addition, this Atlas provides an overview of the jurisdictions in which **KPMG firms** can support you in your business endeavors. The **KPMG Global Legal Insurance Network** has grown significantly in recent years and is designed to provide you with regulatory experience from across the member firm network, through a single point of contact. Whether you are an insurance professional, a legal expert or simply someone with a keen interest in getting insights on the global insurance sector, this resource is designed to serve as a **valuable guide** to gain a quick understanding of a variety of jurisdictions or a single country or territory.

As the insurance landscape continues to evolve, so too will the regulatory environment. We therefore view this Atlas as a **dynamic resource** and intend to update it regularly to keep pace with the changing world of insurance regulation. We are also committed to increasing the number of jurisdictions included in the next iteration to further enhance its content and usefulness. We invite you to explore the rich tapestry of insurance regulation around the world, and we are confident that you will find this resource both informative and enlightening.

It is our sincere hope that this Atlas will not only help you understand the local structures of insurance regulation, but also facilitate **global cooperation and relationships** within the industry. In an everchanging world, keeping abreast of international insurance regulation is vital to ensuring stability and security in the insurance sector.

Thank you for entrusting us with your assessment into insurance regulation around the world. Your quest for knowledge in this area is both admirable and essential, and it is an honor and a privilege for us to be a part of your journey.

We would like to express our sincere gratitude to the KPMG specialists who have worked diligently to compile this valuable compendium, in particular, to Dr. Köksal Sahin, Justus Seesing, and Robin Goeritz. Their dedication and experience have made this possible.

Sincerely,

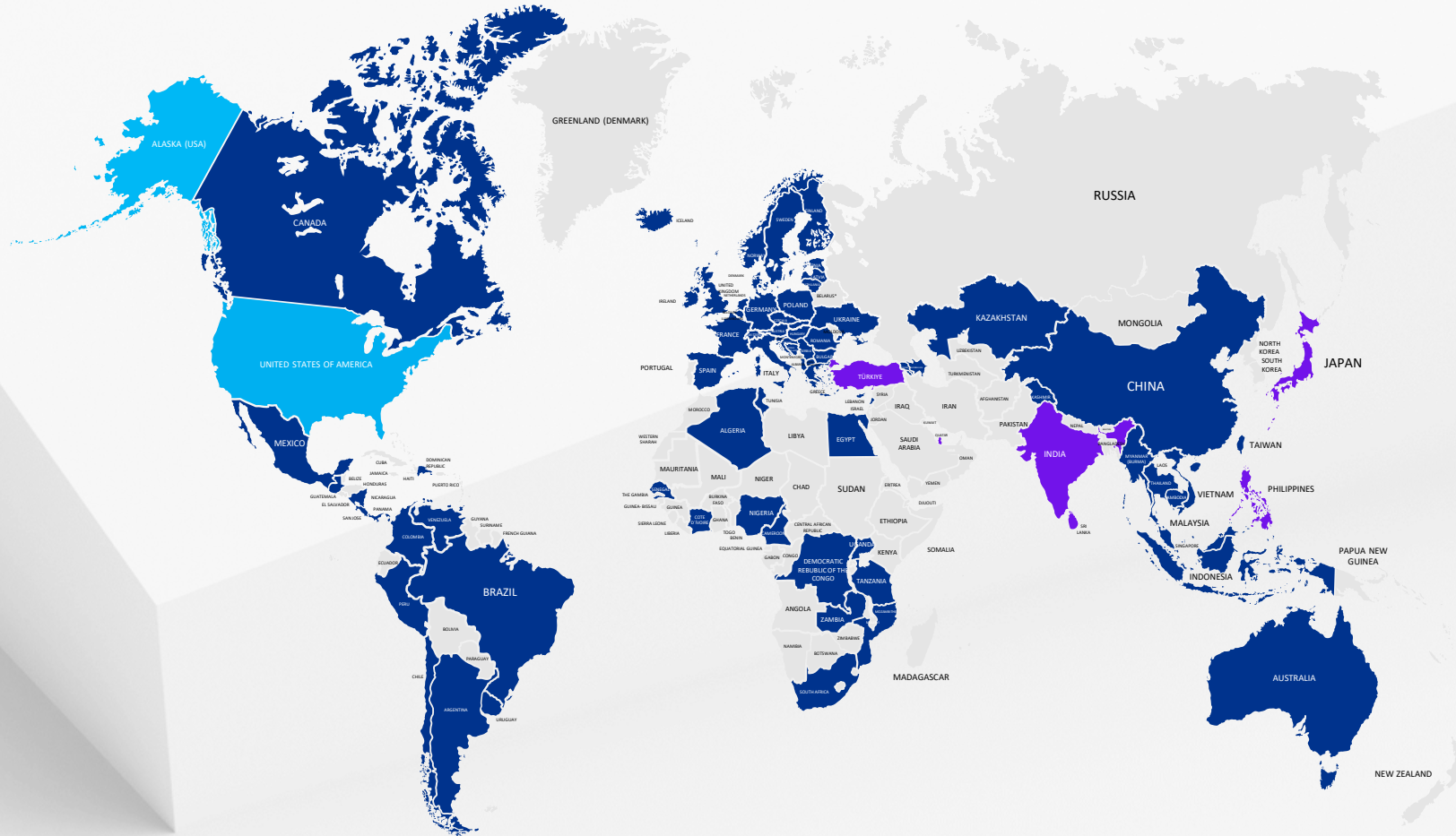
Ulrich Keunecke



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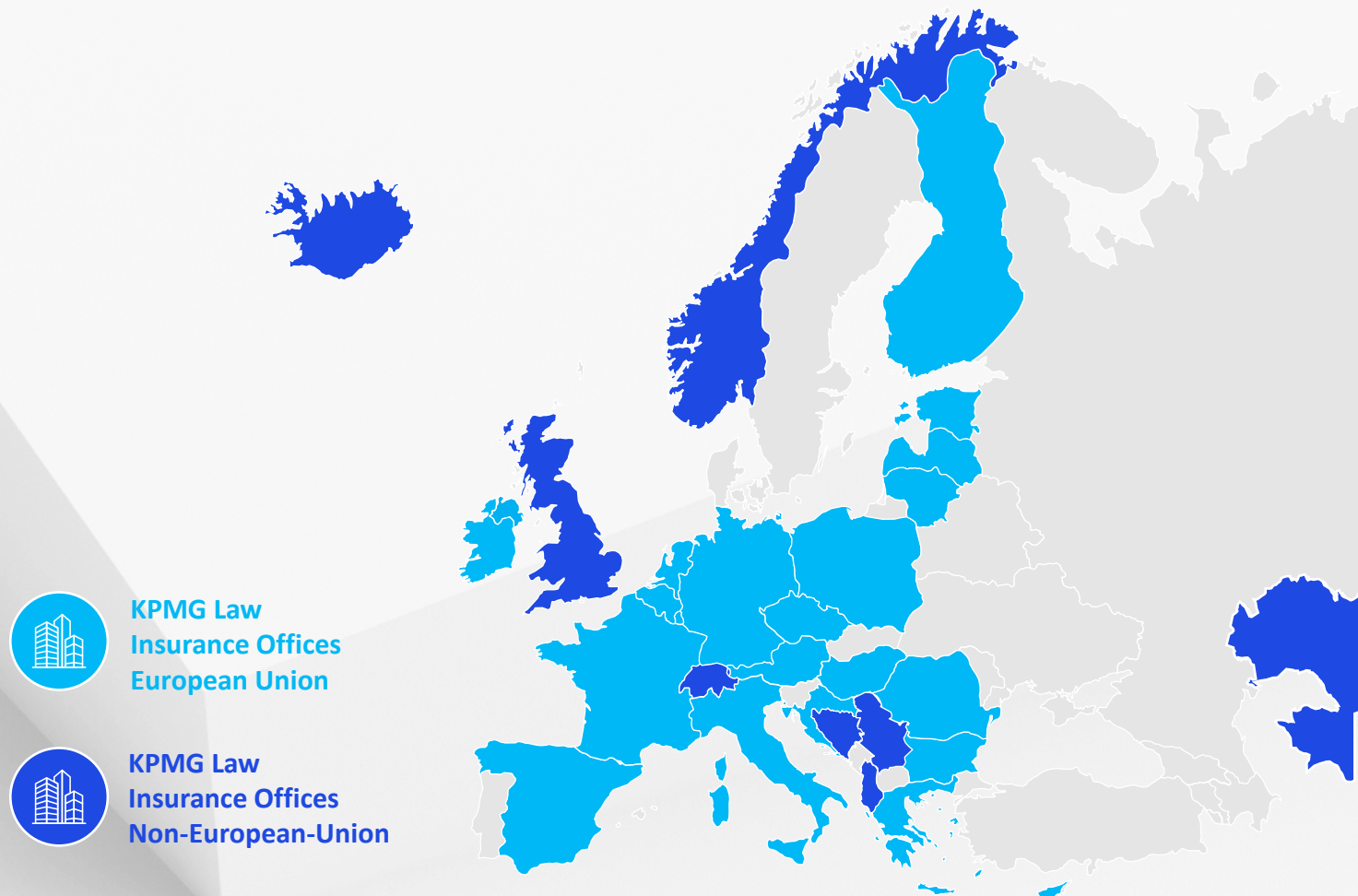


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2 | Europe



KPMG Law firms in Europe



**KPMG Law
Insurance Offices
European Union**



**KPMG Law
Insurance Offices
Non-European-Union**

European Union

Austria

Belgium

Bulgaria

Croatia

Cyprus

Czechia

Estonia

Finland

France

Germany

Greece

Hungary

Ireland

Italy

Latvia

Lithuania

Luxembourg

Netherlands

Poland

Romania

Spain

Non-European-Union

Albania

Bosnia and Herzegovina

Georgia

Iceland

Kazakhstan

Liechtenstein

North Macedonia

Norway

Serbia

UK

Europe – European Union



2.1 Introduction EU Regulations

1. Introduction

Insurance is one of the cornerstones of the European financial ecosystem serving its markets with a rich history. Many large global insurance Companies in primary insurance but also in reinsurance originate from Europe. The European Union has taken several actions in order to harmonize the formerly heterogenic regulatory landscape in the financial sector and has established regulatory authorities acting on an EU level. The insurance industry's regulatory body is the European Insurance and Pensions Authority (**EIOPA**) which delegates some of its powers on to the respective authorities in the EU's member states.

The regulatory landscape is already quite harmonized, with the EIOPA aiming to further increase regulatory convergence to bolster the international competitiveness of the European market.



2. What is the relevant legal framework for insurance companies?

On the European level, the Solvency II regulation (**Directive 2009/138/EC**) is crucial for insurance regulation. It outlines a solvency regime that each member state must implement through their own laws while upholding the provisions to the fullest extent necessary. Although member countries can impose more stringent regulations. The Solvency II regulation is flanked by additional regulations made by the EIOPA such as Regulatory Technical Standards (**RTS**) which focus on the technical implementation of the laws.

The Insurance Distribution Directive (**IDD**) is instrumental in the distribution and development of insurance products. As this legislation is a directive, each member state is bound by their own transformative legislation. The European directive promotes adherence to a specific standard, and grants member countries some freedom to tailor it to their particular needs. The IDD is also complimented by RTS and Implementing technical standards (**ITS**) as well as Guidelines and Delegated regulations carried out by the competent authority in each state.

In accordance with EU Act No 1094/2010 (**EIOPA Act**) Article 16 the EIOPA publishes Guidelines and Recommendations which are addressed either at the national competent authorities or insurance companies directly. These are focused on a unified application of EU law on a more granular legal level. Those pieces of legislation follow a "complain or explain" approach, and thus are not directly legally binding. This type of "legislation" frequently revolves around the intricacies of implementing supervisory practices. If the directives and recommendations are not followed

by the national supervisory authorities, EIOPA can make use of its powers under Art 17 (**EIOPA Act**) and ultimately issue an overriding decision that is binding for the company concerned.

In the financial sector, secure digital operations are essential to the sector's functionality. The Digital Operational Resilience Act (**DORA**) is legislation that applies to financial firms, and thus insurance companies, in proportion to their size and associated operational risk. The Act mandates the fulfillment of specific criteria to ensure the complete digital infrastructure's resilience, including subcontractors of the affected companies such as cloud service providers.

3. What special features apply to the authorization of an insurance company?

The authorization of insurance firms is managed by individual member countries and their competent national authorities. The indirect application of EU law is carried out by each member state and may vary from state to state.

Within the European Union, the Freedom of Services (**FoS**) and Freedom of Establishment (**FoE**) considerably impact the Pan-European insurance market. If a company is authorized in a member state, it can "passport" to another member state, conduct insurance business, and open a branch office, without requiring state-specific authorization.

4. What are the relevant supervisory authorities?

Even though EIOPA has a supervisory mandate on a European level, each state has their own competent regulatory authority administering each state's respective legal framework. Please note that some regulatory functions may be divided between

separate authorities in each state, as the administrative structure of the state is not affected by EU law.

The EIOPA Act is the legal basis of the EIOPA and stipulates certain task and powers wielded by the EIOPA.

5. What powers does the supervisor have?

The EIOPA possesses authority over national competent authorities and financial institutions, such as insurance companies. Generally, the EIOPA has adequate powers to evaluate existing measures and risks, as well as to organize future measures on a European level for effective risk mitigation across Europe as well as ensuring supervisory convergence.

In line with Section 3 of the EIOPA Act, Article 9, the EIOPA has the authority to release public warnings regarding fraudulent financial activities. Pursuant to Section 5 of the same Act, the EIOPA is vested with the power to undertake product interventions such as temporary bans and product restrictions where such products pose a consequential threat to the financial stability in the EU.

EIOPA also has various methods, some of which are aimed at insurance companies/financial market players or the national supervisory authorities:

Legal Instrument	Brief Description
Technical Standards (RTS/ITS) (Art. 10 – 15)	Ensure consistent harmonization in specifically designated areas
Guidelines and Recommendations (Art. 16)	Ensuring consistent and uniform application of EU legislation
Opinions (Art 16a sec. 2)	Offer insights by the national authorities pertaining to topics within EIOPA's jurisdiction
Inquiry (Art. 22 sec. 4)	Conduct product or institution related assessments
Q&As (Art. 16b)	Offer guidance on the application of sectoral regulation

The Articles refer to the EIOPA Act

6. How is the financial constitution of insurance companies regulated?

The financial constitution is regulated by the transposed Solvency II directive in each respective member state. Solvency II follows a

risk-based approach implementing capital requirements through three pillars.

Pillar I: It sets quantitative requirements and establishes a market-consistent framework for valuing assets and liabilities. This includes the minimum capital requirement (**MCR**) for insurers or reinsurers to conduct business and the solvency capital requirement (**SCR**) to meet their obligations.

Pillar II: It mandates insurers to adhere to minimum standards for corporate governance and risk/capital management. Regular completion of an Own Risk and Solvency Assessment is also required.

Pillar III: It involves disclosure requirements to supervisors and the public regarding the risk and capital demands. These reports are published as aggregated data by the EIOPA regularly.

Currently Solvency II is undergoing a thorough review to keep up with the ever-changing market conditions such as changing interest rates. On 18 July, the Economic Committee of the European Parliament adopted the final proposals for the adaptation of Solvency II. At the same time, it approved the start of the trilogue negotiations between the EU Parliament, the EU Council and the EU Commission required to adapt the regulation. However, it is unclear whether an updated Solvency II framework will be ready in 2024.

7. What are the permissible legal forms for insurance companies and how is the business organization regulated?

The EU has a special legal form for larger pan-European companies, such as large insurance groups: **Societas Europae (SE)**. Though most insurance companies are established using the

legally permissible forms specific to each member state.

EU Act No. 2157/2001 provides the legal framework for this special type of company. Apart from some special features, this company form is based on the legal basis for public limited companies in each member state, which is why the state of origin is very important for the individual legal structure.

Solvency II also contains corporate governance requirements within Articles 41 to 49. For instance, Solvency II necessitates a suitable and translucent organizational structure, with a definite allocation and an appropriate segregation of responsibilities, as well as an effective information transmission system. The governance system must be effective, appropriate and subject to regular review. Firms must have written policies in place, which consist of policies on risk management.

8. What regulations apply to the insurance contract?

The insurance contract is not defined at EU level. The possible content of insurance contracts and the formalities for concluding such contracts are governed by national law.

As consumer protection is one of the key aspects of EU legislation, the IDD contains provisions on the production of insurance products as well as transparency requirements for the conclusion of contracts. Consumers must be provided with an Insurance Product Information Document (**IPID**) when concluding a non-life insurance contract. Even stricter transparency rules apply if the insurance product to be sold contains an investment element.

9. What applies to insurance intermediation?

Insurance intermediation is mainly regulated by the IDD, which EU member states had to transpose into national law by 1 July 2018. The IDD imposes rules on the conduct of insurance intermediaries as well as various transparency requirements. In addition to the national laws of the member states, the IDD is supplemented by more detailed rules issued by the national authorities, for example in the form of circulars.

The IDD requires EU member states to have general good provisions, which are part of the rules of conduct relevant to insurance intermediaries. Also group insurance policy holders can be classified as intermediaries.

When a new insurance product is to be marketed, a Product Oversight and Governance (**POG**) process established within the product manufacturing company must be followed. In addition to the process, a product approval policy must also be established. Not only insurance companies can be product manufacturers, but also distributors selling their own tailored products to consumers.

Insurance intermediaries are free to conduct pan-European business within the EU based on their FoE and FoS freedoms.

10. What are the ESG requirements for insurance companies?

Insurance companies in Hungary are subject to the ESG (Environmental, Social, and Governance) requirements aimed at integrating sustainability, transparency, and responsible corporate behavior within the EU financial and corporate sectors.

The EU has implemented different regulations. The Sustainable Finance Disclosure Regulation (**SFDR**) aims to enhance

transparency in sustainable investment products, combat greenwashing, and increase investor confidence in sustainability claims by financial market participants such as insurance companies. They are required to disclose information on their ESG policies, risks, impacts and performance at both company and product level. The EU Regulation 2020/852 (**EU Taxonomy**) establishes an EU-wide framework for classifying environmentally sustainable economic activities. Under this regulation, insurance companies will be required to disclose their alignment with this framework, with initial reporting starting in January 2023.

The Corporate Sustainability Reporting Directive (**CSRD**), Directive EU 2022/2464, extends sustainability reporting requirements for companies, with implementation stages from 2024 to 2028, depending on the type of company. With the first CSRD report due in 2025 for the 2024 financial year, it will eventually replace the current Non-Financial Reporting Directive (**NFRD**).

There have also been two recent delegated acts amending the Solvency II Directive and the IDD. Commission Delegated Regulations (EU) 2021/1256 and 2021/1257. The amendments to the Solvency II Directive consist of new sustainability risk management obligations and ensure that sustainability factors are taken into account in risk assessment.

The amendments to the IDD Regulation require insurance companies and distributors to integrate sustainability factors into the product oversight and governance process. It also requires that sustainability factors be taken into account at the point of sale of insurance-based investment contracts.

The Digital Operational Resilience Act (**DORA**) and the Artificial Intelligence Act (**AI Act**) are two notable pieces of upcoming

legislation for the financial sector, and insurance companies in particular. While DORA focuses on IT infrastructure and aims to ensure the digital operational resilience of key businesses, the AI Act aims to create a completely new framework for AI applications, which are already prevalent in insurance operations and may be significantly impacted by the AI Act. DORA is flanked by several technical regulatory standards, which are being published successively. DORA-regulations will become binding on 17 January 2025, and the AI Act is expected to be applicable law from 2026.

2.2 Belgium

1. Introduction

The insurance industry traditionally has had a strong presence in Belgium.

The main sectors in the Belgian general insurance market include property insurance, motor insurance, liability insurance, credit insurance, MAT insurance, non-life PA&H insurance, and miscellaneous insurance. Motor insurance holds the largest market share, followed by property insurance and non-life PA&H insurance.

In Belgium, the insurance market has reached a mature stage, resulting in limited organic growth opportunities within core insurance operations. As a result, scale, growth and differentiation have become essential priorities for all stakeholders. The sector is expected to undergo significant transformation due to digital advancements, although the full extent of its impact, disruption level, and timing remain uncertain. In addition, the Belgian insurance market has seen a number of recent take-over transactions amongst insurance intermediaries. In addition, the several Belgian insurance companies have recently engaged in strategic transfers of insurance portfolios.

The principle of consumer protection leads to a "twin peaks" supervisory system. Belgium has two authorities that supervise the financial market, each with a different role and on the basis of a highly Europeanized framework.



2. What is the relevant legal framework for insurance companies?

In Belgium, the regulatory framework for insurance is established through several key legal instruments.

The regulatory landscape overseeing (re)insurance undertakings is based on two key legislative acts: The Law of 13 March 2016 and the Royal Decree of 22 February 1991, which implement the Law of 13 March 2016. These regulations essentially establish conditions for the access and the practice of (re)insurance activities.

The Law of 4 April 2014, is another significant piece of legislation that implements various directives, including Directive (EU) 2016/97 on insurance distribution (**IDD**). The purpose of this law is to safeguard the rights of policyholders, insured individuals, beneficiaries, and any third parties with an interest in the execution of insurance contracts. This Law contains the principal conduct of business rules applicable when offering insurances in Belgium. For life insurance activities, the Royal Decree of 14 November 2003 comes into play, outlining specific guidelines and provisions related to this particular sector.

While certain legislation is not exclusively targeted at insurance, it nonetheless can impact insurance activities. The Law of 2 August 2002, known as the “Financial Supervision Act”, plays a key role in regulating the entire financial sector, including insurance services. The Civil Code, the Code of Economic Law (**CEL**), and the Companies’ and Associations’ Code also contribute to the regulatory landscape for insurance in Belgium.

Finally, both the National Bank of Belgium (**NBB**) and the Financial

Services and Markets Authority (**FSMA**) release circulars, communications, and question-and-answer (**Q&A**) documents regarding the interpretation of the law on an ongoing basis.

3. What special features apply to the authorization of an insurance company?

Pursuant article L. 321-1 of the FIC, insurance In Belgium, insurance and reinsurance companies operate under the regulation of the Law of 13 March 2016. According to Article 17 of this Law, any company intending to engage in the activities of an insurance or reinsurance undertaking in Belgium must obtain an authorization from the NBB before commencing operations. This approval is granted based on the specific insurance class or reinsurance activity (life or non-life) that the company plans to undertake.

To obtain authorization, applicants are required to submit an authorization application to the NBB, following the guidelines set forth in Communication NBB_2017_17. In practical terms, it typically takes approximately 12 to 24 months to complete the licensing process as an insurance undertaking.

Under the EU single passport regime, EEA insurers have the privilege to conduct business in Belgium through two methods: firstly, by exercising their right of establishment, which involves opening a Belgian branch, and secondly, by utilizing the freedom to provide cross-border services. Notably, they are not required to seek any particular authorization from the NBB for these activities, but need to go through the typical notification process (as is the case for cross-border activities into other EU jurisdictions).

4. What are the relevant supervisory authorities?

The Belgian supervisory system is built up as a „twin peaks“ model with two government bodies supervising insurance companies.

The NBB:

- is responsible for supervising the financial system. Its goal is to ensure stability and to examine the solvency of financial institutions;
- is the responsible authority to obtain a license as (re)insurance undertaking;
- supervises compliance with the prudential requirements for (re)insurance undertakings (e.g. solvency requirements, technical provisions, etc.).
- On the other hand FSMA:
 - is responsible for the protection of clients as well as the proper functioning and transparency of the financial markets;
 - is the responsible authority to obtain a registration as insurance intermediary (broker, agent, underwriter, etc.);
 - supervises compliance with the conduct of business rules (e.g. following the IDD requirements).

5. What powers does the supervisor have?

Due to the „twin peaks“ model, the FSMA shares the power of supervision with the NBB.

In general, the FSMA is a point of contact for consumers and companies with questions and complaints. Furthermore, the supervisor publishes circulars and recommendations in order to create legal certainty for insurance companies. The FSMA holds responsibility for administrative sanctions and measures, such as addressing entities that no longer meet requirements, and it also possesses the authority to issue corrective measures. The FSMA exercises authority to ensure proper conduct, which includes implementing recovery measures like prohibition of contracting and marketing suspension, prohibiting intermediary activities and suspending registrations, removing entities from the FSMA register, disclosing deficiencies and imposing administrative fines.

The NBB possesses distinct powers for ensuring prudential supervision. Regarding (re)insurers, the NBB's powers encompass penalty payments, publishing deficiencies on its website, applying coercive measures (like risk limitation or business transfer), executing recovery actions (such as recovery plans), imposing administrative penalties and initiating winding-up proceedings.

6. How is the financial constitution of insurance companies regulated?

Insurance company regulation concerning the financial constitution in Belgium is primarily based on the Solvency II Directive, which is a maximum harmonization directive that has been incorporated into the Law of 13 March 2016. The directive has reformed the regulation and supervision of life, non-life, and

reinsurance companies, providing a harmonized, risk-based prudential framework to enhance the protection of insured interests and promote internal competition within the EU. In addition to the Law of 13 March 2016 the activities of insurance companies are also governed by the Commission Delegated Regulation (EU) 2015/35, which supplements Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).

7. What are the permissible legal forms for insurance companies and how is the business organization regulated?

A (re)insurance undertaking must be established in one of the following forms:

- limited liability company (société anonyme **(SA)**/naamloze vennootschap **(NV)**).
- Cooperative company (société cooperative **(SC)**/coöperatieve vennootschap **(CV)**).
- Mutual insurance undertaking.
- European company (societas europea **(SE)**).
- European Cooperative Society.
- Insurance company of mutual assistance (société mutualiste d'assurance **(SMA)**/verzekeringsmaatschappij van onderlinge bijstand) (for non-life insurances only).

In practice, the limited liability company is the most commonly used corporate form for (re)insurance undertakings.

The Law of 13 March 2016 sets out provisions for the governance structure of an (re)insurance company.

8. What regulations apply to the insurance contract?

Belgian insurance contracts are primarily governed by the Law of 4 April 2014, which includes essential provisions related to non-payment of premiums, misrepresentation, non-disclosure of risks, and contract duration. Compliance with these mandatory provisions is a legal requirement for all insurance undertakings operating in the Belgian market. Additionally, the NBB has issued a list of provisions aimed at safeguarding the general good, which must also be adhered to by insurance companies operating in Belgium under the freedom to provide services and freedom of establishment.

Furthermore, there are several other laws in Belgium that limit freedom of contract in the insurance sector. These laws cover areas such as the use of official languages, precontractual disclosures, and regulations ensuring that information provided to customers is fair, clear, and non-misleading.

Finally, the insurance sector in Belgium is also subject to various general laws, including the Code of Economic Law **(CEL)**, which further regulate and influence insurance practices in the country.

9. What applies to insurance intermediation?

In Belgium, insurance brokerage is regulated under the Law of 4 April 2014.

The law has detailed provisions on conduct of business and information provision, including a standardized Insurance Product Information Document for customers. Insurers are required to establish a product approval process. Both insurers and intermediaries are prohibited from having sales targets or compensation schemes that encourage unsuitable product recommendations. Operating as an insurance intermediary demands a license, and intermediaries must be registered. They are subject to comprehensive duties of information, consultation, and documentation about the policyholder.

10. What are the ESG requirements for insurance companies?

In general, the Environmental, Social, and Governance (ESG) requirements are created and put into action by the EU to harmonize ESG standards across Europe.

Besides these European regulations, there is no specific national law which oblige the insurance companies to ESG related duties.

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2.3 Cyprus

1. Introduction

Following its accession to the European Union in 2004, Cyprus benefits from a solid legal and regulatory framework and enjoys a reputation as an attractive and tax efficient jurisdiction for insurance companies, insurance management companies and insurance intermediaries wishing to set up their business whilst obtaining or maintaining EU passporting rights.

The Superintendent of Insurance is the competent authority of the insurance sector in the Republic of Cyprus (**Republic**) and exercises all the powers granted to him by the Law on Insurance and Reinsurance Services and Other Related Issues of 2016 (Law 38(I) 2016) (**Law**) and by the relevant regulations, for the purpose of protecting the policyholders and the insurance beneficiaries. The said legislation regulates the issues relating to the taking-up, pursuit and supervision of insurance and reinsurance services and the taking-up, pursuit and supervision of insurance/reinsurance distribution services and other related issues.



2. What is the relevant legal framework for insurance companies?

The main law governing the insurance sector is the Law which came into force on 11th April 2016, transposing the Directive 2009/138/EC of the European Parliament and the Council of 25th November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (**Solvency II**) into national law and its accompanying regulations, the Insurance and Reinsurance Business and Other Related Issues Regulations of 2016 (**Regulations**). The legal framework is further supplemented by relevant guides, orders and circulars issued by the Superintendent of Insurance (**Superintendent**).

3. What special features apply to the authorization of an insurance company?

Under article 14 of the Law, the taking-up of business of insurance or reinsurance is subject to prior authorization from the Superintendent.

An authorization is valid for the entire EU also covering the right of establishment and the freedom to provide services to other member states. An authorization is granted for a particular class of direct insurance and shall cover the entire class, unless the undertaking wishes to cover only a part of the risks pertaining to that class.

For an authorization to be granted, the conditions that must be fulfilled include the following:

- a) limitation of the objects of the applicant to the business of insurance/reinsurance and operations;

- b) submission of a scheme of operations that shall provide, among others, the nature of risks or commitments the undertaking shall cover, the reinsurance arrangements and a forecast balance sheet, estimates of the future solvency capital requirements, estimates of the future minimum capital requirements and estimates of the financial resources intended to cover technical provisions, the minimum capital requirement and the solvency capital requirements for the first three financial years;
- c) provision of evidence that the undertaking has available basic own funds and the demonstration by the undertaking that it is in a position to make available own funds eligible to cover the capital requirements;
- d) demonstration by the undertaking that it is in a position to comply with the system of governance;
- e) maintenance by the undertaking of both its head office and registered office in the Republic of Cyprus.

4. What are the relevant supervisory authorities?

The Superintendent is the competent supervisory authority for insurance and reinsurance undertakings in the Republic of Cyprus.

The Superintendent is the head of the Insurance Companies Control Service (which at all times acts on behalf of and by order of the Superintendent) which is a government department under the jurisdiction of the Ministry of Finance.

5. What powers does the supervisor have?

The supervisory powers of the Superintendent are exercised pursuant to the provisions of the Law and the relevant regulations and include:

- a) Granting, suspension or revocation of a license to conduct insurance or reinsurance business to insurance or reinsurance undertakings that fall under the jurisdiction of the Superintendent.
- b) Supervision of the operation of insurance and reinsurance undertakings, licensed by the Superintendent, and their compliance with their obligations under the provisions of the Law and any delegated acts or regulatory or implementing technical standards issued pursuant Directive 2009/138/EC, or Court decisions regarding their activities, in the interest of the insured and the beneficiaries of insurance.
- c) Exercise of any other power or competence conferred by the Law or any other law or regulations issued pursuant to them and the imposition of the administrative fines provided for in the Law.
- d) Take any other measures necessary to ensure compliance with the laws, regulations and administrative provisions in force in the Republic and in the other Member States, where applicable, and to avoid or eliminate any anomaly which could affect the interests of the policyholders.

- e) Financial supervision, which includes the verification, for all the activities of the insurance or reinsurance undertaking, of its solvency situation, of the provision of technical provisions, of its assets, of its eligible own funds and of the exercise of its operations in accordance with the sound insurance principles.
- f) Participation in onsite inspections carried out by the supervisory authorities.
- g) The requirement for insurance or reinsurance undertakings to submit information, and to collect it, for the purposes of supervision, and to monitor and evaluate it, in particular for the compliance of undertakings with the requirements laid out in the law.
- h) Supervision of insurance and reinsurance undertakings at group level as well as group solvency. Additionally, Supervision of intra-group transactions.
- i) Cooperation and exchange of information between the supervisory authorities involved.
- j) Keeping Registers of Insurance Intermediaries and supervision of distribution of insurance products.

6. How is the financial constitution of insurance companies regulated?

Insurance companies must have available basic own funds eligible to cover the absolute floor of the minimum capital requirements, provided for in paragraph (d) of subsection (1) of article 136 of the Law.

It is further noted that in accordance with the Circular of the Superintendent of Insurance dated 15 November 2016, insurance

companies should notify the Superintendent immediately once their solvency ratio is or falls below 115%, submitting at the same time a specific recovery plan for the purpose of prompt recovery of their capital solvency requirements. Insurance companies must invest all their assets in accordance with the “prudent person principle”, pursuant to section 139 of the Law.

7. What are the permissible legal forms for insurance companies and how is the business organization regulated?

In accordance with section 17 of the Law, insurance companies may only take the following forms:

- a limited liability company, with or without shares, which is registered under the provisions of the Law and the Cyprus Companies Law, for the sole purpose of pursuing insurance business.
- a limited liability company by guarantee, without a share capital, which is registered under the provisions of the Law and the Cyprus Companies Law, for the sole purpose of pursuing mutual business.

A third country insurance undertaking, which pursues insurance business in Cyprus in the form of a branch or representation which is registered as an overseas company under the provisions of the Cyprus Companies Law, for the sole purpose of pursuing insurance business.

The creation of public law undertakings of any form in order to pursue insurance business, is permitted, on condition that these entities carry out insurance businesses under conditions equivalent to those that private law businesses operate, and in such a case, this is communicated to the Commission in order to

update Annex III of Directive 2009/138/EC.

The board of directors has the ultimate responsibility for the compliance, by the undertaking concerned, with the provisions of the Law and the regulations issued thereunder, and with any other legislative, regulatory and administrative provisions issued with on a national or European level with regard to the pursuit of insurance operations.

On a collective level the board of directors must possess relevant professional qualifications, experience and knowledge in the relevant areas to conduct insurance business. The frequency of the meetings of the board of directors shall be proportionate to the scale and complexity of the business enabling the board to exercise in a sufficient and appropriate manner its supervisory role. The insurance companies as entities of public interest have to establish an audit committee. The audit committee shall consist of a majority of members that will need to be independent from the insurance company. Board and committee meetings are expected to take place in Cyprus.

8. What regulations apply to the insurance contract?

An insurance contract is governed by the Cyprus Contract Law CAP. 149, entered into between an insurance undertaking and one or more persons, regardless as to whether or not a contract of insurance is issued, with regard to providing insurance cover in one or more classes, covered by the license of the particular insurance undertaking.

Before the conclusion of an insurance contract, the insurance undertaking is obliged to provide to each interested person certain information (and also include such information in the contract), as analyzed in sections 225-226 of the Law and Regulation 20 of the Regulations relating to non-life insurance and in section 227 of the Law and Regulation 21 of the Regulations relating to life insurance. An insurance undertaking is also obliged to provide information to policyholders during the validity of the insurance contract, as analyzed under Regulations 24 – 25 of the Regulations.

The policyholder has the right to withdraw from a life insurance contract, in accordance with the time limits prescribed for the nature of his/her insurance contract and in the prescribed form set under section 228 of the Law.

9. What applies to insurance intermediation?

The Insurance Distribution Directive was transposed into national law by the Insurance and Reinsurance Business and Other Related Issues (Amendment) Law 38(1)/2019, and its accompanying regulations, which also introduced some refinements to the local application of Solvency II.

A person who intends to undertake or distribute insurance products must be registered in one of the following Registers which are kept by the Superintendent differentiating between different kinds of insurance intermediation. In order to register into one of the respective registers, the interested persons need to submit the relevant application for registration together with all the documents/certificates/ confirmations provided in the Law and defined in the Regulations.

An authorization is valid for the entire EU covering also the right of establishment and the freedom to provide services to other member states. The registration in the Registers is valid for three (3) years from the date of issuance of the registration certificate and can be renewed, upon submission of the relevant application for renewal, at least one (1) month before its expiration.

10. What are the ESG requirements for insurance companies?

The Non-Financial Reporting Directive (**NFRD**) 2014/95/EU amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups has been transposed into Cyprus law by an amendment of the Cyprus Companies Law (CAP. 113) in sections 151A and 151B. The disclosure of non-financial and diversity information applies to insurance companies with more than 500 employees which are considered a “large undertaking” under section 141A(1)(c) and/or “large group” in section 141A(2)(c) of the Companies Law, and relates to non-financial reporting through the obligation imposed by section 151A (1) of the Law to produce a non-financial report. The relevant entity discharges its obligation for the production of such report if pursuant to section 151A (9)(b), the non-financial report of the entity is made publicly available, within six (6) months of the balance sheet date in its website and referred to in the management report. Alternatively, as per section 151A (9)(a) the non-financial report is included in the management report and financial statements of the entity which will accompany the annual return for the respective year and filed with the Cyprus Registrar of Companies.

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2.4 Czechia

1. Introduction

The insurance sector in Czechia has a storied history and stands as one of the significant industries in the country. As in many parts of the world, the insurance industry in Czechia serves to safeguard individuals and businesses against various risks inherent in modern life. Through a combination of primary insurance and reinsurance, economic entities can transfer their risks to insurance undertakings and receive compensation for potential losses. This, in turn, contributes to reducing the overall vulnerability of the Czechia economy to unforeseen disruptions.

To maintain the integrity of the insurance sector and protect the interests of policyholders, insurance undertakings in Czechia are only allowed to be engaged in insurance activities and activities directly connected to them. They must perform these activities with professional care and are not allowed to participate in other activities. To this end, life insurance is operated exclusively by legally independent companies to ensure that the critical importance of these insurance lines to the policyholders remains uncompromised.

In keeping with European standards and regulatory requirements, the private insurance sector in Czechia operates under a highly regulated framework. The continuous growth of regulations in this service sector is influenced significantly by European directives and standards, which ensures the consistent and reliable protection of policyholders and the overall stability of the insurance industry.



2. What is the relevant legal framework for insurance companies?

In Czechia, the relevant legal framework for insurance companies is primarily governed by Act No. 277/2009 Coll., on Insurance (**Insurance Act**). Act No. 170/2018 Coll., on Insurance and Reinsurance Distribution (**Insurance and Reinsurance Distribution Act**) regulates rights and obligations of individuals and entities authorized to distribute insurance and reinsurance.

Insurance Act sets out the rules and regulations related to insurance activities in the country. This act sets forth the requirements for the establishment, operation, and supervision of insurance undertakings.

The Insurance Act covers various aspects of the insurance industry, including licensing and authorization procedures for insurance companies, their capital requirements, solvency regulations, and reporting obligations.

The legal framework for insurance companies in Czechia is influenced by European Union's directives and regulations. As a member of the EU, Czechia aligns its insurance laws with EU standards, ensuring consistency with the broader European insurance market.

Insurance and Reinsurance Distribution Act sets forth in particular rules for distribution of insurance and reinsurance, requirements for insurance brokers and other distributors of insurance and reinsurance, their rights and obligations, and information requirements vis-à-vis policyholders.

Other relevant legislation may apply to specific insurance sectors,

such as health insurance, or motor insurance, each of which have its own distinct legal provisions and requirements. Overall, the legal framework aims to promote stability, transparency, and consumer protection in the insurance sector of Czechia.

3. What special features apply to the authorization of an insurance company?

Special features that apply to the authorization of an insurance company in Czechia include the requirement that insurance undertakings can only engage in other activities if directly related to insurance business. It is not permitted for a Czech insurance undertaking to carry on life and non-life insurance business concurrently, except for the concurrent carrying on of insurance business falling under the life insurance classes and the carrying on of non-life insurance business in the event of accident or sickness; this restriction does not apply to already existing insurance undertakings. Other insurance lines may be offered by the same company. The regulatory legal framework is also significantly influenced by European requirements.

4. What are the relevant supervisory authorities?

The insurance industry plays a crucial role in maintaining a functional economy, but its credibility and stability cannot be solely ensured by market mechanisms. Therefore, regulations in the form of legal rules govern the activities of insurance companies, reinsurance companies, insurance intermediaries, and independent loss adjusters. The Czechian National Bank (**CNB**) oversees adherence to these rules and ensures accountability for any violations, which is known as supervision of the insurance industry. The objective of this supervision, as defined by the

Insurance Act, is to maintain the financial stability of insurers and reinsurers and protect policyholders, insured parties, and beneficiaries. This includes promoting the sound development, market discipline, and competitiveness of insurers and reinsurers, preventing systemic crises, protecting policyholders, insured parties, and beneficiaries, and strengthening public confidence in the insurance industry.

5. What powers does the supervisor have?

The CNB operates as a central bank and financial regulator, mandated to enforce the legal framework governing the insurance industry. If mandated by an act, it is entitled to issue binding regulations and control adherence to them by market participants. It also issues official statements and opinion letters to standardize good market practice.

The robust supervision by the CNB and alignment with European standards contribute to maintaining a stable and reliable insurance sector that protects the interests of policyholders and supports the overall financial well-being of the country. In case the supervisory authority discovers any deficiencies, it is obligated to utilize its corrective measures, which may involve revoking the license or implementing conservatorship. These measures are governed by public law and are designed to safeguard the financial market as a whole and minimize the likelihood of comparable illicit activities occurring in the future.

6. How is the financial constitution of insurance companies regulated?

In Czechia, the financial constitution of insurance companies is regulated through specific requirements set out in European regulations, the Insurance Act and in certain areas by CNB's regulations.

Insurance undertakings are mandated to maintain eligible own capital funds at a level equal to or exceeding the solvency capital requirement, which is determined based on the company's risk profile. Additionally, insurance companies must adhere to the minimum capital requirement. Failure to meet this requirement can lead to legal obligations and sanctions.

Moreover, the Insurance Act outlines principles for the prudential investment of insurance companies' capital. Alongside specific investment requirements for all assets, the principle of entrepreneurial prudence governs their investment decisions. This ensures a prudent and responsible approach to managing their capital and investments, ultimately contributing to the stability and reliability of the insurance sector in the country.

7. What are the permissible legal forms for insurance companies, and how is the business organization regulated?

In Czechia, insurance companies must adhere to specific legal forms and comply with regulated business organization requirements. Eligible entities include public limited companies ("Společnost s ručením omezeným"),

cooperatives ("Družstvo"), European public limited companies ("Evropská společnost"), and European Cooperative Societies ("Evropské družstvo"). Supervisory law imposes significant

demands on the management and control system of insurance companies, including requirements for professional suitability and reliability of key personnel, such as directors, members of the supervisory board and personnel responsible for risk management. Insurance companies must establish at least four key functions: risk management, compliance (internal supervision), internal audit, and actuarial practices. The remuneration system for directors, employees, and board members is strictly regulated for appropriateness and transparency, aligning with sustainable development.

8. What regulations apply to the insurance contract?

An insurance contract in Czechia is governed by the law of obligations. The insurer is obligated to provide coverage for specific risks of the policyholder or a third party when the agreed insured event occurs. In return, the policyholder must pay the agreed premium. The legal basis for the insurance contract includes general regulations under private law, and the relevant General Insurance Conditions. Additionally, regulatory provisions imposing obligations on insurers (such as information duty) and granting rights to both parties (such as the right to withdraw from the contract) are of significant importance.

According to the Czechian Civil Code, the insurance contract is concluded through application and acceptance. The policyholder has a specified period set out by law to withdraw

from the insurance contract. Moreover, the policyholder has a duty to disclose all necessary information that is important for the assessment of the insurance risk to the insurer. During various phases of the insurance contract, the insurer is obligated to inform, instruct, and advise the policyholder in addition to its

primary duties.

9. What applies to insurance intermediation?

The Insurance and Reinsurance Distribution Act regulates insurance distribution in Czechia, setting out the rules for insurance brokerage and other intermediaries who offer and sell insurance products. To comply with the Insurance and Reinsurance Distribution Act, insurance intermediaries must register with the CNB and fulfill specific requirements, including possessing appropriate professional qualifications and maintaining professional liability insurance. They must also act in the best interests of their clients and provide impartial advice.

Under the Insurance and Reinsurance Distribution Act, insurance intermediaries are obliged to disclose information about the insurance products they sell, their fees, and any potential conflicts of interest. Additionally, insurance intermediaries must maintain records of their activities and provide clients with copies of any contracts or documents related to the insurance products they sell.

Apart from the Insurance and Reinsurance Distribution Act, insurance intermediaries in Czechia must also comply with other laws and regulations, such as the Civil Code and the Consumer Protection Act, which offer further safeguards for consumers.

10. What are the ESG requirements for insurance companies?

The legal framework is based on the European requirements, in particular the Sustainable Finance Disclosure Regulation (**SFDR**). Obligated parties of the SFDR are financial market participants and financial advisors with regard to financial products. Financial advisors according to the SFDR are credit and financial services institutions, as well as insurance intermediaries and insurance companies. The products or instruments covered by the SFDR are referred to as financial products. This also includes insurance investment and pension products.

Further national regulations are not apparent, with the result that only the aforementioned European regulations regarding ESG must be taken into account.

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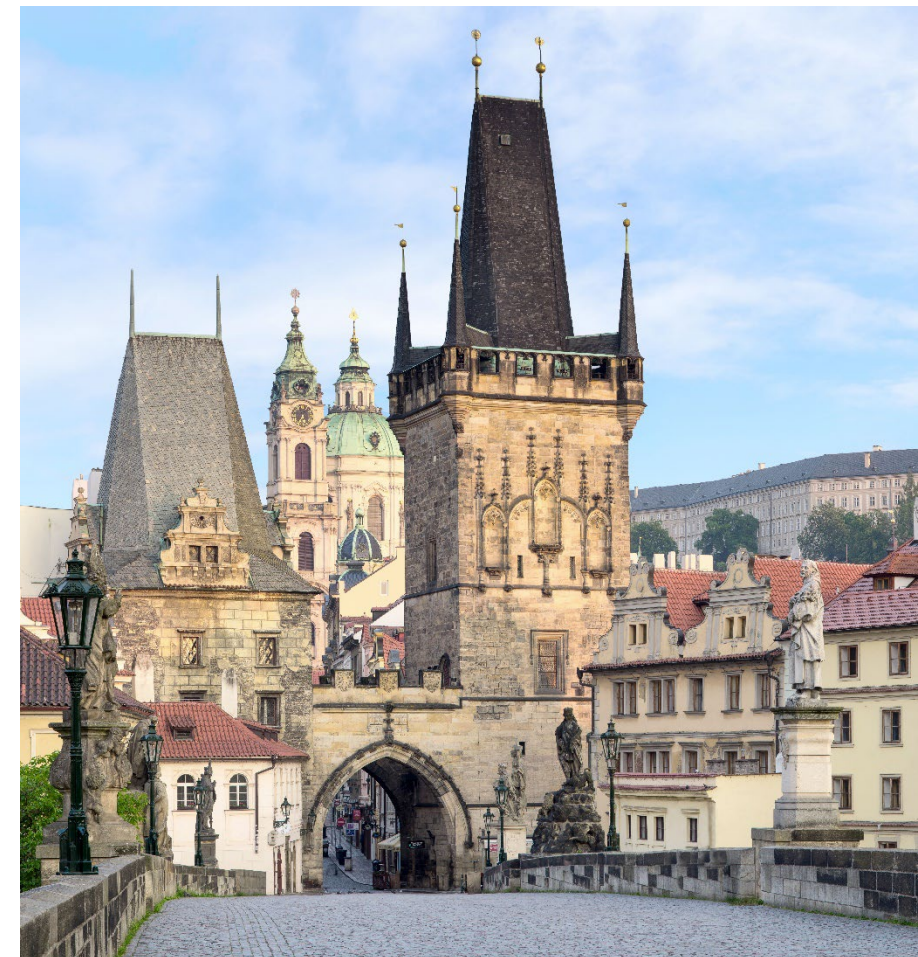
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2.5 Finland

1. Introduction

The history of Finland's insurance sector spans over a century, reflecting its growth and adaptation to changing societal needs. From small mutual associations to a diverse and sophisticated industry, insurance has played a crucial role in safeguarding individuals and businesses. Despite challenges, the sector showed resilience during crises and embraced technology, digitalization, and sustainability. Today, Finland's insurance industry remains a pillar of financial stability, providing a wide range of products and services to meet the evolving needs of its people and businesses. The general insurance market primarily consists of locally operating insurance companies.

Insurers and stakeholders have integrated insurtech across the value chain to enhance product innovation, competitiveness, and overall processes. Additionally, the adoption of connected devices has facilitated the development of telematics-based insurance products, especially in motor and property lines.

ESG, digitalization, and insurtech, along with telematics, are driving trends in the Finland general insurance market highly influenced by European regulations. The key lines of business (excluding statutory lines of insurance) in the Finland general insurance market include property, motor, liability, financial lines, MAT (miscellaneous accident and health), and non-life PA&H (personal accident and health). Motor insurance held the largest market share in 2022 (according to Vakuutusvuosi 2022, published 25.4.2023 by FA), followed by property and liability insurance.



2. What is the relevant legal framework for insurance companies?

In Finland, insurance business is regulated by multiple acts, the most important being the Insurance Companies Act (521/2008), incorporating the Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (**Solvency II**). The Act governs direct insurance business as well as the reinsurance companies. If the insurance company belongs to a financial conglomerate, the Act on the Supervision of Financial and Insurance Conglomerates (699/2004) shall also apply.

The insurance products are regulated by the Act on Insurance Distribution (234/2018) that implemented the Insurance Distribution Directive (EU) 2016/97. (See also: Chapter 8. What regulations apply to the insurance contract?)

Mandatory insurance, such as motor liability insurance, and work accident insurance, are subject to additional laws such as the Motor Liability Insurance Act (460/2016), Patient Injuries Act (948/2019), and Act on Environment Fund Liability (1262/2022). The Finnish insurance system also recognizes group insurance, covering members specified in an underlying contract (see Chapter 8).

Foreign insurance companies' conditions for operating in Finland are regulated by the Act on Foreign Insurance Companies (398/1995).

3. What special features apply to the authorization of an insurance company?

To establish a new insurance undertaking in Finland, obtaining a license from the Financial Supervisory Authority is a prerequisite.

The application for the license must include specific details, such as the intended insurance classes to be provided. Additionally, the application must be accompanied by various documentation, including:

An action plan outlining the business intentions, estimated premium income, administrative structure, associated costs, and the reinsurance strategy. The Supervisory Authority may also request additional information as per its guidelines and prerogatives.

Documents providing comprehensive information about the company's management and its shareholders, and an account detailing any potential conflicts of interest.

Evidence demonstrating the payment of the founding capital. An undertaking established in the EEA can carry on business under the principle of freedom to provide services.

4. What are the relevant supervisory authorities?

The Finnish Financial Supervisory Authority (**FIN-FSA, Finanssivalvonta**) oversees and holds the main responsibility for prudential supervision of the insurance sector. The FIN-FSA supervises the solvency, financial position, internal governance, risk management procedures, underwriting risks, investment risks, and codes of conduct in customer relationships and application practices of life and non-life insurance companies, pension institutions, and unemployment funds.

The Financial Supervisory Authority operates administratively in connection with the Bank of Finland, but is independent in its decision-making.

5. What powers does the supervisor have?

The powers of FIN-FSA in the supervision of financial markets include the authority to request information from supervised entities or financial market participants, conduct inspections, and obtain necessary documents and records. The FIN-FSA can summon representatives or employees of supervised entities to hearings. Within its supervisory powers, it can make decisions to restrict authorized business or management activities of supervised entities, appoint an attorney to supervise their activities, and employ external expert advisors.

Additionally, FIN-FSA can convene meetings of supervised entities' decision-making bodies, issue orders to comply with financial market regulations under penalty of a fine, and impose administrative sanctions such as public fines, warnings, and penalty payments for non-compliance. If there are suspicions of an offense, FIN-FSA can request investigations by the police.

The FIN-FSA decides on the authorization of an insurance company.

Under the set of FIN-FSA regulations and guidelines, the guidelines presented under the heading 'Guideline' primarily include FIN-FSA's interpretations of laws or other binding provisions, as well as recommendations addressed to supervised entities and other financial market participants, along with other non-binding operating guidelines.

6. How is the financial constitution of insurance companies regulated?

Insurance company regulation concerning the financial constitution in Finland is primarily based on the Solvency II Directive, which is a maximum harmonization directive that has been incorporated into the Insurance Companies Act (521/2008). This directive has reformed the regulation and supervision of life, non-life, and reinsurance companies, providing a harmonized, risk-based prudential framework to enhance the protection of insured interests and promote internal competition within the EU. In addition to the Insurance Companies Act, the activities of insurance companies are also governed by the Commission Delegated Regulation (EU) 2015/35, which supplements Solvency II.

7. What are the permissible legal forms for insurance companies, and how is the business organization regulated?

In Finland, insurance companies can be of the following types:

Keskinäinen vakuutusyhtiö (Mutual Insurance Company): This type of insurance company operates as a mutual, where policyholders are also the owners of the company. They share the risks and rewards collectively.

Julkinen keskinäinen vakuutusyhtiö (Public Mutual Insurance Company; jy): This is a mutual insurance company that has the additional feature of being publicly listed and traded on the stock exchange.

Yksityinen vakuutusosakeyhtiö (Private Insurance Stock Company; oy): This is a private limited company with shares that are privately held by a limited number of shareholders.

Julkinen vakuutusosakeyhtiö (Public Insurance Stock Company; oyj): This is a publicly traded insurance company with shares listed and traded on the stock exchange.

Branch Office: Foreign insurance companies may also operate in Finland through a branch office. The branch office is an extension of the foreign company and is subject to Finnish regulations and supervision.

8. What regulations apply to the insurance contract?

The Insurance Contracts Act (543/1994) governs insurance contracts and is mandatory for consumer policyholders or insured individuals and enterprises comparable to consumers in terms of business nature or size. Insurance contracts with such parties must adhere to the minimum terms and protection provided by the Act. The Act also governs group insurance and self-funded group insurance.

However, "large risks" as defined in EU legislation and corporate marine insurance are exempt from mandatory coverage. Foreign insurers must generally comply with the Finnish general good provisions, except when insuring large risks as defined by EU legislation. Reinsurance, on the other hand, is not regulated under the Insurance Contracts Act.

9. What applies to insurance intermediation?

In Finland, insurance brokerage is regulated under the Act on insurance distribution and the Insurance Contracts Act (also the Act amending the Insurance Contracts Act entered into force on 1 October 2018). These laws implement the Insurance Distribution Directive (**IDD**) 2016/97 in Finland.

Insurance intermediaries must be registered by FIN-FSA, and their personnel need to meet requirements on professional competence and good repute.

The Acts have detailed provisions on conduct of business and information provision, including a standardized Insurance Product Information Document for customers. Insurers must have a process for approving insurance products, and both insurers and intermediaries cannot have sales targets or remuneration schemes that encourage recommending unsuitable products.

10. What are the ESG requirements for insurance companies?

In general, the ESG requirements are created and put into action by the EU to harmonize ESG standards across Europe.

There are also some new amendments to Solvency II –directive concerning the integration of sustainability factors in the governance of insurance undertakings. Sustainability risks must be assessed, a materiality assessment made for them and the results of the assessment documented.

The national legislator has not made any further regulations.

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2.6 France

1. Introduction

In the interests of financial security and the protection of policyholders/beneficiaries/affiliates, the insurance sector is being more regulated at both national and European levels.

Under French law, there are a number of obligations regarding insurance and in particular regarding the guarantees offered. The French Insurance Code provides for mandatory rules governing the content of insurance contracts for the purpose of protecting the insured and beneficiaries.

The European institution has adopted more demanding prudential regulations for insurance companies in recent years. In particular, the Solvency II framework has strengthened insurers' capital requirements: the amount of capital must be determined in relation to the risks to which the insurance companies are exposed. The Autorité de Contrôle Prudentiel et de Résolution (**ACPR**) ensures compliance with this regulation.



2. What is the relevant legal framework for insurance companies?

There are two different concepts to be considered: insurance companies, subject to the French Insurance Code (**FIC**) 3rd Book, and mutual benefit companies governed by the Mutual Benefit Insurance Code (**MBIC**).

Since 2019, insurance companies are supervised by the ACPR, itself under the European Insurance and Occupational Pensions Authority (**EIOPA**) supervision. Insurance companies having their registered offices in France must be licensed with the ACPR to carry out insurance activities in France.

Insurance companies are subject to prudential regulatory requirements, including accounting standards, quantitative and qualitative and governance requirements provided for in the European regulation. This prudential framework was recently improved with the 2009/138 Directive of 25 November 2009, to ensure an appropriate ratio between regulatory capital requirements and the risks to which insurance companies are exposed, with a view to safeguarding policyholders, affiliates, or beneficiaries.

3. What special features apply to the authorization of an insurance company?

Pursuant to article L. 321-1 of the FIC, insurance companies registered in France are required to hold a license from the ACPR to carry out insurance activities in France.

Insurance companies are subject to a specialty principle (Art L.321-1 and R.321-1 of the FIC) which provides for insurance companies to only carry out activities in the branch they are licensed. Article

R.321-1 of the FIC provides a list of the 26 licensing branches. However, there is a tolerance for companies carrying out insurance operation out of the scope of their licensing, provided it is in a limited proportion.

A company can apply with the ACPR for multiple branches. However, it is not possible for an insurance company to carry out both life and non-life insurance activities (Art. L.321-1 of the FIC).

Nonetheless, there is an exception for reinsurance companies, for which this specialty principle does not apply. Once the ACPR grants a license to a reinsurance company, it is authorized to carry out both life and non-life reinsurance activity (or any other reinsurance activity).

The ACPR requires minimum share capital and Solvency II capital requirements as a condition of approval. Designated directors and officers must also meet criteria of competence and experience, as well as being assessed for the “fit and proper” purposes.

4. What are the relevant supervisory authorities?

- EIOPA: EIOPA's responsibilities include developing common regulatory and supervisory standards and practices and ensuring the protection of policyholders, pension scheme members, beneficiaries, and consumers.
- ACPR: The ACPR has four main responsibilities in the national financial system of France: (1) Ensure the financial stability, (2) Protecting the customer of banking and insurance undertakings, (3) combating money laundering and terrorist financing and (4) implementing crisis prevention mechanisms.

- Organisme pour le Registre unique des Intermédiaires en Assurance, banque et finance (**ORIAS**): Insurance intermediaries carrying out insurance distribution activities must register with the ORIAS and are also subject to supervision by the ACPR.

5. What powers does the supervisor have?

As part of its supervision of authorized insurance companies' mission, the ACPR is granted a certain number of powers. The ACPR may carry out documentary or on-site inspections (Article L.612-23 of the French Monetary and Financial Code (**FMC**)). Documentary inspections are carried out based on the documents that insurance companies are required to provide (accounting and prudential statements, internal control, solvency and reinsurance reports).

The ACPR also has the power to carry out on-site inspections of insurance undertakings presenting risk factors that justify more in-depth controls. The ACPR further has a certain normative power since it has the power to issue operational and organizational rules as well as recommendations to insurance companies so that they adopt rules of good conduct.

As part of its supervision, the ACPR's sanctions committee can impose disciplinary sanctions ranging from a simple warning to the license withdrawal. Finally, if insurance companies are considered to present risks by the ACPR, the latter can adopt a certain number of administrative police measures to remedy the situation:

- placing the insurer under special supervision or provisional administration;
- temporary ban on carrying out certain operations;
- suspension of the company's managers (Article L. 612-30 of FIC).

6. How is the financial constitution of insurance companies regulated?

There are several financial requirements as for the constitution of insurance companies, which are subject to the control of the ACPR. The ACPR can deny issuing its approval if such conditions are not met.

Insurance companies subject to the provisions of the FIC are required to have a minimum share capital of €480,000 (Article R. 322-5 of FIC). However, this minimum amount of share capital is increased to €800,000 when the company has applied for approval in specific lines of insurance, such as life insurance and civil liability insurance. Several financial requirements are imposed on insurance undertakings by the Solvency II regime under the quantitative pillar. Again, the ACPR ensures that companies comply with these requirements before granting its approval.

Indeed, insurance companies must justify a solvency capital requirement intended to cover certain risks, in particular underwriting risk, market risk and operational risk. This capital must allow the company to face a number of losses corresponding to a probability of bankruptcy at one year of less than 0.5%.

In addition, FIC (Articles L. 352-5 and L. 352-29), following

Solvency 2 provisions, requires insurance undertakings to establish a Minimum Capital Requirement (**MCR**) corresponding to the threshold under which policyholders are exposed to an intolerable risk. These requirements are also applicable to groups of insurance undertakings.

Finally, the applicant seeking the licensing must demonstrate that it holds sufficient prudential capital at market value and justify prudential technical provisions (Article L. 351-2 of FIC).

The insurance undertaking is required to hold an amount of capital at least equal to the MCR, otherwise the authorization to carry out insurance activities may be denied or withdrawn by the ACPR.

7. What are the permissible legal forms for insurance companies and how is the business organization regulated?

Insurance companies can take several legal forms, as listed below.

The public limited company (*société anonyme*, **SA**)

PLCs are subject to the Commercial Code and to the specific provisions of FIC. Two modes of governance are possible: Chief Executive Officer and Board of Directors (i.e., “moniste”) or Board of Directors and Supervisory Board (i.e., “dualiste”).

The mutual insurance company (*Société d’assurance mutuelle*)

As provided for in article L. 322-26-1 of the FIC, this specific type of company has no share capital but has an establishment fund financed by the contributions of its members and

by loans. The mutual insurance company exclusively covers the risks of its members and the member-policyholders.

The member-policyholders are all the insured of the company and have political powers within the company (they have a right to vote at the general meetings). Although the profits made by the company are not intended to be shared among the members, they do ensure that they are guaranteed under better conditions and terms.

The European Company (*societas europae*)

An insurance company may take the form of a European Company (article L. 322-28 of FIC). It is also governed by the provisions applicable to public limited companies and the provisions of the Commercial Code relating to the European Company.

The setting-up of such a company is intended to facilitate the cross-border grouping of companies established in several Member States of the European Union. This explains why it can take the form of a holding company of companies established in different Member States, or of subsidiaries common to such companies.

Supplementary occupational pension funds (**FRPS** or *Fonds de Retraite Professionnelle Supplémentaire*) for limited types of insurance activities.

An insurance company may set up a FRPS with a specific purpose. In accordance with Article L. 143-1 of FIC, an FRPS manages insurance contracts taken out by employers for their employees and by associations for their non-salaried members (group insurance).

8. What regulations apply to the insurance contract?

Under French law, the insurance contract is governed by both the Civil Code and FIC provisions. First, French law differentiates provisions for life and life insurance in FIC. Further, FIC contains provisions relating to land, sea and air insurance. Among land insurance, the code distinguishes between damage insurance and personal insurance.

The MBIC governs insurance operations carried out by mutual insurance entities (exception for mutual benefit insurance companies that are governed by FIC). Group insurance policies taken out with pension funds "Institution de prévoyance" are subject to the provisions of the Social Security Code. Many of the provisions of these codes are of a mandatory nature, and therefore it is not possible for contractors to derogate from them. These regulations may require that insurance contract stipulations meet certain form requirements in order to protect the policyholder's consent or to draw the policyholder's attention to certain clauses in the policy.

It can be noted that compulsory insurance/guarantees have multiplied in recent years: in some cases, contractors are required to take out an insurance/guarantee policy and mandatory provisions govern the content of the said policy. The Minister of the Economy has the power to exercise a posteriori control of insurance contracts and to require communication of them, in order to ensure their compliance with the regulations (article L. 310-8 of FIC).

9. What applies to insurance intermediation?

Insurance distribution is defined by article L. 511-1 of FIC as "the activity of providing recommendations on insurance or reinsurance contracts, presenting, proposing or assisting in the conclusion of

such contracts or carrying out other work preparatory to their conclusion, or contributing to their management and execution".

Insurance and reinsurance intermediaries are required to register with ORIAS, which is responsible for monitoring the conditions of access to insurance distribution, before starting their activity. These intermediaries are also subject to the supervision of the ACPR. Indeed, the ACPR may exercise its supervisory powers over any natural or legal person who has received a mandate from an insurance company or who carries out insurance or reinsurance intermediation activities (Article L. 612-2, II of the Monetary and Financial Code).

The insurance broker is an independent trader, who carries out brokerage operations, consisting in putting a potential subscriber in contact with an insurer with a view to concluding an insurance contract. He is mandated by the future subscriber to find the insurance product adapted to his needs. The broker is subject to brokerage practices.

The insurance agent is also an insurance intermediary whose activity includes the presentation, the proposal, or the assistance to the conclusion of insurance operations, excluding the management of the contracts (article L. 520-1 II, a. and b. FIC).

The general insurance agent distributes and manages the insurance product under a written mandate issued by an insurance company. He seeks out customers and prepares the subscription of the insurance product on behalf of the insurer who has mandated him. In principle, the general agent is bound to his principal by an exclusivity clause and therefore reserves his professional competence for his account. The activity of general agent is governed by the status of general insurance agents

approved by decree.

10. What are the ESG requirements for insurance companies?

Combating the risk of Greenwashing is a key focus area within the ACPR's supervisory approach. The ACPR is further the responsible authority within the enforcement of disclosure obligations derived from the CSRD. Therefore, the ACPR can impose substantial sanctions such as fines or disqualifications of board members.

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2.7 Germany

1. Introduction

In Germany, the insurance sector has a long history.

Private and commercial risks are intrinsic to today's world; protection is provided by the insurance industry. Through primary insurance and reinsurance, individual economic entities can pass on risks and obtain compensation for their losses. The insurance sector reduces the vulnerability of the economy as a whole to disruption.

Insurance undertakings conduct insurance business and may only engage in other activities if these are directly related to the insurance activity. This is to ensure that the claims of insured persons are not jeopardized by risks from other businesses. Life insurance and substitutive health insurance may not be operated with other lines of business for the same reason. Accordingly, these lines of business may only be offered by legally independent companies. The existential importance of the insurance for the policyholder is decisive here. The insurance companies may operate all other insurance lines together.

Private insurance is a highly regulated service sector. The constantly growing regulatory legal framework is also significantly influenced by European requirements.



2. What is the relevant legal framework for insurance companies?

Insurance companies are subject to state insurance supervision. The aim is to protect policyholders and beneficiaries and to maintain financial stability.

The legal bases of national supervision law are the Insurance Supervision Act (**VAG** – Versicherungsaufsichtsgesetz) and the Act on the Federal Financial Supervisory Authority (**FinDAG** – Gesetz über die Bundesanstalt für Finanzdienstleistungsaufsicht). Essentially, these regulations are based on the European requirements of the Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (**Solvency II**). The national regulations are supplemented by the Solvency II Regulation, which is directly applicable in the member states. This regulates in particular individual questions of the financial constitution of insurance companies. The Regulatory Technical Standards and the Implementing Technical Standards of the EU Commission are also directly applicable. The pronouncements of the German supervisory authority (**BaFin** – Bundesanstalt für Finanzdienstleistungsaufsicht) are also de facto binding. The Insurance Contract Act (**VVG** – Versicherungsvertragsgesetz) must be observed for the contractual design of insurance contracts.

3. What special features apply to the authorization of an insurance company?

Pursuant to Section 8 para. 1 VAG, insurance undertakings require a license from the supervisory authority to conduct insurance business. Operating without a license is a criminal offense. Upon application, permission is granted separately for each line of business. In order to obtain a license, the company must submit a

business plan with the application. The business plan provides information on the legal, actuarial and financial basis of the insurance undertaking. Permission to operate an insurance undertaking must be granted if there are no grounds for refusal. Such a reason would be assumed, for example, if the permanent ability to meet the obligations arising from the insurance policies is not sufficiently demonstrated. If a lack of transparency in a group of companies could impair effective supervision of the company, the authority may decide at its discretion. A permission granted extends to all member states of the EU.

4. What are the relevant supervisory authorities?

The BaFin ensures that companies comply with the regulatory requirements. The BaFin is located in Bonn and Frankfurt am Main. It is a federal institution with legal capacity under public law, which is subject to the legal and technical supervision of the Federal Ministry of Finance. The legal basis for its activities is the FinDAG. It performs its tasks and exercises its powers only in the public interest. This clarifies that a policyholder cannot derive any subjective rights from the supervisory law.

5. What powers does the supervisor have?

The supervisory authorities' powers to act are regulated in the Insurance Supervision Act. According to this Section 298 para. 1 VAG, the supervisory authority is authorized to take all measures that are suitable and necessary to prevent or eliminate maladministration. Maladministration is understood to mean all conduct of an insurance undertaking that contradicts the explained supervisory objectives (Section 294 para. 2 VAG), as well as weaknesses or deficiencies that the supervisory authority has identified in the supervisory review process. Special regulations

apply to reinsurance undertakings. Specifically, the supervisory authority may demand the amendment of a business plan or a capital surcharge, prohibit a participation, dismiss persons with key responsibilities, transfer the powers of a body to a special representative, revoke the license or demand the cessation of unauthorized insurance business.

In addition, the BaFin is authorized to demand the submission of business documents and to conduct on-site inspections at the premises of the insurance undertaking. Furthermore, only the supervisory authority may file an application to open insolvency proceedings against the assets of an insurance undertaking.

6. How is the financial constitution of insurance companies regulated?

Insurance undertakings must always have eligible own funds at least equal to the solvency capital requirement. The corresponding amount of own funds is determined based on the risk profile of the company. In addition, companies must comply with the minimum capital requirement. Falling below this requirement triggers legal obligations and sanctions.

Insurance supervisory law also specifies how insurance companies may invest their capital. In addition to specific requirements for the investment of all assets, the principle of entrepreneurial prudence also applies.

7. What are the permissible legal forms for insurance companies, and how is the business organization regulated?

Only public limited companies, including the European public limited company (Europäische Gesellschaft, **SE**), mutual insurance companies (Versicherungsverein auf Gegenseitigkeit, **VVaG**) as well as corporations and institutions under public law (Körperschaft des öffentlichen Rechts, **KÖR**) may be granted a supervisory license to conduct business. The insurance stock corporation (Aktiengesellschaft, **AG**) is a corporation that has a share capital divided into shares. The mutual insurance association is an association with legal capacity. When an insurance relationship is established, membership is acquired at the same time.

Supervisory law places considerable requirements on the business organization of insurance undertakings that go beyond general company law. The board of directors of an insurance undertaking must consist of at least two persons. The persons who manage the company or perform other key tasks must be professionally suitable and reliable. This also applies to the members of the supervisory board. Every insurance company must establish the four key functions of risk management, compliance, internal audit and actuarial. In addition, the remuneration system for managing directors, employees and supervisory board members is regulated. These must be appropriate, transparent, and geared towards the sustainable development of the company.

8. What regulations apply to the insurance contract?

An insurance contract is a contract under the law of obligations. The insurer is obligated to cover a certain risk of the policyholder or a third party by means of a service that it must provide when

the agreed insured event occurs. In return, the policyholder must pay the agreed premium. The legal basis for the insurance contract is the general regulations under private law, the Insurance Contract Act and the respective General Insurance Conditions (**AVB** – Allgemeine Versicherungsbedingungen). Regulatory provisions are also of importance. According to the provisions of the German Civil Code (**BGB** – Bürgerliches Gesetzbuch), the insurance contract is concluded by application and acceptance. The policyholder may revoke his contractual declaration within a period of time depending on the insurance contract. The policyholder has duties to disclose required information to the insurer. During various phases of the insurance contract, the insurer has also duties to inform, instruct and advise in addition to its main duties.

9. What applies to insurance intermediation?

Insurance intermediaries are involved in various ways in the conclusion and servicing of insurance contracts. An insurance intermediary is supposed to inform customers about the content and scope of insurance cover. Under the influence of the European Insurance Distribution Directive, intermediary law is highly regulated.

There are different types of insurance intermediaries. An insurance agent is someone who is permanently entrusted by an insurer or an insurance agent to broker or conclude insurance contracts on a professional basis. The insurance agent receives a commission from the insurer for the brokerage activity. On the other hand, an insurance broker is a person who professionally arranges or concludes insurance contracts for the principal without being entrusted with this by an insurer or an insurance agent. The

insurance broker is also entitled to remuneration from the insurance company.

An insurance advisor is a person who professionally advises third parties on the agreement, amendment, or review of insurance contracts or on the assertion of claims arising from insurance contracts in the event of an insured event, or who represents third parties out of court against the insurer. He receives his fee accordingly from the policyholder. A person who operates a website that enables the conclusion of an insurance contract is also considered an intermediary.

Insurance mediation is a business that requires a license. Intermediaries are obliged to be entered in an intermediary register. The intermediary is subject to comprehensive duties of information, consultation, and documentation with regard to the policyholder.

10. What are the ESG requirements for insurance companies?

The legal framework is based on the European requirements, in particular the Sustainable Finance Disclosure Regulation (SFDR). Obligated parties of the Disclosure Regulation are financial market participants and financial advisors with regard to financial products. Financial advisors according to the Disclosure Regulation are credit and financial services institutions, as well as insurance intermediaries and insurance companies. The products or instruments covered by the Regulation are referred to as financial products. This also includes insurance investment and pension products.

Further national regulations are not apparent, with the result that only the aforementioned European regulations regarding ESG must be taken into account.

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2.8 Hungary

1. Introduction

With a long history, the Hungarian insurance industry has evolved into a dynamic and well-regulated market, offering a diverse range of insurance products and services. Originally, the insurance market operated as a monopoly market until 1986. As the market opened, an oligopolistic market emerged as a result. The market is largely dominated by big European insurance companies.

As Hungary is a member of the EU, its insurance sector operates within the framework of EU directives and national regulations, ensuring compliance with international standards and best practices. The sector is supervised by the Central Bank of Hungary (Magyar Nemzeti Bank – **MNB**).

Hungary's insurance market consists of both domestic and international insurance companies, providing coverage in areas such as life insurance, property and casualty insurance, health insurance, motor insurance, and various commercial lines. Over the years, the insurance sector in Hungary has adapted to changing market dynamics and customer preferences. Embracing technology and digitalization, insurers have enhanced their distribution channels and customer service, making insurance products more accessible and convenient for consumers.

Additionally, the Hungarian insurance industry is becoming increasingly aware of environmental, social, and governance (**ESG**) considerations, integrating sustainability principles into their operations, investment strategies, and risk management practices.



2. What is the relevant legal framework for insurance companies?

The operation of the Hungarian insurance industry is determined by the Act LXXXVIII of 2014 on the Business of Insurance (**Insurance Act**) and Act V of 2013 on the Civil Code (**Hungarian Civil Code**). The Insurance Act is the primary piece of legislation that governs insurance activities in Hungary and implements the EU Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (**Solvency II**) into Hungarian law. It regulates the establishment and operation of insurance companies, outlines the types of insurance that can be provided, and sets out the requirements for insurance contracts. Furthermore, it sets out the rules on the authorization process, prudential requirements, governance, risk management, and disclosure obligations for insurance companies. The Hungarian Civil Code supplements the Insurance Act, establishes the general rules for insurance contracts and specifies the types of insurance contracts and the rules applicable to them.

In addition, the Hungarian insurance industry is influenced by the relevant EU directives and regulations, and the regulatory guidelines issued by the MNB also play an important role.

3. What special features apply to the authorization of an insurance company?

Insurance companies seeking authorization must fulfil specific licensing requirements outlined in the Insurance Act. These requirements typically include minimum capital and solvency levels, as well as fit and proper criteria for the company's management and shareholders. Insurance companies must comply with solvency requirements as stipulated by the EU Solvency II

Directive. As part of the authorization process, insurance companies are required to submit a comprehensive business plan detailing their proposed operations, financial projections, and risk management strategies. The MNB evaluates these plans to ensure they are viable and in line with regulatory expectations.

Insurance companies that have been granted authorization in any country of the European Union can utilize the Freedom of Establishment (**FoE**) and Freedom of Services (**FoS**) regulations to extend their operations to Hungary and initiate insurance activities there.

4. What are the relevant supervisory authorities?

The MNB is the central bank of Hungary and is responsible for overseeing and regulating the financial and insurance sectors in the country. The MNB has broad authority and responsibilities related to the supervision of insurance companies. The primary objective of the MNB shall be to achieve and maintain price stability.

5. What powers does the supervisor have?

First, the MNB is responsible for granting licenses and authorizations to insurance companies that wish to operate in Hungary. Moreover, the MNB conducts prudential supervision of insurance companies to ensure their financial stability and compliance with solvency requirements. Once licensed and authorized, insurance companies remain under the continuous supervision of the MNB. The regulator conducts regular inspections, receives financial reports, and assesses the company's compliance with relevant laws and regulations.

The MNB is responsible for protecting the interests of

policyholders in Hungary. It monitors market conduct, investigates customer complaints, and ensures that insurance companies adhere to consumer protection regulations. Also, the MNB sets and enforces rules governing the behavior and practices of insurance companies in their dealings with customers and competitors. This includes adopting and implementing EU directives and regulations related to the insurance sector.

In the event of financial difficulties or crises faced by insurance companies, the MNB is responsible for taking appropriate measures, such as resolution actions or crisis management, to safeguard the stability of the insurance market and protect policyholders.

6. How is the financial constitution of insurance companies regulated?

The financial constitution of insurance companies is regulated in the Insurance Act, in addition to the guidelines and regulations of MNB. The Insurance Act lays down comprehensive rules regarding the financial constitution of insurance companies, including the requirements for capital adequacy, risk management, and solvency. Insurance companies in Hungary are subject to specific capital and solvency requirements to ensure that they have sufficient financial resources to cover potential liabilities and risks.

These requirements are based on the EU Solvency II Directive framework, which considers various risk factors, including market, credit, and operational risks. To ensure all this, insurance companies must submit regular financial reports to the MNB and other relevant authorities.

Furthermore, the insurance companies are often required to obtain actuarial assessments to evaluate the adequacy of their technical provisions and reserves.

7. What are the permissible legal forms for insurance companies, and how is the business organization regulated?

In Hungary, there are several legal forms for insurance companies, such as companies limited by shares (Részvénytársaság), where ownership is divided into shares and shareholders' liability is limited to the amount they have invested in the company. This is the most common form of operation.

It is also possible to operate as a European public limited-liability company (Societas Europaea – SE). This is a type of public limited liability company that can operate in multiple EU member states, making it suitable for larger insurers with cross-border operations.

Furthermore, it is possible to operate as cooperative societies (Szövetkezet) or mutual associations, or as branches of insurance companies established in other Member States or of third-country insurance companies.

The business organization is primarily overseen by the MNB and regulated through the Insurance Act, Hungarian Civil Code and the EU Solvency II Directive.

8. What regulations apply to the insurance contract?

The primary legislation governing insurance contracts in Hungary is the Insurance Act. This legislation sets out general rules and principles governing insurance activities, including the formation, content, and termination of insurance contracts. Insurance contracts are also regulated by the Hungarian Civil Code.

In addition, Hungary has specific regulations in place to protect consumers in insurance contracts. These regulations aim to ensure transparency, fair treatment and disclosure of essential information to policyholders. Consumer protection is mainly regulated within the Insurance Distribution Directive (IDD), Directive EU 2016/97, which has been transposed to Hungarian law.

It is important for insurance companies to provide standard terms and conditions for their insurance products. These terms and conditions must be clear and accessible to policyholders, outlining the coverage, exclusions, and other relevant terms of the insurance contract. Pre to the conclusion of a contract, insurers are obligated to provide potential policyholders with comprehensive pre-contractual information about the insurance product. This information should include details about the coverage, duration, cancellation policy and any other significant terms.

9. What applies to insurance intermediation?

Insurance brokerage in Hungary is mainly regulated by the Insurance Act, in addition to the guidelines and regulations of MNB, and the relevant EU legislations.

According to the Insurance Act, insurance brokerage activities may be performed by independent and dependent insurance brokers.

Types of independent insurance brokers include, brokers and multiple agents, brokers are acting for and on behalf of the client, while multiple agents are mediating the insurance products of competing insurers.

Types of dependent insurance brokers include, agents, who mediate insurance products of one insurance company or non-competing insurance products of several insurance companies, and the principal agent, who is fully authorized by an insurance company to exercise all the powers necessary for the conduct of the insurer's business.

Insurance brokers must obtain a license from the MNB, and they must meet certain requirements, including professional qualifications, financial standing and professional liability insurance coverage.

The law has detailed provisions on conduct of business and information provision, including a standardized Insurance Product Information Document (IPID) for customers. Insurers are required to establish a procedure for the approval of the insurance products. Additionally, it is prohibited for both insurance companies and intermediaries to have sales targets or remuneration schemes that encourage recommending unsuitable products. They may also assist with claims handling on behalf of the insured. Insurance brokers are required to have professional indemnity insurance to cover potential liabilities arising from their professional activities.

10. What are the ESG requirements for insurance companies?

Insurance companies in Hungary are subject to the ESG requirements aimed at integrating sustainability, transparency, and responsible corporate behavior within the EU financial and corporate sectors.

The EU has implemented different regulations, for instance the Sustainable Finance Disclosure Regulation (SFDR), the Corporate Sustainability Reporting Directive (CSRD) and the EU Regulation 2020/852 (EU Taxonomy). On the national level are no further regulations, which could specify or extend the ESG criteria. That means the insurance companies in Hungary only have to take the European ESG regulations into account.

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2.9 Ireland

1. Introduction

The insurance industry in Ireland has a high level of penetration and density in both the life and non-life sectors, but this is mainly due to cross-border business. Most Irish insurers are subsidiaries of international groups and have significant connections with related entities within the same group. Cross-border business is crucial, and Irish insurers have significant market shares in other EU member states. Many companies operate on an "outward" cross-border basis. Ireland is also home to a substantial "captive" (re)insurance market, many of whom were among the initial companies established in the International Financial Services Centre (IFSC) in the late 1980s.

Insurance brokers or tied agents are the primary intermediaries for most insurance products in Ireland.

While there are some retail banks that partner with insurers in a bancassurance-type model, there are not many bancassurance models through ownership. The non-life market is dominated by subsidiaries of international groups, writing both direct/online and via a substantial domestic broker sector. There is also a significant amount of business written by European Insurers writing into Ireland on a Freedom of Establishment or Freedom of Services basis.

The health insurance sector currently comprises three

undertakings where prudential supervision rests with the Central Bank of Ireland (CBI) while the Health Insurance Authority is the statutory regulator of the private health insurance market.

Due to growing internet penetration in Ireland the online sale of insurance policies is growing.

Despite its close proximity to the UK no twin peaks Model of insurance supervision is in place. Insurance Companies are solely regulated by the Bank of Ireland. The regulatory framework is heavily influenced by EU legislation.



2. What is the relevant legal framework for insurance companies?

The Solvency II Directive was transposed into Irish Law as the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. 485 of 2015) and the legislation entered into force on 1 January 2016.

Relevant regulations concerning insurance established under the European Communities Act 1972 (No. 27 of 1972).

As of 1 October 2018, all distributors of (re)insurance are regulated under the European Union (Insurance Distribution Directive, **IDD**) Regulations 2018, which has repealed and replaced the Mediation Regulations and amended certain provisions of the IIA 1995.

The CBI implements various codes and guidelines, such as the Consumer Protection Code 2012, Corporate Governance Requirements for Insurance Undertakings 2015, and Minimum Competency Code 2017.

3. What special features apply to the authorization of an insurance company?

The CBI is the competent authority in Ireland for the issuing of an authorization.

In general, the Insurance Acts and Regulations require an undertaking to hold an authorization if they wish to carry on insurance business. For example, Regulation 12 of S.I. 485 of 2015 requires that an insurance undertaking shall not carry on the business of non-life insurance unless it is the holder of an authorization.

Regulations 14 and 15 of S.I. 485 of 2015 set out the requirements of authorization of non-life insurance undertakings. To obtain an authorization, an undertaking must make an application to the CBI, who must be satisfied that the applicant complies with the appropriate Insurance Acts and legislation.

The CBI through the authorization process ascertains if, in its opinion, the applicant complies with the appropriate provisions of the Insurance Acts and Regulations.

The CBI aims to make the application process an efficient and manageable one. It is not a one-step mechanism; rather, it is an iterative process involving contact and consultation with personnel from the CBI prior to and after an application is formally submitted.

In advance of contacting the CBI, each potential applicant must assess whether its proposed business model:

- requires an insurance or reinsurance license;
- falls within the ‘captive’ definition;
- is capable of complying with the CBI’s requirements for authorization; and
- will comply with the requirements that must be adhered to by insurance or reinsurance undertakings on an on-going basis.

There is no application fee. However, authorized firms are subject to ongoing prudential and consumer levies. The CBI will contact authorized firms in this regard. A guide to the CBI funding regulations is available on www.centralbank.ie.

Persons holding key positions and firms under the CBI's regulation are subject to the CBI's fitness and probity regime (the “F&P regime”). Additionally, these regulated firms must adhere to the CBI's Corporate Governance Requirements for Insurance Undertakings 2015.

Under the EU single passport regime, EEA insurers have the privilege to conduct business in Ireland by opening a branch.

4. What are the relevant supervisory authorities?

According to Regulation 30 of the S.I. 485 of 2015, the CBI is responsible for the financial supervision of insurance undertakings and reinsurance undertakings. The CBI is the sole supervisor and bears full responsibility for this oversight.

The CBI is accountable for granting authorization and holds the main responsibility for the prudential supervision and regulation of insurance and reinsurance companies in Ireland.

Most insurance and reinsurance firms authorized and supervised by the CBI are regulated under the Solvency II regime.

5. What powers does the supervisor have?

The CBI has a range of regulatory powers in the areas of authorization, supervision and engagement, which it uses to pursue its objective of promoting financial stability, consumer protection and market integrity. It uses a risk-based approach to supervision and underpins this with a credible threat of enforcement.

The CBI implements its supervisory role by:

- Processing applications from financial services providers for authorization in Ireland, and from individuals seeking approval to hold controlled function roles
- Monitoring compliance with prudential standards, primarily through examining prudential returns (weekly, monthly, and annual), financial statements and annual reports, conducting regular review meetings and on-site inspections
- Developing systems and procedures to monitor activities and detect non-compliance by financial service providers
- Issuing guidance notes to enhance it's our supervisory oversight due to continued growth and changes in financial markets
- Supporting the development of domestic legislation and implementing EU regulations and international standards

In underpinning its supervisory role with a credible threat of enforcement, the CBI investigates suspected prescribed contraventions of financial services regulation under its Administrative Sanctions Procedures (**ASP**) and its (**F&P**) regime and takes enforcement action where it deems such action appropriate.

It is notable that the CBI's enforcement powers were significantly enhanced by the Central Bank of Ireland (Individual Accountability Framework) Act 2023 (**the IAF Act**), which introduces Conduct Standards, as well as enhancements to the CBI's F&P regime and its ASP and which will take effect from 31 December 2023. The IAF Act also introduces a Senior Executive Accountability Regime (**SEAR**) which will take effect from 1 July 2024 (initially for a subset of regulated entities) and will require the creation of statements of responsibilities for each individual holding a pre-approval controlled function (**PCF**) role, the development of a management responsibilities map, and will introduce a new duty of responsibility.

Where it is established that a regulated entity or a relevant individual (typically an individual holding a controlled function role or a PCF role) has committed a prescribed contravention, the CBI may decide to impose sanctions.

Under the Administrative Sanctions Procedure, the sanctions for regulated firms include: a caution or reprimand; a suspension or revocation of authorization; or a fine up to €10m or 10% of the firm's turnover.

For an individual, the potential sanctions include: a caution or reprimand, disqualification from managing a regulated firm for a specified period, and a fine of up to €1m.

6. How is the financial constitution of insurance companies regulated?

The financial constitution of insurance companies in Ireland is regulated by the Solvency II Directive. This directive requires

insurance companies to maintain a certain level of capital and solvency to ensure that they can meet their obligations to policyholders. It is supplemented by a broader legislative package, notably the "Level 2" Commission Delegated Regulations that apply directly to Member States, and "Level 3" guidance from the European Insurance and Occupational Pensions Authority (**EIOPA**).

The Solvency II Directive follows a risk-based approach thus, insurance companies are required to hold a minimum amount of own funds, which is calculated based on the risks they are exposed to. The CBI also requires insurance companies to conduct regular stress tests to assess their ability to withstand adverse scenarios.

In addition to these requirements, Regulation 141 of SI 485 sets out rules on the investment of insurance company assets to ensure that they are invested in a prudent and diversified manner. The CBI also requires insurance companies to have appropriate risk management systems in place to identify, measure, monitor, and manage risks.

7. What are the permissible legal forms for insurance companies, and how is the business organization regulated?

In Ireland, insurance companies can be established in the form of:

- A designated activity company (**DAC**);
- A public limited company;
- A company limited by guarantee; An unlimited company;
- A European company (**SE**).

A private company limited by shares cannot be a credit institution or insurance undertaking.

8. What regulations apply to the insurance contract?

In Ireland, the regulations that apply to insurance contracts are primarily set out in the Consumer Insurance Contracts Act 2019. Section 16 of this Act sets out the rights and obligations of both the insurer and the policyholder in relation to insurance contracts.

In addition to the Consumer Insurance Contracts Act 2019, the regulatory framework for insurance contracts in Ireland also includes the CBI's Consumer Protection Code, which sets out requirements for insurers in relation to the conduct of business, including the handling of claims.

9. What applies to insurance intermediation?

An Insurance Intermediary must be registered if they wish to carry out the activity of insurance distribution, including the provision of advice in relation to Insurance products.

An insurance intermediary can also carry out certain specified activities e.g., loss assessing and assisting consumers in dealing with claims under insurance contracts.

It is an offense to engage in any activity outlined above without being registered with the CBI.

In Ireland, insurance brokerage is regulated under the Regulations 2018 (IDR 2018) transposing Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (IDD).

The law has detailed provisions on conduct of business and information provision, including a standardized Insurance Product

Information Document for customers. Insurers must have a process for approving insurance products, and both insurers and intermediaries cannot have sales targets or remuneration schemes that encourage recommending unsuitable products.

The CBI aims to assess the application within 90 working days of receiving all required documents.

In the context of Irish regulation, if a person meets the ancillary insurance intermediary conditions specified above within the IDD regime, they may not be required to register with the CBI as an ancillary insurance intermediary.

10. What are the ESG requirements for insurance companies?

In general, the ESG requirements are created and put into action by the EU to harmonize ESG standards across Europe.

The Corporate Sustainability Reporting Directive (CSRD) set out regulatory and reporting requirements for insurance companies in Ireland.

As for the CSRD, it broadens the range of companies required to disclose non-financial information.

The CBI has issued guidance on ESG risk management and expects insurance companies to integrate ESG considerations into their overall risk management framework. This includes identifying and assessing ESG risks, developing appropriate risk management strategies, and monitoring and reporting on ESG risks and performance. The CBI has indicated that it will continue to monitor and assess the implementation of ESG requirements by insurance companies in Ireland.

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2.10 Latvia

1. Introduction

The insurance sector in Latvia has grown in the recent years, with life insurance as the market leader.

In 2022, after the economic difficulties caused by the Covid-19 pandemic, the insurance sector in Latvia faced new challenges, with the main influencing factor being the geopolitical situation in the region. Soaring inflation put pressure on insurance and reinsurance premiums, while the sharp rise in interest rates, driven by inflation, encouraged insurers to reassess the composition of their investment portfolios.

The regulatory legal framework for insurance in Latvia is highly influenced by requirements and standards set out at a European Union level.



2. What is the relevant legal framework for insurance companies?

Insurance companies in Latvia are subject to Latvian insurance supervision.

The legal basis for insurance companies in Latvia is the Insurance and Reinsurance Law (Apdrošināšanas un pārapdrošināšanas likums). In this legal framework is transposed EU related to insurance such as Directive 2009/138/EC (**Solvency II**).

The guidelines and recommendations of the Latvian supervisory authority – the Bank of Latvia (**Latvijas Banka**) – shall be taken into account by insurance companies in Latvia as well.

The Insurance Contract Law (Apdrošināšanas līguma likums) is applicable for insurance contracts. The Insurance and Reinsurance Distribution Law is also applicable for insurance intermediaries (such as insurance brokers).

3. What special features apply to the authorization of an insurance company?

In order to operate in the insurance sector, companies need to obtain an insurance license. The insurance license is issued for an indefinite period of time. The insurance license is valid in EU Member States in exercising the right to establish a branch or, if the principle of freedom to provide services is followed, in providing insurance services without opening a branch. Submission for obtaining an insurance license has to be made to the Latvian supervisory authority (the Bank of Latvia) along with an operational plan and other documentation. The Bank of Latvia shall take a decision within six months after the receipt of the submission and the relevant documentation. The Bank of Latvia

informs the EIOPA of the issued insurance license.

The founders of an insurance company (shareholders) may be both natural and legal persons, and public authority or local government.

4. What are the relevant supervisory authorities?

The supervision of insurance and reinsurance activities in Latvia is performed by the Bank of Latvia.

5. What powers does the supervisor have?

The supervisory authorities' powers are set out in the Insurance and Reinsurance Law. The powers of the Bank of Latvia are set out in the aforementioned law, as well as the Insurance and Reinsurance Distribution Law and the Law on the Bank of Latvia (Latvijas Bankas likums).

The Bank of Latvia lays down the procedure for issuing insurance licenses. When issuing an insurance license, the Bank of Latvia is entitled to determine therein specific conditions for the provision of insurance services for the purpose of protecting the interests of the insured persons.

Latvijas Banka performs supervision of insurance activities. The Bank of Latvia is entitled to request insurance companies to conduct a stress test. The Bank of Latvia is entitled to verify the management system of an insurance company and assess risks which may affect its financial stability, as well as to request that the management system is improved and strengthened.

Latvijas Banka performs supervision of the registration of intermediaries – insurance agents, ancillary insurance

intermediaries, insurance brokers.

6. How is the financial constitution of insurance companies regulated?

The financial constitution of insurance companies is regulated by the Insurance and Reinsurance Law.

The procedures for calculating the minimum capital requirement for insurance companies is laid down in Regulation (EU) 2015/35.

In accordance with the Insurance and Reinsurance Law the minimum capital requirement has to be 25 – 45 percent of the solvency capital requirement of an insurance company. The absolute minimum value of the minimum capital requirement for non-life insurance companies is EUR 2.5 million or EUR 3.7 million depending on the classes of insurance that they perform, while for life insurance companies the minimum capital requirement is EUR 3.7 million. For insurance companies which concurrently perform both life and non-life insurance the framework set out in Regulation (EU) 2015/35 and the minimum capital requirement of 25 – 45 per cent of the solvency capital requirement are applicable.

7. What are the permissible legal forms for insurance companies, and how is the business organization regulated?

Only joint stock companies (akciju sabiedrība) registered in Latvia, European commercial companies (Societas Europae, SE), and mutual insurance cooperative undertakings (savstarpējās apdrošināšanas kooperatīvā sabiedrīb) have the right to perform insurance services in Latvia.

Board members and persons responsible for risk management, compliance, internal audit and actuarial functions in insurance companies, as well as managers of the branch of a foreign insurer and persons who create civil obligations for the insurance company in taking major decisions on behalf of the insurance company, need to have acquired the required education and at least three years of work experience in the relevant field, and an impeccable reputation.

Insurance companies have to develop and approve various internal documents and for the implementation of and compliance with these internal documents responsible is the board of the insurance company.

An insurance company shall carry out a stress test at least once a year, in which the potential development scenarios are evaluated and documented.

8. What regulations apply to the insurance contract?

In Latvia, insurance contracts are subject to the Insurance Contract Law (Apdrošināšanas līguma likums). Three types of insurance can be distinguished: namely, insurance contracts can be concluded for insurance against losses (valuable property or interests), civil liability insurance (civil liability of a person), and personal

insurance (life, health, or physical state of a person). An insurance contract is concluded between a policyholder and an insurer. The insurance contract specifies the manner, time period and amount in which the policyholder is obliged to pay the insurance premium. An insurance contract must be drawn up and concluded in the official language of the Republic of Latvia. If a policyholder – natural person – wishes to conclude the insurance contract in a foreign language, such consent of the policyholder must be clearly expressed. If the insurance contract with the policyholder – legal person (or association thereof) – has been concluded in a foreign language, it shall be regarded that policyholder has agreed to conclude the contract in a foreign language, unless he or she proves the contrary. Provisions which are not in contradiction with the applicable laws and regulations of the Republic of Latvia may also be included in an insurance contract.

9. What applies to insurance intermediation?

The involvement of intermediaries in the insurance sector is regulated by the Insurance and Reinsurance Distribution Law. This law provides for several types of intermediaries, including insurance agents, insurance brokers, insurance distributors, ancillary insurance intermediaries, branches of foreign insurance intermediaries.

An insurance broker may commence insurance distribution only after registration in the register of insurance brokers. This register is maintained by the Bank of Latvia. Natural persons who are the responsible persons of an insurance broker or employees directly involved in insurance distribution need to have acquired appropriate higher education and the knowledge and skills necessary for insurance distribution, and an impeccable

reputation.

The share capital of an insurance broker may not be less than EUR 15 000.

10. What are the ESG requirements for insurance companies?

Apart from the EU ESG regulations mentioned above, Latvia has no country-specific requirements for sustainability analysis and reporting standards.

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2.11 Netherlands

1. Introduction

Insurance law in the Netherlands contains a comprehensive set of regulations and obligations for both insurers and policyholders. Both civil law and financial law provide for the applicable legal framework.

Central elements in insurance law are licensing requirements, regulations concerning the solvency and financial sustainability, transparency and disclosure obligations, and measures for consumer protection. And of course, liability and litigation matters are of importance from a legal perspective. Insurance law extends to a broad range of insurance types like, among others, health insurances, vehicle insurances, property insurances and liability insurances. Conducting an insurance business, or operating as an intermediary, is a prohibited activity for which a license is required, or an exemption needs to apply.

In recent years, insurance law has also reacted to relevant trends by incorporating sustainability and environmental, social, and governance (**ESG**) rules. With the most important being the obligations arising from the Sustainable Finance Disclosure Regulation (**SFDR**).



2. What is the relevant legal framework for insurance companies?

In the Netherlands, insurance companies are subject to the Financial Supervision Act (Wet op het Financieel Toezicht, **FSA**). Other relevant laws are contained in the Dutch Civil Code (Burgerlijk Wetboek, **DCC**). The FSA is based on both national and international (European) law, like the Solvency II Directive and the Insurance Distribution Directive (Richtlijn Verzekeringsdistributie, **IDD**). Both of which have been incorporated into national legislation.

Directives may describe minimum or maximum harmonization. Minimum harmonization is the standard to which the supervision and financial regulation must be met, at the very least. Maximum harmonization means that, when incorporating the directive into the national legislation, there is no room for national deviations or additional requirements from the directive.

3. What special features apply to the authorization of an insurance company?

Pursuant to art. 2:27 FSA it is prohibited to conduct the business of a life or non-life insurer without a license of the Dutch Central Bank (De Nederlandsche Bank, **DCB**). An insurer gets its license for a certain branch of insurance. It is possible to gain a license for multiple branches. When applying for a license the applicant will have to prove it meets certain requirements. Those requirements are concerning, among others, the suitability of the day-to-day policymakers, managers who work for the day-to-day policymakers and are responsible for others whose activities may affect the risk profile of the insurer and members of the supervisory body (art. 3:8 FSA). Furthermore, the reliability of the management (art. 3:9

FSA), control structure (art. 3:16 FSA), the management and business operations (art. 3:10 FSA) and the solvability (art. 3:57 FSA) will be assessed. Operating without a license or exemption is considered an offense.

4. What are the relevant supervisory authorities?

The Netherlands Authority for the Financial Markets (Autoriteit Financiële Markten, **AFM**) and the DCB are the supervisory authorities for the financial markets in the Netherlands.

The DCB is the prudential supervisor for insurers based in the Netherlands. Pursuant to art. 1:24 FSA, the DCB, supervises the solidity of financial companies and the stability of financial markets.

The prudential supervision is first and foremost to protect the interests of the insured, as well as against the possibility of non-performance by the insurer of its obligations under the FSA.

The prudential supervision is specified in chapter 3 of the FSA, where, for example, the regulations of the day-to-day policymakers concerning their suitability, trustworthy and integrity is governed (section 3.3.2), as well as the regulations regarding providing the annual report to the DCB (art. 3:71 FSA).

Furthermore, the DCB decides on insurers' access to the Dutch financial market and supervises the financial strength of insurers. For example, based on the Solvency II obligations, the insurers have to report periodically to the DCB on its solvency and financial condition (Solvency and Financial Condition Report).

The DCB also has certain conduct supervisory functions. The DCB analyses the conduct of the insurance's directors and the

company's supervisory directors insofar this could affect the insurers business operations.

The AFM is the conduct supervisor for financial companies, such as insurers, banks, investment firms, stock exchanges and financial advisors. Pursuant to art. 1:25 FSA, this supervision focuses on orderly and transparent market processes, the relationships between market participants and the careful treatment of consumers and investors. It concerns, in particular, the conduct of financial companies towards anyone entering the financial markets.

5. What powers does the supervisor have?

The supervisory authorities (DCB for prudential supervision and the AFM for conduct supervision) investigate offenses of the FSA and are authorized to impose sanctions. There are two kinds of powers that the supervisors have: punitive sanctions and remedial sanctions.

An example of a punitive sanction is a fine. An example of a remedial sanction is a coercive fine, or a designation order. Other sanctions that the supervisors might use are the publication of a warning or the withdrawal of a license. However, it is common that the supervisory authority does not impose a sanction right after an offense.

Generally, it chooses to have a conversation with the offending party or to send a warning or normative letter, first before imposing a (formal) sanction. It is up to the supervisory authority to choose which of the mentioned powers are being used.

6. How is the financial constitution of insurance companies regulated?

An insurer must have a financial buffer in order to be able to absorb setbacks, art. 3:57 FSA. This is to ensure that an insurer has sufficient capital to cover his risks. The capital requirement is further elaborated in art. 65-68 Decree Prudential Rules FSA (Besluit prudentiële regels Wft, **Bpr**) where a further distinction is made between insurers falling under Solvency II (art. 65 Bpr) and insurers with a limited risk scope (art. 66 Bpr). Furthermore, another capital requirement is that the insurer must have a minimal amount of equity (art. 3:53(1) FSA).

7. What are the permissible legal forms for insurance companies, and how is the business organization regulated?

Insurance companies are heavily regulated. Therefore, not any type of legal form may be used. Pursuant to art. 3:20 FSA an insurer domiciled in the Netherlands needs to have the legal form of a public limited company, mutual insurance company or a European company. This obligation arises from art. 17 Solvency II. In addition to the requirement about the legal form, the FSA contains multiple requirements regarding the governance within the insurer.

One of the governance requirements is that at least two natural persons must constitute the day-to-day policies. The insurer must immediately seek for a replacement policy-maker if for some

reason only one remains (art. 3:15 FSA).

An insurer that has the legal form of a public limited company (naamloze vennootschap, **N.V.**) or a European company is obligated to have a supervisory board (Raad van Commissarissen, **RvC**) which consist of at least three members (art. 3:19 FSA) which conduct the internal supervision on the day-to-day policymakers. A mutual insurance company needs to establish a body similar to that of a RvC.

Furthermore, pursuant to Solvency II certain key functions must be fulfilled (e.g., risk management, compliance and internal audit). The persons who manage the company or fulfill key tasks will be asked whether they are suitable and reliable. Also, their (variable) remuneration is regulated.

8. What regulations apply to the insurance contract?

The definition of insurance company is given in the DCC. Pursuant to art. 7:925 DCC an insurance contract is, in short, a product with the following elements: (1) a contract, (2) a premium, (3) an obligation to pay, (4) an uncertain event or circumstance. This product must be offered in the course of its profession or business. The insurance contract is a reciprocal contract that is concluded by offering and acceptance, to which general contract law applies.

The policyholder has multiple obligations under the insurance contract. For instance, the policyholder is obligated to disclose information, before concluding the contract, all facts of which he knows or is ought to know that affect or could affect the decision (or terms) of the insurer to conclude the contract (art. 7:928 DCC). The duty to inform the insurer remains throughout the contract.

9. What applies to insurance intermediation?

A lot of insurers make use of insurance intermediaries. Insurance intermediaries are involved with the insurance contract in different ways (e.g., enter into an insurance agreement with the client on behalf of the insurer, or only provide information about the insurance). However, generally the initial contact with the client is first made with the intermediary. Furthermore, the intermediary may manage the insurance (e.g. settling claims and collecting premiums). The activities of an intermediary, just like an insurer, are regulated in the FSA and are prohibited without a corresponding license. Intermediaries generally qualify as a financial services providers.

There are different types of insurance intermediaries. There are authorized agents, insurance advisors and insurance brokers.

An authorized agent concludes, in its exercise of a profession or business as an agent of an insurer, contracts on behalf of the insurer.

An insurance advisor advises, in its course of a profession or business, one or more specific insurances to a consumer or client.

An insurance broker arranges and concludes insurance contracts between the client and the insurer, or assists in the administration and the execution of the insurance contract.

The difference between an authorized agent and an insurance broker is that the insurance broker may not conclude the insurance on its own behalf. Furthermore, the insurance broker generally also is an insurance advisor.

10. What are the ESG requirements for insurance companies?

There are multiple ESG requirements of insurance companies. Under the Sustainable Disclosure Regulation (**SFDR**) there are multiple disclosure rules regarding sustainability claims. According to art. 1 SFDR the regulation lays down harmonized rules for financial market participants and financial advisers on transparency with regard to the integration of sustainability risks and the consideration of adverse sustainability impacts in their processes and the provision of sustainability-related information with respect to financial products.

Besides the European regulations, there is no specific national law which obliges the insurance companies to ESG related duties.

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2.12 Poland

1. Introduction

Current Polish regulation of insurance sector is based (i) from civil law and contractual perspective – on section of the Polish Civil Code dated 23 April 1964 (as amended) regulating the insurance contracts, which shall be interpreted with consideration of the relevant current jurisdiction of the Supreme Court, and (ii) from regulatory perspective – mainly on Act on Insurance and Reinsurance Activity dated 11 September 2015 (**IARA Act**). There are also other legal acts related to specific areas of insurance sector, e.g., mandatory third party liability insurance.

In Poland activity in the field of insurance, reinsurance and insurance intermediation is highly regulated (supervised by Polish Financial Supervision Authority/*Komisja Nadzoru Finansowego (KNF)*) and complex, with civil courts having significant impact on directions of legal interpretations and market practice.

As a rule, under Polish law, insurance undertakings may engage in other activities only if these are directly related to the insurance activity. This is to ensure that claims of insured persons are not jeopardized by risks resulting from other business operations. For the same reason life insurance and health insurance may not be operated together with other lines of insurance business.

Accordingly, these lines of insurance may only be offered by legally independent companies, resulting into split of Polish insurance sector into (i) life insurance business and (ii) property insurance business.



2. What is the relevant legal framework for insurance companies?

Polish law distinguishes between social insurance, which is covered by statutory law, and business insurance, which is based on contracts. Insurance companies operate within the scope of insurance activity, for which the legal framework is determined primarily by the IARA Act, being inter alia implementation of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 (**Solvency II**). The IARA Act introduces regulations regarding the conduct of personal and non-life insurance activities, reinsurance activities, defines the rules for the exercise of the profession of actuary, insurance and reinsurance supervision, and the organization and functioning of insurance economic self-government. Furthermore, the legal framework, that enables KNF having several powers in the field of supplementary supervision over the proper functioning of the insurance market is outlined by the Act of 15 December 2017 on insurance distribution, the Act of 22 May 2003 on insurance mediation, the Act of 15 April 2005 on supplementary supervision of credit institutions, insurance companies, reinsurance companies and investment companies included in a financial conglomerate.

The insurance sector is also a subject of Directive 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution. Additionally, the EU authorities are currently working on a draft of Insurance Recovery and Resolution Directive (**IRR**), which aims to increase the resilience of the insurance and reinsurance sector in order to better protect policyholders, taxpayers, the economy and financial stability in the EU. The draft assumes that Member States will have 18 months to implement the provisions of the directive, therefore, once the

above directive is introduced, it will be necessary to implement its provisions into Polish legal system by amending the abovementioned local legal acts.

3. What special features apply to the authorization of an insurance company?

Insurance business is a highly regulated. The basic condition for exercising insurance activity is obtaining a permit issued by KNF. The above authority may request information about the ownership structure, financial situation, results of previous activities. The insurer must submit a 3-year business plan, specifying the type of insured risks, the reinsurance program, sources of financing, administrative costs and organization of insurance activities.

The insurer shall commence operations within 12 months from obtaining the above permit. The date of commencement shall be deemed the date of conclusion of the first insurance contract. If a company ceases its insurance activity, it is obliged to notify KNF within 7 days.

Noteworthy, insurers that have obtained authorization to conduct insurance activity in other EU countries are allowed to pursue their activity in Poland (after notifying relevant supervisory authority in registration country).

A foreign insurer (which should be understood as an entity registered in a non-EU country) may conduct insurance activity in Poland only through the main branch, subject to Polish law, after being entered in the National Court Register and

obtaining relevant permit from KNF. A foreign insurer shall provide a deposit in the amount of the minimum guarantee capital. The liability of a foreign insurer for the liabilities of its branch covers all

its assets. In a situation where its capital reserves are too small to cover the insurance benefits to be paid out to the insured entities, the resulting shortage is supplemented with money from the deposit.

4. What are the relevant supervisory authorities?

At the national level, supervision of insurance companies is exercised by KNF in order to protect the interests of policyholders, insured or beneficiaries of insurance contracts. KNF's powers cover both the authorization to commence the activity and control over pursuant actions, after the entity concerned has obtained authorization to carry on with the activity. A characteristic feature of insurance supervision is that it combines two elements: control and the possibility of authoritative influence on the supervised institution.

5. What powers does the supervisor have?

Supervision measures are vested in KNF pursuant to the IARA Act. The most important powers of KNF with regard to insurance companies are as follows: issuing a permit to carry out insurance activities, authorizing a change in the territorial scope or material scope of activities of the insurer, consent to appointment of all members of the board of directors, approval of the statutes of the insurance undertaking (the approval is required also in the event of amendments of the statutes) prior to registration, objecting to the acquisition of shares of the insurance company, the withdrawal of an authorization to conduct the insurance activity, imposing financial fines or suspending members of the board of directors.

One of the tools used by the KNF in the insurance supervision process is the risk assessment framework (**BION**) of insurance and reinsurance companies. It is a holistic process using all available information held by the supervisor about the insurance/reinsurance undertaking, including information obtained from licensing activities, analytical supervision activities, and on-site inspections at the insurance or reinsurance undertaking, as well as enquiries/surveys addressed to the insurance or reinsurance undertaking. The result of the process has an impact on the possibility of dividend payment and on the control activity of the KNF in the insurance company (the higher the score obtained by the company, the more control procedures KNF will exercise).

Regarding the possibility of dividend payment in insurance companies, it is noteworthy, that an entity has to meet criteria specified by the KNF in a statement on dividend policy, issued by KNF at the end of each calendar year. The statement on dividend policy is a recommendation which is not legally binding, however, in practice a non-compliance by the entity concerned may result in retorsions from the regulator. KNF's statement limits the amount of possible dividends to be paid by the insurance institution based on coverage ratios.

One of the key legal instruments used by the KNF to supervise the insurance/ reinsurance market are its general recommendations (PI: rekomendacje) (addressed to all entities in a given sector) They relate to such matters as e.g., examination of product adequacy, claims handling from vehicle insurance or the process of determining and paying compensation for non-material damage. The recommendations are not legally binding, however,

due to the fact that they are regulator's guidelines issued in order to ensure compliance of insurance companies' activities with the law, to prevent the interests of policyholders, insured persons or insurance contract holders from being violated, and to limit the risk occurring in the activities of insurance companies, their non-application may in practice trigger regulator's retorsions toward the non-compliant insurance company.

Furthermore, one of the most important tools for performing supervisory activities by KNF is the possibility of issuing individual recommendations (PI: zalecenia), addressed specifically to a given entity.

6. How is the financial constitution of insurance companies regulated?

In order to be able to operate, an insurance company must have its own funds in their disposal in the amount not lower than the solvency margin and the minimum amount of guaranteed capital (each amount shall be considered separately).

These funds and resources have to be free from any liabilities. The guaranteed capital is defined as the greater of the values of a) 1/3 of the solvency margin, b) the minimum amount of the guaranteed capital. The method of calculating the minimum guarantee capital and solvency margin for individual branches and classes of insurance is determined by the Minister of Finance.

The amount of the above indicators depends on the sum of the collected premiums and the insurer's risk (i.e., insurance contracts it concludes with customers). It is important that in fact both indicators are determined by the insurer itself (they

are not imposed by any authority). The task of calculating them rests with the actuary, who performs based on guidelines from the Ministry of Finance (**MFN**). The amounts thus determined are subject to the control of the MFN.

7. What are the permissible legal forms for insurance companies, and how is the business organization regulated?

An insurance undertaking may pursue insurance activities in form of a public joint stock company (Spółka Akcyjna), a mutual insurance company (Towarzystwo Ubezpieczeń Wzajemnych) or a European company (spółki europejskiej; SE) as defined in Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company. The same requirements apply to a reinsurance undertaking.

Based on EU law, local legislator introduced the prohibition on merging life insurance companies with companies providing insurance of other kind. This is due to the differentiation of risk in life and other insurance. The legislator imposed additional financial requirements for life insurers.

8. What regulations apply to the insurance contract?

By the insurance contract, the insurer undertakes to bear the risk of paying a specified sum of money in the event of an accident provided for in the contract (i.e., to provide insurance coverage) and to pay this sum in the event of an insurance accident.

In exchange for the protection provided, the policyholder undertakes to pay the insurance premium.

In most cases, an insurance contract is concluded by accepting an offer prepared by the insurer; in relations with consumers such contracts are, as a rule, adhesive.

The provisions regarding the insurance contract, including mandatory provisions of such contract, are included in the Polish Civil Code with separate regulations for property insurance and personal insurance. Noteworthy is also the division between optional insurance and compulsory insurance. In case of the latter, one may carry out certain activities, only when having applicable insurance such as e.g., third-party liability insurance for car owners and certain regulated professions (e.g., lawyers, auditors etc.), compulsory insurance for farmers (including also third-party liability insurance).

9. What applies to insurance intermediation?

Insurance brokerage is an activity related to the presentation of information, submission of offers or the performance of preparatory work for the conclusion of an insurance contract (reinsurance) or participation in the administration of such contracts. Insurance brokerage is regulated activity and requires obtaining a license from KNF and entry into the special public register. Registration with the competent authority in one of the Member State enables the brokerage undertaking to carry out its activities in other Member States. Under Polish law there are two organizational and legal forms of insurance brokerage: agents and insurance brokers. The main difference between these two professions is the party for whom they provide their services. Agents are bound by the contract with the insurance company whom they represent, whereas the broker works for the benefit of a person interested in conclusion of the insurance contract. The

activity of agents and insurance brokers is regulated by IARA Act. One can also distinguish a person performing agency activities (Osoba wykonująca czynności agencyjne – the OWCA) who works in a close cooperation with an agent or a broker but does not have a license. However, to become an OWCA it is necessary to pass the required test and obtain applicable permission from KNF.

10. What are the ESG requirements for insurance companies?

Identifying, understanding and managing risks are at the core of the insurance industry. All risks have various dimensions, but the environmental, social and governance profile of a risk is a dimension that has only recently found its way into risk analysis in the industrial insurance segment.

The risk associated with ESG factors should be taken into account in the assessment of credit risk, policies, and procedures of financial institutions. ESG factors assume that business should bring broadly understood benefits to all stakeholders, local communities and the environment, ensuring sustainable development and stability.

Investment firms and insurance distributors have the central role in steering the financial system towards sustainable development.

Insurance companies should collect the data from their customers about their preferences and take them into account in the assessment of the scope of recommended financial instruments and insurance products, i.e., in the product selection process and the adequacy assessment.

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2.13 Switzerland and Liechtenstein

1. Introduction

Switzerland has traditionally been a hub for the global insurance industry. Located in the heart of Europe, the country offers a favorable legal, tax and political environment for insurers, with many of the world's major players having established a presence in the country.

The Swiss private insurance industry can be divided into five segments: life insurance, non-life insurance, supplementary health and accident insurance, reinsurance and captives.

Insurtechs are reshaping traditional insurance products and distribution channels. The 2024 revision of the Swiss Insurance Supervision Act (**ISA**) brings significant regulatory easing for Insurtechs, creating new opportunities for such companies.

Switzerland's regulatory framework is well established and equivalent to the EU's solvency regime. Moreover, Switzerland has entered into a direct insurance treaty with the EU (non-life insurance).

Switzerland and **Liechtenstein** (an EEA member state) have entered into a direct insurance treaty that mutually grants full market access. Liechtenstein is an interesting hub for Pan-European insurance operations. With local presences in Switzerland and Liechtenstein and excellent relationships to the regulators, KPMG is an advisor to insurers considering operations in these countries.



2. What is the relevant legal framework for insurance companies?

Switzerland has a regulatory framework for private insurance and reinsurance that mainly consists of the following legislative acts: the Federal Insurance Supervision Act (Versicherungsaufsichtsgesetz, **ISA**), the Federal Ordinance on the Supervision of Private Insurance Companies (Aufsichtsverordnung, **ISO**), and the FINMA-Ordinance on the Supervision of Private Insurance Companies (Aufsichtsverordnung-FINMA, **ISO-FINMA**). Additionally, FINMA provides further prudential regulation through various circulars and notifications, which are not legally binding but are often considered de facto binding for insurance companies. Switzerland's insurance supervision regime has been partially revised as per 2024. This revision increases policyholder protection (including a new supervision of insurance intermediaries), reflects international developments, aligns qualified life insurance products with the Financial Services Act, and introduces a reorganization law.

The Federal Insurance Contract Act (Versicherungs-vertragsgesetz – **ICA**), which was also partially revised in 2022, governs insurance contracts and regulates the legal relationship between the different parties of an insurance contract.

Thus, Switzerland offers a modern, effective and yet flexible as well as relatively liberal legal and regulatory framework for the insurance industry.

3. What special features apply to the authorization of an insurance company?

Any insurance company that falls under the scope of the ISA must obtain an insurance license from FINMA before engaging in any insurance activities (Article 3(1) ISA). To obtain a license, the insurance company must submit a formal application to FINMA, along with a

regulatory business plan as defined by ISA (Article 4(1) ISA). Additionally, different financial and organizational criteria must be fulfilled.

FINMA has developed an electronic survey and application platform called EHP, which allows for the electronic submission of encrypted supervisory data and license applications to FINMA.

The fees for obtaining an insurance license are regulated by the FINMA Ordinance on the Levying of Supervisory Fees and Charges and range from CHF 5,000 to CHF 50,000.

4. What are the relevant supervisory authorities?

FINMA serves as the supervisory authority for financial institutions, including insurance and reinsurance companies, as well as insurance intermediaries within the scope of the ISA.

Established in 2009 by the Federal Act on the Swiss Financial Market Supervisory Authority (**FINMASA**), FINMA is a unified supervisory authority that oversees various financial institutions, such as banks, securities firms, managers of collective assets, fund management companies, and funds/collective investment schemes. Its primary responsibilities include protecting the interests of policy holders, creditors, and investors, as well as ensuring the proper functioning of financial markets. To carry out its duties, FINMA employs various instruments, such as licensing, supervision, enforcement, and regulation.

Please note that non-private insurance companies are supervised by other authorities under special federal legislation. For instance, insurance companies offering compulsory health insurance are supervised by the Federal Office of Public Health, while cantonal supervisory bodies oversee pension funds.

5. What powers does the supervisor have?

FINMA possesses a wide range of supervisory and enforcement tools that are applied in accordance with the principle of proportionality to uphold supervisory law (as outlined in Article 24 FINMASA). For instance, if a supervised insurance undertaking no longer fulfils the license requirements or seriously violates regulatory provisions, FINMA can revoke its license (as per Article 37(1) FINMASA). Additionally, FINMA can initiate regulatory procedures and apply protective measures or sanctions under Article 29 et sqq. of the FINMASA. These protective measures or sanctions may include a reprimand in a declaratory ruling (as per Article 32 FINMASA), specific orders to restore compliance with and prevent further breaches of the law or regulation (as per Article 31 FINMASA), and the publication of the supervisory ruling (as per Article 34 FINMASA).

Such orders may require the development and implementation of a risk management and risk control system that is suitable for identifying, limiting, and monitoring the legal and reputational risks associated with certain business activities.

6. How is the financial constitution of insurance companies regulated?

According to Art. 7-9 ISO, an insurance company domiciled in Switzerland must have a minimum capital of between CHF 3m and 20m, depending on the type of insurance it conducts. In addition, the insurance company must have sufficient free and unencumbered own funds in respect of all its activities (solvency margin). When determining the solvency margin, account must be taken of the risks to which the insurance undertaking is exposed, the types of insurance, the volume of business, the geographical scope, and internationally recognized principles.

In addition, pursuant to Art. 10(1) ISA, an insurance undertaking must have, in addition to its capital, an organizational fund enabling it to cover, in particular, the costs of establishment and development or extraordinary expansion of its business. The amount of the organizational fund usually corresponds to up to 50% of the minimum capital pursuant to Article 8 ISA at the start of business.

It is worth noting that the EU recognizes the financial regulation of insurance companies in Switzerland as equivalent to Solvency II. This makes it easier to conduct insurance business with EU and EEA countries. Moreover, FINMA has concluded numerous arrangements on supervisory cooperation.

7. What are the permissible legal forms for insurance companies, and how is the business organization regulated?

Under Article 7 ISA insurance companies must be established in the legal form of either a company limited by shares (Aktiengesellschaft, AG) or a cooperative (Genossenschaft).

The persons responsible for its direction, supervision, control, and management must pass FINMA's fit and proper test, which requires them to be of good standing and provide assurance of proper business conduct (Article 14 ISA). The company must also be organized in a manner that allows it to recognize, limit, and monitor all significant risks (Article 22 ISA), with detailed provisions on risk management and liquidity planning outlined in the ISO and the FINMA-Circular 2017/2 "Corporate Governance – Insurers".

In addition, the company must appoint a responsible actuary, who must have access to all business records to ensure compliance with the principles of Articles 23 and 24 ISA.

The company must also establish an effective internal control system and an independent internal audit function (Article 27 ISA and FINMA-Circular 2017/2) and appoint a licensed audit firm to review its conduct of business (Article 28 ISA).

8. What regulations apply to the insurance contract?

The validity of an insurance contract is not tied to formal requirements but customarily will be concluded in written form.

The ICA encompasses a range of both obligatory and discretionary provisions pertaining to insurance agreements. In cases where the ICA does not provide specific regulations, insurance contracts are governed by the provisions outlined in the Swiss Code of Obligations (CO). However, it is important to note that reinsurance contracts are exclusively subject to the broader rules outlined in the CO.

When entering into insurance contracts, the insurance company is required to furnish the insured party with a policy that outlines the

rights and responsibilities of both parties, as stipulated in Article 11 ICA.

Furthermore, prior to finalizing the contract, the insured party must be provided with information regarding the identity of the insurer and the primary terms of the insurance agreement. Failure to fulfill this duty to inform by the insurer can grant the insured party the right to terminate the contract, as detailed in Article 3a ICA.

9. What applies to insurance intermediation?

In light of increasing consumer protection expectations, the revised ISA introduces a new supervision regime for independent insurance intermediaries (brokers). Untied intermediaries may only operate if they are entered in the public FINMA register of intermediaries (registration obligation). The registration is subject to fit and proper criteria.

Insurance brokers have a fiduciary relationship with policyholders. They must take care of their interests and be free (independent) to choose the optimal insurance product. They may therefore not be legally, personally or economically tied to an insurance company.

All other intermediaries are considered to be tied. The requirements for untied intermediaries also apply to tied intermediaries (albeit without the obligation or option to register). However, direct supervision of tied intermediaries is not the responsibility of FINMA but of the insurance companies. For insurance companies, this entails considerable effort.

Tied and untied activity at the same time is prohibited (type constraint). Intermediaries must therefore align their business model uniformly and have this reflected in their contracts.

Both intermediaries and insurance companies need to make considerable adjustments in response to the new rules on intermediary supervision.

10. What are the ESG requirements for insurance companies?

At the international level, Switzerland, as a UN member state, has adopted the Sustainable Development Goals (SDGs) and ratified the Paris Climate Agreement. These intergovernmental agreements aim to secure the livelihoods of future generations by enabling a shift towards a sustainable economy and society.

Insurance companies with total assets exceeding one billion Swiss Francs are required to disclose financial risk information in accordance with the TCFD (Task Force on Climate-related Financial Disclosures) as part of their annual reporting. Starting from January 2024, this obligation will be extended to all publicly traded companies, banks, and insurance companies with more than 500 employees, total assets exceeding CHF 20m, or revenue exceeding CHF 40m.

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2.14 United Kingdom

1. Introduction

The history of the insurance sector in the United Kingdom is a captivating tale of innovation, resilience, and adaptation spanning centuries. Originating from humble beginnings in the bustling streets of London's coffeehouses, the insurance industry evolved into a robust and integral part of the nation's financial landscape. From its early roots in the 17th century, when Lloyd's of London emerged as a gathering place for merchants and shipowners seeking protection against maritime perils, to the establishment of the world's first life insurance company in the 18th century, the UK insurance sector has witnessed pioneering milestones that set the groundwork for its future growth.

Over time, the sector expanded its scope to cater to a wide array of risks faced by individuals, businesses, and industries, providing stability and security in an everchanging world.

The UK general insurance market is being influenced by several significant trends. These include gig economy insurance, electric vehicles, embedded insurance, multiline insurance, subscription insurance plans, and hyper-personalized products.

Embedded insurance, for instance, involves the integration of insurance with products from third-party providers, typically available for online purchase. This approach aims to offer customers a smooth and straightforward buying experience while keeping costs low. In the UK general insurance market, the primary lines of business include motor, property, MAT (Marine, Aviation, and Transport), liability, non-life PA&H (Personal Accident and Health), financial lines, and miscellaneous coverage like travel and pet.

The year 2013 saw comprehensive reforms in the regulation of the financial services sector, which also encompassed the insurance industry. The regulatory authority responsible for overseeing the UK financial services, known as the Financial Services Authority (**FSA**), was replaced by two distinct regulatory bodies, namely the Financial Conduct Authority (**FCA**) and the Prudential Regulation Authority (**PRA**). This new regulatory framework is commonly referred to as the 'twin peaks' system of regulation.



2. What is the relevant legal framework for insurance companies?

The relevant legal framework for insurance companies in the UK is primarily governed by the Financial Services and Markets Act 2000 (**FSMA**). Insurance companies are bound also by the regulations and guidelines outlined in the FCA Handbook and PRA Rulebook ("Rules and Guidance"). These rules have been significantly influenced by EU insurance directives, which aimed to establish a unified system of insurance regulation within the EU. Despite the UK's departure from the EU, much of this regulatory framework has been retained thus far. The Solvency II directive has been implemented into UK law (PRA Rulebook) and remains in effect to date. A reform of the Solvency II provisions is currently underway, so changes are to be expected in the future.

3. What special features apply to the authorization of an insurance company?

To establish a new insurance company, the interested party must submit an authorization application to the PRA. This application seeks permission to conduct regulated activities under Part 4A of the Financial Services and Markets Act.

For insurers, which are firms intending to engage in insurance contracts, the application should include various essential components, such as a regulatory business plan, financial projections, details of financial resources, information about systems, controls, and compliance arrangements, as well as details of personnel, including key individuals who will perform 'controlled functions,' and information about the controllers of the applicant.

The PRA evaluates the applicants from a prudential perspective,

focusing on their financial stability and risk management, while the FCA assesses them from a conduct perspective, emphasizing consumer protection and market integrity. In both cases, the relevant regulator will scrutinize whether the applicant, if authorized, would meet the applicable Threshold Conditions both during the authorization process and on an ongoing basis.

4. What are the relevant supervisory authorities?

The relevant supervisory authorities in the UK for the financial services industry, including insurance companies, are:

PRA: The PRA is a part of the Bank of England and is responsible for the prudential regulation of banks, building societies, credit unions, insurers and major investment firms. Its primary objective is to promote the safety and soundness of these financial institutions and to ensure the stability of the UK financial system.

FCA: The FCA is an independent regulatory authority responsible for regulating the conduct of financial services firms. This includes insurance companies, banks, investment firms, mortgage providers, and consumer credit firms. The FCA's primary goal is to protect consumers, ensure market integrity, and promote effective competition in the financial markets.

5. What powers does the supervisor have?

In the UK, the supervisory authorities, primarily the PRA and the FCA, have a range of powers and tools to regulate and oversee the financial services industry. These powers are granted to them under various legislation and regulations and are used to ensure the stability of the financial system, protect consumers, and maintain market integrity.

For the PRA, powers and measures consist of:

- Statutory notices and decision-making processes.
 - Imposition of financial penalties.
 - Implementation of suspensions and restrictions.
 - Settlement procedures.
 - Public disclosure of regulatory actions taken.
 - Conducting interviews in accordance with section 169(7) of the Financial Services and Markets Act.
- For the FCA powers and measures consist of:
- Statutory notices to inform the public.
 - Revoking or varying a firm's authorization to conduct regulated activities.
 - Prohibiting individuals from engaging in regulated activities.
 - Temporarily suspending firms and individuals from participating in regulated activities.
 - Imposing fines on firms and individuals found in violation of its rules or involved in market abuse.
 - Making public announcements.
 - Publishing detail of warning, decision and final notices.

- Applying to the courts for injunctions, restitution order, winding-up and other insolvency orders.
- Initiating criminal prosecutions.
- Issuing warnings and alerts about unapproved firms and individuals and requesting web hosts to deactivate associated websites.

6. How is the financial constitution of insurance companies regulated?

The financial constitution is regulated by the transposed Solvency II regulation set down in the PRA rulebooks. Solvency II implements risk-based capital requirements through three pillars.

Pillar I: It sets quantitative requirements and establishes a market-consistent framework for valuing assets and liabilities. This includes the minimum capital requirement for insurers or reinsurers to conduct business and the solvency capital requirement to meet their obligations.

Pillar II: It mandates insurers to adhere to minimum standards for corporate governance and risk/capital management. Regular completion of an Own Risk and Solvency Assessment is also required.

Pillar III: It involves disclosure requirements to supervisors and the public regarding the risk and capital demands.

Please note that the prudential regulation reforming the Solvency II provisions are expected to be passed within 2023.

7. What are the permissible legal forms for insurance companies, and how is the business organization regulated?

The permissible legal forms for insurance companies in the UK typically include:

- Public Limited Company (**PLC**)
- Private Limited Company (**Ltd**)
- Mutual Insurance Company
- Lloyd's Syndicate
- Branch of an Overseas Company

Additionally, the Companies Act 2006 sets out general company law requirements that all companies, including insurance companies, must follow in terms of accounting, corporate governance and reporting.

8. What regulations apply to the insurance contract?

The Unfair Terms in Consumer Contracts Regulations 1999 are applicable to consumer insurance contracts entered into prior to October 2015. The Consumer Rights Act 2015 applies to consumer insurance contracts entered into from October 2015, and introduced the concepts of transparency and prominence of exclusions and limitations to exclude them from an assessment of fairness. Terms that are deemed unfair under these will be unenforceable. It is crucial to exercise caution when using standard terms of business in contract formation, as they are not subject to individual negotiation and may be seen as unfair if they create a significant imbalance between the rights and obligations of the parties, to the detriment of the consumer.

For non-consumer insurance contracts, the insured is bound by the duty of fair presentation, which is implied by the Insurance Act 2015. In contrast, for consumer insurance contracts, the FCA's new Consumer Duty require firms to act to deliver good outcomes for customers.

Moreover:

The FCA's Insurance Conduct of Business Sourcebook (**ICOBS**) outlines the information that must be provided in writing to consumers before a policy is finalized. It also includes rules on cancellation rights, renewal of policies and specific requirements for various insurance products, such as home and motor insurance renewal pricing rules.

The Product Intervention and Product Governance Sourcebook (**PROD**) establishes a product approval process for insurance products, including ongoing reviews to ensure the product meets fair value criteria. This process involves identifying a target market, conducting product testing, and considering other relevant factors such as outcome testing.

9. What applies to insurance brokerage?

In the UK, insurance brokerage is regulated under the Financial Services and Markets Act 2000 and overseen only by the Financial Conduct Authority.

In the UK, insurance brokerage is regulated under the IDD which has been adopted into UK law thus being still binding the UK despite it having left the EU.

10. What are the ESG requirements for insurance companies?

The main legislative sources governing ESG practices in the UK include the UK Corporate Governance Code 2018 (**UKCGC**), the Companies Act 2006, the Listing Rules, the Disclosure Guidance and Transparency Rules (**DTRs**), the UK Stewardship Code 2020 (**UKSC**), the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008, the Climate Change Act 2008 (**CCA 2008**), the Equality Act 2010, the Modern Slavery Act 2015 (**MSA 2015**), and the Companies (Strategic Report and Directors' Report) Regulations 2022 (Regulations).

The legal landscape for ESG is quite fragmented, with various laws and regulations that apply to all businesses, regardless of their size.

Regarding ESG disclosure regulations, the Companies Act, the UKCGC, and the Taskforce on Climate-related Financial Disclosures (**TCFD**) play a significant role. Under the Companies Act, large and medium-sized companies are required to publish an annual strategic report containing information on various ESG-related matters. This includes the impact of the business on the environment, disclosures about employees, social and community issues, human rights matters, and the company's policies in relation to each of these areas.

Moreover, Section 172 of the Companies Act mandates directors of UK companies to consider the interests of employees, foster business relationships, assess the impact of the company's

operations on the community and the environment, and uphold a reputation for high standards of business conduct. These provisions emphasize the importance of ESG considerations in the decision-making process of company directors.

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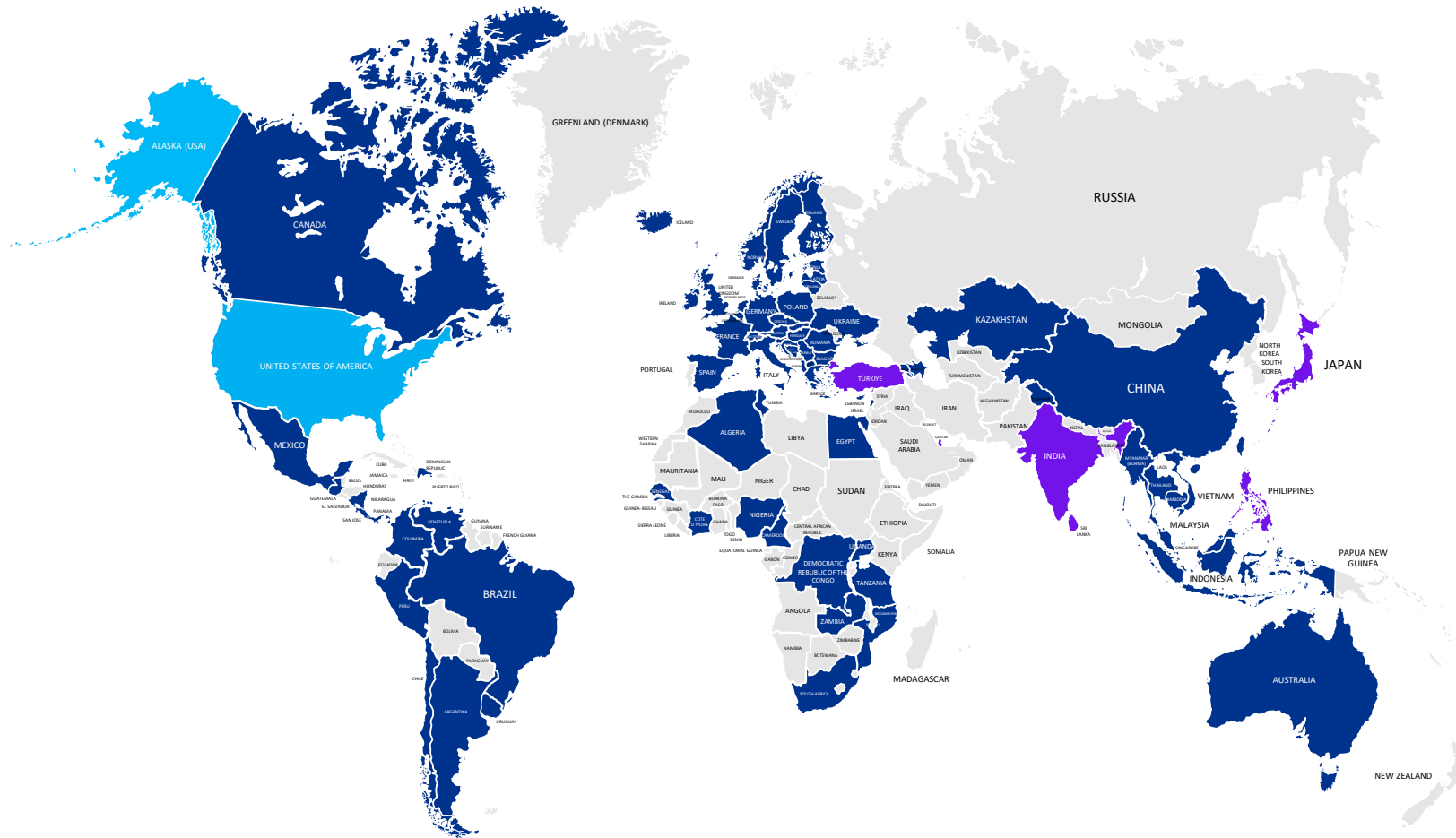
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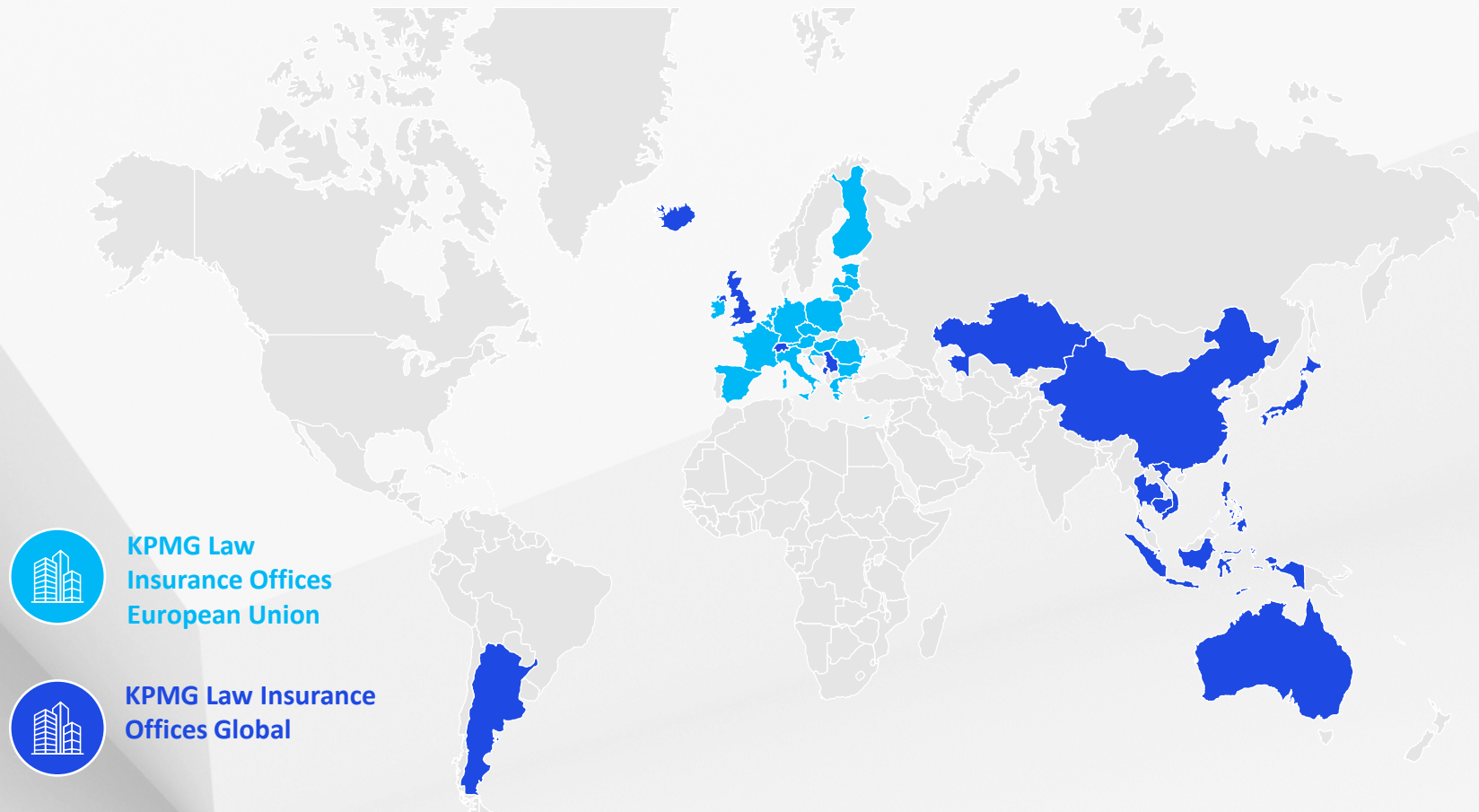


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Finland	Serbia
France	Singapore
Germany	Spain
Greece	Switzerland
Hungary	Taiwan
Iceland	Thailand
Indonesia	UK
Ireland	Vietnam

3.1 Australia

1. Introduction

Steeped in a tradition of resilience and innovation, Australia's insurance industry stands as a pillar of financial protection, offering a comprehensive range of coverage options that safeguard against life's uncertainties. The insurance sector in Australia is a dynamic and adaptive industry, driven by regulatory compliance, technological advancements, and a commitment to providing reliable financial protection to individuals and businesses alike.

As a key player in the nation's financial services ecosystem, the insurance sector plays a crucial role in mitigating risk and fostering economic stability. Guided by a regulatory framework that prioritizes consumer protection and sound governance, insurers in Australia uphold the highest standards of integrity, transparency, and customer-centricity. The general insurance industry in Australia has been the most profitable in the world for almost 20 years.

Australia's insurance market can be roughly categorized into three segments: general insurance, health insurance, and life insurance. These segments are quite distinct, and larger insurers typically specialize in one particular segment. Moreover, specialty lines, such as marine, aviation, and cyber insurance, demonstrate the industry's adaptability in addressing emerging risks in an ever-changing world.

The insurance sector in Australia is subject to strict regulation by the Australian Prudential Regulation Authority (**APRA**) and the Australian Securities and Investments Commission (**ASIC**). These regulators ensure that insurers operate prudently, safeguard policyholders' interests, and comply with regulatory standards.

Australian regulators are transitioning from monitoring the implementation of post-Financial Services Royal Commission regulatory reforms to continuous scrutiny of compliance.

ASIC will primarily focus on the following areas: unfair contract terms, claims handling and settlement services, product design and distribution obligations, and pricing commitments.



2. What is the relevant legal framework for insurance companies?

The insurance industry in Australia is governed by regulating authorities as well as legislation. Usually, the regulations governing insurance business in Australia are at the Commonwealth level, rather than being based on individual State laws. The activity of insurers and reinsurers is primarily regulated by the following legislation:

The Insurance Act 1973 (Cth) and Insurance Regulations 2002 (Cth) establish the foundation for the authorization and prudential regulation of general insurance and reinsurance operations. Furthermore, the Insurance Contracts Act 1984 (Cth) and Insurance Contracts Regulations 2017 (Cth) govern most of the life and general insurance contracts, excluding marine, workers' compensation, compulsory third-party motor, and private health insurance.

There is also the Corporations Act 2001, which is a comprehensive federal law that regulates the formation, operation and conduct of insurance companies. In respect of different insurance branches such as marine or private health different special regulatory provisions exist.

Furthermore, there are the General Insurance Code of Practice and Life Insurance Code of Practice. These are enforceable voluntary industry codes that outline standards of service, disclosure and claims handling for general and life insurance products.

3. What special features apply to the authorization of an insurance company?

Under the Insurance Act 1973 (Cth), it is an offence to conduct insurance business in Australia without the proper authority. Obtaining a license is necessary for an entity to operate as an insurer and offer insurance products and services to the public. The terms of

the license will differ depending on the specific insurance business.

The process involves obtaining an Australian Financial Services License (AFSL) specific to insurance activities from ASIC and then applying for a license from APRA. Typically, the assessment process will require a minimum of 12 months from the receipt of the application. The process requires the entities to meet strict financial, risk, governance and capability requirements and demonstrate their ability to meet all Prudential Standards.

4. What are the relevant supervisory authorities?

Australian insurance legislation is primarily overseen by Australian Prudential Regulatory Authority and Australian Securities and Investments Commission, with key monitoring roles held by authorities such as Australian Transaction Reports and Analysis Centre (AUSTRAC) and Australian Financial Complaints Authority (AFCA).

APRA is concerned with maintaining the safety and soundness of financial institutions, so that the community can have confidence that they will meet their financial commitments under all reasonable circumstances. APRA's focus is on ensuring the stability and safety of the financial institutions to protect the interests of depositors, policyholders and members.

ASIC is the corporate regulator in Australia. It oversees and regulates companies, financial markets, financial services providers, and consumer credit.

5. What powers does the supervisor have?

APRA grants licenses and authorizations to financial institutions, ensuring they meet strict prudential standards and risk management requirements before they can operate. Furthermore, it sets prudential

standards for the general insurance industry. APRA possesses statutory powers to address breaches and non-compliance with legal and regulatory requirements, including:

Extensive investigative powers. Authority to disqualify individuals from acting as responsible persons. Ability to seek injunctive relief. Power to impose conditions on an institution's license or issue directions related to specific matters. Recapitalization direction powers. Capability to apply to the Federal Court for various judicial penalties. In extreme cases, appointing an administrator to manage the entity.

The APRA collects levies and industry fees to help fund elements of its regulatory work and other related government organizations.

ASIC has the authority to initiate enforcement actions and pursue a range of remedies, which may vary depending on the severity and impact of the misconduct committed by licensees and corporations. These remedies available to ASIC include comprehensive investigative powers, issuing product intervention and stop orders, imposing infringement notices, revoking, suspending, or altering conditions of an AFSL, and applying to the Courts for various judicial penalties.

6. How is the financial constitution of insurance companies regulated?

The financial constitution of insurance companies in Australia is regulated through a combination of prudential supervision by the APRA under the Prudential Standards. The regulatory framework aims to ensure the financial stability, solvency, and soundness of insurance companies, thereby safeguarding the interests of policyholders and maintaining the overall integrity of the insurance sector. The standards and requirements that insurance companies must meet cover areas such as capital adequacy, accountability, risk management, governance, liquidity, and asset-liability management. Insurance companies are expected to maintain sufficient capital reserves to ensure they can meet their insurance liabilities and withstand adverse economic conditions.

7. What are the permissible legal forms for insurance companies, and how is the business organization regulated?

Insurance companies can take various legal forms to operate in Australia and their business organization is regulated primarily through the Corporations Act 2001:

An insurance company can be incorporated as a public company limited by shares. This legal form allows the company's shares to be traded on the stock exchange, enabling it to raise capital from public investors.

Alternatively, an insurance company can be structured as a proprietary company limited by shares. This form is suitable for smaller insurance companies that do not intend to offer their shares to the public.

Furthermore, a mutual insurance company is a form of insurance

organization where policyholders are also members of the company. Policyholders participate in the profits and may have voting rights in the management of the company.

8. What regulations apply to the insurance contract?

In Australia, insurance contracts are primarily regulated by the Insurance Contracts Act 1984 (ICA), which sets out the rights and obligations of both insurers and policyholders.

Both parties are required to act honestly and disclose all relevant information that could influence the insurance contract's terms and conditions.

Policyholders have a duty to disclose all relevant information to the insurer before the contract is formed. This duty applies to any information that a reasonable person in the circumstances would know to be relevant to the insurer's decision to accept the risk or determine the premium.

The ICA prohibits unfair contract terms in insurance contracts. If a term in the contract is found to be unfair, it may be declared void or unenforceable by a court. It also sets out rules for contract renewal and termination. Insurers must provide notice to policyholders before renewal or any changes in terms and conditions.

9. What applies to insurance brokerage?

Insurance brokerage is regulated by the Financial Sector Reform (Hayne Royal Commission Response – Protecting Consumers (2019 Measures)) Act 2020, which amended the Corporations Act 2001, and the regulations issued by the ASIC. Insurance brokers must hold an AFSL issued by ASIC or be appointed as the authorized

representative of an AFS licensee or fall within an exemption from the requirement to be licensed. The AFSL sets out the authorized activities the broker can engage in and the obligations they must meet. Insurance brokers have a duty to disclose any potential conflicts of interest and must also provide clear and transparent information about their remuneration and any benefits they receive from insurers. Before recommending or selling an insurance product, insurance brokers must provide their clients with a Product Disclosure Statement (PDS). The PDS contains important information about the insurance product, including its features, benefits, exclusions, and costs. For a specific period, insurance brokers are required to maintain proper records of their advice and transactions.

It is important, that insurance brokers have a professional indemnity insurance coverage to protect their clients in case of errors, omissions, or negligence in their advice. Furthermore, insurance brokers must be a member of the ASIC-approved External Dispute Resolution scheme under the Australian Financial Complaints Authority. This allows clients to access an independent dispute resolution process in case of complaints or disputes with their broker.

10. What are the ESG requirements for insurance companies?

While not mandated by specific regulations, insurance companies in Australia were encouraged to consider ESG factors in their operations to address environmental risks, promote social responsibility, and enhance governance practices. Many insurers in Australia are taking proactive steps to incorporate ESG principles into their strategies to achieve sustainable and responsible growth.

In late 2021, APRA issued prudential guidance (CPG 229) aimed at helping APRA-regulated entities manage the financial risks associated with climate change. Additionally, in 2022, APRA announced its intention to publish the findings of a self-assessment survey of APRA-regulated entities, assessing their approaches to identifying, assessing, and managing climate-related risks.

In 2021, APRA released updated prudential standards and a prudential practice guide for remuneration. These updates require boards of APRA-regulated entities to play a more active role in determining remuneration outcomes for the organization and key individuals. Furthermore, the standards mandate that non-financial measures, including environmental, social, and governance outcomes, be appropriately considered when determining performance-related variable remuneration.

Recently, the government of Australia planned to implement mandatory climate-related financial disclosure requirements for companies and financial institutions. Reporting requirements would apply as soon as 2024 for large businesses, with smaller entities phased in over the following three years.

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3.2 Japan

1. Introduction

The insurance market in Japan is characterized by a mix of domestic and international players, having established a strong presence, fostering healthy sector competition and driving innovation.

Insurance needs and risks have been rapidly diversifying and changing amid developments that include evolution and growing prevalence of digital technologies, increasingly severe natural disasters such as earthquakes, tsunami, typhoons etc., and demographic trends in the form of a decreasing birthrate and an aging population in Japan. Meanwhile, the COVID-19 pandemic has greatly affected the economic climate as well as people's work and lifestyles, side by side with the ESG and Sustainable Development Goals (SDG) requirements.

Major Japanese insurance companies are actively venturing into global market, strategically to broaden their footprint on an international scale. Domestically, they are navigating the intricacies of mergers and acquisitions enhancing their operational efficiency and diligently seeking cost-effective avenues for the distribution of insurance contracts. There is a discernible shift towards the diversification of solicitation methods to bolster efficiency and proactively address the evolving needs of their customer base. While conventional face-to-face sales by employees of life insurance companies were common, the use of agents, including bancassurance, and direct marketing through various channels is becoming more prevalent. In essence, the Japanese insurance sector is undergoing a transformative phase marked by a strategic global outlook, operational refinement through mergers and acquisitions, and a proactive approach to diversifying sales channels.



2. What is the relevant legal framework for insurance companies?

The Insurance Business Act (**IBA**) is the central legislation for the insurance business in Japan, covering various provisions, including licensing, corporate governance structures, solvency requirements, risk management, and consumer protection. Striking a balance between promoting market competition and protecting consumers, the regulation aims to create an environment where insurance companies can thrive while providing reliable and secure services to policyholders.

The Insurance Law Act (**ILA**) introduced in 2010, regulates the law of insurance contracts, covering the life and non-life insurance types, whereas the Commercial Act still contains provisions regarding the industrial insurance contracts.

Further regulations concerning the insurance companies are the Financial Instruments Sales Act, the Consumer Contract Act, and the Financial Instruments and Exchange Act (FIEA), which contain regulations regarding the solicitation and sale of insurance contracts. The Anti-Monopoly Law and the Act Against Unjustifiable Premiums and Misleading Representations also apply to insurance contracts and the insurance industry.

3. What special features apply to the authorization of an insurance company?

Pursuant to Sec.3 para.1, Sec.4 IBA, insurance companies registered in Japan are required to hold a license to carry out insurance activities. The necessary basic documents for the licensing procedure are (a) the insurer's articles of association, (b) the statement of business operations, (c) the general insurance conditions, (d) the presentation of the calculation methods for insurance premiums and reserve for

coverage, (e) the business plan, (f) documents explaining the status of recent assets, profits, and losses, and (g) if applicable, documents related to the applicant's subsidiaries. The General Terms and Conditions can be attached to the licensing to protect the public welfare.

The same applies to foreign insurance companies, whose permission requirements are regulated in Sec. 185 and 187 IBA and are similar as for the domestic companies. However, for their business activities, the establishment of a Japanese branch, and location of the legal entity, name and address of the representative, and main branch in Japan is essential.

A company can apply for multiple branches. But it is not possible for an insurance company to carry out both life and non-life insurance activities (Sec. 3 para. 2 IBA), except for reinsurance business.

The IBA allows the following types of business activities once a license is obtained: (a) general insurance business and asset management, (b) activities related to insurance business, such as representing the company or providing services on behalf of other insurers and other companies engaged in financial transactions, guarantees of obligations, the handling of private placements of securities and derivative transactions, and (c) activities expressly permitted under the IBA and other laws, such as certain securities trading activities and trust transactions involving secured bonds (see for more details sec. 97 to 100 IBA).

In accordance with Sec. 133 IBA, the license can be suspended if (a) a person has violated laws, regulations, supervisory orders, or particularly important matters related to the documents and records submitted when applying for the license, (b) the conditions associated

with the permit are not fulfilled, or (c) the insurance company has engaged in an action detrimental to the public interest. The order may include the suspension of all or part of the business activities or the dismissal of key personnel such as directors, senior executives, accounting advisors, company auditors, or accounting auditors.

For foreign insurance companies Sec. 205 IBA applies. For example, the license may be suspended if the foreign insurance company's license has been suspended in its home country.

The Japanese law also recognizes Small Amount and Short-Term Insurance providers (SASTI providers). These are required to be separately registered with the Local Finance Bureau of the Ministry of Finance (**LFB**), which is a separate entity under the ministry of finance and operates under the delegated mandate of the Commissioner of the FSA. The registration requirements are similar to those for insurance companies.

4. What are the relevant supervisory authorities?

The Financial Service Authority (FSA), as the primary regulatory and supervisory authority, oversees and enforces compliance with regulations to maintain the financial soundness of insurance entities. It formulates and updates guidelines, ensuring that insurers adhere to stringent standards to safeguard the interests of policyholders and maintain the overall health of the insurance market. The FSA is entitled to issue, revoke or suspend business licenses in the name of the Prime Minister of Japan.

The Local Financial Bureau (LFB) is a regional government department that operates in its respective prefecture. Its main function is to regulate and supervise the distribution of financial products, such as insurance, at the local level.

5. What powers does the supervisor have?

The FSA holds the power to demand reports and conduct inspections within insurance companies. If regulatory provisions are violated the FSA can take administrative actions.

Persons who violate certain provisions of the IBA, such as operating insurance business without a license, may face imprisonment or fines. In order to protect policyholders and ensure the sound management of an insurance company, the FSA may issue a business improvement order, suspend the company's business, order the deposit of property, or take other necessary measures for supervision.

If an insurance company violates laws and regulations, commits acts prejudicial to the public interest, or has a significantly worsening financial situation, the FSA or Prime Minister may order the suspension of the company's business, dismiss directors or auditors, or rescind the license.

The FSA also has lawmaking powers under the IBA and issues granular legislation and provides comprehensive guidelines for the supervision of insurance companies.

Insurance solicitors may have their registration cancelled or face other administrative action by the LFB and must indemnify customers for any losses incurred due to their improper actions. Insurance companies must also indemnify customers for losses associated with the solicitation of insurance contracts.

6. How is the financial constitution of insurance companies regulated?

Insurance companies in Japan must maintain a minimum level of capital and reserves under the IBA to ensure their financial stability and ability to meet their obligations to policyholders. The IBA sets out calculation requirements for the key relevant capital soundness indicator the solvency margin ratio. Insurance Companies are among other aspects required to maintain a minimum solvency margin ratio of 200%.

Japan is on the way to introduce a new financial requirements similar to the EU Solvency II framework. The FSA's Advisory Council on the Economic Value-Based Solvency Framework issued a report on 26 June 2020, which proposed the implementation of Economic Value-Based Solvency Regulations by 2025. The purpose of these regulations is to improve policyholder protection and enhance risk management and discipline among insurance companies.

The report outlines three key pillars for prudential policy, including establishing a common standard for the solvency margin ratio, verifying and promoting the development of insurance companies' internal control, and ensuring necessary discipline through communication with outside stakeholders.

The report recommends finalizing the standard by spring 2024 and implementing it as regulations in 2025, taking into account relevant factors such as the Insurance Capital Standard, issues raised in other countries, and any unique factors specific to Japan's insurance companies.

The introduction process is ongoing, expecting that the new regulation will come into effect as announced.

7. What are the permissible legal forms for insurance companies, and how is the business organization regulated?

For Japanese insurance companies and SASTI providers, it is required that they be structured as either Japanese stock companies (*kabushiki-kaisha*, designated as K.K./Co./Co. Ltd./Inc.) or mutual companies (*sôgo-kaisha*) and must have the following governing bodies a board of directors, a board of company auditors or committee (with certain exceptions for SASTI providers), and an accounting auditor (with certain exceptions for SASTI providers).

The business organization of insurance companies is regulated by the IBA and the Companies Act. The IBA sets out the requirements for obtaining a license to operate an insurance business, including the minimum capital requirements, the types of insurance that can be offered, and the rules for financial reporting. The Companies Act sets out the rules for the organization and management of companies, including the requirements for holding shareholder meetings, appointing directors and auditors, and maintaining proper accounting records.

8. What regulations apply to the insurance contract?

Under Japanese law, the insurance contract is mainly governed by both the new ILA as *lex specialis*, and the Civil Law Act contract law provisions. The latter specifically contains provision for the handling of the terms and conditions of insurance contracts. The Commercial Act contains provisions relating to land, sea and air insurance contracts.

The ILA differentiates between dispositive and mandatory provisions. While the insurer must comply and must not derogate from mandatory provisions to the detriment of the policyholder, it may deviate in case of dispositive provisions. Similarly, any provisions that restrict consumer rights or impose additional duties beyond what is allowed by the Civil Code, Commercial Code, and other laws and regulations are invalid under the Consumer Contract Act. It also prohibits any unilateral actions that harm consumer interests in violation of the fundamental principle of *good faith* of the Civil Code. For commercial insurance, the consumer regulations do not apply.

Upon concluding the insurance contract, the policyholder is obliged to disclose all relevant information concerning the risk as requested by the insurer. Violating this duty of disclosure result in exclusion of the insurance benefit. The ILA does not recognize a partial *pro-rata* payment of insurance benefit subject to the severity of the breach of duty.

9. What applies to insurance intermediation?

Insurance intermediation regulation was reformed under the IBA in 2016, loosely resembling the European Insurance Distribution Directive, which introduced significant information requirements

and prohibited certain behaviors previously used in the sale of insurance products. Although the person selling insurance products must comply with the conduct rules on their own behalf, the FSA sets out in its guidelines detailed procedures necessary to comply with this legal obligation.

Life insurance solicitors, non-life insurance agents, small-amount and short-term insurance solicitors, and brokers must register with the LFB through the Prime Minister. The applicant submits a registration application to the LFB. Unlike non-life insurance, officers and employees of licensed life insurance companies who engage in insurance solicitation are considered solicitors and are required to register.

In general, most non-life insurance sales are made by insurance agents, while most life insurance sales are made by insurance company employees or associated persons.

The IBA specifies that only certain individuals/entities are authorized to act as agents or intermediaries for the purpose of concluding an insurance contract (known as insurance solicitors). Insurance solicitors (excluding brokers and their officers and employees) engage in insurance solicitation on behalf of insurance companies, while brokers and their officers and employees engage in insurance solicitation on their own behalf.

If there is a change in the basic information submitted with the application to the authority or the insurance intermediation ceases to operate, the LFB must be informed.

10. What are the ESG requirements for insurance companies?

In Japan, the regulatory framework for Environmental, Social, and Governance (**ESG**) considerations within the insurance sector is evolving to reflect the growing global emphasis on sustainable and responsible business practices.

ESG requirements for insurance companies in Japan are primarily governed by the IBA and laws that aim to promote sustainable and responsible business practices. Although the IBA does not explicitly delineate ESG specific requirements, it emphasizes the importance of sound business practices, ethical conduct, and compliance with laws and regulations, indirectly encouraging insurers to incorporate ESG factors into their decision-making processes.

Furthermore, Japan has been actively promoting the Principles for Responsible Institutional Investors (Japan's Stewardship Code) and the Principles for Financial Action for the 21st Century. These guidelines encourage institutional investors, including insurance companies, to consider ESG factors in their investment decisions.

Insurance companies in Japan are also urged to disclose relevant information regarding their ESG policies and practices. This transparency helps stakeholders, including policyholders and investors, assess the company's commitment to sustainable and socially responsible business activities.

In summary, while Japan may not have explicit ESG requirements tailored specifically for insurance companies, the broader regulatory environment and international principles encourage these entities to embrace ESG considerations in their daily business.

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3.3 Malaysia

1. Introduction

The insurance sector in Malaysia consists of both conventional and takaful insurance businesses, with the latter being an Islamic insurance that complies with Shariah principles. The conventional insurance business is divided into general and life insurance businesses whereas the takaful insurance business is divided into family takaful business and general takaful business.

The insurance industry is a highly regulated sector in Malaysia, with legal requirements governing the corporate structure, shareholding percentage, fitness and propriety of directors or shareholders, capital funds, internal risk management systems, winding up, transfer of business, reconstruction or amalgamation of business as well as the standard terms of the insurance contracts.

There is an offshore jurisdiction in Malaysia known as Labuan, which is subject to a different legal regime in respect of the insurance and takaful businesses conducted in Labuan.



2. What is the relevant legal framework for insurance companies?

Insurance and takaful companies in Malaysia are primarily governed by Bank Negara Malaysia (**BNM**) i.e. the Central Bank of Malaysia, with the conventional insurance business regulated under the Financial Services Act 2013 (**FSA 2013**) and the takaful business regulated under the Islamic Financial Services Act 2013 (**IFSA 2013**).

In addition to main legislative framework, it is within BNM's powers to issue regulations, guidelines and/or policy documents to further regulate the insurance sector. It is worth noting that some (but not all) of the issued regulations, guidelines and/or policy documents are issued and made publicly available on BNM's website. The relevant regulations, guidelines and/or policy documents that are not made publicly available are typically issued by BNM directly to the relevant insurance and takaful companies in Malaysia and the insurance and takaful companies are legally obligated under the FSA and/or IFSA to keep such documents confidential. Such secondary legislation is wide ranging in nature and may cover the operational conduct of an insurance and takaful business such as the Policy Document on Life Insurance and Family Takaful Framework, to the market conduct of an insurance company such as the Policy Document on Market Conduct and Enhancing Financial Capability, to the transparency of an insurance product such as the Guidelines on Product Transparency and Disclosure, amongst others.

Labuan

Insurance and takaful businesses in Labuan are governed under a different legislative framework under the purview of a different sector regulator.

Insurance and takaful businesses in Labuan are governed by the Labuan Financial Services Authority ("Labuan FSA"), with the conventional insurance business regulated under the Labuan Financial Services and Securities Act 2010 ("LFSSA 2010") and the takaful business regulated under the Labuan Islamic Financial Services and Securities Act 2010 ("LIFSSA 2010").

3. What special features apply to the authorization of an insurance company?

Malaysia

(a) Licenses and approvals

All persons undertaking insurance, takaful or international takaful business ("licensed persons") are required to hold valid licenses granted by MOF on the recommendation of BNM. Insurance includes reinsurance whereas takaful business includes retakaful business. On the other hand, persons undertaking businesses such as insurance broking and takaful broking ("approved persons") will only need to obtain approvals from BNM. Any person who contravenes the law commits an offence and shall be liable to imprisonment or a fine or both.

In assessing the license and approval applications, BNM will consider the factors set out in Schedule 5 of the FSA 2013 and IFSA 2013.

This includes reputation for being operated under standards of good governance and integrity, soundness and feasibility of the business plans of the applicant as well as business record and experience of the applicant.

There are also minimum working funds requirements to be complied by the applicant.

BNM's Guideline on Application Procedures for New Licenses under FSA 2013 and IFSA 2013, issued in 2019, serves as a comprehensive guide on processes that are to be undertaken and expectations that are to be met.

b) Nature of business

Under the FSA 2013, insurers are prohibited from operating both general and life insurance businesses. Similarly, under the IFSA 2013, takaful operators are prohibited from operating both general and family takaful business. However, licensed professional re-insurers and re-takaful operators are exempted from this prohibition.

(c) Foreign shareholding

There is a general policy of 70% limit on foreign equity ownership. Notwithstanding that, the percentage is considered by BNM on a case-by-case basis for players who can facilitate consolidation and rationalization of the industry.

Labuan

(a) Licenses and approvals

Any person conducting Labuan insurance/takaful, re-insurance/re-takaful or captive insurance/takaful business (“insurance/takaful business”), or carrying on business as a Labuan insurance/takaful manager, Labuan underwriting/takaful underwriting manager or Labuan insurance/takaful broker (“insurance/takaful related business”) must hold a valid license, unless the persons mentioned under the LIFSSA 2010 have been operating under the regulation of the LFSSA 2010 and have obtained the prior approval of LFSA.

Every applicant who wishes to carry on insurance/takaful and insurance/takaful related business must have established, or will establish, its management in Labuan with adequate knowledge and expertise or has appointed, or will appoint, a licensed Labuan underwriting manager or Labuan insurance manager with adequate knowledge and experience, amongst others. There are minimum capital funds requirements to be complied with by the applicant.

Every specific type of business is also further governed and regulated under its respective guidelines issued by LFSA.

(b) Nature of business

Insurers are not prohibited from operating both general and life insurance/takaful businesses in Labuan, but separate asset funds and accounts should be kept for life insurance and general insurance, general takaful and family takaful.

Every Labuan insurance/takaful business shall also keep the accounts and funds separate from its other funds or funds of a

branch of a Malaysian insurer/takaful operator or reinsurer/retakaful operator.

No Labuan insurer/takaful operator shall carry on any other business activities in Labuan or elsewhere from its office in Labuan except the reinsurance/retakaful of domestic insurance/takaful business. No licensed Labuan insurance/takaful manager shall provide any services other than administrative services and no licensed Labuan underwriting/takaful underwriting manager shall provide any other services.

(c) Foreign shareholding

In Labuan, 100% foreign ownership is permitted.

4. What are the relevant supervisory authorities?

Malaysia

The main sector regulator for the insurance and takaful sector is BNM. The FSA 2013 and IFSA 2013 provide for the regulatory objectives, the purpose and method of exercising such powers and functions of BNM to meet its objectives to foster the safety and soundness of financial institutions, business conduct of financial institutions, and consumer protection.

BNM, from time to time, keep MOF informed on matters relating to the exercise of its powers and performance of its functions.

Further, pursuant to section 36(2) of the Malaysia Deposit Insurance Corporation Act 2011, licensed insurers or takaful operators are deemed to be member institutions and comes under the purview of the Malaysia Deposit Insurance Corporation (**MDIC**). MDIC has the necessary powers to administer a deposit insurance system and a takaful and insurance benefits protection

system, provide incentives for sound risk management in the financial system, and promote or contribute to the stability of the financial system. MDIC may also make, with the approval of MOF, regulations, rules, orders, by-laws, notifications, directives, guidelines, circulars or notes.

Labuan

The main sector regulator for the insurance and takaful sector in Labuan is LFSA. LFSA main objectives are to develop national objectives, policies and priorities for the orderly development and administration of the international business and financial services in Labuan (including insurance and takaful businesses) and to act as the central regulatory, supervisory and enforcement authority for such industry in Labuan.

As discussed above, there are also other regulators that insurance and takaful companies are subject to the purview of such as The Minister of Communications and Digital, MOF and/or the Minister of Home Affairs.

5. What powers does the supervisor have?

(a) BNM

Under the FSA 2013 and IFSA 2013, BNM is charged with the assessment of applications for licenses or approvals. Such powers include making a recommendation to the MOF to grant or revoke a license with or without conditions. The FSA 2013 and IFSA 2013 further provide BNM with wide powers in relation to the right of access to documents and information, to conduct examination and investigation, and to enter, seize and search for articles with or without warrant. BNM is also empowered to issue directions to the institutions or impose monetary penalties under certain circumstances.

Part XIII of the FSA 2013 and Part XIV of the IFSA 2013 grant BNM intervention and remedial powers in relation to the operations of institutions. Intervention, among others, may be in the form of assumption of control of the institutions, appointment of receiver and manager for the institutions, compulsory transfer of business, assets or liabilities, restructuring of share capital, designation of a bridge institution when certain circumstances arise or removal of director, chief executive officer or senior officer.

It is also worth noting that the IFSA 2013 gives BNM the authority to specify standards in accordance with the advice or ruling of the Shariah Advisory Council. BNM may also specify standards and codes relating to other matters which does not require the ascertainment of Islamic law, in addition to its authority to appoint an auditor to conduct audit on Shariah compliance by an institution. BNM's Policy

Document on Shariah Governance serves as a useful guide in this respect.

(b) MOF

The MOF may, on the recommendation of BNM, revoke the license of a licensed person under certain grounds or designate a body corporate established or acquired under the Central Bank of Malaysia Act 2009 as a bridge institution for vesting purposes when there is a compulsory transfer of the business, assets or liabilities of a licensed person.

The MOF may, from time to time, give to LFSAA certain directions or require LFSAA to furnish the MOF with such returns, accounts and information with respect to the performance of any of its functions under the Labuan Financial Services Authority Act 1996 (LFSAA 1996) Act and any other law relating to Labuan financial services. The MOF may also, on the recommendation LFSAA, make such regulations to give effect to the provisions of LFSAA 1996.

(c) MDIC

MDIC or BNM may, upon request by the former, examine the operations of a member institution. Upon receiving a notification from BNM regarding concern over a member institution's viability, MDIC may require the institution to cease carrying on business or restructure the business, assume control of the assets, liabilities, businesses and affairs, apply to the High Court to appoint a receiver or manager, present a petition for winding up, designate a subsidiary of MDIC as a bridge institution, transfer assets, business, affairs, shares, capital instruments, warrants or rights of the member institution.

However, takaful liabilities shall only be transferred to a member institution that is a takaful operator or a bridge institution the operations of which are conducted consistently with Shariah. Where assumption of control has materialized, MDIC or the

appointed person may also apply to the High Court for an order to reduce the share capital of such institution. MDIC may give directions to the board of directors of a bridge institution which shall implement any such direction.

(d) LFSAA

LFSAA has the powers to require any offshore financial institution or any related corporation to submit to it any information relating to the identity, affairs, account or particulars of any customer or beneficial owner, nominee or beneficiary any information which LFSAA deems necessary or expedient for the performance of its supervisory functions. The LFSAA 1996 provides LFSAA with wide powers in relation to the right of access and examination of any report or document from any Labuan financial institution or any corporation, entry, search, inspection, examination and search of persons, detention of conveyance and taking possession of articles as deemed necessary.

Any person authorized by LFSAA may, with the written authorization of the Public Prosecutor, prosecute in any court any case in respect of any offence committed under the LFSAA 1996. LFSAA may also impose an administrative penalty on any person for failure to comply with any legal requirements. In addition to all the above, LFSAA may delegate any of its functions or powers to its member, committee, officer or servant.

LFSA is also empowered to issue, amend or revoke guidelines to clarify any provision or laws facilitate compliance with the law by a Labuan financial institution. LFSA also has the power to issue certain directions to a Labuan financial institution for supervision and regulation of the Labuan financial institution or action to be taken against its members or servants.

6. How is the financial constitution of insurance companies regulated?

Malaysia

The financial constitution of insurance and takaful companies are highly regulated. All licensed persons and approved persons are required to maintain at all times a minimum capital of funds whereas licensed foreign insurers and licensed foreign takaful operators are required to maintain a minimum of surplus of assets over liabilities as prescribed by the FSA 2013 or IFSA 2013 even after successfully obtaining the relevant license or approval.

BNM's Risk-Based Capital Framework (applicable to all licensed persons) sets out the total capital requirement for licensed persons, which is the adequacy of the capital available in its insurance and shareholders' funds and the valuation bases for licensed persons' assets and liabilities. This ensures the ability to maintain a capital adequacy level that is commensurate with its risk profile at all times. The Capital Adequacy Ratio (CAR) is computed as follows:

Licensed persons must maintain adequate liquidity to meet their payment obligations when they fall due, regardless of the state of the operating environment as stipulated under BNM's Policy

Document on Liquidity Facility to Licensed Insurers and Licensed Takaful Operators.

Licensed insurers and licensed takaful operators are also required to prepare financial statements in accordance with the Malaysian Financial Reporting Standards. It is important to ensure that sound risk management and control processes around their measurements are in place for financial instruments that are measured at fair value.

Labuan

Every applicant planning to conduct insurance/takaful related business in Labuan must be able to maintain sufficient funds in its business to cover for at least 6 months and obtain or undertake to obtain any professional indemnity insurance policy of not less than RM2.5 million or its equivalent in any foreign currency or such other amount or denomination as may be specified by LFSA and shall at all times maintain the policy throughout its operation.

LFSA's Directive on Minimum Capital Requirement by Labuan Licensed Entities provides for the capital adequacy ratio, solvency margin requirement and minimum paid-up capital requirement to be maintained by insurance/takaful business and insurance/takaful related business. Upon assessment on these businesses, LFSA has the discretion to impose higher capital requirements to commensurate with its business activities and risk exposures.

Every Labuan insurer and takaful licensee are similarly required to ensure that the financial statements comply with certain requirements which includes submission of audited annual balance sheet, profit and loss account and revenue account within 6 months after the close of each financial year or such further period approved by LFSA.

7. What are the permissible legal forms for insurance companies, and how is the business organization regulated?

Malaysia

All licensed insurers and licensed takaful operators are required to be public companies incorporated in Malaysia under the Malaysian Companies Act 2016. For professional reinsurer, professional re-takaful operator, international takaful operator and persons approved by BNM under the FSA 2013 and/or the IFSA 2013, they need not be a public company and BNM may specify the form of establishment.

It is a requirement under the law that the licensed persons and approved persons shall at all times appoint a chief executive officer. Any person who is appointed, elected, reappointed or reelected as chairman, director, chief executive officer or senior executive officer is subject to certain requirements as set out under the law. The business and affairs of the licensed persons and approved persons shall be managed under the direction and over-sight of the board of directors.

Fit and Proper Criteria

Directors and senior management of the licensed persons must not be disqualified and are subject to fit and proper criteria specified by BNM, which include minimum requirements relating to probity, personal integrity and reputation, meet the competency and capability criteria and fulfill the requirements of financial integrity.

Corporate Governance

Licensed Insurers and licensed takaful operators must establish board committees including the board nominations committee, board remuneration committee, board risk management committee and board audit committee, which each take on different responsibilities. These board committees are required to fulfil certain requirements such as to appoint a minimum of at least three directors and to have a majority of independent directors.

Labuan

A person carrying on or transacting or holding himself out as carrying on or transacting any insurance/takaful business must either be a (i) Labuan company (ii) Foreign Labuan company or (iii) branch of a Malaysian insurer.

Fit and Proper Criteria

The person in control, director and principal officer of the applicant as a Labuan insurer and a Labuan takaful operator are required to also comply with the fit and proper criteria. They must have sufficient skills, knowledge and soundness of judgement to undertake and fulfil the particular duties and responsibilities.

Corporate Governance

Similarly, insurance/takaful business in Labuan (excluding captive insurance/takaful business) are also required to establish board committees including the board nominations committee, board remuneration committee, board risk management committee and board audit committee.

8. What regulations apply to the insurance contract?

Insurance and takaful policies are subject to a number of regulatory requirements. For one, such policies are required to adhere to certain provisions in the FSA 2013 and IFSA 2013. For example, in the context of a life policy and family takaful certificate, the policy owner or the takaful participant (as the case may be) may, within fifteen days or such longer period as may be specified by BNM after the delivery of a life policy or family takaful certificate to him, return the life policy or the family takaful certificate to the licensed life insurer or the licensed family takaful operator.

The life insurer or family takaful operator shall immediately refund any premium or takaful contribution which has been paid in respect of the life policy and family takaful certificate subject only to the deduction of expenses incurred for the medical examination of the life insured and person covered.

In addition to the main legislative framework, it is also important that the relevant persons (including but not limited to licensed insurers, licensed takaful operators, insurance brokers, and takaful brokers) ensure any information provided to its consumers complies with the regulations, guidelines and/or policy documents issued by BNM that are applicable to insurance or takaful contracts. One such guideline that is of importance, amongst others, is the Guidelines on Product Transparency and Disclosure (“Guidelines on Product Transparency”) issued by BNM, which must be complied with in respect of the disclosure of information pertaining to insurance or takaful products. The Guidelines on Product Transparency have set out the information to be disclosed at the pre-contractual stage, point of entering a contract and

during the term of the contract which includes but is not limited to the product feature, premium payment, disclosure of commissions and charges and other important notices. Furthermore, the Guidelines on Product Transparency requires information to be disclosed in a timely, clear and concise, accurate and consistent manner. Insurance policy and takaful certificate may be made in a single language of either Bahasa Malaysia or English and must be written in plain language.

Such duty on disclosure of information in a comprehensive and timely manner which assists the customer in making a balanced and informed decision prior to entering an insurance and/or takaful contract also extends to Labuan insurance/takaful and insurance/takaful-related companies.

9. What applies to insurance brokerage?

Malaysia

In Malaysia, BNM’s written approval must be granted for insurance broker and takaful broker to operate legally. They are independent contractor who carry on insurance broking business and takaful broking business which includes re-insurance broker and re-takaful broker.

They act as intermediaries with the policy owner, soliciting, negotiating or procuring a policy and takaful certificate with an insurer and takaful operator, or the renewal or continuance of the policy and takaful certificate by a person, for a policy owner and takaful participant and includes reinsurance broking for an insurer and re-takaful broking for a takaful operator.

Among the requirements that an insurance broker and takaful broker must comply with is to ensure there is a separation of customer accounts in a licensed bank and licensed Islamic bank for customers in the event an approved insurance broker and takaful broker receives any money.

It is a requirement for a person carrying on insurance broking business and takaful broking business to always have in force a professional indemnity insurance or takaful of such amount specified by BNM.

Labuan

Labuan insurance broker and Labuan takaful broker are also required to open and maintain separate bank accounts for client monies, thereby ensuring there is a clear segregation with their own bank accounts.

This obligation to always have in force a professional indemnity insurance or takaful is similarly applicable to a Labuan insurance broker and Labuan takaful broker in which the amount is specified by LFSA.

An applicant for an insurance license to carry on business as a Labuan insurance broker and Labuan takaful broker needs to ensure there is sufficient funds in its business to cover its expenses of operations and management in Labuan for at least 6 months.

10. What are the ESG requirements for insurance companies?

While there are no provisions under the FSA 2013 and IFSA 2013 that tackles ESG requirements specifically, BNM has issued a number of regulations, guidelines and/or policy documents which governs different components under the ESG umbrella. For example, the Climate Risk Management and Scenario Analysis issued by BNM sets out the principle and specific requirements on the management of climate related risks by financial institutions which includes licensed persons. The policy, however, is being gradually enforced in phases, with certain aspects taking effect in December 2023 and others in December 2024. Furthermore, BNM has issued several regulations, guidelines and/or policy documents on corporate governance related requirements that are to be complied with by licensed persons, such as the Guidelines on Corporate Governance issued by BNM.

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3.4 Philippines

1. Introduction

The insurance sector in the Philippines is very diverse and extensive compared to other Southeast Asian countries. It encompasses a range of insurance types, including traditional life and nonlife insurance, composite companies, mutual benefit associations (**MBAs**), health maintenance organizations (**HMOs**), and micro and macro insurers. While the preneed segment has declined due to the introduction of alternative insurance products, the other types of insurance have experienced significant growth over the past decade. The Insurance Commission (**IC**) is the regulatory body established by law to oversee the insurance industry in the Philippines. The IC is committed to building a robust national insurance market and sees overall growth of the industry in the coming months.

Notwithstanding the increase, majority of Filipinos are uninsured.

The IC Commissioner expressed optimism that through financial literacy programs and digitalization, the protection gap in the economy can be reduced.

Due to the increased awareness and growth of the industry, regulatory developments can also be expected. For instance, recent regulatory developments in the industry include financial products and services consumer protection as well as catastrophe insurance to mitigate and insure the risk of climate change-induced catastrophes to which the Philippines is exposed.



2. What is the relevant legal framework for insurance companies?

The regulation of insurance and reinsurance in the Philippines is primarily governed by laws enacted by the Philippine Congress. Decisions made by the Supreme Court of the Philippines that interpret these laws carry the same weight and effect as the laws themselves. In addition to these laws and Supreme Court decisions, the IC has the authority to issue rules and regulations that help interpret and implement the statutes governing or affecting insurance and reinsurance.

According to the Civil Code of the Philippines, the contract of insurance is subject to special laws. Matters that are not explicitly addressed in these special laws are governed by the Civil Code. The primary legislation on insurance and reinsurance in the Philippines is the Insurance Code of the Philippines (Presidential Decree (PD) No. 612, as amended by Republic Act (RA) No. 10607. Other special laws on insurance include the Revised Government Service Insurance Act of 1977 (PD No. 1146, as amended) for government employees, the Social Security Act of 1954 (RA No. 1161, as amended) for employees of private entities, the National Health Insurance Act of 1995 (RA No. 7875, as amended), the Property Insurance Law (RA No. 656, as amended), and RA No. 3591, as amended, which established the Philippine Deposit Insurance Corporation (PDIC). The insurance industry is also covered by the Financial Products and Services Consumer Protection Act (RA No. 11765).

3. What special features apply to the authorization of an insurance company?

An entity intending to engage in the insurance business must obtain a certificate of authority from the IC. The following documents must be submitted to the IC: a letter of intent, articles of incorporation and bylaws, General Information Sheet, pre-operational balance sheet, list of incorporators and officers, organization chart, income tax return of incorporators for the last three years, clearance of the members of the board of directors from the National Bureau of Investigation, project study, and waiver on applying the Bank Secrecy Law, and documentary stamp tax.

Foreign companies may establish a branch office by complying the requirements of the IC.

4. What are the relevant supervisory authorities?

The IC, operating under the Department of Finance, is responsible for overseeing and regulating the insurance, pre-need, and health maintenance organization industries in accordance with PD 612, Republic Act Nos. 10607 and 9829, as well as Executive Order No. 192, series of 2015.

The IC is characterized by its role as a regulator of the insurance sector, with a focus on safeguarding the interests of policyholders. It is responsible for issuing certificates of authority to new insurance businesses seeking to operate in the Philippines and overseeing the activities of the insurance industry to ensure the growth and protection of both insurers and policyholders.

Furthermore, the Securities and Exchange Commission (SEC) is responsible for the incorporation and registration of these entities, while the National Privacy Commission oversees the data privacy compliance of those in the insurance business.

5. What powers does the supervisor have?

The IC plays a crucial role in developing regulations that prioritize the interests of policyholders. The IC has several important responsibilities, including protecting the interests of the insured, promoting the orderly growth of the insurance business for the public's benefit, providing long-term financing to support the country's economy, enforcing high standards of integrity, fair dealing, financial soundness, and insurance provider competence, ensuring efficient resolution of legitimate claims, establishing a grievance redress forum to protect policyholders from malpractice and fraud, encouraging transparent and fair conduct of insurance in financial markets, and creating a dependable management system that ensures good quality.

The IC has several measures to ensure compliance of insurance companies such as suspending, revoking, or withdrawing registration certificates of non-compliant companies. It further imposes fees and charges to carry out the provisions of relevant insurance laws and regulations and conduct inspections, investigations, and audits of insurance companies, intermediaries, and other organizations involved in the insurance sector. The IC also ensures that policyholders are treated fairly in terms of policy grant, claim settlement, nomination, insurable interest, policy surrender value, and other policy terms and conditions.

It also oversees and regulates the licensing of insurance agents, insurance brokers, general agents, underwriters, adjusters, and actuaries.

6. How is the financial constitution of insurance companies regulated?

The capital requirements for domestic insurance companies in the Philippines vary depending on whether they are new entrants or existing companies. The minimum paid-up capital requirements are as follows:

Type of Insurer	News	Existing
Life Insurance	PHP 1 billion (approximately USD 18 million)	PHP 1.3 billion (approximately USD 23 million)
Non-Life Insurance	PHP 1 billion	PHP 1.3 billion
Composite Insurance	PHP 2 billion (approximately USD 36 million)	PHP 1.3 billion
Microinsurance	PHP 500 million (approximately USD 89,000)	
Reinsurance	PHP 3 billion (approximately USD 54 million)	

On the other hand, new foreign insurance companies, whether life or non-life, must have a paid-up capital of at least PHP 1 billion and must maintain capital or assets and reserves of at least PHP 1 billion.

Additionally, the IC may, apart from the paid-up capital, require the stockholders to pay a surplus fund in proportion to their subscription interest of not less than PHP 100 million as a pre-licensing requirement. The IC has also issued guidelines on the risk-based capital ratio and the risk-based capital requirement that all life and non-life insurance companies operating in the Philippines must comply with. Furthermore, an insurance company is prohibited from having any equity in an adjustment company, and vice versa.

7. What are the permissible legal forms for insurance companies, and how is the business organization regulated?

Under the Insurance Code an ‘insurer’ or an ‘insurance company’ encompasses partnerships, associations, cooperatives or corporations, including government-owned or controlled corporations or entities, acting as principals in the insurance business, with the exception of mutual benefit associations. Nonetheless, mutual benefit associations are regulated by the IC.

In 2013, corporate governance was explicitly recognized in Section 193 of the Insurance Code. In 2020, the IC issued the Revised Code of Corporate Governance for IC-Regulated Companies and required the submission of the Annual Corporate Governance Report (ACGR).

Various circulars and department orders, such as Fit & Proper requirements for management members, also set out numerous detailed rules on corporate governance. Through an assessment performed by an independent third party of the ACGR filings, corporate governance rankings of regulated entities are announced annually.

8. What regulations apply to the insurance contract?

As per the Insurance Code, parties involved in a contract of insurance are required to disclose, in good faith, all facts within their knowledge that are material to the contract and as to which they make no warranty, and which the other party has no means of ascertaining. A fact is considered material if it is likely to have a reasonable influence on the party to whom the communication is due, in forming their estimate of the disadvantages of the proposed contract or in making their inquiries.

However, this right to be informed of material facts can be derogated by either the terms of the insurance or through neglect in making inquiries about those facts, where they are distinctly implied in other facts that have been communicated. In the case of the insurer, it is their responsibility to actively seek more information from the insured if the communication made by the insured implies that there are other material facts that are relevant to the insurer with respect to the negotiation of the contract.

Furthermore, Section 232 of the Insurance Code provides that insurance policies, certificates, or contracts cannot be issued or delivered in the Philippines unless they have been approved by the Insurance Commissioner.

Additionally, any application form, rider, clause, warranty, or endorsement attached to the policy must also be approved by the Insurance Commissioner before being printed or stamped onto the policy. The Insurance Code also provides mandatory provisions for certain types of insurance, including grace periods, incontestability and cooling off.

9. What applies to insurance brokerage?

In the insurance industry, an insurance agent represents the insurer, while an insurance broker represents the insured. They are required to be licensed by the IC before engaging in such business.

Both the insurance agent and the insurance broker have specific fiduciary duties. The premium, or any portion thereof, that an insurance agent or insurance broker collects from an insured and is intended to be paid to an insurance company, is held by the agent or broker in a fiduciary capacity. It must not be misused or converted for their own benefit. If an insurer delivers a policy or contract to an insurance agent or insurance broker, that agent or broker is authorized to receive payment of any premium due on that policy or contract of insurance on behalf of the insurer. Failure to comply with these fiduciary obligations may result in the denial, suspension, or revocation of the license of an insurance agent or insurance broker.

10. What are the ESG requirements for insurance companies?

In an advisory letter, the IC vouches for the adoption of the UNEP Principles for Sustainable Insurance regarding the climate risk suitability of the Philippine insurance sector.

In 2021, the IC issued Circular Letter No. 2021-27 entitled "Strict Implementation of Sustainable Catastrophe Insurance Premium Rates and Establishment of the Philippine Catastrophe Insurance Facility (PCIF)". The PCIF is a set of regulations aimed at ensuring risk-adjusted insurance premiums in the face of increasing environmental catastrophes. The pricing guidelines for catastrophe insurance premiums are detailed in separate circulars.

The Financial Sector Forum (FSF) is a voluntary interagency body of the four financial regulators in the Philippines: IC, Bangko Sentral ng Pilipinas, SEC and PDIC. The Financial Sector Forum (FSF) is a voluntary interagency body of the four financial regulators in the Philippines: IC, Bangko Sentral ng Pilipinas, SEC and PDIC. It provides a platform for discussion of the supervisory approaches and issues, as well as emerging risks in the financial sector. In 2023, the FSF completed the review of corporate governance requirements issued by its member agencies in relation to advancing the sustainability agenda across the financial sector. The IC directed its covered entities to, among others, adopt the Own Risk and Solvency Assessment (ORSA) Framework aligned with the Insurance Core Principles including the establishment by insurance companies, within their respective risk management systems, of an Enterprise Risk Management Framework for solvency purposes to identify, measure, report and manage insurers' risks in an ongoing and integrated manner. The ORSA report includes, among others, information on the governance of the ORSA process.

Meanwhile, publicly listed companies are required to disclose their significant economic, environmental and social impacts annually to the SEC in accordance with SEC Memorandum Circular No. 04-19.

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3.5 Taiwan

1. Introduction

In Taiwan, insurance can be classified into two categories: social insurance and commercial insurance.

Social insurance is subject to specific laws and regulations, such as national health insurance, labor insurance, etc., and it has grown and developed due to Taiwan's special historical factors and government policies. Designated institutions will be appointed to carry out such social insurance.

On the other hand, commercial insurance is insurance provided by the insurance companies and generally known as the “insurance” by the public. Commercial insurance is categorized into two types: “Non-Life Insurance” and “Insurance of Person”.

Non-life insurance includes fire insurance, marine insurance, land and air cargo transit insurance, liability insurance, guarantee insurance, and any other type of insurance approved by the competent authority; insurance of person includes life insurance, health insurance, personal injury insurance, and annuities.

It is worth mentioning that while there are some insurance companies not owned by large business conglomerate, a significant part of local insurance companies in Taiwan are a part of a financial holding company, together with a bank or a security house or other financial institutions, existing as a subsidiary to form a big financial group.



2. What is the relevant legal framework for insurance companies?

Insurance companies are subject to supervision and management of the Financial Supervisory Commission (**FSC**) with the goals to protect consumers' rights and achieve financial stability. There is no exception to the license and authorization requirement for running an insurance company as stipulated under Article 137 of the Insurance Act; the violation of which shall be subject to fines and criminal charge.

Besides Insurance Act, insurance companies shall comply with practice code enacted by the Non-life Insurance Association of the ROC and the Life Insurance Association of the ROC, as well as relevant regulations.

Moreover, if foreign insurance companies' intent to run its insurance business by branches rather than subsidiary, they need to also comply with "Regulations Governing Offshore Insurance Branches."

3. What special features apply to the authorization of an insurance company?

Only a Company Limited by Shares under Article 2 of the Company Act may conduct insurance business.

The establishment and organization requirements of insurance companies are regulated under Regulations for Establishment and Administration of Insurance Enterprises and Insurance Act.

Unless being granted an establishment permit and business license by FSC, an insurance company cannot commence operations. There is different threshold of paid-in capital for internet-only insurance company and general insurance company,

and contributions of such capital shall be limited to cash. An insurance company shall apply for business license with FSC within three months from the date on which incorporation registration is completed, otherwise FSC may revoke its establishment permit.

The directors, supervisors, and managing officers of an insurance company shall meet the qualification requirements set out in the "Regulations Governing Qualification Requirement and Concurrent Serving Restrictions and Matters for Compliance by the Responsible Persons of Insurance Enterprises."

To avoid conflicts of interest, such as related party transactions, the Financial Holding Company Act and Insurance Act requires a "separation of commerce and finance," and even, a "separation of finance and finance." For a "separation of commerce and finance," a financial holding company may invest in public-issued company stock, and subject to FSC's approval, any other marketable securities; provided that the insurance company and its representative do not act as the director or supervisor or designate a person to be the manager of such company. As for "separation of finance and finance," under "Regulations Governing Qualification Requirement and Concurrent Serving Restrictions and Matters for Compliance by the Responsible Persons of Insurance Enterprises" a director or officer of an insurance company or their related party cannot be a director or officer of other financial institution at the same time.

4. What are the relevant supervisory authorities?

According to Article 12 of Insurance Act, FSC is the supervisory authority in Taiwan. Among all the functions of FSC, the Insurance Bureau under FSC is the main bureau in charge of the supervision of the insurance industry, and it is further divided into four

divisions, "General Supervision Division," Life Insurance Supervision Division, "Non-Life Insurance Supervision Division" and "Financial Supervision Division," all of which are charged with certain supervisory functions.

5. What powers does the supervisor have?

The Insurance Act and relevant legislations regulates the powers of the supervisory authority's power. Since commercial insurance is a highly regulated sector, FSC is responsible for issuing insurance business license, registering permission of agency, broker, and surveyor or approving special permit for certain business.

To supervise the whole industry and insurance companies, FSC may, at any time, conduct on-site inspections or order an insurance company to report its business condition. The insurance company cannot evade, obstruct, or refuse to provide the business and financial documents and relevant materials.

FSC is authorized to order the insurance company to submit a capital increase or financial improvement plan, impose an administrative fine on the insurance company, dismiss the responsible person from his or her duties, reduce the compensation of the responsible person, restrict expansion

of branches or departments, restrict the introduction of new insurance policies, revoke the relevant permit and/or the insurance company's business license or take any reasonable measures deemed necessary.

6. How is the financial constitution of insurance companies regulated?

So far, capital adequacy is of important concern for the FSC in overseeing if insurance companies are sound and sustainable. The capital adequacy is generally determined by the "RBC ratio" and the net worth ratio.

Pursuant to Regulations Governing Capital Adequacy of Insurance Companies, insurance companies must maintain a capital adequacy ratio ((adjusted net capital/risk-based capital) X 100%, also known as the "RBC ratio") of at least 200%. Additionally, the net worth ratio (equity/total assets, excluding separate accounts for investment-linked insurance) shall meet the requirement of 3% at least once in the recent two consecutive report periods. Falling below the requirements may trigger addition obligations (such as capital increase) and demands from FSC.

Moreover, to strengthen the quality of adjusted net capital of insurance companies and enable insurance companies to implement the new solvency system (**TW-ICS**) in 2026, FSC has proposed amendments to Regulations Governing Capital Adequacy of Insurance Companies in April 2023, with reference to the Insurance Capital Standard (**ICS**) set out by International Association of Insurance Supervisors (**IAIS**).

7. What are the permissible legal forms for insurance companies, and how is the business organization regulated?

According to Article 146-4 of Insurance Act and Regulations Governing Foreign Investments by Insurance Companies, insurance companies can only invest in a specific set of foreign investment products approved by FSC, major investment projects approved by the Executive Yuan and any other investments approved by FSC. The invested amount shall not exceed 45% of the insurance company's total capital.

It is important to note that there are specific limitations on shareholding for insurance companies under Article 146-4 of the Insurance Act. This article specifies that for each publicly issued shares held by an insurance company, the quantity shall not exceed 10% of the total outstanding voting shares of the invested company and the invested amount shall not exceed 5% of the insurance company's capital. Moreover, the insurance company shall not exercise their voting rights over the shares in the election of directors or supervisors of the invested company. This limitation is in place to strengthen control over the use of insurance company's funds.

Additionally, a person or the person's related party acquiring more than 5% of the outstanding voting shares of an insurance company, whether solely, jointly, or collectively, must report to the FSC within ten days after acquirement.

If a person or the person's related party intends to hold more than 10%, 25%, or 50% of the total outstanding voting shares of an insurance company, whether solely, jointly, or collectively, prior approval from FSC is needed and meet the requirements specified in the "Regulations Governing the Same Person or Related Party Concerned Holding a Certain Percentage or More of the Outstanding

Voting Shares of Insurance Company".

8. What regulations apply to the insurance contract?

The legal foundation for insurance contracts in Taiwan is the Insurance Act. This act outlines that an insurance contract involves an agreement for one party to pay a premium to the other party, who then becomes liable for providing financial compensation in the event of unforeseeable events or force majeure. The type of insurance contract determines which specific requirements must be followed as defined by the Insurance Act.

Additionally, the FSC has provided standard form contracts (including mandatory and prohibited provisions of such policies) as templates for automobile insurance, online insurance, and traditional life insurance. These templates serve as a reference for consumers and the insurances companies should incorporate the terms into their insurance companies.

9. What applies to insurance brokerage?

There are several types of insurance intermediaries in Taiwan.

"Insurance agent" is a company who collects remuneration from an insurer and acts as a business agent on the insurer's behalf (based on a contract of agency or a letter of authorization) and is regulated under Insurance Act and Regulations Governing Insurance Agents. Insurance agents would need to meet the qualifications and requirements under the Regulations Governing Insurance Agents to provide services.

An “Insurance broker” is a company who, on the basis of the interests of the insured, negotiates an insurance contract or provides related services and collects a commission or remuneration, and is regulated under Insurance Act and Regulations Governing Insurance Brokers. Insurance brokers would need to meet the qualification and requirements under the Regulations Governing Insurance Brokers to provide services.

According to FSC’s order, Insurance broker may only provide services relating to personal risk planning, property risk planning, liability risk planning, damage prevention planning, other insurance or risk planning related consulting and services, reinsurance planning and counseling, and assistance with application of insurance claims.

Both insurance agent and insurance broker may practice business in his or her own name or in the capacity of a corporate organization, and a bank may operate insurance agent/insurance broker business concurrently with an approval of FSC.

To avoid confusion, an insurance solicitor is a natural person who is not an agent or broker but a salesperson soliciting insurance business on behalf of an insurance company, an insurance broker, or an insurance agent.

10. What are the ESG requirements for insurance companies?

In order to promote sustainable financial development goals set in the “Green Finance Action Plan 2.0” and strengthen the insurance industry’s management of climate-related risks and financial disclosure, FSC have issued “Insurance Industry Climate-Related Financial Disclosure Guidelines” (the “Guidelines”) in 2022, based on “Climate-Related Financial Disclosure Recommendations”

issued by the Financial Stability Board (FSB).

According to the Guidelines, insurance companies shall establish an appropriate assessment and disclosure mechanism for climate-related risks and opportunities in accordance with the scale and nature of its business, including governance, strategy, risk management, indicators, and targets. Climate risk-related information shall be disclosed in the sustainability report or publish on the company’s website every year.

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3.6 Thailand

1. Introduction

Thailand's insurance industry has a long history. The insurance business in Thailand began by trading with foreigners with the objective of protecting the safety of commodities during transportation from overseas.

When starting to make any investments or businesses or activities, there will be risks associated with it as well. Consequently, the insurance business has developed an alternative to mitigate the suffering of the insured and to provide basic insurance and economic insurance by allowing the insured to pass on the risk and receive compensation in the event of loss. The insurance business helps minimize the vulnerability of the overall economy in unpredictable business scenarios.

Insurance is an agreement between two parties, namely the insurer (insurance company) and the insured (customer). Insurance companies in Thailand must set up and conduct business in accordance with Thailand's insurance legislation.



2. What is the relevant legal framework for insurance companies?

There are two types of insurance businesses: life insurance and non-life insurance. Life insurance is a type of insurance that provides coverage for the insured's death in return for the payment of a premium. Non-life insurance, on the other hand, is a type of insurance that provides cover for risks other than mortality. Life insurance is regulated by the Life Insurance Act B.E. 2535, whereas non-life insurance is regulated by the Non-Life Insurance Act B.E. 2535. There is also Road Accident Victims Protection Act B.E. 2535, which specifically regulates insurance for injury to life, body, or health resulting from conveyance.

In addition, Sections 861-897 of the Civil and Commercial Code govern the contract of insurance.

According to Section 868 of the Civil and Commercial Code, maritime insurance contracts shall be governed by the provisions of the Maritime Law. However, the Thai Maritime Insurance Act has yet to be enacted at the time of this publication. In practice, the conditions of coverage that most insurers provided to the insured are usually based on the terms of coverage used in England, which are conditions of coverage provided by group of insurers which are the Institute of London Underwriters, the Liverpool Underwriters Association and Lloyds Underwriters Association. Furthermore, Thai courts also recognized British law on marine insurance in their judicial proceeding to the extent allowed by Thai laws.

3. What special features apply to the authorization of an insurance company?

The insurance company must be a public limited liability company that possesses a license from the Minister of Finance, allowing the company to legally conduct insurance business. If a company operates without the license, they could be held criminally accountable. To obtain a license, the insurance company, among other requirements, must have the required security deposit. A life insurance company requires the security deposit of at least THB20 million, while in a non-life insurance company, the security deposit of at least THB3.5 million is required. In addition, the insurance company must maintain the required amount of capital fund.

Other qualifications for a license application can be found into other law such as the Ministerial Regulations issued under the Life Insurance Act, Ministerial Regulations issued under the Non-Life Insurance Act, Ministerial Regulation Prescribing Fees for Non-Life Insurance Business B.E.2552, Ministerial Regulation Prescribing Fees for Life Insurance Business B.E.2552, and Notification of Ministry of Commerce Re: The conditions for establishment of a limited company or public limited company to operate life insurance business or non-life insurance business B.E.2538. The laws contain various significant information, such as the criteria for license application, business formation, registration processes, fees, guarantees, registered capital, insurance policies, and plans.

4. What are the relevant supervisory authorities?

The insurance business in Thailand is under the supervision of the state regulation, and compliance oversight is conducted by the Office of Insurance Commission (OIC), with the head office located in Bangkok. In brief, the OIC is an independent organization with

three core missions, as follows:

1. Regulating and developing the insurance business to ensure the strength and viability of companies in their operations;
2. Supporting the insurance industry to bolster the country's economy and improve the quality of life for its citizens by supporting the company to design products or insurance plans that will benefit the quality of life of the people; and
3. Protecting the rights of individuals in order to prevent any exploitation by insurance companies.

In addition, the OIC is in charge of issuing operating licenses to insurance companies, as well as ensuring operational compliance with legislation through market oversight. Ensuring insurers adhere to capital adequacy rules is a key component of the OIC's continuous market monitoring function.

5. What powers does the supervisor have?

According to Section 4 of the Non-Life Insurance Act B.E.2535 and Section 5 of the Life Insurance Act B.E.2535, OIC is the supervisory authority in the operation of insurance business. The power of OIC includes regulating, promoting, and developing the insurance business in accordance with the policies and resolutions of the Insurance Commission as well as the criteria, methods, conditions, and guidelines set by the Insurance Commission, pursuant to the Insurance Commission Act B.E. 2550.

6. How is the financial constitution of insurance companies regulated?

In order to operate an insurance business, the insurance company must maintain a security deposit, the amount of which depends on the types of insurance. Where the security deposit is lower than required, the company will have to top it up until it meets the specified.

On the other hand, if the company's security deposit has a higher value than specified, the registrar may withdraw the additional values of the security deposit amount. The company must allocate reserves, comprising a reserve for unearned premiums, a reserve for claims and reserves for other purposes as announced by the Insurance Commission.

The insurance business must maintain the required capital funds and comply with the rules, procedures, and conditions as announced by the Insurance Commission. These vary among the types of assets, liabilities, obligations, and risks. In addition, the financial management of the company must also be consistent with the payment period of insurance premiums, loans, and money collected from insurers or the public. The company needs to allocate assets for liabilities and obligations under insurance contracts and prepare a report on maintaining capital funds to submit to the registrar monthly in order to demonstrate the company's financial status.

7. What are the permissible legal forms for insurance companies, and how is the business organization regulated?

The insurance company must be in the form of a public limited company under the Public Limited Companies Act B.E. 2535 and

obtain an insurance business license from the Minister of Finance with the approval of the Cabinet.

The insurance businesses are subject to certain specific laws related to insurance businesses in addition to the general company law. For example, the Notification of the Ministry of Commerce, which provide various guidelines for those insurance companies. It also defines the requirements for both internal and external business operations of insurance companies.

One of the key criteria stipulates that a newly founded insurance company must not have a relationship with shareholders, directors, and management of existing life insurance company or non-life insurance company. In addition, Thai shareholders must hold at least 75% of the total issued shares.

There are certain limitations regarding the business operations, directors, managers, or authorized persons acting on behalf of the company. The Board of Directors of the Company must consist of not less than 7 persons with at least 75% directors Thai nationals. There must be at least two directors authorized to sign on behalf of the company, in which half must be Thai nationals.

Moreover, there are certain rules needed to be complied with, such as prohibited qualifications for directors or managers, specific regulation that the company promoters must hold shares in the company, not less than 25% of the registered capital, which cannot be transferred within three years from the date of obtaining a life insurance or non-life insurance business license unless exempted.

8. What regulations apply to the insurance contract?

An insurance contract is a contract under the law of specific contracts governed by the Thai Civil and Commercial Code. The

insurer is obligated to cover a certain risk for the insured or a third party to compensate the damages in case of contingent loss or any other future event specified in the contract. In return, the insured must pay the agreed premium. According to the provisions of the Thai Civil and Commercial Code, the insurance contract binds the parties when the insurer makes an offer, and the insured accept the terms.

The insured may revoke its acceptance within a specific period depending on the terms of the insurance contract. The insured has duties to disclose required information to the insurer during the insurance policy period, while the insurer must inform and give advice regarding relevant information of insurance apart from their main duties. The insurance contract is enforceable when it is made in writing and signed by the liable party.

9. What applies to insurance brokerage?

An insurance broker is a person who, for commissions, indicates the opportunities, or arranges for persons to enter into insurance contracts with the insurance company. It is regulated under the Non-life Insurance Act B.E. 2535 and Life Insurance Act B.E. 2535.

There are diverse types of insurance intermediaries, which can be mainly divided into three common types. First, an insurance agent is a person appointed by the company to persuade people to enter into insurance contracts with the insurance company. Second, an insurance broker is a person who manages the arrangements for potential customers to enter into insurance contracts with the company. Lastly, an insurance arbitrator is a third party appointed by the parties to settle an insurance dispute.

These types of insurance intermediaries need to obtain a license and register under the Registrar of OIC in order to legally performing their jobs.

10. What are the ESG requirements for insurance companies?

ESG (Environmental, Social, and Governance) is a framework that assists stakeholders in understanding how an organization is managing risks and opportunities related to environmental, social, and governance criteria. If the insurance company is listed on the Securities Exchange of Thailand, it must disclose and report on sustainability that shows information, policies, and goals on sustainability performance under a good corporate governance system.

This will create trust in the organization in terms of the ability to manage the business with efficiency, transparency, and competitiveness.

On October 2020, the OIC has released the 4th Insurance Development Plan (2021-2025), which is the core action plan to encourage the insurance company to be a part of driving society to be sustainable in terms of environment, society, and governance. Promoting ESG in the insurance industry may be

considered as a criterion for underwriting consideration, tax incentives, or reward for the insurance companies that operate in accordance with ESG.

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3.6 Vietnam

1. Introduction

In Vietnam, the insurance industry is rather young.

Since 1990s when the Government of Vietnam opened the market for foreign investors, insurance market in Vietnam has become more vibrant and attractive with the participation of many foreign insurance companies along with local traditional insurance companies.

However, insurance is a highly regulated industry in Vietnam. The laws on insurance business were first launched in 2000, creating the official legal framework for insurance companies to operate in Vietnam. Since then, laws on insurance business were amended and supplemented for several times in order to fit with the socio-economic development and comply with Vietnam's commitments in international treaties.



2. What is the relevant legal framework for insurance companies?

On 16 June 2022, the National Assembly issued the law No. 08/2022/QH15 on Insurance Business (**LoIB 2022**) with effect from 1 Jan 2023, replacing the previous LoIB 2000 and Amended LoIB 2010 to be the main regulatory framework governing the incorporation and operation of insurance companies in Vietnam.

In addition to the LoIB 2022, insurance companies must adhere to guiding legislative documents including but not limited to Decree No. 46/2023/ND-CP detailing the implementation of a number of articles of the LoIB; Decree No. 21/2023/ND-CP on microinsurance; a number of articles of Decree No. 73/2016/ND-CP detailing the implementation of the LoIB 2000 and Amended LoIB 2010; Circular 70/2022/TT-BTC stipulating risk management, internal control and internal audit of insurance enterprises, reinsurance enterprises, branches of non-life insurers; and Circular 50/2017/TT-BTC guiding on implementation of the LoIB 2000 and Amended LoIB 2010. Compared to the LoIB 2000 and Amended LoIB 2010, the LoIB 2022 is expected to reinforce the Vietnamese insurance market, improve its efficiency, safety, stability, and transparency.

3. What special features apply to the authorization of an insurance company?

Insurance is a conditional business in Vietnam and an insurance company must obtain a license for establishment and operation from the competent supervisory authority to conduct insurance business.

To obtain the license, the insurance company and its

members/shareholders must satisfy statutory conditions on legal status, total assets, statutory charter, profitability, personnel, organization structure and experiences.

In respect of licensing procedures, the insurance company must submit an application dossier to the competent supervisory authority for review and consideration. Among others, a business plan for the first 5 years of operation, documents proving ability to satisfy conditions, criteria of the proposed management board, director/general director, actuary, and other corporate documents of members/shareholders of the insurance company must be included in the application dossier.

4. What are the relevant supervisory authorities?

The Ministry of Finance (**MoF**) is the main authority taking responsibility to the Government for performing the state management of insurance business activities. The MoF shall also establish a mechanism for sharing administrative and supervisory information with the State Bank of Vietnam, other ministries, and socio-professional organizations in insurance business activities; and coordinate with foreign insurance authorities in managing, supervising, inspecting and examining Vietnam-based foreign branches in accordance with the Government's regulations.

5. What powers does the supervisor have?

Being the focal supervisory authority, the MoF monitors, supervises and manages most aspects of an insurance business operation varying from (i) issuing, reissuing, revising, amending or revoking business licenses or permits; suspending part or all business activities; (ii) supervising operations (iii) examining and inspecting insurance companies, reinsurance

companies, foreign branches in Vietnam, mutuals providing microinsurance products, insurance brokerage companies and foreign representative offices in Vietnam.

In addition, the MoF carries out state management responsibilities and duties, such as: (i) promulgate or seek competent authorities' approval of promulgation and instructions on implementation of legislative documents on insurance business, formulation of strategies, projects, and policies for development of Vietnam's insurance market; (ii) conduct statistics and forecast of the insurance market; (iii) ensure international cooperation in the insurance sector; (iv) settle disputes, claims and impose sanctions against administrative violations arising in the insurance business; and (v) setting up, running and managing the insurance- industry database designed for state management and protection of legitimate rights and interests of parties involved in insurance business activities.

6. How is the financial constitution of insurance companies regulated?

Insurance companies must comply with the minimum capital requirements for each type of insurance companies. For instance, the minimum charter capital of life insurers and non- life insurers range from VND750 billion to VND1,300 billion and VND400 billion to VND500 billion respectively depending on the applied insurance activities.

During operation, the insurance companies must maintain their equity sources to ensure the solvency margin no less than the minimum solvency margin requirement. The satisfaction of this requirement must be reviewed on a quarterly basis and insurance companies. In failure to satisfy this requirement, insurance companies are required to conduct necessary procedures to inject additional capital within 6 months from the quarter end.

7. What are the permissible legal forms for insurance companies, and how is the business organization regulated?

Insurance company shall be organized under the form of a joint-stock company or a limited liability company. In respect of limited liability insurance companies, all capital contribution members must be part of the organization. For joint stock insurance companies, at least 2 shareholders must be part of the organization and with each contributing not less than 10% charter capital of the insurance company. Each individual shareholder is not permitted to contribute more than 10% charter capital of the insurance company.

The LoIB 2022 also places requirements on the business organization of the insurance company corresponding to the respective corporate forms. Each management and supervision personnel must satisfy the conditions and criteria in terms of ethics, qualifications, experiences, residence and non-criminal status. To ensure that independence and transparency are maintained within the insurance market, management personnel and supervision personnel cannot hold concurrent positions among insurance companies in the same sector.

Moreover, every insurance company must establish three key functions, internal control, internal audit and risk management, to ensure prudential operation.

8. What regulations apply to the insurance contract?

LoIB 2022 and other relevant guiding instruments set out several requirements to the insurance contract as follows:

First, an insurance contract must be concluded and implemented in compliance with basic principles of civil code and 5 specific principles including, (i) principle of utmost good faith; (ii) principle of insurable interest; (iii) principle of indemnity; (iv) principle of subrogation; and (v) principle of unpredictable risk.

Second, an insurance contract must be made in writing. Proof of conclusion of an insurance contract shall comprise of insurance contract, certificate of insurance, insurance policy or others prescribed in law.

Third, an insurance contract must cover the following contents: (i) the policyholder, the insured, the beneficiary (if any), the insurer or the foreign non-life insurer's branch; (ii) subject matter insured; (iii) sum insured or value of property insured or covered property value or insurance policy limit; (iv) scope of insurance coverage and insurance benefits; insurance rules, terms and conditions; (v) rights and obligations of the insurer, the foreign non-life insurer's branch and the policyholder; (vi) insurance policy period, date of entry into force of the insurance contract; (vii) insurance premium, premium payment option; (viii) insurance coverage and payment option; (ix) dispute resolution method.

9. What applies to insurance brokerage?

In accordance with LoIB, insurance brokerage refers to the practice of providing a policyholder with information, advice or consult on type of insurance, line of insurance business, insurance product, insurance schemes, terms and conditions, insurance premium, insurer, reinsurer, foreign insurance branch in Vietnam; other service activities related to the negotiation, arrangement for conclusion and execution of insurance or reinsurance contracts or policies.

Similar to insurance company, the companies providing insurance brokerage must obtain a license for establishment and operation from MoF.

The license imposed conditions for the establishment and operation for brokerage insurance companies includes but not limited to legal status of members/shareholders, capital level, personnel, organization structure and experiences.

Upon issuance of the license, insurance brokerage companies in Vietnam are permitted to engage in (i) primary insurance brokerage activities, reinsurance brokerage activities; (ii) provision of insurance auxiliary services; and (iii) other activities related to insurance contracts at the request of insurance buyers.

Management personnel of an insurance brokerage company are required to meet with the criteria and conditions on qualifications, certificates, experiences, and others. The individual directly carrying out the insurance brokerage must have diploma degree on insurance or obtain insurance brokerage practicing certificate issued by licensed local or international educational organization.

10. What are the ESG requirements for insurance companies?

Currently, there is no specific legal regulation on ESG requirements for insurance companies.

However, realizing the importance of implementing ESG standards and to meet with international expectations of foreign investors preferring ESG-centric companies with strong and transparent governance practices, Vietnam has passed many regulations, policies towards ESG, for instance (a) national strategies on sustainable development including (i) Socio-Economic Development Strategy 2021 – 2030, (ii) National Financial Inclusion Strategy through 2025, vision to 2030, and (iii) Financial Strategy through 2030; (b) national strategies/action plan on green growth including (i) National Strategy on Green Growth 2021 – 2030, vision to 2050, and (ii) National Action Plan on Green Growth 2021 – 2030; (c) legislations on environment including (i) National Strategy for Climate Change until 2050, (ii) Power Development Plan 8, (iii) Mitigation of GHG emissions and protection of ozone layer, (iii) Guidelines for implementation of law on environmental protection regarding response to climate change, social and government, (iv) Law on Environment Protection and guidelines, and (v) Extended Producer Responsibility regulations; (d) legislation on social including (i) Labour Code, (ii) Decree on Personal Data Protection, (iii) Law on Consumer Protection; and (e) legislation on governance including (i) Law on Investment, (ii) Law on Enterprises, (iii) MOF's Guidelines on disclosure of information on securities market, (iv) Corporate Governance Code of Best Practices.

Insurance companies interested in ESG compliance may refer to above policies and regulations for guidance on ESG requirements

and guidance in Vietnam.

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