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2016: Insurance regulation in Asia Pacific

Ten things to know about 20 countries

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2016: Insurance regulation in Asia Pacific

Ten things to know about 20 countries

A Norton Rose Fulbright guide
as at January 1, 2016

Preface

We are pleased to present the 2016, and the third edition of *Insurance regulation in Asia Pacific – Ten things to know about 20 countries*. Thank you to our clients, contacts and regulators for your support and contribution.

The purpose of this guide is to provide an overview and practical checklist of ten common regulatory issues for insurance companies on which we frequently are asked to advise upon for the key Asia Pacific jurisdictions where most of our clients operate or in which they are interested in expanding. It identifies the regulator and whether branches of foreign insurance companies are permitted or only locally incorporated companies. Any restriction on foreign direct investment is highlighted along with the controller regimes (shareholders and management) and whether a notification or approval from the regulator is required upon proposed or actual change of control and the thresholds thereof. Also addressed is the nature of the regulatory capital regime, whether there is group supervision and policyholder protection, and whether outsourcing is subject to regulatory oversight. We aim for this guide to be a useful first stop for generic advice on the topics covered.

The information is up to date as at January 2016. It is not a substitute for considered legal advice.

If you would like further information on any of the matters covered here, please do get in touch with me or the relevant contributor.

Anna Tipping
Partner

Acknowledgements

The chapters on Australia, China, Hong Kong, Singapore and Thailand have been provided by Norton Rose Fulbright. We gratefully acknowledge the assistance of the law firms who have contributed to the chapters on Cambodia, India, Indonesia, Japan, Macau, Malaysia, Mongolia, Myanmar, New Zealand, Papua New Guinea, Philippines, South Korea, Sri Lanka, Taiwan and Vietnam. These firms are identified at the start of each section and further details on the contributors are given at the end of the guide

Contents

Australia

Contributed by: Norton Rose Fulbright

01 | The regulator

The Australian Prudential Regulation Authority (APRA) is the prudential regulator, and the Australian Securities and Investments Commission (ASIC) is the consumer protection regulator, for the insurance industry.

General and life insurers and reinsurers carrying on business in Australia must be authorised by, or registered with, APRA.

Insurers, insurance brokers, agents and other distributors must hold an Australian financial services licence (AFSL) issued by ASIC, be authorised by a licensee or rely on an exemption from the licensing requirements.

A reinsurer may operate from abroad without registering with APRA or holding an AFSL.

Responsibility for the prudential supervision of private health insurers has recently transferred to APRA from the Private Health Insurance Administration Council. APRA adopted the prudential framework of the previous regulator, but may change that framework going forward.Relevant legislation and regulation is primarily made at the Federal level.

02 | Subsidiary/branch

A foreign life insurer may establish a locally incorporated subsidiary to carry on life insurance business in Australia. Alternatively, a US registered life insurer may seek to operate in Australia through a branch as an Eligible Foreign Life Insurance Company (EFLIC).

A foreign general insurer may establish a locally incorporated subsidiary to carry on insurance business in Australia (foreign-owned subsidiary) or it may establish a branch (branch of foreign insurer).

EFLIC, foreign-owned subsidiaries and branches of foreign insurers are subject to the same APRA requirements as Australian insurers but have different governance requirements.

03 | FDI restrictions

Generally, approval of the Foreign Investment Review Board must be obtained prior to any foreign person acquiring a direct or indirect interest of 15 per cent or more in an Australian company through the acquisition of shares or assets in the Australian company or any offshore parent of that company.

04 | Change of control approvals

In addition to the FDI restrictions, an entity that holds an AFSL must notify ASIC of any change in control within 10 business days after the change occurs. 'Control' includes having more than 50 per cent of the votes or shares in the entity or having the capacity to appoint its directors or determine its financial operating policies.

05 | Minimum capital

The APRA prescribed minimum capital amounts for insurers are:

- Life insurer – A$10 million
- General insurer – A$5 million (A$2 million for captives).

There are no minimum capital requirements for insurance brokers, agents and financial advisers.

A$1.37 = US$1.00 as at January 1, 2016

06 | Risk based capital – insurers

An insurer must have capital in excess of its Prudential Capital Requirement (PCR).

The PCR is the prescribed capital amount plus any supervisory adjustments made by APRA in respect of each insurer.

The prescribed capital amount can be calculated using either APRA's 'Standard Method' or an internal model approved by APRA. The Standard Method calculates the capital amount based on insurance risk, asset risk, asset concentration risk and operational risk.

Life insurers additionally have a separate solvency requirement. Under the solvency requirements, a life insurer's statutory fund must have a capital base that exceeds 90 per cent of the fund's prescribed capital amount.

07 | Group supervision

APRA has the power to authorise (in the case of a general insurer) or register (in the case of a life insurer) an Australian incorporated non-operating holding company (NOHC) which owns at least one Australian authorised/registered insurer.

An 'insurance group' exists if an Australian insurer has controlled entities or is itself the subsidiary of an authorised/ registered NOHC. This provides APRA with some level of control over the group that the insurer or NOHC manages. Most of APRA's powers that apply to an insurer, also apply to a NOHC.

APRA can impose directions on the insurer or NOHC to take specified actions in relation to their subsidiaries.

Furthermore, APRA has recently extended its supervisory powers over Australian established non-APRA-regulated institutions that are part of a conglomerate group that carries on insurance business in Australia. Currently, APRA has direct oversight of all such entities within those groups in the areas of group governance and risk management. This means that APRA will have direct oversight of all of the Australian subsidiaries of an insurer or NOHC. It is also proposing to extend these powers in the areas of risk exposures and capital adequacy, which are expected to come into effect within the year.

08 | Policyholder protection

Life insurer

Life insurers are required to maintain statutory funds, which act as a mechanism for quarantining the life insurance business of the company from any other business of the company.

General insurer

APRA administers the Financial Claims Scheme (FCS), which makes payments to certain policyholders with valid claims on an insolvent general insurer. The Government funds the payments made under the scheme and then seeks recovery from the general insurer in the winding up process. Any shortfall may be recovered through a levy on the general insurance sector.

09 | Portfolio transfers

Court approval

The transfer of life or general insurance business within Australia must be carried out by a scheme confirmed by the Federal Court of Australia.

The insurer must provide a copy of the scheme to APRA and ASIC and an approved summary of the scheme to each affected policy owner. A notice of intention to make the application must also be published in the Federal Government Gazette and advertised in the one or more newspapers approved by APRA.

APRA approval

Alternatively, two registered life insurers may apply to APRA for approval of a transfer of business between them under the Financial Sector (Business Transfer and Group Restructure) Act 1999 (Cth).

10 | Outsourcing

If an insurer outsources any material business activity, it must implement a written policy, approved by its board of Directors, to monitor and manage the outsourcing arrangement. A ‘material business activity’ is one that may, if disrupted, have a significant impact on the insurer’s business operations or its ability to manage risks effectively. Generally, material outsourcing arrangements must be documented in a legally binding agreement, which must include terms relating to the services to be provided, fees, liability, as well as review and audit procedures. Outsourcing to offshore service providers may be permitted after consultation with APRA.

Cambodia

Contributed by: Bun & Associates

01 | The regulator

The Insurance and Pension Division of The General Department of Financial Industry, being a division of the Ministry of Economy and Finance (MEF) is the insurance regulator.

Anyone carrying out insurance activities (undefined) in Cambodia is subject to the new Law on Insurance, promulgated on August 04, 2014, replacing that of July 25, 2000 and the Sub-Decree on Insurance adopted on October 22, 2001, which remains in force. The new Law on Insurance involves the following changes: a better protection for policyholders, an increased control for the regulatory body, dispute resolution and insurance companies' liquidation and dissolution process, and a clearer regulation for insurance companies to operate in Cambodia.

Insurers, insurance brokers, insurance agents and loss adjusters must be licensed by the regulator.

Only insurance companies licensed in Cambodia may underwrite insurance business in Cambodia.

A reinsurer may operate from abroad without a licence.

02 | Subsidiary/branch

An insurance company shall be registered as a Public Limited Company. A foreign insurer may not carry on business in Cambodia without establishing a locally incorporated company meeting this requirement, i.e. a branch of a foreign insurer is not permitted.

An insurance intermediary shall be registered as a Private Limited Company.

03 | FDI restrictions

Nil – local insurance companies may be owned 100 per cent by foreign investors.

04 | Control approvals

A change of greater than 10 per cent of the shareholding of an insurance company must be notified to the insurance regulator prior to the event. As the MEF may withdraw or not renew a licence if the licence requirements are not met, it is prudent to obtain prior approval to any change of control.

Management individuals are subject to agreement from the MEF based on their diploma and experience.

05 | Minimum capital

Life or General Insurance company:	SDR5 million*
Composite Insurance company:	SDR10 million
Micro-insurance company (life or non-life):	KHR600 million
Insurance Broker:	KHR200 million
Insurance Agent:	KHR20 million
Loss Adjustor:	KHR20 million

* SDR = IMF special drawing rights. SDR 1 = US$1.39 as at January 1, 2016

* KHR4065.04 = US$1.00 as at January 1, 2016

06 | Risk based capital

No – capital based.

Insurance companies and intermediaries shall maintain a deposit to the National Treasury.

Insurance Company: 10 per cent of registered capital
Insurance Broker: US$50,000
Insurance Agent and Loss Adjustor: US$10,000

Insurance companies shall maintain a solvency margin:

For the first year of operation: 50 per cent of the registered capital; thereafter:

- KHR13.3 billion, where net premiums ≤ KHR66.5 billion
- 20 per cent of total premium, where net premiums are between KHR66.5 billion and KHR332.5 billion
- KHR66.5 billion plus 10 per cent of insurance surplus from the previous year where net premium is < KHR332.5 billion,

in each case assessed on the previous year's premiums.

Professional liability insurance: US$500,000 applicable only to insurance brokers.

07 | Group supervision

No.

08 | Policyholder protection

Apart from the solvency margin requirement and the mandatory deposit, there is no protection fund for policyholders (that is the purpose of the deposit).

On liquidation of a life insurance company there is no priority for policyholders, however the policies and the reserve fund shall be transferred to another life insurance company. This provision has never been used, so no details of its practical application are available.

However, the new Law on Insurance imposes a priority of repayment of debt in case of liquidation of an insurance company. The priority of repayment of debt is determined as follows:

- remuneration and other expenses related to the provisional governance and the liquidation
- claim for the insurance indemnity
- claim by the insurance policy holder
- salary of employee and worker, administrative fees, court fees and other taxes of the court proceeding
- secured claim
- tax duty of the state without deposit of the notification
- recognised unsecured claim.

09 | Portfolio transfers

Yes. A Cambodian insurance company may apply to the insurance regulator for approval to transfer all or part of its insurance business to another Cambodian insurance company. The transfer is effected by agreement between the transferor and the transferee, once insurance regulator approval is given. No portfolio transfer has been carried out. It is prudent to assume the MEF will develop details of the process that are in the best interests of the policyholders.

10 | Outsourcing

There is no restriction for outsourcing activities that are not subject to licensing. Currently there are no loss adjustors or actuaries registered in Cambodia so the MEF tolerates the outsourcing of such activities to outside of Cambodia.

China

Contributed by: Norton Rose Fulbright

01 | The regulator

The China Insurance Regulatory Commission (CIRC) regulates insurance companies and intermediaries, including agents, brokers, loss adjustors and their business operations.

02 | Subsidiary/branch

Life and non-life insurer subsidiaries are permitted. Branches of non-life foreign insurers are permitted. Licences are issued on a 'province by province' basis.

03 | FDI restrictions

Yes.

- Non-life – 100 per cent by foreign investor
- Life – 50 per cent by foreign investor.

An insurer branch or subsidiary with ≥ 25 per cent foreign investment is 'foreign funded' and different administrative regulations apply to those that apply to locally funded insurers. For example, a Representative Office is required to be in place for a two year 'seasoning' period before a foreign funded insurer may be set up.

04 | Control approvals

≥ 5 per cent – prior approval of CIRC required.
< 5 per cent – notification to CIRC after transfer.

Directors and controllers must be approved by CIRC as 'fit and proper'.

05 | Minimum capital

Insurer (life):
Nationwide:
RMB200 million for applying one of the following three basic businesses: (i) life and annuity insurance, (ii) health insurance and (iii) accident injury insurance, and additional RMB200 million for adding one more basic business above.

RMB1 billion for carrying on all three basic businesses above, plus one category of the following two additional basic businesses: (i) participating insurance and (ii) universal life insurance.

RMB1.5 billion for carrying all five basic businesses above.

Branches:
RMB20 million for any single branch and RMB500 million max for multiple branches.

Insurer (non-life):
Nationwide:
RMB200 million for applying one of the following basic businesses: (i) motor insurance (including mandatory and commercial), (ii) enterprise/household property insurance and engineering insurance (excluding special risk insurance), (iii) liability insurance, (iv) marine hull/cargo insurance and (v) short term health/accident injury insurance, and additional RMB200 million for adding one more basic business above.

Branches:
RMB20 million for any single branch and RMB500 million max for multiple branches

Carrying on extended life businesses (such as unit-linked insurance and variable annuity insurance) or extended non-life businesses (such as agricultural insurance, special risk insurance, credit warranty insurance and investment linked insurance) will subject insurers to higher qualification requirements such as having engaged in requisite basic businesses, average net asset value requirement etc.

RMB 6.51 = US$1.00 as at January 1, 2016

06 | Risk based capital

Yes.

China formally launched a Solvency II type regime in May 2013, which includes a three-pillar structure. One of the three pillars is the requirement of capital quantification, which obliges an insurer to identify and quantify categories of risks (such as insurance risks, market risks, credit risks etc) and support such risks with a comparable amount of capital. Categories of risks are open to expansion, for example reputation risk has recently been added.

07 | Group supervision

Yes. A group requires two or more insurance companies approved by CIRC and then constitutes all member companies.

08 | Policyholder protection

Yes, funded by industry levies.

In the event of insolvency or revocation of licence of a non-life insurer whose assets are insufficient to pay benefits, a non-life policyholder protection fund covers 100 per cent of losses up to RMB50,000 and thereafter, 90 per cent of losses for individual policyholders and 80 per cent for corporate policyholders.

In the event of insolvency or revocation of licence of a life insurer, the policies are required to be transferred to a new insurer and the policyholder protection fund will make up the shortfall in supporting assets to 90 per cent of individual policyholder liabilities and 80 per cent of corporate policyholder liabilities.

09 | Portfolio transfers

Yes. Consent of CIRC and individual policyholders is required for a voluntary portfolio transfer between contracting insurers. If a policyholder objects or fails to consent, CIRC cannot compel the transfer of a policy. In the event of a merger, the surviving insurer is obliged to transfer any portfolio that falls outside of its permitted business scope to a qualified insurer upon CIRCs approval on the merger. In this circumstance, the relevant laws are unclear on whether the consent of individual policyholders is required or not. In the event of insolvency or revocation of licence of a life insurer, CIRC can compel a portfolio transfer without policyholder consent.

10 | Outsourcing

There is no unified law on outsourcing applicable to insurance operations. Individual laws address individual areas. For example, there is an express prohibition on outsourcing the management of the security of information systems. Non-core back-office functions may be outsourced to qualified outsource providers (e.g. call centres, customer service and book-keeping).

Hong Kong

Contributed by: Norton Rose Fulbright

01 | The regulator

The Insurance Authority (IA), head of the Office of the Commissioner of Insurance (OCI) administers the Insurance Companies Ordinance which has provisions governing the regulation of insurers and insurance intermediaries (agents and brokers) in Hong Kong.

An insurer must be authorised by the IA before it carries on insurance business in or from Hong Kong. Insurance brokers must be authorised by the IA or admitted as members of self-regulatory organisations approved by the IA. At present, all insurance brokers in Hong Kong are members of either one of the two approved broker bodies, namely, the Hong Kong Confederation of Insurance Brokers (HKCIB) and the Professional Insurance Brokers Association (PIBA). The Insurance Agents Registration Board (IARB) established under the Hong Kong Federation of Insurers is responsible for registering insurance agents.

The Insurance Companies (Amendment) Ordinance (Amendment Ordinance) was passed in July 2015 and will be enacted and implemented on a phased basis in three stages. This is to facilitate the transition from the existing IA and OCI and the self-regulatory regime for insurance intermediaries to an independent Insurance Authority (IIA).

- Stage 1: Establish the Provisional Insurance Authority (PIA) (without regulatory functions and co-existing with the OCI). This occurred in December 2015. It is intended that relevant guidelines for insurers and necessary subsidiary legislation will be ready before the commencement of Stage 2.

- Stage 2: PIA to become the IIA and to replace the OCI by taking over its regulatory functions such as the prudential and conduct regulation of insurers, frontline regulation of Mandatory Provident Fund intermediaries and enforcement of the anti-money laundering regime. This is expected to occur in approximately December 2016.The self-regulatory insurance intermediary regime will continue.

- Stage 3: IIA to implement the statutory licensing regime and take over the regulation of insurance intermediaries from the three existing self-regulatory (broker and agent) organisations. This is expected to occur in approximately December 2018–2019.

02 | Subsidiary/branch

Both Hong Kong incorporated entities (including subsidiaries of foreign insurers) and branches of foreign insurers are permitted to conduct insurance business in or from Hong Kong if they satisfy the relevant requirements and are granted a licence by the IA.

A foreign insurer wishing to open a branch is required to satisfy the IA that it: (a) is a company incorporated in a country where there is comprehensive company law and insurance law; (b) is an insurer under effective supervision by the relevant authority(ies) of its home country; and (c) is a well-established insurer with international experience and of undoubted financial standing.

03 | FDI restrictions

None.

04 | Change of control approvals

Prior approval of the IA must be obtained prior to any change to persons who are entitled to exercise or control the exercise of more than 15 per cent (direct or indirect) shareholding or voting power of an insurer.

The managing director, chief executive and shareholder controllers (as described above) of the insurer must be approved by the IA as ‘fit and proper’.

An insurance broker must obtain the confirmation of the IA, or either the HKCIB or PIBA before confirming the appointment of its chief executive. An insurance agent must obtain the confirmation of the IARB before confirming the appointment of its responsible officer.

Changes to the existing requirements will be introduced by the Amendment Ordinance.

05 | Minimum capital

- HK$10 million – general and life insurers

- HK$20 million – composite insurers and insurers writing statutory classes (e.g. third-party motor and, employee compensation)

- HK$2 million – captive insurers.

Branches of overseas insurers have no capital deposit requirement, but must maintain assets in Hong Kong equal to 80 per cent of net liabilities and the applicable solvency margin.

HK$7.75 = US$1.00 as at January 1, 2016

06 | Risk based capital

No, the current framework is a rules-based capital adequacy framework. However, an insurer must maintain an excess of assets over liabilities of not less than a required solvency margin:

General – the greater of:

- 20 per cent of relevant premium income up to HK$200 million plus 10 per cent of the amount by which the relevant premium income exceeds HK$200 million
- 20 per cent of relevant outstanding claims up to HK$200 million plus 10 per cent of the amount by which the relevant outstanding claims exceed HK$200 million,

subject to a minimum of HK$10 million (HK$20 million for certain statutory classes).

Life – the greater of:

- HK$2 million
- generally 4 per cent of mathematical reserves plus 0.3 per cent of capital at risk.

There are proposals to introduce a risk-based capital framework. The IA published consultation conclusions in September 2015 on the proposed introduction of a risk-based capital framework in line with core principles of the International Association of Insurance Supervisors (IAIS). It is proposed that the framework will comprise three pillars (Pillar 1: quantitative requirements; Pillar 2: qualitative requirements; and Pillar 3: disclosure and transparency requirements) and will be introduced on a phased basis; the next step being the development of detailed rules.

07 | Group supervision

Not currently. However, there are proposals to introduce group supervision. The IA has expressed an interest in being part of a transitional regime for third country equivalence under Solvency II, which requires group supervision. The proposals have regard to the core principles of the IAIS and similar group-wide supervision regimes introduced and proposed in other jurisdictions, including the EEA.

Key elements of the proposed regime will cover the nature of groups to be subject to group-wide supervision, as well as prudential, corporate governance, enterprise risk management and disclosure requirements at the group level.

08 | Policyholder protection

There is currently no compensation scheme for life insurance policies and certain types of general insurance policies. However, there are two funds to protect the interests of policyholders or claimants of certain statutory general business in the event of insurer insolvency: (a) the Insolvency Fund operated by the Motor Insurers' Bureau of Hong Kong is available for meeting claims for bodily injuries or death arising from motor accidents; and (b) the Employees Compensation Insurer Insolvency Scheme operated by the Employees Compensation Insurer Insolvency Bureau is available to meet employees' compensation claims.

The consultation process for the establishment of a policyholder protection fund (PPF) for direct general (other than motor vehicle and employees' compensation claims which are covered by the existing schemes) and life insurance policies concluded in January 2012 and the drafting of legislation is underway. It is proposed that there will be separate life and general policyholder protection schemes, which will be established on a statutory basis and administered by a statutory body under independent oversight of the PPF Board. Subject to completion of the legislative process, the PPF is expected to be set up following establishment of the new IIA.

Policyholders have priority in the distribution of an insurer's assets in the event of its insolvency.

09 | Portfolio transfers

Yes. All or part of portfolios of life business must be transferred under a court-sanctioned scheme of transfer. The transferor or transferee insurer may apply to court to approve a scheme for the transfer, which also involves engagement with the IA. The IA, policyholders and interested parties may object to the proposed transfer but the court ultimately has discretion to approve the scheme.

General business portfolios may be transferred contractually or alternatively under the statutory provisions with approval of the IA upon application of the transferor. Policyholders and other interested parties may object to the transfer, but the IA has ultimate discretion to approve the scheme.

Notification by Gazette/newspaper advertisement is required as a minimum.

10 | Outsourcing

Outsourcing by insurers is generally permitted, subject to compliance with IA guidance (GN14) which applies to all outsourcing arrangements of authorised insurers incorporated or based in Hong Kong and for the Hong Kong operations of overseas insurers. An authorised insurer must notify the IA at least 3three months before entering into, or significantly varying, any material outsourcing arrangement. Essential issues to consider when outsourcing (regardless of materiality) include having a documented, board-approved outsourcing policy in place, conducting a risk and materiality assessment and entering into a written agreement with the service provider. The IA must be satisfied that all essential issues have been properly addressed. Within 30 days of entering into a material outsourcing arrangement, further details must be submitted to the IA together with a copy of the outsourcing agreement.

India

Contributed by: Cyril Amarchand Mangaldas

01 | The regulator

The Insurance Regulatory and Development Authority (IRDA) which is constituted under the Insurance Regulatory and Development Authority Act 1999, and which derives its powers from the Insurance Act 1938 regulates entities which carry on insurance business and intermediary business (brokers, insurance surveyors, loss assessors, insurance agents and third party administrators) in or from India.

02 | Subsidiary/branch

Performance of any commercial activity in the insurance sector requires the establishment of a duly licensed local entity. A local insurer must be a public company or a co- operative society. A foreign company is permitted to undertake reinsurance business in India by establishing a branch in India.

03 | FDI restrictions

Foreign direct investment to the extent of 49 per cent of equity share capital of an Indian insurance company and insurance sector intermediaries is permitted under extant Indian laws.

Foreign direct investments up to 26 per cent of the total paid up equity of the Indian insurance company is allowed under the automatic route, i.e. without prior approval of the Foreign Investment Promotion Board (FIPB). Foreign direct investment between 26 per cent and 49 per cent is permitted with prior approval of the FIPB.

All insurance companies in India with foreign investment are required to be mandatorily Indian 'owned and controlled'.

04 | Control approvals

Any transfer of shares by a transferor or group of transferors which jointly or severally exceeds 1 per cent of the paid up equity capital of an insurance company requires prior approval of the IRDA.

Prior approval of the IRDA is also required for any transfer where the shareholding of the transferee is likely to exceed 5 per cent of the paid up equity capital of the insurance company.

All other changes in shareholding must be notified to IRDA. In case of a private bank promoted insurance company (an insurance company owned by a bank) any foreign direct investment in the bank requires approval of the Reserve Bank of India in consultation with the IRDA.

05 | Minimum capital

Minimum paid-up capital requirements:

- insurer – INR1 billion
- reinsurer – INR2 billion
- direct broker – INR5 million
- reinsurance broker – INR20 million
- composite broker – INR25 million.

Equity shares having a single face value and other forms of capital as may be specified by regulations are allowed. However, voting rights of shareholders are restricted to equity shares only. A foreign company carrying on reinsurance business through a branch in India is required to have net owned funds of INR 50 billion.

INR$66.24 = US$1.00 as at January 1, 2016

06 | Risk based capital

Every insurer and re-insurer shall at all times maintain an excess of value of assets over liabilities of not less than 50 per cent of the amount of minimum capital that such insurer or re-insurer is required to bring.

Available Solvency Margin (ASM) is in excess of policyholder funds and shareholder funds.

Solvency Margin Ratio (ASM/RSM) must be not less than 1.5.

07 | Group supervision

No.

08 | Policyholder protection

The IRDA (Protection of Policyholders' Interests) Regulations, 2002 provides for protection of the interest of the policyholders.

The Corporate Governance Guidelines for Insurance Companies require each company to form a Policyholder Protection Committee. The committee is responsible for addressing the various compliance issues relating to protection of the interests of policyholders and keeping the policyholders well informed of and educated about insurance products and complaint-handling procedures.

The committee will directly report to the board of directors of the insurance companies.

09 | Portfolio transfers

Yes. A scheme for amalgamation must be submitted to and approved in principle by IRDA then advertised to policyholders, following which IRDA will give final approval if the merger is in the best interests of the policyholders.

10 | Outsourcing

Core and important activities which are said to affect corporate governance, protection of policyholders, solvency and revenue flows of the insurer cannot be outsourced. There is a comprehensive list of core activities in the Guidelines on Outsourcing of Activities by Insurance Companies, including: underwriting, product design, actuarial functions, ERM, investment and related functions, fund accounting, claims decisions, bank reconciliation, complaints, market conduct, appointment of surveyors and loss assessors and compliance.

Indonesia

Contributed by: Makarim & Taira S.

01 | The regulator

The Financial Services Authority (Otoritas Jasa Keuangan 'OJK') supervises all financial institutions. Law No. 40 of 2014 on Insurance which was enacted on October 17, 2014 is the principal legislation relating to insurance business (Insurance Law).

02 | Subsidiary/branch

Branches of foreign insurers are not permitted. Only an Indonesian incorporated legal entity can apply for a licence to engage in business as an insurer.

03 | FDI restrictions

Yes. Foreign insurance company (or, as the case may be, any of its shareholders) engaged in similar insurance activities to those of the proposed company in Indonesia may hold up to 80 per cent of its shares at establishment subject to an implementing Government Regulation to be issued soon.

04 | Control approvals

Any transfer of shares in an insurance company requires approval from the OJK.

All key parties must pass the OJK's 'fit and proper' test before being appointed or acquiring shares. Key parties means members of the Board of Directors, Board of Commissioners, Sharia Supervisory Board and the Members Representative Board, as well as controlling shareholders, experts and foreign citizens. A controlling shareholder is a shareholder that holds 25 per cent or more interest in the company, or less than 25 per cent but can influence the management and/or policy of the insurer. An insurance company must have at least one controlling shareholder determined by the general meeting of shareholders, who will require approval for ceasing to be a controller from the OJK. A party (other than the Indonesian Government) may only be a controlling shareholder in one life insurance company, general insurance company, reinsurance company, sharia life insurance company, sharia general insurance company or sharia reinsurance company. Controlling shareholders have three years to comply with this requirement under the Insurance Law.

05 | Minimum capital

Insurer: IDR 100 billion
Sharia insurer: IDR billion
Reinsurer: IDR 200 billion
Sharia reinsurer: IDR billion

IDR$13,837 = US$1.00 as at January 1, 2016

06 | Risk based capital

RBC Solvency Margin Ratio = net asset value (book value)/ net asset value recalculated with possible adverse risks taken into account (risk based capital). Specific risk factors are applied to asset values to reflect the potential for an asset default, currency mismatch of assets and liabilities, adverse claim experience and reinsurance default.

07 | Group supervision

No.

08 | Policyholder protection

Each insurance company must form its own protection fund to serve as a 'last resort' to protect the interests of its policyholders. The protection fund must constitute at least 20 per cent of the insurer's own capital, which must be adjusted to the development of the insurance company's business volume. The funds representing the protection fund must be deposited with a bank. Within three years of the enactment of the Insurance Law, the protection fund will be replaced by a policy assurance program, which all insurance companies licensed by the OJK must be a member. Once the policy assurance program comes into effect, the protection fund requirement will no longer apply to insurance companies.

All insurance companies must also be a member of a mediation institution for resolving disputes between insurance companies and their policyholders.

The Insurance Law gives policyholders preferential rights in liquidation ahead of secured and unsecured creditors, but behind preferred creditors (as well as tax liabilities and employee compensation).

OJK Regulation No. 1 of 2013 gives a policyholder the right to report a complaint to the OJK over a dispute between an insurance company and the policyholder and/or an alleged violation of the financial laws and regulations. Insurance companies must implement an annual customer and/or public education program to promote financial (insurance) literacy.

09 | Portfolio transfers

The consent of the OJK is required. If the transfer involves all portfolios, the shareholders of the transferor must submit an application to OJK for the return of its insurance business license after the transfer has been completed. The policyholders must be informed of the transfer in writing. Announcements in national circulated newspapers must also be made by the transferor. A report to the OJK on the result of the transfer must be submitted by the transferor upon completion of the transfer. However, the applicable regulation is silent on the procedure to be followed by customers who object to the transfer.

10 | Outsourcing

While the Insurance Law allows an insurance company to outsource some of its functions, it is still silent on what functions may be outsourced and the relevant requirements. This will presumably be further regulated under its implementing regulations.

Japan

Contributed by: Nishimura & Asahi

01 | The regulator

Under the Insurance Business Act (IBA) the Prime Minister of Japan has overarching authority as the insurance regulator. Except for certain important powers such as granting and cancelling insurance business licences, most have been delegated to the Commissioner of the Financial Services Agency of the Japanese Government (FSA) and to the directors of the Local Finance Bureau and the Local Finance Branch Bureau of the Ministry of Finance (collectively LFB).

Insurers and reinsurers must be licensed by the Prime Minister. There is a separate category of registration for entities that only carry on small amount and short-term insurance business (SASTI).

Insurance brokers (*Nakadachi-nin*) must be registered.

Insurance agents must be registered and, for life insurance, every officer and employee of a corporate agent who individually acts as an agent must also be registered.

02 | Subsidiary/branch

Japanese incorporated entities with a licence are Licensed Insurance Companies.

Branches of foreign insurers and reinsurers may also be licensed and are known as Licensed Foreign Insurers. Every Licensed Foreign Insurer must deposit ¥200 million with the government office.

Except in limited circumstances only Licensed Insurance Companies or Licensed Foreign Insurers may underwrite policies covering Japanese risks.

03 | FDI restrictions

None.

04 | Control approvals

Prior authorisation (ninka) from the FSA is required to:

- become an ‘insurance holding company’ (a company (i) of which more than 50 per cent of the total assets consists of subsidiaries’ shares and (ii) which holds the majority of voting rights in a Licensed Insurance Company).
- acquire 20 per cent or more (or 15 per cent or more together with substantial influence on financial and business policy decisions) of the voting rights of a Licensed Insurance Company (Major Shareholder Threshold) – the ultimate controller as well as the direct controllers must apply.

The acquisition of five per cent or more of the voting rights in an insurer must be notified.

05 | Minimum capital

Licensed Insurance Companies	¥1 billion x capital
SASTI insurers	¥10 million x capital plus ¥10 million x (or more) deposit
Licensed Foreign Insurers	¥200 million x deposit
Insurance brokers	¥20 million x (or more) deposited guarantee

¥120.63 = US$1.00 as at January 1, 2016

06 | Risk based capital

The IBA provides for calculation of a solvency margin ratio:

$$\text{Solvency margin ratio (\%)} = \frac{\text{Total amount of solvency margin}}{\text{Total amounts of risk} \times \frac{1}{2}} \times 100$$

The total amount of risks is calculated using different formulas for life and non-life, taking into account potential volatility or deviations in claims, interest rates, asset valuations, credit risk, business risks, minimum guarantee risk and catastrophe risks.

A solvency margin of:

200% or more = sound condition, no intervention by FSA

Less than 200% and no less than 100% FSA will issue a ‘business improvement order’

Less than 100% and no less than 0% FSA will order measures to improve capability to pay claims, e.g. suspension of dividends to shareholders and/or policyholders, change of terms for new business, prohibition on directors’ bonuses.

Less than 0% FSA will order partial or total suspension of business

07 | Group supervision

From the fiscal year ending March 2012 a group solvency margin requirement applies to the group (the holding company and its subsidiaries or the insurance company and its subsidiaries).

08 | Policyholder protection

There are two policyholder protection corporations: Life Insurance Policyholders Protection Corporation of Japan and the Non-Life Insurance Policyholders Protection Corporation of Japan. There is no such corporation covering SASTI.

They will protect the policy reserves depending on the type of insurance. Basically, up to 90 per cent (life insurance) or 80 per cent (non-life insurance) of the policy reserves will be protected.

In addition, they may:

- provide financial assistance for the transfer or payment of insurance contracts of a bankrupt insurer
- assume insurance contacts of a bankrupt insurer
- purchase rights to insurance claims of a bankrupt insurer.

The corporations are funded by industry levies.

09 | Portfolio transfers

Permitted as a portfolio transfer. Insurance contracts can be transferred to another insurance company subject to certain conditions and procedures including public notice, the absence of more than one-tenth (or one-fifth in the case of transfer of all insurance contracts) of the policyholders objecting and prior authorisation from the FSA. The IBA no longer requires that such portfolio transfer cover all insurance contracts, which adopt the same calculation basis for their policy reserves.

10 | Outsourcing

Insurers may only in very limited circumstances (usually limited to insolvency) delegate discretionary powers with respect to their substantial business or administration of their assets with the FSA's prior approval. Insurers may outsource 'clerical functions' to a service provider without restriction. If the service provider is another insurer, the service provider must obtain the FSA's prior approval. With regard to insurance solicitation, the IBA has been amended to require that not only insurance providers, but also insurance agents take measures to ensure the sound and appropriate management of their insurance solicitation business. The IBA amendments in 2014 establish new fundamental rules regarding insurance solicitation under which persons conducting insurance solicitation should perform certain acts in order to ensure that they give finely-tuned responses to their customers at each step of the insurance solicitation. The new rules will be in force from 27 May 2016.

Macau

Contributed by: MdME

01 | The regulator

Macau is officially known as the Special Administrative Region of the People's Republic of China ('Macau SAR'). The Macau SAR insurance regulator is the Monetary Authority of Macau, known by its Portuguese acronym 'AMCM', which operates under the authority of Macau SAR's Chief Executive. The Insurance Supervision Department is AMCM's dedicated insurance unit.

Insurers and Reinsurers must be licensed and will be either life or non-life. Composite licences are not granted.

A company carrying on business as an insurance broker or insurance agent must be approved by AMCM and at least one individual must be appropriately qualified.

02 | Subsidiary/branch

Both Macau incorporated entities (including subsidiaries of foreign insurers) and branches of foreign insurers are permitted.

A foreign insurer must be licensed and have been in operation for more than five years in its country or territory of origin, must have sound business and financial ability and have no record of material violation of laws and regulations in order to be permitted to establish a branch.

A foreign insurer will only be permitted to carry on in Macau, through its authorised branch, the class of insurance for which it is licensed and which it effectively operates in its jurisdiction.

03 | FDI restrictions

Nil.

04 | Control approvals

Prior approval from AMCM is required to directly or indirectly acquire more than 10 per cent of the share capital or of the voting rights in a Macau incorporated insurance company. Any subsequent and cumulative increase of more than 5 per cent must similarly be approved by AMCM. Voting rights held by nominees and related parties are aggregated for the purpose of assessing whether the limits have been reached.

05 | Minimum capital

Minimum paid-up capital requirement:

- Insurance companies (life) MOP30 million
- Insurance companies (non-life) MOP15 million
- Reinsurance companies (life) MOP150 million
- Reinsurance companies (non-life) MOP100 million.

50 per cent to be paid in at the time of application, the remaining to be paid in within 180 days from the date of incorporation of the company;

- Insurance broker companies MOP25,000
- Insurance agent companies MOP25,000.

In order to be permitted to establish a branch, a foreign insurer/reinsurer must have a paid up capital at least equal to the minimum capital requirement of a Macau incorporated insurance/reinsurance company and allocate to the branch funds in the amount of MOP7.5 million (life) and MOP5million (non-life).

MOP$7.98 = US$1.00 as at January 1, 2016

06 | Risk based capital

Non-life insurance companies must maintain a solvency ratio determined in accordance with the total amount of gross written premiums of the previous year, as follows:

Gross written premiums	Solvency ratio
< MOP 10 million	MOP5 million
= or > MOP 10 million and < MOP 20 million	50 per cent of the gross premium amount
= or > MOP 20 million	MOP 10 million plus 25 of the amount in excess of MOP20 million of gross premiums.

Life insurance companies must maintain a solvency ratio determined by a set of formulas that take into account the mathematical reserves of the main technical provisions and the risk based capital.

As insurance company solvency ratio must be composed by tangible unencumbered assets. AMCM publishes a yearly list of assets which are excluded from incorporating the solvency ratio of authorised insurers.

07 | Group supervision

No.

08 | Policyholder protection

No, except in respect of the mandatory motor vehicle insurance policyholders. The Automobile and Recreational Boats Guarantee Fund (FGAM) is a public organisation, sponsored by insurance companies, established to safeguard the interests of insured parties and beneficiaries of the mandatory motor vehicle and recreational boats insurances. The Automobile Guarantee Fund may advance claims payments to beneficiaries in case an insurance company is declared bankrupted or in case the responsible party does not hold a valid policy at the time damage is caused.

09 | Portfolio transfers

Yes. An insurance company and/or a branch of a foreign insurer may apply to AMCM for approval to transfer all or part of its insurance business to another Macau insurer or Macau branch of a foreign insurer. In practice, prior notice is often given to policyholders to give them the opportunity to object. The transfer of life insurance policies will not be authorised if 20 per cent or more of the policyholders object to such transfer.

10 | Outsourcing

The outsourcing of business operations by an insurer is currently not expressly regulated. The existing regulatory practice is that AMCM reviews outsourcing requests on a case-by-case basis. The insurer is required to provide details on the types of activities to be outsourced, the party to whom the activities shall be outsourced, the control measures in place and the contingency plans and monitoring procedures to be set out. Guidelines to this respect are expected to be published by AMCM in the short term.

Malaysia

Contributed by: Zaid Ibrahim & Co

01 | The regulator

Bank Negara Malaysia (BNM) regulates entities which carry on insurance business, insurance broking, adjusting and financial advisory. Insurers are licensed by the Minister of Finance on the recommendation of the BNM. Brokers and financial advisers must be approved by BNM, and adjusters must be registered with BNM.

02 | Subsidiary/branch

Branches are not permitted. Insurers (other than professional reinsurers) must be public companies; adjusters must be incorporated, whereas BNM may specify the form of establishment of reinsurers, brokers and financial advisors.

There is currently a freeze on the issuance of new insurance licences by BNM, although BNM may be open to consider applications on a case by case basis. Prior consultation with BNM is encouraged.

03 | FDI restrictions

Yes: 70 per cent limit on foreign equity ownership.

> 70 per cent considered on a case by case basis for players who can facilitate consolidation and rationalisation of the industry.

04 | Control approvals

Prior written approval of the BNM or the Minister of Finance (as the case may be) is required for a person to:

- initially acquire an aggregate share interest of >5 per cent in a licensed insurer
- subsequently hold an aggregate share interest in a licensed insurer equal to or exceeding each multiple of 5 per cent, or the trigger for a mandatory general offer (i.e. 33 per cent)
- hold more than 50 per cent interest in share in a licensed insurer
- have 'control' over a licensed insurer, regardless of shareholding level; or
- dispose of shares resulting in shareholding below 50 per cent or a change in 'control'.

In addition, a company holding > 50 per cent interest in shares in a licensed insurer must be approved by BNM as a 'financial holding company'.

For an approved insurance broker or financial adviser, ≥ 5 per cent shareholding requires notification to BNM and any change of control requires prior written approval of BNM.

05 | Minimum capital

Minimum paid-up share capital:

• insurer:	RM100 million
• local reinsurer (life):	RM50 million
• local reinsurer (non-life):	RM100 million.

Minimum surplus assets over liabilities:

• licensed foreign reinsurer:	RM20 million

RM$4.30 = US$1.00 at January 1, 2016

06 | Risk based capital

Yes, the Risk-Based Capital Framework applies to all insurers, including reinsurers, licensed under the Financial Services Act 2013, for business generated within and (subject to limited exceptions) outside Malaysia. The Framework was implemented with effect from January 1, 2009.

$$\text{CAR} = \frac{\text{Total Capital Available}}{\text{Total Capital required}} \text{ X 100 per cent.}$$

Total capital available (TCA) is the aggregate of Tier 1 capital (such as issued and paid-up ordinary shares) and Tier 2 capital (such as cumulative irredeemable preference shares) less deductions from capital (such as goodwill, deferred tax assets and investment in subsidiaries). The total amount of Tier 2 capital must not exceed the amount of Tier 1 capital.

Total capital required (TCR) is the aggregate of capital charges for each insurance fund and assets in the shareholders fund/working fund. Capital charges are fixed for credit risk, market risk, insurance liability risk and operational risk or surrender value capital charges.

BNM has set a Supervisory Target Capital Level of 130 per cent.

Each insurer must set its own Individual Target Capital Level to reflect its own risk profile. The Individual Target Capital Level must be higher than the Supervisory Target Capital Level.

07 | Group supervision

Yes. Under the Financial Services Act 2013, BNM is empowered to exercise oversight over financial groups for the purposes of promoting the safety and soundness of a licensed insurer. In general, the prudential requirements applicable to licensed insurers also apply to financial holding companies, and BNM may specify standards on prudential matters to a subsidiary of a financial holding company if it is of the opinion that the activities of such subsidiary may pose risks to the licensed insurer or its financial group. BNM also has the power to issue directions to a financial holding company, its subsidiary or the director, CEO or senior officer of such financial holding company or such subsidiary.

08 | Policyholder protection

The Malaysia Deposit Insurance Corporation (MDIC) administers the Takaful and Insurance Benefits Protection System (TIPS) which protects specific benefits under life and general insurance, subject to specific limits for different classes of coverage.

09 | Portfolio transfers

Yes, by scheme approved by the BNM and confirmed by the Court. Court approval has the effect of vesting all of transferor's right and title in the assets transferred by the scheme on the transferee and making the transferee fully responsible for the liabilities transferred by the scheme without further actions or consents required.

10 | Outsourcing

'Core Activities' consist of activities constituting insurance business (i.e. receiving proposals for insurance, negotiating on proposals for insurance on behalf of an insurer, issuing of policies, collection or receipt of premiums or settlement or recovery of claims on policies), board and senior management oversight, investment management, internal audit and compliance functions, risk management, strategic planning and decision making and financial analysis.

Certain types of core activities are permitted to be outsourced except to the extent permitted and subject to the requirements set out in the relevant BNM guidelines. The prior approval of BNM is required for the outsourcing of some of these core activities (e.g. premium collection, administration of claims, investment management to fund managers and internal audit to group internal audit).

An insurer is required to notify BNM of any material outsourcing arrangement.

Note: The Financial Services Act 2013 provides that any guideline, direction or circular which was issued before the enforcement of the Financial Services Act 2013 under the repealed Insurance Act 1996, in relation to any matter which corresponds with any provision of the Financial Services Act 2013, shall be deemed to be standards and shall remain in full force and effect in relation to the person to whom it applied until amended or revoke. At this juncture, as there has not been any announcement made in relation to any amendment and/or revocation of the relevant BNM guidelines, the above outsourcing requirements would still apply to all insurers.

Mongolia

Contributed by: ELC LLP Advocates

01 | The regulator

The Financial Regulatory Commission (FRC) is the regulatory and supervisory body of the insurance market in Mongolia. The FRC implements and enforces the insurance legislation, including the Law of Mongolia on Insurance (2004) and the Law on Insurance Intermediaries (2004).

Insurers, insurance brokers, insurance agents, intermediaries and loss adjusters must be licensed by the FRC.

No person may advertise or promote any insurance business or establish a place of business for that purpose or establish or maintain a representative office or branch without the prior written approval of the FRC.

02 | Subsidiary/branch

A licence is required to carry on insurance business in or from Mongolia or conduct insurance intermediary activities in Mongolia. Either a company established in Mongolia or in another jurisdiction may apply for a licence.

When a foreign legal entity is carrying out reinsurance based on insurance agreement made with an insurer, no license from the FRC is required.

Foreign insurers and insurance intermediaries established outside Mongolia may open a representative office or a branch in Mongolia with the prior written approval of the FRC.

There is a prohibition on cross holdings between insurance brokers and insurance agents and insurers and insurance brokers and their directors.

03 | FDI restrictions

Investment including foreign investment in Mongolia is regulated primarily through the Law on Investment which was enacted on October 3, 2013. One aim of this law is to support and encourage investors and to attract more investment into Mongolia.

The main objective is to protect the legal rights and interests of investors in Mongolia without any distinction as a foreign investor or as a domestic investor and to stabilise the tax environment by issuing 'Stabilisation Certificate'.

Where a foreign state owned entity proposes to hold 33 per cent or more of the total issued shares of a Mongolian legal entity operating in the banking, finance, media and communication sector, it shall obtain approval from the state central administrative body in charge of investment affairs.

The basic requirement is where more than 25 per cent of the total issued shares of a Mongolian entity are owned by a foreign investor, at least US$100,000 must be invested by each foreign investor.

04 | Control approvals

Prior written approval from the FRC is required for any person to acquire 10 per cent or more of the ordinary shares of an insurer.

Any persons applying to hold 10 per cent or more of the ordinary shares in an insurer, and their controllers (being persons holding 10 per cent or more of the applicant) must be approved by the FRC as fit and proper to carry out insurance business.

Persons owning or holding 10 per cent or more of the ordinary shares of an insurer solely or collectively shall not transfer, sell or pledge such shares without the prior written approval of the FRC.

05 | Minimum capital

The capital of an insurance company may consist only of share capital and may not be accumulated through loans.

Minimum capital requirement:

- General insurance: MNT5 billion
- Long term insurance: MNT6 billion
- Reinsurance: MNT15 billion.

MNT$1994.02 = US$1.00 as at January 1, 2016

06 | Risk based capital

No. The Solvency Requirement (SR) is determined as below, subject to the FRC's discretion.

Ordinary Insurers

Proper Ratio of Solvency = (admitted assets – debts & payments)/(mandatory assets)*100

If the Proper Ratio of Solvency is < 100 per cent the insurer will be considered insolvent.

Long Term Insurers

Proper Ratio of Solvency = (admitted assets)/(debts and payments)*100

The Proper Ratio of Solvency shall be ≥ 125 per cent

If the ratio is between 125 per cent – 100 per cent, the insurer will be presumed to become insolvent.

If the ratio is less than 100 per cent the insurer will be considered insolvent, Solvency Margin = admitted assets – debts and payments

Solvency Margin = admitted assets – debts & payments

The Solvency Margin shall be ≥ the Minimum Solvency Requirement (MSR).

The MSR = actuarial percentage of the reserve fund + valuation percentage of risk of insurance policies.

07 | Group supervision

Where an insurer is a member of a group of companies, the FRC may require it to submit financial statements for any other members of the group and consolidated group accounts.

Each insurer holding a license to carry out compulsory insurance activity is obliged to join Union of Compulsory Insurers (the 'Union'). The Union shall submit annual activity report and FRC shall publish brief financial statement of the Union to public press.

08 | Policyholder protection

There are statutory funds designed to protect policyholders. These are the long term fund, the insurance reserve fund and the reinsurer's protection fund.

09 | Portfolio transfers

Transfer or amalgamation of an insurer's business may only take place with the prior written consent of the FRC. The FRC may investigate the desirability of the transfer and require the provision of documents and information from the insurer before granting permission.

10 | Outsourcing

No activities constituting insurance activities may be outsourced except to an entity that has the appropriate authorisation to perform those activities. Outsourcing to an entity outside of Mongolia is only permitted with the prior written consent of the FRC.

Myanmar

Contributed by: DFDL

01 | The regulator

The Insurance Business Supervisory Board, which reports to the Ministry of Finance and Revenue, is responsible for licensing insurers, underwriting agents and insurance brokers. Myanmar Insurance, the state owned insurance company, performs the work of the Supervisory Board.

02 | Subsidiary/branch

Insurance and insurance broking business must be conducted through either a company incorporated in Myanmar or a company established outside Myanmar with an established place of business in Myanmar.

Until 2013, Myanmar Insurance was the sole insurer in Myanmar.

In September 2012 the government announced that it would grant 12 new licences to domestic operators (writing a more limited range of classes than the incumbent Myanmar Insurance). These licenses have since been granted. Foreign companies are meeting and providing services to these companies with the hope of future collaboration. One problem is that the majority of the companies that have received these licenses are on the US specially designated nationals list and this fact may prevent some foreign companies from dealing with them.

A second round of licences is anticipated but has not been announced.

03 | FDI restrictions

Foreign investment in the insurance industry is not permitted. This may be relaxed in the future, as a result of Asean Economic Community. At present, foreign insurers are limited to opening representative offices in Myanmar – registered offices of foreign companies not allowed to conducting business, except of a general liaison nature, e.g. to establish contacts in Myanmar.

04 | Control approvals

An insurer may not transfer its licence and shall provide information about its shareholders when required by the Supervisory Board.

05 | Minimum capital

Minimum paid up capital:

- life insurance: MMK6 billion
- non-life insurance: MMK40 billion
- mixed: MMK46 billion.

10 per cent of the paid up capital must be deposited at the Myanmar Economic Bank.

30 per cent of the paid up capital must be used to purchase Government Treasury Bonds.

MMK$1306.73 = US$1.00 as at January 1, 2016

06 | Risk based capital

No – capital requirements are based on a solvency margin.

A separate fund for each class of general business and for life assurance must be established.

07 | Group supervision

No.

08 | Policyholder protection

The Supervisory Board has the power to establish a fund for the protection of life assurance policy-holders.

Policyholders get priority over an insurer's assets in the event of insolvency (subject to certain preferential payments – section 230 Myanmar Companies Act).

09 | Portfolio transfers

The insurance laws are silent as to portfolio transfers.

10 | Outsourcing

The insurance laws are silent as to outsourcing.

New Zealand

Contributed by: Kensington Swan

01 | The regulator

The Reserve Bank of New Zealand (RBNZ), which gains its authority under the Insurance (Prudential Supervision) Act 2010, is the regulator of the insurance sector. Any entity that is formed or is resident or carries on business in New Zealand, and assumes liabilities to New Zealand policyholders as an insurer under a contract of insurance, requires a licence from and is regulated by the RBNZ.

The provision of insurance broking services and other insurance intermediation services (such as the provision of advice in relation to insurance products) is regulated. Licensing authorisation is currently not required under New Zealand legislation in order to provide these services, although entities with a place of business in New Zealand are usually required to be registered before carrying on a business of providing or offering to provide such a service.

02 | Subsidiary/branch

Insurers:

- an insurer may be a local entity or a branch of a foreign insurer
- the directors and other relevant officers must be 'fit and proper'
- an insurer must hold a current financial strength rating from an approved rating agency.

Brokers, financial advisers and insurance agents – may be a local entity, branch of a foreign broker or insurer, or individuals.

03 | FDI restrictions

Yes – consent of the Minister of the Crown is required for acquisition of rights or interests of 25 per cent or more of an entity worth more than NZ$100 million.

NZ$1.46 = US$1.00 as at January 1, 2016

04 | Control approvals

Consent of the RBNZ must be obtained for any change of control of a licensed insurer: control means ≥ 50 per cent of the company's voting rights.

05 | Minimum capital

Actual Solvency Capital (ASC)/ Fixed Capital Amount:

- Life insurer – ASC of NZD5 million
- General insurer – ASC of NZD3 million ($1 million for captives)

06 | Risk based capital

Solvency Margin is the excess of Actual Solvency Capital (ASC) over Minimum Solvency Capital (MSC), expressed as a dollar amount.

ASC is the total of capital less deductions from capital.

MSC = Total Solvency Requirement (TSR) less, in the case of life insurance, the aggregate of Policy Liabilities and Other Liabilities.

TSR = sum of capital charges for certain key business metrics including: insurance risk, catastrophe and asset risks (including credit, equity & property risk, foreign currency & interest rate risk, asset concentration risk and reinsurance recovery risk).

Policy Liabilities are valued on a best estimate basis and Other Liabilities are valued under NZ GAAP.

Any likely breach over the next three years must be reported.

07 | Group supervision

Yes – for subsidiaries of NZ insurers. Insurer subsidiaries must be consolidated and the solvency standards applied to the consolidated group. Non-insurance subsidiaries are treated as related party equity investments, subordinated loans or other obligations.

08 | Policyholder protection

Life Insurers must maintain and keep distinct and separate from other assets, one or more statutory funds into which all amounts received by the insurer in respect of the business of that fund must be credited. Investments made are assets of the fund.

There is no legislative requirement to maintain a protection fund for non-life policyholders.

Overseas insurers are required to disclose the nature and extent of any overseas policyholder preferences in relation to recognition and priorities of claims in the event of the insurer's insolvency.

Any provision in a licensed insurer's constitution that permits a director of the insurer to act in a manner believed to be in the interests of the insurer's holding entity, even though it may not be in the interests of the insurer, is of no effect.

On liquidation of an insurer, (other than from a life insurer's statutory fund) there is no priority for policyholders and the Court has the power to reduce the value of contracts of insurance.

09 | Portfolio transfers

Yes. The RBNZ may on application approve a transfer of all or part of an insurer's NZ business to another insurer that meets the licensing requirements. The RBNZ must have regard to the policyholders' interests and may request an actuarial report. The transfer takes effect as a novation of each policy.

On insolvency, a liquidator or administrator may apply to the High Court for approval of a scheme of transfer of insurance business.

10 | Outsourcing

There is no express restriction on outsourcing. However insurers must have a risk management policy and depending on the nature and scope of the activity to be outsourced, such outsourcing may need to be disclosed by way of a modification to the risk management policy. In addition, the insurer must ensure that at all times it meets the conditions for entitlement to hold its licence.

Papua New Guinea

Contributed by: Leahy Lewin Lowing Sullivan Lawyers

01 | The regulator

The two regulators of the insurance industry in Papua New Guinea are the Insurance Commissioner and the Bank of Papua New Guinea.

The regulator for general insurance business is the Insurance Commissioner who administers the Insurance Act 1995 and issues licences to insurers, brokers and loss adjusters. The Insurance Commissioner is responsible to the Ministry of Treasury.

The regulator of life insurance is the Bank of Papua New Guinea (Central Bank) which administers the Life Insurance Act 2000 and issues licences to life insurance companies and brokers.

The following entities/persons require authorisation: Insurers (life and general), reinsurers, insurance agents (persons who provide marketing, administration, management or any other services to any licensed insurer), insurance brokers and loss adjusters.

Insurers must reapply for their licences annually. Pursuant to section 64c of the Insurance Act insurers and brokers must pay an amount not exceeding one per cent of premium income to the Commissioner's Fund. Life insurers pay an annual licence fee only.

02 | Subsidiary/branch

A life insurer must be a locally incorporated corporation.

Likewise a general insurer must be a locally incorporated corporation with the exception of some insurers that were licensed as overseas branches under previous legislation.

In either case, if an insurer is foreign owned or controlled it must be certified under the Investment Promotion Act 1997 to carry on business in PNG.

03 | FDI restrictions

Nil, other than satisfying the Investment Promotion Authority requirements noted in 2 above.

04 | Control approvals

Section 36 of the Insurance Act provides that all risks situated in PNG are to be insured with PNG licensed insurers. The Insurance Commissioner has a discretion to grant an exemption from this requirement. These restrictions apply to reinsurance as well and practical issues can arise due to the limited capacity of the onshore reinsurance market.

No entity shall become a 'shareholder controller' or 'indirect shareholder controller' of a life insurer without the prior approval of the Central Bank as regulator. A person is a 'shareholder controller' when that person accumulates more than a 15 per cent stake in a licence holder and an 'indirect controller' means a person in accordance with whose directions the directors are accustomed to act.

Each corporate shareholder controller (and each of its executive officers and shareholder controllers and indirect shareholder controllers) and each executive officer of an insurer must satisfy fit and proper criteria.

05 | Minimum capital

Yes, which amounts must be deposited with the Central Bank:

General insurers: PGK2,000,000

Life insurers: PGK4,000,000 plus, the Central Bank may require that the life insurer be entitled to the benefit of an approved guarantee of not less than PGK4,000,000.

A life insurer shall also establish a statutory fund for all policyholder assets (separate funds for PNG policies and offshore policies).

PGK$3.00 = US$1.00 as at January 1, 2016

06 | Risk based capital

General Insurers have a risk based capital regime modelled on the Australian Prudential Supervisory Authority's risk based capital model as at 2008:

- Minimum Capital Requirement = Liability Risk Charge + Asset Risk Charge + Excessive Exposure Risk Capital Charge.
- Life Insurers have a risk based capital regime.

- The Solvency Requirement is intended to ensure solvency in the event that a company ceases writing new business.
- The Capital Adequacy Requirement is intended to ensure solvency on a going concern basis for the next three years assuming future experience is in line with Best Estimate Assumptions.

07 | Group supervision

No. But the Central Bank may exercise its powers against any parent, controller or controller of any subsidiary of a life insurer.

08 | Policyholder protection

There are no separate policyholder protection funds.

Policyholders have the benefit of the deposits and guarantees.

Life insurance policyholders also have the benefit of the statutory fund relating to the life insurance business. The fund gives priority to the interest of the policyholders and has restrictions on its liabilities and expenditure.

09 | Portfolio transfers

Under the Insurance Act any licensed insurer wishing to transfer any insurance business is required to make an application to the insurance Commissioner to approve the transfer scheme. The scheme must set out in detail how the transfer of insurance business is to be implemented.

Alternately application may be made to the National Court.

10 | Outsourcing

There is no restriction on what activities an insurer may outsource and no requirement for regulatory approval for outsourcing. However formal agreements with agents are required and may be monitored by the Insurance Commissioner. Responsibility for the outsourced service remains with the insurer.

The Philippines

Contributed by: SyCip Salazar Hernandez & Gatmaitan

01 | The regulator

The Insurance Commissioner is the insurance regulator. The position is the head of the Insurance Commission, a government agency under the Department of Finance.

The Commission supervises and regulates the operations of insurance and reinsurance corporations, mutual benefit associations, health maintenance organisations and rating organisations, all of which need to be authorised.

Pre-need companies – companies that provide pre-need contracts, being contracts for the provision of future payments or services including life, pension, education and interment – must also be licensed by the Insurance Commission.

Insurance agents, general agents, resident agents, underwriters, insurance brokers, adjusters, actuaries, and trustees for charitable uses must be licensed.

Authorisations and licences must be renewed every three years.

02 | Subsidiary/branch

Locally incorporated corporations (domestic insurer) and branches of foreign insurers and reinsurers (foreign insurer) are permitted to be licensed and carry on business in the Philippines as an insurer, reinsurer or pre-need company.

A foreign insurer, non-resident foreign reinsurer, or non-resident foreign reinsurance broker must appoint a resident agent.

03 | FDI restrictions

There is no limit on foreign equity ownership in a domestic insurer.

Foreign equity ownership in a domestic loss adjuster company cannot exceed 40 per cent.

04 | Control approvals

No person, other than an authorised domestic insurer, may acquire control of any domestic insurer without giving 20 days' prior written notice to the domestic insurer of its intention to acquire control, and without obtaining the prior written approval of the Insurance Commissioner.

Control means power to direct or cause the direction of the management and policies of the domestic insurer, and is presumed to exist when one person owns, controls or holds, 40 per cent or more of the voting shares of the domestic insurer.

Directors and officers must satisfy fit and proper criteria.

05 | Minimum capital

Existing domestic insurers (life or non-life):

- 250,000,000 by June 30, 2013
- 550,000,000 by December 31, 2016
- 900,000,000 by December 31, 2019
- 1,300,000,000 by December 31, 2022.

A new domestic insurer (life or non-life) must have paid up capital of at least PHP1,000,000,000.

A new foreign insurer (life or non-life) must have unimpaired capital or assets and reserve of at least PHP1,000,000,000. It must also deposit with the Insurance Commissioner, for the benefit of policyholders and creditors of the foreign insurer in the Philippines, securities which have a market value of not less than PHP1,000,000,000. The securities have to be acceptable to the Insurance Commissioner and at least 50 per cent of them have to be bonds or other instruments of debt of the Government of the Philippines.

Pre-need companies already existing at the time the Pre-Need Code took effect on 18 December 2009 must have minimum paid-up capital of:

- PHP50,000,000 for companies selling a single plan
- PHP75,000,000 for companies selling two types of plan
- PHP100,000,000 for companies selling at least three types of plans, and those selling traditional education plans.

A corporation applying for registration to act as an issuer of pre-need plans after the effectivity of the Pre-Need Code must have a minimum paid-up capital PHP100,000,000.

A trust fund for each category of pre-need plan category must be established.

PHP$47.05 = US$1.00 as at January 1, 2016

The paid-up capital and other requirements to establish a micro-insurance company will be prescribed under rules and regulations to be issued by the Insurance Commissioner.

06 | Risk based capital

Yes: for life insurers RBC takes into account asset default risk, insurance pricing risk, interest rate risk and general business risk. For non-life insurers, RBC takes into account fixed income securities, equity securities, credit risk, loss reserves and net written premiums. Each insurance company must maintain a minimum RBC ratio of 100 per cent.

07 | Group supervision

The Insurance Commissioner has rights of examination in respect of any holding company of an insurer/reinsurer and any related party transactions.

08 | Policyholder protection

Each insurer contributes to a Security Fund, depending on whether it is engaged in life or non-life insurance business. The Security Fund has a Life Account and Non-Life Account. The contribution of each insurer to the Security Fund is in direct proportion to the ratio that that insurer's net worth bears to the total net worth of the life/non-life industry. The aggregate contribution of all relevant insurers to each account is PHP5,000,000.

09 | Portfolio transfers

Portfolio transfer is permissible with prior approval of the Insurance Commissioner and of the policyholders.

10 | Outsourcing

Activities regulated by the Insurance Code cannot be outsourced unless the contractor has the requisite license. Generally, 'backroom activities' such as claims administration services, intermediary servicing and contact centre services, and mailing services may be outsourced.

Singapore

Contributed by: Norton Rose Fulbright

01 | The regulator

The Monetary Authority of Singapore (MAS) is the central bank of Singapore. It administers the Insurance Act (Cap 142) which has provisions governing the regulation of insurance business in Singapore, insurers (including, reinsurers), insurance intermediaries (agents and brokers) and related institutions in Singapore.

02 | Subsidiary/branch

Both Singapore incorporated entities (including subsidiaries of foreign insurers) and branches of foreign insurers are permitted to carry on insurance business in Singapore if they satisfy the relevant licensing requirements.

Insurers and reinsurers with an establishment in Singapore must be 'licensed'.

Reinsurers without an operating presence in Singapore may become 'authorised' which allows them to solicit business and collect premiums in Singapore.

Foreign insurers which are approved under the law of another country/territory to carry on insurance business in that country/territory may carry on business in Singapore under a foreign insurer scheme established by the MAS.

Representative offices must be 'registered'.

03 | FDI restrictions

None.

04 | Control approvals

Prior approval of the MAS must be obtained before obtaining an interest in ≥ 5 per cent of the voting shares of, or entering into any agreement to act in concert with any other person in relation to the exercise of rights in relation to ≥ 5 per cent of the voting rights of, a licensed insurer in Singapore.

The MAS' prior approval should also be obtained before obtaining effective control of a licensed insurer incorporated in Singapore.

All controllers must be approved by MAS as fit and proper. A licensed insurer must have a Board chairman, chief executive and an appointed actuary (life) or certifying actuary (non-life) and such other positions as are prescribed.

The chairman, all directors and key executives must satisfy the MAS fit and proper criteria and be approved by the MAS.

05 | Minimum capital

Licensed Insurer	S$10 million
Licensed Reinsurer	S$25 million
Licensed Insurer (writing specific lines of business)	S$5 million

An authorised reinsurer shall maintain a minimum deposit of S$2 million for each class of reinsurance business for which it is authorised.

S$1.4141 = US$1.00 as at January 1, 2016

06 | Risk based capital

Every licensed insurer shall establish and maintain a separate insurance fund for each class of business carried on by that insurer, and this applies to both Singapore policies as well as offshore policies. A life insurer shall also have separate funds for investment-linked, participating and non-participating policies.

An Insurer must hold capital against its risk exposures, known as Total Risk Requirements (TRR), for each insurance fund and the insurer in aggregate.

TRR is calculated in three components: C1 – insurance risks, C2 – asset portfolio risks, including market and credit risks and C3 – asset concentration risks.

The MAS is currently reviewing its regulatory capital framework. Under the revised framework, the risk requirements will be calibrated based on a specified risk measure – Value at Risk (VaR), confidence level and time horizon.

Two solvency intervention levels are proposed:

- Prescribed Capital Requirement (PCR) = VaR at a 99.5 per cent confidence level over a one year period.
- Minimum Capital requirement (MCR) = VaR at a 90 per cent confidence level over a one year period. NB MCR will be calibrated as a fixed percentage of PCR.

PCR and MCR will be calculated for each insurance fund and the insurer in the aggregate.

07 | Group supervision

The MAS will regulate insurance groups headquartered in Singapore as well as sub-groups domiciled in Singapore that are significant to the Singapore financial system unless there is adequate group-wide supervision by another regulator.

A 'group' arises where a parent entity (non-operating financial holding company) holds an insurance subsidiary in Singapore or a Singapore licensed insurer has subsidiaries, whether within or outside of Singapore.

08 | Policyholder protection

The Policy Owners' Protection (PPF) Scheme provides 100 per cent coverage to individuals for guaranteed benefits of life insurance policies (subject to caps), to all insureds for compulsory general insurance policies and to individuals with Singapore policies of specified personal lines policies.

09 | Portfolio transfers

Yes. The transferor may apply to the court to approve a scheme of transfer of whole or part of an insurance business, subject to MAS prior consent. An independent actuarial report may be required. Notification to policyholders by Gazette/newspaper advertisement is required before an application is made to the Court. The Court has ultimate discretion whether to approve the scheme.

10 | Outsourcing

Outsourcing is permitted, including to an offshore service provider. An insurer must notify the MAS when it is planning or has entered into material outsourcing or plans to vary any material outsourcing. Outsourcing of all or substantially all risk management and internal control functions, including compliance, internal audit and financial accounting is to be considered material.

All outsourcing arrangements must be agreed in writing and contain minimum specified terms. The agreement must allow the insurer and the MAS to audit the service provider.

If the outsourcing involves the collection, use or disclosure of personal data, the insurer must also ensure that its service provider protects the confidentiality of customer information.

The MAS in September 2014 issued two consultation papers on its proposed revision to its Guidelines on Outsourcing and a Notice on Outsourcing. These propose minimum standards for outsourcing and broaden the scope of material outsourcing.

South Korea

Contributed by: Kim & Chang

01 | The regulator

The Financial Services Commission (FSC) oversees the establishment of financial policies, enactment and amendment of insurance related laws and regulations and the grant of insurance business licences. The Financial Supervisory Service (FSS) which is the executive arm of the FSC conducts day to day supervision of the operations and financial status of insurance related institutions (insurers, brokers and agents) and supplemental activities for the FSC.

An 'insurance product' is defined as a contract that stipulates the payment of money and other benefits to the insured in connection with the occurrence of a contingency, for the purpose of guaranteeing risk and in exchange for consideration. Insurance products fall into three categories: life, non-life and a third being agreed benefits payable in respect of accident, disease or nursing services.

Insurance business includes underwriting insurance products, collecting premiums and distribution of insurance payments. All insurers and reinsurers must be licensed by the FSC.

Insurance brokers must be registered with the FSS having met certain training and other requirements.

Individual insurance solicitors and insurance agents must register with the insurance association after meeting certain training requirements.

02 | Subsidiary/branch

Both Korean incorporated entities and branches of a foreign insurer or reinsurer are permitted.

03 | FDI restrictions

No.

04 | Control approvals

'Large' shareholders (≥ 10 per cent of total shares) must meet the financial soundness and other requirements and be pre-approved by the FSC. Requirements depend on nationality and the type of proposed shareholder.

Any subsequent increase or reduction of shareholding by ≥ 1 per cent by a large shareholder must be notified to FSS by the insurer.

05 | Minimum capital

An insurance company must maintain a solvency margin that is at least equal to the solvency margin standard, i.e. 100 per cent.

The solvency margin ratio is the ratio of solvency margin to solvency margin standard. The solvency margin is calculated by aggregating contributed capital, retained earnings, capital surplus and other items recognised as capital. The solvency margin standard is intended to be a reflection of the risk borne by an insurance company: insurance risk, interest risk, credit risk, market risk and operational risk.

If the solvency margin drops below 100 per cent then the FSC may intervene.

06 | Risk based capital

Yes, since April 1, 2011.

KRW$1,175.95 = US$1.00 as at January 1, 2016

07 | Group supervision

Some of the regulatory restrictions on insurance companies' asset management relate to transactions between insurance companies and their affiliates (e.g. if an insurance company acquires bonds or stock issued by an affiliate in an amount not less than 0.1 per cent of shareholders' equity or KRW1 billion, whichever is less, the insurance company is required to report the transaction to the FSC and issue a public disclosure on its website).

Further, insurance companies held by holding companies are subject to regulations on incorporation, acquisition of new subsidiaries, management and other matters under the Financial Holding Companies Act.

08 | Policyholder protection

Yes. The Korea Deposit Insurance Corporation (KDIC) maintains a deposit insurance fund that is dedicated to protecting policyholders and other customers in the event of insurer default. Coverage is capped at KRW50 million per insurance policy.

09 | Portfolio transfers

Yes. Policies that share the same basis for liability reserve calculation may be transferred together. Prior approval of the FSC is required, and public notice of the proposed transfer must be issued and policyholders must be given at least one month's notice to object. The transfer is effected by agreement between the transferor and the transferee, subject to FSC approval. In the event more than ten per cent of the total policyholders (in terms of either number of policyholders or insured amount) object to the intended policy transfer, the transfer will not be allowed.

In case of a policy transfer, there will be a 'black-out' period starting on the execution date of the policy transfer agreement. During this period, the transferor cannot sell new insurance policies.

10 | Outsourcing

The Regulations on the Delegation of Business of a Financial Institution (the Delegation Regulation) prohibit a financial institution from delegating its 'core' business activities to a third party.

Core business activities include: solicitation and execution of insurance contracts, product disclosure, underwriting discretion, contractual matters relating to policies (e.g. termination and reinstatement), management of premium receipts, cession and assumption of reinsurance contracts, determination and payment of insurance claims.

Any outsourcing of non-core activities must be notified to the FSS at least seven days prior to the execution of the outsourcing agreement.

However, the IT outsourcing by financial institutions is separately governed by the Regulations for Outsourcing of Data Processing by Financial Institutions (the IT Outsourcing Regulations).

The IT Outsourcing Regulations provide different reporting requirements to the FSS for the outsourcing of financial transaction information (i.e. information collected from a customer in the course of a financial transaction or produced as a result of a financial transaction). There must be a report to the FSS: (i) 30 days prior to the date of execution of the relevant outsourcing agreement in case of the offshore outsourcing, where there will be processing of identifiable individual customer financial transaction information; (ii) 7 days prior to the date of execution of the relevant outsourcing agreement in case of the onshore outsourcing, where there will be processing of identifiable individual customer financial transaction information; or (iii) within 10 days from the execution of the relevant offshore or onshore outsourcing agreement where the outsourcing of financial transaction information processing does not include identifiable individual customer information.

Under the IT Outsourcing Regulations, the outsourcing of non-financial transaction information processing is subject to after-the-fact semi-annual report to the FSS.

Sri Lanka

Contributed by: Julius & Creasy

01 | The regulator

The Insurance Board of Sri Lanka (IBSL) is responsible for the development, supervision and regulation of the insurance industry.

The Regulation of Insurance Industry Act, No. 43 of 2000 (as amended) (Insurance Act) governs inter alia the licensing and regulation of insurance companies, brokers, agents and loss adjusters.

The IBSL is a member of the International Association of Insurance Supervisors (IAIS) and adopts some of the core principles for effective supervision and monitoring of the insurance industry.

02 | Subsidiary/branch

Only companies incorporated in Sri Lanka may be registered to carry on business as an insurer or insurance broker. All insurance companies must be listed on the Sri Lankan stock exchange, unless exempted, within three years of obtaining a licence to operate.

All composite insurers have four years from 2011 to segregate into separate companies for their life and general businesses.

There is a prohibition on cross holdings and common directorships between insurers and broking companies.

03 | FDI restrictions

None. Foreign equity participation in insurance companies is permitted up to 100 per cent.

04 | Control approvals

Any change in the shareholders of an insurance company must be notified to the IBSL immediately after the event. This is on account of the statutory requirement to submit, to the IBSL, a full authenticated statement of any change in the statement submitted to the IBSL on registration, of the insurance company, which statement sets out prescribed particulars relating to the shareholders of the company.

In practice, insurance companies notify the IBSL of any change of control prior to such event.

The Insurance Act imposes fit and proper criteria for all directors of insurers.

A director of one insurer cannot be a director for any other insurer unless it is a subsidiary or associate of the first insurer.

05 | Minimum capital

The minimum capital requirement is LKR 500* million per class of insurance business.

LKR$144.62 = US$1.00 as at January 1, 2016

06 | Risk based capital

The IBSL is in the process of introducing a Risk Sensitive Minimum Capital Model for insurance companies. It has requested all insurance companies to obtain a rating on Insurer's Financial Strength (IFS) and the Claims Paying Ability (CPA). However, there have been no statutory amendments to the law in this regard to date.

Currently a solvency margin regime applies as follows:

- life insurers must maintain a solvency margin not less than five per cent of the value of their liabilities
- non-life insurers must maintain a solvency margin of not less than the highest of:
  - LKR50 million or
  - 20 per cent of net premium or
  - 40 per cent of average net outstanding claims for the three years immediately preceding the current year.

07 | Group supervision

The IBSL does not supervise the parent of an insurance company or any subsidiaries of an insurance company, not engaged in the business of insurance.

08 | Policyholder protection

The Minister of Finance has levied a 'Cess' on the annual net premium income of insurers for the creation of the Policyholders Protection Fund. 0.2 per cent on the annual net premium of long term insurance business and 0.4 per cent on the annual net premium of general insurance business is credited to the Policyholders' Protection Fund. As per the 2014 Annual Report of the IBSL this amount is invested in government securities and the accumulated amount in the Fund as at December 31, 2014 was LKR 2,185billion.

09 | Portfolio transfers

An insurance company may apply to Court to approve a transaction relating to any transfer and amalgamation of insurance business. The insurer must first have approached the IBSL and have obtained its observations thereon.

The Court has the discretion to approve or decline the application if the IBSL does not support the proposal and/or policyholders object.

10 | Outsourcing

The IBSL may grant permission to an insurer to keep assets outside Sri Lanka upon IBSL being satisfied that the value of assets permitted to be kept outside of Sri Lanka (i) will not exceed 20 per cent of the total assets of the insurer at any given time, and (ii) (of any single person) will not exceed five per cent of the value of assets permitted to be kept outside Sri Lanka at any given time; and upon the insurer providing a written assurance that documents evidencing the insurer's title to such assets are kept safe in Sri Lanka.

There are no statutory restrictions on using a service company for 'back office' operations such as human resources, photocopying and claims processing (excluding the activities of a loss adjuster).

Taiwan

Contributed by: Lee and Li, Attorneys at Law

01 | The regulator

Taiwan is officially known as the Republic of China (ROC). The ROC insurance regulator is the Financial Supervisory Commission (FSC).

Insurers must be licensed and will be either life or non- life. Composite licences are not granted to insurers, but are available for reinsurers.

A company carrying on business as an insurance broker, insurance agent or loss adjuster must be approved by FSC and at least one individual must be appropriately qualified.

02 | Subsidiary/branch

Both Taiwanese incorporated entities (including subsidiaries of foreign insurers) and branches of foreign insurers are permitted.

A foreign insurer that has been in operation for more than three years must have sound business and financial ability and have no record of material violation of laws and regulations in order to be permitted to establish a branch.

A foreign insurer that has been in operation for less than three years must establish a representative office within ROC for at least one year before establishing a branch.

03 | FDI restrictions

Nil.

04 | Control approvals

Prior approval from the FSC is required to acquire more than each of 10 per cent, 25 per cent or 50 per cent of the voting shares in an insurance company.

Any person who acquires more than 5 per cent of an insurance company's shares must notify the FSC within 10 days of such acquisition. Any subsequent and cumulative increase or decrease of more than 1 per cent must similarly be notified to the FSC.

Shares held by nominees and related parties are aggregated for the purpose of assessing whether the limits have been reached.

05 | Minimum capital

Minimum paid-up capital requirement:

• Insurance companies	NT$2 billion, 20 per cent to be paid in at the time of application
• Insurance brokers	NT$5 million
• Reinsurance brokers	NT$10 million
• Insurance agent companies	T$5 million
• Insurance adjustor companies	NT$2 million.

A branch of a foreign insurer must have minimum operating funds of NT$50 million. If the foreign insurer has been in operation for less than three years, it must have minimum paid-up capital of NT$2 billion or meet the FSC's credit rating requirements.

A branch of a foreign insurance broker or a foreign insurance agent company must have minimum operating funds of NT$5 million.

A branch of a foreign insurance adjustor company must have minimum operating funds of NT$2 million.

A branch of a foreign insurance enterprise applying to simultaneously operate insurance broker business and reinsurance brokering business must have minimum operating funds of NT$10 million.

NT$ 33.05 = US$ 1.00 as at January 1, 2016

06 | Risk based capital

Yes. An insurance company must maintain a ratio of total adjusted net capital to its risk-based capital requirement of at least 200 per cent. The risk based capital requirement is determined by a formula that takes into account asset risk, insurance risk, interest rate risk and business risk.

07 | Group supervision

No.

08 | Policyholder protection

Yes. The Stabilization Fund is a private organisation, sponsored by insurance companies, established to stabilise the market and safeguard the interests of insured parties. The Stabilization Fund may provide loans to insurers experiencing business difficulties, advance claims payments to insureds or beneficiaries if an insurer is unable to make payments, and make other payments approved by the FSC.

09 | Portfolio transfers

Yes. An insurance company and/or a branch of a foreign insurer may apply to the FSC for approval to transfer all or part of its insurance business to another Taiwanese insurer or Taiwanese branch of a foreign insurer. In practice, prior notice is often given to policyholders to give them the opportunity to object. If no objection is received within the specified period, consent is deemed.

10 | Outsourcing

The outsourcing of business operations by an insurer is limited to the following: (1) logistical support for data processing; (2) conducting investigations relating to insurance contracts and consumer opinion surveys; (3) forms and documents relating to the performance of insurance contracts; (4) overseas emergency assistance and roadside assistance services provided under the insurance contract; (5) distribution of sales advertisements and consumer publications; (6) collection of premiums, principal and interest payments on policy loans or other loans, provided the service provider is engaged in accordance with the self-regulatory rules promulgated by the FSC; (7) collection of debts; (8) electronic customer services; (9) real estate related activities; (10) locating cars with auto loan default and sale at car auction, but excluding the determination of floor price for auction; (11) valuation, classification, bundling and sale of non-performing loans; and (12) other operations approved by the competent authority.

Prior approval from the FSC is required to outsource the business operations identified in items (7) and/or (12) to a local person/company.

Prior approval from the FSC is required to outsource any and all of the business operations identified above to a foreigner/ foreign company. Branches of foreign insurance companies in Taiwan that outsource their operations to their head office or other overseas branches for internal division of labor purpose shall also apply for FSC's prior approval. However, such FSC's prior approval is waived where the insurance company engages an offshore institution to assist in the handling of claims, emergency rescue, investigation or assessment, the insurance company outsources the development and maintenance of its onshore information systems to an offshore institution, or others stipulated by Directions for Operation Outsourcing by Insurance Enterprises.

(See: Directions for Operation Outsourcing by Insurance Enterprises, announced on 21 July 2010 and amended on 30 December 2014.)

Thailand

Contributed by: Norton Rose Fulbright

01 | The regulator
The Office of Insurance Commission, under the supervision of the Ministry of Finance (OIC) regulates insurers, brokers and agents.

02 | Subsidiary/branch
Both are permitted for an insurer; however the OIC's current policy is not to grant new licences for either on the basis that the insurance company market requires consolidation.

Brokers can be individuals or a legal entity in Thailand. Only individuals can be insurance agents.

03 | FDI restrictions
Insurance and reinsurance companies:

- up to 25 per cent permitted
- up to 49 per cent with approval of the OIC
- above 49 per cent with approval of the Minister of Finance.

Brokers can be 100 per cent foreign owned, but if > 49 per cent they need a licence under the Foreign Business Act.

04 | Control approvals
A change of shareholdings ≥ five per cent must be notified after the event to the OIC. A change in directors must be approved by the OIC.

05 | Minimum capital
- Life insurer/reinsurer: THB500 million (min registered capital)
- General insurer/reinsurer: THB300 million (min registered capital)

THB$36.00 = US$1.00 at January 1, 2016

06 | Risk based capital
Yes – Eligible Capital/Risk Capital Requirement x 100 per cent = risk based capital.

Eligible Capital is equity, share premium, retained profits, issued price of preference shares, etc. less certain deductions. Assets are valued at market value with adjustments.

Risk Capital Requirement is capital charges for insurance risk, market risk, credit risk and concentration risk.

Solvency margin: minimum capital requirement of 140 per cent of risk based capital.

07 | Group supervision
No.

08 | Policyholder protection
Yes. The General Insurance Fund and the Life Insurance Fund (funded by industry levies) assist policyholders of non-life and life insurers respectively in the event of revocation of an insurance licence. Payments are limited to THB1 million.

Following revocation of an insurance licence and prior to commencement of bankruptcy/liquidation proceedings, any insured with a claim under a policy will be entitled to payment firstly from securities placed by the insurer with the OIC, and secondly from the relevant fund. In insolvency proceedings, the policyholder will have priority over other creditors against any securities and unearned premiums reserves of the relevant insurer placed with the OIC.

09 | Portfolio transfers
No regime.

10 | Outsourcing
Insurer may not outsource 'core' functions, which include: risk underwriting & issue of policy, collecting premiums, accepting or rejecting claims and loss adjustment. With specific approval of the OIC, insurer may outsource certain 'support' functions, which include: paying claims under limited circumstance. Insurer may freely outsource 'other' non-core administrative functions, which include: Internal audit, accounting, IT and advisory services in respect of claims and back office functions.

Vietnam

Contributed by: Vision & Associates Legal

01 | Regulator

The Ministry of Finance (MOF) is responsible for supervising the insurance market in Vietnam. The MOF has the power to grant and withdraw licences and has authority to issue legal documents circulars/decisions) which provide guidelines for the operation and other activities of insurers/reinsurers/insurance agents and insurance brokers. The Insurance Supervisory Authority (ISA, which is part of the MOF) assists the MOF in supervising the insurance business and market in Vietnam.

02 | Branch/subsidiary

Pursuant to the Schedule of Specific Commitments in Services annexed to the Protocol of Accession of Vietnam to WTO (Vietnam's WTO Commitments),

Offshore insurers are permitted to provide (cross-border) into Vietnam:

- insurance services (excluding life and health insurances) to companies where foreigner(s) own(s) more than 49 per cent of charter capital and to foreign individuals working in Vietnam
- reinsurance services
- insurance services in international transportation, including insurance of risks relating to: (i) international maritime transport and international commercial aviation with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods and any liability arising there-from; and (ii) goods in international transit
- insurance broking and reinsurance broking services
- consultancy, actuarial, risk assessment and claim settlement services.

Except as provided above, no person may use insurance services provided by offshore insurers into Vietnam.

Life insurers established in Vietnam must operate through a locally established company and general insurers may operate through either a locally established company or as a branch of a foreign insurer. As a practical matter, the MOF treats the establishment of a branch by a foreign insurer similarly to the establishment of a subsidiary.

To establish offices in cities or provinces in Vietnam other than the city or province where the company was established, companies must establish branches or representative offices in those other provinces and cities. Approval from the MOF is needed for each branch.

Foreign insurers or brokers can establish representative offices in Vietnam. The foreign insurer or broker must have been operating for at least five years and must have 'a co-operative relationship with the Vietnamese bodies and organisations.' Representative offices are not permitted to conduct insurance business in Vietnam.

03 | FDI restrictions

Nil. All restrictions on the ability of foreign insurers to establish 100 per cent foreign-owned subsidiaries were removed on 1 January 2008 according to Vietnam's WTO Commitments. Some restrictions remain on the ability of foreign life insurers to establish branches in Vietnam.

04 | Control approvals

Divisions, splits, mergers, amalgamations, conversions of the form, or transfers of 10 per cent or more of the charter capital of an insurer or insurance broker require prior written approval of the MOF. Approvals from MOF are also required for a wide range of changes including a change of the Chairman of the Board of Directors, General Director (CEO), or Appointed Actuary.

05 | Minimum capital

Minimum paid-up capital of:

- General and health insurer — VND300 billion
- Life insurer — VND600 billion
- Reinsurer (general and health insurance) — VND400 billion
- Reinsurer (life and health insurance) — VND700 billion
- Reinsurer (all types of insurance) — VND1,100 billion
- Branch of foreign insurer — VND200 billion
- Broker (either primary insurance or reinsurance brokerage) — VND4 billion

Extra paid-up capital required:

- Insurer with aviation insurance, satellite insurance: VND50 billion for each type of insurance (as from October 1, 2012)
- Insurer with investment-linked insurance, pension insurance: To be further guided by the MOF
- Insurer with more than 20 branches and representative offices: VND10 billion for each additional branch or representative office (as from October 1, 2012)
- Broker (both primary insurance and reinsurance brokerage): VND4 billion.

VND$22,727.27 = US$1.00 at January 1, 2016

Idle capital may only be invested in Vietnam.

06 | Risk based capital

No – capital based.

The minimum solvency of a general insurer is the greater of either 25 per cent of the total premiums actually retained at the time of determination of the solvency margin or 12.5 per cent of the total primary insurance premiums plus reinsurance premiums at the time of determination of the solvency margin.

The minimum solvency of a life insurer is 4 per cent of the insurance reserves and 0.1 per cent of the sums insured which carry risks for policies with term of five years or less and 4 per cent of the insurance reserves and 0.3 per cent of the sums insured which carry risks for policies with term of over five years.

Insurers and brokers must also establish a reserve fund to ensure their solvency. The annual contribution is 5 per cent of after-tax profits up to a maximum of 10 per cent of insurer or broker's charter capital.

07 | Group supervision

No.

08 | Policyholder protection

Insurers must establish a policyholder protection fund to protect insured persons in the event that the insurer becomes insolvent or bankrupt. Appropriations for this fund will be announced by the MOF annually and must be made biannually, but will not exceed 0.3 per cent of total premium revenue retained from primary insurance contracts. Contributions will be required until the accumulated fund amounts to 5 per cent of total assets of a general insurer or a foreign general insurer's branch, or to 3 per cent in the case of a life insurer.

09 | Portfolio transfer

The transfer or assignment of insurance policies, which include all policies within one or a number of types of insurance products, may be transferred or assigned in one of the following cases: (A) an insurer is in danger of becoming insolvent; (B) an insurer divides, splits, consolidates, merges or dissolves; (C) pursuant to an agreement between insurers. In the case of an insurer in danger of becoming insolvent or upon dissolution, where agreement cannot be reached on the assignment of its insurance contracts to another insurer, the MOF shall appoint an insurer to accept the assignment.

The transferor must apply for the MOF's written approval before conducting the assignment. Within 15 days from the date of MOF's approval, the transferor must make a public announcement of the assignment on two central newspapers in five consecutive issues and must notify the policyholders in writing, who will be entitled to terminate their policies with 15 days from the date of receipt of the notice of the transferor if they do not agree with the assignment plan.

All works related to the assignment must be finished within 60 days from the date of MOF's approval.

In the case of assignment of the whole of the insurance policies within one or a number of types of insurance products, the insurer must forward a written request to the MOF for amendment of or addition to its licence for establishment and operation.

10 | Outsourcing

There are no specific regulations restricting outsourcing of particular functions of a Vietnamese insurer. Payments from Vietnam are subject to foreign exchange approval. If the outsourcing is to a group company and if payment is to be made by the Vietnamese subsidiary or branch, as a matter of prudence, a written contract should be entered into and provided to the remitting bank before the contract commences.

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