Asia Pacific Insurance - Japan

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# Guide for Directors and Senior Managers of Insurance Companies

## Does the CEO, director or senior executives of an insurance company need to be registered or licensed by the insurance regulatory authority?

Under the Insurance Business Act of Japan (IBA), Japan-incorporated insurance companies need to notify the Financial Services Agency (FSA) of the appointment, resignation and removal of representative directors (daihyo torishimariyaku) and directors engaging in day-to-day operations.

## Is approval from the regulator required for the appointment of a director/senior management of an insurance company? Is there any distinction between persons acting in an executive capacity and persons in a non-executive capacity?

No, but Japan-incorporated insurance companies need to notify the FSA of the appointment of representative directors and directors engaging in day-to-day operations.

## Is there generally any distinction between EDs and NEDs?

Yes. Japan-incorporated insurance companies need to notify the FSA of the appointment, resignation and removal of representative directors and directors engaging in their day-to-day operations. NEDs usually do not fall under any of the above types of directors.

## Is approval from the regulator required for the resignation or removal of a director/senior management of an insurance company? Is there any distinction between EDs and NEDs?

No. However, Japan-incorporated insurance companies must notify the FSA of the resignation or removal of representative directors and directors engaging in their day-to-day operations.

## Is there any nationality requirement for directors/senior management of an insurance company? If so, do any exemptions exist?

No. However, residency requirements may apply.

## Is there a minimum qualification or minimum number of years of relevant experience applicable to directors/senior management of an insurance company?

For Japan-incorporated insurance companies, the IBA provides that directors engaging in their day-to-day operations must satisfy certain requirements as to knowledge, experience and social credibility.

## Are there any other fitness and propriety requirements that apply to directors of an insurance company? What are they?

Yes. For Japan-incorporated insurance companies, directors engaging in the company's day-to-day operations must have sufficient knowledge and experience to carry out the business management of the insurance company appropriately, fairly and efficiently, and must have sufficient social credibility.

## Are there any other negative factors which will disqualify a candidate from becoming a director of an insurance company?

Yes. For Japan-incorporated insurance companies, directors engaging in the company's day-to-day operations must have sufficient knowledge and experience to carry out the business management of the insurance company appropriately, fairly and efficiently, and must have sufficient social credibility.

## Is there a residency requirement for directors/senior management of an insurance company (e.g., primary residence must be in each local jurisdiction)?

In the case of a Japan-incorporated insurance company, there is no residency requirement. In the case of a foreign-incorporated insurance company, at least one of the Japan representatives must be a resident.

## Does the insurance company need to evaluate its directors/senior management before appointing such persons? What certifications, if any, must the insurance company provide to the insurance regulatory authority in respect of its directors/senior management?

Yes. An insurance company is expected to assess the knowledge, experience and social credibility of candidates for the offices of director.

Materials that need to be attached to the notification to the FSA of the appointment of representative directors and directors engaging in their day-to-day operations include (i) the candidate's resume and (ii) any other materials that include information relating to the candidate, such as materials the insurance company used to assess the candidate's knowledge, experience and social credibility.

## Generally, are there any distinctions in the duties and responsibilities or the regulatory treatment for EDs and NEDs?

No statutory restriction but may attract additional scrutiny.

The IBA provides the following rules applicable only to directors engaging in the day-to-day operations of the (Japan-incorporated)
insurance company:

Such directors are prohibited from engaging in the day-to-day operations of another company unless approved by the FSA.

Such directors are required to have certain knowledge and experience and sufficient social credibility.

The FSA must be notified of the appointment of such directors.

## Are there any overarching duties and responsibilities for directors/senior management of insurance companies arising from insurance regulations (in addition to general corporate laws)?

The IBA sets out duties and responsibilities for directors of Japan-incorporated insurance companies, which are basically identical to those set out in the Companies Act. The FSA-issued guidelines also provide detailed guidance as to the corporate governance roles and responsibilities of representative directors and directors applicable to insurance companies.

## Will directors/senior management be personally liable for breach of insurance regulations by the insurance company? What penalties are there, if any?

Yes, if a director is found to have committed the offense on the company's behalf.

Statutory penalties include fines and/or imprisonment, and the amount or length depends on the offense committed.

FSA also has the power to direct the insurance company to remove the director in the case of a material violation of the law, among others.

## Are directors/senior management of an insurance company subject to any periodic filing/notification requirements? What are they?

No periodic filings apply to directors. However, ad hoc filings (to be made by the insurance company) may apply to the appointment, resignation and removal of certain types of directors.

## Is there a requirement on minimum number of the board of directors of an insurance company?

Yes. Japan-incorporated insurance companies are required to have at least three directors.

## Are there any rules around composition of the board of directors or equivalent (e.g., independence requirement or the number of executive- or management-level directors)?

For a Japan-incorporated insurance company with nomination, audit and remuneration committees, the majority of the directors comprising each committee must be independent directors.

A listed insurance company must have two or more independent outside directors.

## Are there any mandatory requirements for setting up of other committees (e.g., audit, remuneration committees)? If so, briefly describe the responsibilities of these committees.

Yes. Japan-incorporated insurance companies must choose to have either of the following:

A board of statutory auditors (kansa yakukai) comprises of statutory auditors (kansayaku) who are non-director senior members of the company responsible for auditing the performance of directors' duties, preparing audit reports and recommending accounting auditors to be appointed

The following committees are composed of directors, in which case executive officers (shikkoyaku) are in charge of day-to-day management whereas the directors will focus more on monitoring the management. Executive officers are subject to the rules similar to those applicable to directors engaging in day-to-day operations at a company with the board of statutory auditors (such as the notification or qualification requirements):

Nomination committee – responsible for identifying candidates for directors or directors to be removed

Audit committee – responsible for auditing the performance of the duties of directors and executive officers, preparing audit reports and recommending accounting auditors to be appointed

Remuneration committee – responsible for determining the remuneration of each director and executive officer

## Are directors of an insurance company permitted to hold other passive business interests (e.g., non-executive directorships and investments/shareholdings in other corporations)? What disclosures, if any, need to be made to the relevant regulatory authorities? Are there restrictions on the number of positions board members can hold?

Directors engaging in day-to-day operations of a Japan-incorporated insurance company are prohibited from engaging in another company's day-to-day operations unless approved by the FSA. Japan representatives of foreign-incorporated insurance companies are likewise prohibited from engaging in another company's day-to-day operations unless approved by the FSA.

## Is there any requirement or prohibition for an insurance company to make a payment to its directors/senior management?

No specific requirements or prohibitions in this regard, except for the rules applicable generally to all Japanese companies, under which a director who intends to enter into a deal with a company on his own behalf, or enter into a deal in which there is a conflict of interest between the company and the director, must disclose the said deal to the board of directors of the company and obtain its approval.

# Guide to Insurtech Innovation and Utilization

## Who are the relevant regulators in the region?

The main regulator is the Financial Services Agency (FSA), which is in charge of the supervision of financial institutions, including insurance companies.

Although the Ministry of Economy, Trade and Industry (METI) is not the regulator of the financial sector, it is very supportive of the introduction and promotion of fintech/insurtech‑related businesses to the Japanese market and organizes study groups on fintech. See Question 4.

## What are the types of fintech/insurtech activities that are regulated?

Activities related to insurance business may be regulated under the Insurance Business Act and the relevant subordinated regulations and guidelines. The Act on the Protection of Personal Information (APPI) as well as the relevant subordinated regulations and guidelines is also
highly relevant as many new insurance products and services related to fintech/insurtech are likely developed through personal information.

Businesses related to payment, fund transfer, settlement and moneylending are subject to the Banking Act, the Money Lending Business Act, the Act for Regulation, etc., of Receiving of Capital Subscription, Deposits, Interest on Deposits, etc., the Payment Services Act, the Installment Sales Act, the Foreign Exchange and Foreign Trade Act and the Act on Prevention of Transfer of Criminal Proceeds (Japanese primary regulations for KYC and AML) as well as their respective subordinate regulations.

Businesses related to investment advisory and investment management would be subject to the Financial Instruments and Exchange Act (FIEA) as well as the subordinate regulations.

The draft amendments to the various financial regulations such as the Banking Act and the Money Lending Business Act, as well as the amendments to the Payment Services Act with the aim of regulating virtual currency exchange businesses, were submitted to the Diet on 4 March 2016 and were passed on 25 May 2016. The amended regulations together with the relevant subordinated regulations came into effect on 1 April 2017.

The draft amendments to the Banking Act, with the aim of regulating electronic collection agency businesses, were submitted to the Diet on 3 March 2017 and were passed on 26 May 2017.

The introduction of fintech/insurtech to the Japanese financial market seems to be still at an early stage and a desirable regulatory framework on fintech/insurtech is still under study and discussion by the regulator and market players, although many regulations related to fintech/insurtech have been recently introduced (please see 4 below). Further regulatory amendments, with the aim of covering the cross-sectoral and cross-border development of fintech/insurtech, may therefore be promoted and implemented.

## What is the attitude and what are the policy views of the regulator in relation to insurtech (if any)? Is innovation encouraged?

The FSA is supportive of the introduction of fintech/insurtech and intends to strongly support fintech/insurtech start-ups. The Financial Administration Policy for 2015-2016 issued by the FSA in September 2015 expressly states that the FSA will anticipate the trend of fintech/insurtech and will prepare the environment so that technological innovation can contribute to economic and financial development in Japan. The Financial Administration Policy for 2016-2017 issued by the FSA in October 2016 also states that the movement of integration of finance and IT represented by fintech has been progressing on a global scale and revolutionizing both financial services and market and that it is important to provide better services through innovation of financial services in Japan (collectively, Financial Administration Policy). Based on the Financial Administration Policy, the FSA established the Fintech Support Desk in December 2015 to serve as point of contact for consultation and information exchange on financial regulations regarding fintech. The FSA also established the Expert Panel on FinTech Venture in April 2016 to discuss desirable environment for development of fintech.

The METI is also supportive of the introduction and promotion of fintech/insurtech‑related businesses to the Japanese market. The METI has held a series of meetings of Study Group on the Integration of Industry, Finance and IT (Study Group) since October 2015. The METI
started to seek public comments on 11 agenda items identified relating to fintech on 21 April 2016 and the public comments period ended on 23 May 2016. Since 1 July 2016, the METI has started to hold a series of meetings of Review Committee for Issues and Future Direction
of FinTech (FinTech Review Committee). The METI put together the discussions held in the FinTech Review Committee and issued the final report titled “FinTech Vision” in May 2017.

## What are the licenses required and what are the criteria and process involved?

The licenses required will depend on the specific activities contemplated. We recommend seeking the advice of local counsel as it is even difficult to identify under which regulations a particular activity should be regulated. In brief overview:

Insurance business. A license may be required to perform life or non-life insurance business. The criteria to obtain the license are specified under the relevant provisions in the Insurance Business Act and the Ordinance for Enforcement of the Insurance Business
Act. The standard processing period designated under the relevant regulations is 120 days. A license may be also required to create new insurance products. The criteria to obtain the license are specified under the relevant provisions in the Insurance Business Act. The standard processing period designated under the relevant regulations is 90 days. However, the Comprehensive Guidelines for Supervision of Insurance Companies (Insurance Supervision Guidelines) express that the FSA shall endeavor to reduce the review period in light of assistance in prompt product development. In particular, it is expressed that stylized and simple products and the products that are substantially the same as the other companies' existing products shall be, in principle, reviewed within 45 days.

Insurance broker business. A registration may be required to run a insurance broker business. The criteria to be registered are specified under the relevant provisions in the Insurance Business Act. The standard processing period designated under the relevant regulations is 30 days.

Accepting deposits. In order to accept deposits from customers, a license may be required. The criteria to be registered are specified under the relevant provisions in the Banking Act and other Ordinance for Enforcement of the Banking Act. The standard processing period designated under the relevant regulations is one month.

Money lending and credit provision for settlement. In order to perform moneylending and credit provision for settlement (including credit card), a license or registration may be required depending on the type of activities. For banking business license, please see
item 3 above. For moneylending business, the criteria to be registered are specified under the relevant provisions in the Money Lending Business Act. The standard processing period designated under the relevant regulations is two months. For credit provision for settlement, the criteria to be registered are specified under the relevant provisions in the Installment Payment Act. The standard processing period designated under the relevant regulations is 60 days.

Prepaid card or other prepaid type of service. Issuers of prepaid payment instruments for third-party business need to be registered. The criteria to be registered are specified under the relevant provisions in the Payment Services Act. The standard processing period designated under the relevant regulations is two months.

Funds transfer service. In order to run a fund transfer service, a license or registration may be required depending on the monetary amount to be transferred. For banking business license, please see item 3 above. For fund transfer service providers under the
Payment Service Act, the criteria to be registered are specified under the relevant provisions in the Payment Service Act. The standard processing period designated under the relevant regulations is two months.

Investment advisory and investment management business. In order to perform investment advisory or investment management business, a registration may be required. The criteria to be registered are specified under the relevant provisions in the FIEA. The standard processing period designated under the relevant regulations is two months.

Crowdfunding. A registration as type II financial instruments business operator may be required for crowdfunding made through collective investment scheme. The criteria to be registered are specified under the relevant provisions in the FIEA. The standard
processing period designated under the relevant regulations is two months.

Virtual currency exchange. In order to perform virtual currency exchange business, a registration may be required. The criteria to be registered are specified under the relevant provisions in the Payment Services Act. The standard processing period designated under the relevant regulations is two months.

## Is the use of telematics and/or biometrics regulated?

There are no specific regulations for the use of telematics. However, any insurance product that uses the telematics must ensure that the use is compliant with any existing insurance regulations such as approval for new insurance products.

In relation to the use of biometrics, the Guidelines for Personal Information Protection in the Financial Sector (Personal Information Protection Guidelines) impose stringent restrictions on the collection, use and transfer of sensitive personal information in addition to the restrictions to be generally applied to the collection, use and transfer of any personal information under the APPI. Although the collection, use and transfer of sensitive personal information are generally prohibited under the Personal Information Protection Guidelines, the collection, use and transfer of biometrics, falling under the category of sensitive personal information for the purpose of identity verification, are permitted exceptions, subject to consent of the data subject. Under the Personal Information Protection Guidelines, financial institutions must, in particular, carefully handle sensitive personal information to avoid any collection, use and transfer deviating
from the purpose mentioned above. The Practical Guidelines for Security Control Measures provided in the Guidelines for Personal Information Protection in the Financial Sector (Practical Guidelines) further set out the detailed measures that need to be taken in relation to biometrics falling under the category of sensitive personal information.

## Does the regulator draw a distinction between institutions that are "too big to fail" versus "too small to care"?

Based on the discussions in the Study Group and the FinTech Review Committee, drawing a clear distinction between institutions that are "too big to fail" and "too small to care" has not been a big focus. However, some regulations contain aspects such as the Payment Services Act, which defines fund transfer service as transfer of a certain limited fund (JPY1 million under the subordinate regulations) or less, whereas any fund transfer of a larger amount is supposed to be handled by licensed banks.The PPC and FSA Guidelines mention sensitive data (Sensitive Data) as Special Care-Required Personal Information, and information on union membership, family status, place of domicile, health and medical care, and sexual orientation (except for the information (a) disclosed by data subject or national or local government or pursuant to specific provisions of laws or (b) which is clear from the appearance recognized by sight or photographic
means). Insurance companies are required not to collect, use or transfer Sensitive Data unless otherwise provided in the PPC and FSA Guidelines. Further, the opt-out arrangement is not available for transfer of Sensitive Data.

## What laws (if any) do insurance companies have to comply with in respect of technology risk management?

The Insurance Supervision Guidelines contain the provisions regarding system risk management environment as one of the points to be assessed to examine the appropriateness of insurance companies' operational risk management environment.

## Are there any laws governing big data, including the collection, use, storage, disclosure and transfer of personal data?

The APPI applies to business operators handling personal information database. The APPI regulates the collection, use, storage, disclosure and transfer of personal data. However, there were discussions that it was unclear whether big data would fall under the category of
personal information and accordingly whether the APPI would apply. Under the amended APPI promulgated on 30 May 2017 (Amended APPI), the definition of personal information is expanded and it is clarified that anonymized and unrestorable personal information can be
used under certain relaxed requirements.

In addition to the baseline requirements of the APPI, additional specific requirements under the Personal Information Protection Guidelines will apply to financial institutions, including insurance companies.

## Are there any restrictions that could hinder the growth and usage of insurtech by insurance companies under data privacy laws?

With respect to transfer of personal information, under the APPI, there were no specific provisions regulating the transfer of personal information to third parties who are located overseas and it was unclear whether the APPI would apply to such third parties. Under the
Amended APPI, in order to transfer personal information to third parties who are located overseas, unless (i) such third parties are located in countries that have personal information protection system comparable to that of Japan or (ii) such third parties establish the system
that meets the requirements necessary to continuously take measures corresponding to requirements under the Amended APPI, the transferor needs to obtain the data subject's consent to transfer to third parties who are located overseas.

With respect to big data, as discussed above, under the APPI, there were discussions whether the APPI would apply to the use of big data and therefore the relevant market players, including insurance companies, tended to hesitate to use big data. Under the Amended APPI,
the Guidelines for the Act on Protection of Personal Information (Edition of Anonymously Processed Information) clarified to what extent the business operators need to have personal information anonymized in order for the information to be treated as anonymized data,
which can enjoy the benefit of the relaxed requirements.

Although it is not specifically related to the insurance sector, the Japan Fair Trade Commission has an awareness of the issue about domination of big data by large companies. It published the report of its study group, the Review Committee of Data and Competition Policy, on 6 June 2017. The report mentioned the possibility of application of the Anti-Monopoly Act for certain activities such as unfair data collection or data hoarding.

## Are there any laws governing cybersecurity or to mitigate cybersecurity concerns?

The Basic Act on Cybersecurity provides the framework of the government's cybersecurity strategy and basic policies. The Cybersecurity Strategic Headquarters was established under the Cabinet based on this act and the National Center of Incident Readiness and Strategy for Cybersecurity (NISC) was established under the Cabinet based on the Order for Organization of the Cabinet Secretariat. The Insurance Supervision Guidelines contain the provisions regarding cybersecurity management as one of the points to be assessed to examine the appropriateness of insurance companies' system risk management environment.

## What innovations are insurance companies and/or regulators looking at implementing?

In Japan, as mentioned in question 3 above, the direction and contents of insurtech innovations to be implemented are still under study and discussion by the regulator and market players, including insurance companies.

Since 2015, some non-life insurance companies introduced new insurance products utilizing telematics. In spring of 2016, it was reported that many leading life and non-life insurance companies would strengthen R&D on products utilizing insurtech such as non-life insurance
products using Internet of Things information and life insurance products using genetic information. In spring of 2017, it was also reported that large insurance companies are developing fintech insurance products utilizing AI and big data.

## Have there been fintech/insurtech-related cases (including competition and/or data privacy) in Asia Pacific

There have been a number of cases where administrative sanctions were imposed on financial institutions due to the lack of appropriate management of customer information; however, such cases were mere loss, leakage or misuse of customer information and were not necessarily fintech/insurtech-related cases.

We are not aware of any fintech/insurtech-related competition cases.

## What are the most immediate challenges to insurtech innovation?

The lack of appropriate legislation covering the cross-sectoral and cross-border development of fintech/insurtech

The high costs of development and innovation

The lack of skilled personnel who have the capacity in both financial and technological areas and the limited mobility of such skilled personnel

## What has been, or could be, the impact of fintech/insurtech on the financial services industry?

Fintech/insurtech is expected to be a key driver in introducing new business opportunities and business models in the financial sector. It will also likely promote competition between existing financial institutions and new market entrants.

## What insurtech trends or disruptions may impact insurance companies?

As mentioned in question 3 above, the next trends are still under study and discussion by the regulator and market players, although we already see some initial moves such as the formation of a JV by a car manufacturer and a non-life insurer on telematics insurance development. In the discussions held in the study group, it was pointed out that new market entrants from different business areas and the commoditization of risks due to technical innovation in various areas would disrupt traditional business model of insurance companies. Although it is not currently easy to expect the extent and speed of disruption, there will be an existing trend of insurance companies making significant investments in R&D on products utilizing insurtech. Please also see question 11 above.

# Guide for Insurance Sales, Advisory and Distribution

## What are the different types of insurance intermediaries in the market and do they need to hold any licenses and minimum qualification to conduct business?

Insurance intermediaries in Japan are broadly classified as insurance agents (persons or companies acting on behalf of a specific insurance company) and insurance brokers (persons or companies not acting on behalf of any insurance company). Insurance agents and insurance brokers both need to be registered with the Financial Services Agency (the FSA). The FSA may reject a registration for reasons such as insolvency, certain criminal record, etc.

## Is it mandatory for insurers to offer customers the option of purchasing insurance products directly from them without going through financial advisers or intermediaries?

No. There are no specific rules in this regard.

## Do agreements between insurers and their agents need to take a certain form?

No. There are no specific rules in this regard.

## Can insurers pay volume-based commission to their appointed agents?

There is no mandatory prohibition on paying sales-based commissions to insurance agents. The FSA recommends that insurers disclose the commissions they pay to insurance agents dealing with insurance products of multiple insurers.

## Are insurers liable for any mis-selling of its agents or appointed distributors?

Yes. An insurer will be liable for any damage caused by its insurance agent in relation to its insurance solicitation. If the insurer uses due care in appointing or employing the insurance agent and has made reasonable efforts in relation to insurance solicitation by such agent to prevent damage caused to the customers, the insurer will not be liable for the damage.

## Are there rules on the number of insurers that insurance brokers need to present to their customers?

No. There are no specific rules in this regard.

## Can insurance brokers receive commission from both insurers and their customers? If so, can they be volume-based commission?

Insurance brokers may not receive insurance brokerage commissions from customers and can only receive such from insurers. It is possible for insurance brokers to receive sales-based commissions from insurers. If requested by customers, insurance brokers need to disclose the commissions they receive in relation to insurance brokerage.

## Can agents or appointed distributors offer rebates on insurance premiums or other special concessions to the customers?

An insurance agent may not promise to offer or actually offer to customers any discount or rebate on insurance premiums or any other special advantage.

## Can insurers appoint offshore agents or accept business from offshore brokers?

No express restriction prohibits insurers from appointing offshore agents or brokers. However, it is likely that the insurer will attract licensing or regulatory issues in the offshore jurisdiction and should therefore consider the laws of the offshore jurisdiction before accepting business from offshore brokers or appointing offshore agents. Unregistered offshore agents and brokers are prohibited from conducting business in Japan.

## Are there specific requirements on selling products through call centers, telemarketing or other distribution channels?

Yes. If an insurer provides information or explanation on insurance products through non-face-to-face channels such as telephone, mail or the internet, the insurer must establish a system that enables the insurer to provide information or explanation at the same level as face-to-face channels.

To protect customers, an insurer which sells products through telemarketing needs to establish and implement insurance solicitation methods and measures that contribute to the prevention and early detection of troubles as well as properly educate, manage and supervise insurance
agents. These measures need to be reviewed and updated and should include the following: (1) that a talk-script which contains the matters to be explained is prepared and widely disseminated; (2) that telemarketing will not be conducted if a customer shows any intention to reject further telemarketing efforts; (3) that the content of a call is recorded and stored; (4) that a root-cause analysis of complaints is made and that a recurrence prevention measure is established and disseminated; and (5) that the content of a call is assessed by another person, and measures that consider the result of the assessment are adopted.

## Are there specific requirements on selling products through online channels?

Yes. When the FSA examines for approval the statement of business procedures containing sales of insurance products through the internet, the following matters will be considered: (1) whether the insurer makes sure that an applicant for an insurance contract is a legitimate party to sign a contract; (2) whether the insurer has taken measures to prevent deficiencies and alterations to information concerning applications for contracts and other information concerning contracts, and to ensure the protection of policyholders even if deficiencies occur; (3) whether the insurer has taken security measures to prevent information concerning contracts and policyholders from being leaked on the internet; (4) whether the insurer has taken measures to enable applicants to check the specifics of procedures concerning applications for contracts and other contract-related matters, the contents and important items of the contract, and stores these data through secure means; and (5) whether the insurer has taken measures to prevent the use of the internet from constituting a constraint on its future interactions with the applicant in relation to the contract. Please also see section 10.

## Can insurers share client information with insurance agents and brokers and vice versa? What data privacy or confidentiality laws apply?

The Act on Protection of Personal Information and its Guidelines apply in addition to some other guidelines specific to the financial sector. Once an insurer has acquired personal information, they must promptly notify the data subject of, or publicly announce, the purpose of use of such personal information, unless they have already publicly announced its purpose of use. Subject to certain prescribed exceptions, an insurer must, when they receive personal data from third parties, confirm the following matters: (1) the name or appellation and address of the third party and, for a corporate body, the name of its representative, and (2) circumstances under which the personal data was acquired by the third party. The guidelines further recommend that the insurer assess legal compliance by third parties concerning purpose of use, disclosure procedure and disclosure of inquiry or complaint counter. The insurer must also record the date when they received the personal data, any matter concerning
said confirmation, and other matters prescribed by the Personal Information Protection Commission.

# Investing in Insurtech Start-ups

## Are there any limitations or criteria on the type of start-up that an insurer can invest in? Does the start-up need to be registered with any authority?

There are no specific limitations focusing on insurtech start-ups. However, general limitations are applicable depending on shareholding ratio and business category of the target company.

## What are the available options in terms of investments that an insurer can make in an insurtech start-up?

An insurance company can invest in an insurtech start-up either as equity instruments or granting of loan.

## What are the restrictions on investing in an onshore insurtech start-up?

An insurance company can only have subsidiaries or affiliated companies, which engage in specific businesses, listed under the Insurance Business Act ("**Act No. 105 of 7 June 1995**") (IBA).

Amendments to the Banking Act, which relax restrictions on the scope of business and will facilitate banks’ investment in fintech companies subject to the approval of the Financial Services Agency (FSA), became effective in April 2017. A similar relaxation of the IBA is expected.

An insurance company needs to obtain approval from the FSA when it acquires a subsidiary engaging in any specific businesses listed under the IBA.

In principle, an insurance company and its subsidiaries in aggregate cannot acquire more than 10% of shares in onshore companies engaging in businesses not listed under the IBA.

The aggregate amount of investment of shares and other form of investments or activities which provide credit listed under the Ordinance for Enforcement of the Insurance Business Act to be made to a specific person by an insurance company and its subsidiaries and affiliated companies in aggregate must not exceed 10% of the total assets of the insurance company and its subsidiaries and affiliated companies unless the FSA approves. This restriction does not apply in the case where an insurance company invests in shares in its subsidiary, which is an insurance company or holding company of which main subsidiaries are insurance companies.

## What are the restrictions on investing in an offshore insurtech start-up? Is approval required from the regulators?

An insurance company needs to obtain approval from the FSA when it acquires a subsidiary engaging in any specific businesses listed under the IBA.

If an insurance company is to acquire a holding company or a foreign financial institution, which has a foreign subsidiary or affiliated company engaging in businesses not listed under the IBA, the FSA's approval can be granted on such acquisition despite the aforementioned restriction. However, it needs to take necessary measures for making such out-of-scope subsidiary or affiliated company ceases to be a subsidiary or affiliated within five years from the acquisition date.

## Is an insurer permitted to grant loans to an insurtech start-up? Under what conditions?

The aggregate amount of loan, guarantee and leased assets to be extended to a specific person by an insurance company and its subsidiaries and affiliated companies in aggregate shall not exceed 3% of the total assets of the insurance company and its subsidiaries and affiliated companies unless the FSA approves.

## What type of corporate approvals is required for an insurer to invest in an insurtech start-up?

The investment in insurtech start-ups must be approved by the board of directors if such investment constitutes an execution of important operations, the applicability of which depends on the sizes of the insurance company and the target company.

## Are there any general minority shareholder protection mechanisms in your jurisdiction?

There are various minority shareholders’ rights such as right to request convocation of shareholders' meeting, make a proposal for shareholders' resolution, bring a derivative suit and bring an injunction suit for illegal actions by directors and so on, with varying shareholding ratio requirements.

Also, if a person holds more than one-third of the shares in a company, the person will have blocking power on important shareholders' resolutions such as resolutions to amend the articles of incorporation, reduce the stated capital and implement entity conversions, mergers, company splits and share exchanges, as well as minority squeeze-outs.

## Are there any restrictions on the insurer in terms of appointing its own staff or management to join the insurtech start-up's board of directors or management team?

Directors of insurance companies (in the case of companies with a committee governance structure under the Companies Act, executive officers) who work on a regular basis cannot work for other companies on a regular basis unless the FSA approves.

## Are there any restrictions on entering into a service contract with the insurtech start-up upon completion of the investment? (a) Any connected party transaction restrictions? (b) Any prerequisite approvals required from the regulators or from internal committees?

An insurance company cannot enter into a service contract with a connected party on terms and conditions that are significantly different from those applied to normal transactions, unless there is any compelling reason stipulated under the Ordinance for Enforcement of the Insurance Business Act and the FSA approves such transaction.

Please see section 9a regarding the approval from the FSA.

If entering into the service contract with the insurtech constitutes an execution of important operations, it needs to be approved by the board of directors.

## Are there any regulatory requirements on the disclosure of the transactions and connected transactions thereafter between the insurer and the insurtech start-up?

From an insurance regulatory perspective, there are no disclosure requirements for related-party transactions.

## To what extent can the insurer provide operational support to the insurtech start-up?

As long as the requirement explained in section 9a is met, there is no other restriction.

## What type of remuneration is permitted for the insurer to offer to the insurtech start-up?

Service fees payable by an insurance company is are permitted unless the terms and conditions are significantly different from those applied to normal transactions. Subject to the said arm’s-length requirement, profit sharing with an insurance company is not specifically prohibited.

## How can the insurtech start-up transfer the intellectual property rights for its

Intellectual property rights are generally transferred through an assignment agreement. Transfer of certain intellectual properties such as patent right, utility model right, design right and trademark needs to be registered to take effect.

## Are there any laws governing the collection, usage, storage, disclosure and transfer of personal data between the insurer and the insurtech start-up?

The main legislation is the Act on Protection of Personal Information ("**Act No. 57 of 30 May 2003**"). In addition to this act, there are various guidelines issued by different Japanese government agencies and industry groups. The guidelines that apply to the insurance sector are the Guidelines for Personal Information Protection in the Financial Sector ("**Personal Information Protection Commission and FSA Notice No. 1 of 28 February 2017**") and the Practical Guidelines for Security Control Measures Provided in the Guidelines for Personal Information Protection in the Financial Sector ("**Personal Information Protection Commission and FSA Notice No. 2 of 28 February 2017**").

The Comprehensive Guidelines for Supervision of Insurance Companies also have certain provisions regarding management of customer information.

# Insurance Regulatory Landscape and Key Considerations for M&A Transactions

## Who is the main regulator with oversight of insurance companies?

Financial Services Agency (**FSA**)

## Are there foreign ownership limitations for insurance companies? Are there shareholding caps on individuals and/or corporate bodies for insurance companies? If in the affirmative, is this encapsulated within statute or a matter of policy?

No.

## Can an insurance company carry on a composite business (i.e., life and non-life)? Is this encapsulated in statute or a matter of policy?

No (a matter of law).

The Insurance Business Act of Japan (IBA), however, allows either type of insurance company to operate other insurance business through a subsidiary, i.e., a life insurance company can have a non-life insurance company as its subsidiary and vice versa.

## Are there other conditions imposed by the regulator in doing an M&A transaction?

There are no conditions imposed by the FSA that are peculiar to a foreign investor in connection with M&A of insurance companies.
As a matter of general conditions (not peculiar to a foreign investor) for the approval for investment into an insurance company, the FSA requires the applicant to fulfill the following conditions:

Approval for an "insurance major shareholder"

No risk of impairing sound and appropriate management of the insurance company in light of the funds for the acquisition, the purpose of the investment and the status of assets and income, and expenditure

Have sufficient understanding of the public nature of the insurance business

Have sufficient social credibility

Approval for an "insurance holding company"

Have good prospects for income and expenditure

Have sufficient knowledge and experience to carry out the business management of the insurance company

Have sufficient social credibility

## Is dispensation given for fulfillment of these conditions and in what circumstances?

Generally no.

## Is there a single presence policy and is it imposed under statute or policy? Is dispensation given and what criteria will the regulator consider?

No.

## What approvals are required for a foreign entity to take a stake in an insurer? Is there a distinction between a share deal or an asset deal?

**Share deal**

If the foreign investor is to constitute an "insurance major shareholder" for the purpose of the IBA, it must obtain the FSA’s approval prior to investing in a Japanese insurance company. Ownership of a 20% (or 15% in certain circumstances) voting shareholding in an insurance company is the trigger threshold for an insurance major shareholder.

If the foreign investor is to acquire the majority shares in the insurance company, and if the value of the acquired shares in the insurance company, together with any other Japanese subsidiaries, exceeds 50% of the total assets of the foreign investor, it must obtain FSA approval to become an "insurance holding company" for the purpose of the IBA prior to the change of control.

**Asset deal**

If the foreign investor is to acquire the business from an insurance company, it must obtain FSA approval in order to effect the acquisition of the business.

## How long will regulatory approvals typically take for a share deal versus an asset deal?

**Share deal**

It varies on a case-by-case basis. Under the IBA, the FSA should issue an approval for a share transfer, which results in the foreign investor being an "insurance major shareholder," within 30 days.

 **Asset deal**

It varies on a case-by-case basis. The IBA and the enforcement ordinance do not stipulate any standard review period. Practically it could take several months from submission to the FSA to obtain an approval.

## How open is the regulator to private equity participation in an insurer?

There is no statutory restriction but may attract additional scrutiny.

Although the IBA does not stipulate any special rules for review of private equity participation, the FSA’s supervisory guidelines for banks mention certain points they will carefully review on an acquisition of shares in a bank by a private equity fund, such as impact on the soundness and sustainability of the bank's business operations. The FSA may take a similar approach to private equity participation in an insurance company.

## Is there a financial holding company concept (FHC) or other equivalent status? What are the implications?

Yes, there is an "insurance holding company" concept under the IBA. A company that intends to become an insurance holding company must obtain approval from the FSA. Also, an insurance holding company is subject to various regulations under the IBA as well as supervision by and reporting to the FSA.

Regulations applicable to an insurance holding company include, among others, limitation of scope of business (generally management of its subsidiaries) and submission of business report and other materials regarding status of the business and assets to FSA.

## What are the typical modes of distribution for insurance companies?

Sales employees, agency force, direct sales through the Internet, bancassurance and brokers

## Is bancassurance a popular mode of distribution? What approvals are required? What are the main parameters in negotiating a bancassurance agreement?

Yes, bancassurance is a popular mode of distribution.

A bank serving as an insurance agent must be registered with the regional financial bureau.

The salient terms are:

Remuneration

Products

Term and renewal

Risk allocation

## What are the top challenges in closing an insurance M&A transaction (share deal versus asset deal)?

**Share and asset deals**

Approval from the FSA

Compliance review of the target company

Change of control clause in material agreements (e.g., reinsurance)

**Asset deal**

Approval from the FSA

Transfer of all other business undertakings

Transfer of employees

# Data Protection and Cybersecurity

## Who is the main regulator with oversight of data privacy matters?

The Personal Information Protection Commission (PPC)

## What is the main legislation on the protection of personal data privacy?

The main legislation is the Act on Protection of Personal Information (Act No. 57 of 30 May 2003) (APPI). The Guidelines for the Act on Protection of Personal Information (PPC Notices No. 6-9 of 2016) function as general guidelines (Guidelines).

In addition to the APPI and the Guidelines, there are some industry-specific guidelines issued by different Japanese government agencies.

The guidelines that apply to the insurance sector are the Guidelines for Personal Information Protection in the Financial Sector (PPC and FSA Notice No. 1 of 28 February 2017) and the Practical Guidelines for Security Control Measures Provided in the Guidelines for Personal
Information Protection in the Financial Sector (PPC and FSA Notice No. 2 of 28 February 2017) (collectively, PPC and FSA Guidelines).

# Regulatory Landscape and Issues in Bancassurance

## Who is the main regulator with oversight of bancassurance matters?

The Financial Services Agency (**FSA**).

## Is bancassurance a popular mode of distribution? What types of bancassurance partnership arrangements are available?

Yes.

Bancassurance partnerships are generally divided into agent arrangements or intermediary arrangements.

## What are the main parameters in negotiating a distribution agreement?

The salient terms are:

remuneration;

products;

term and renewal; and

risk allocation.

## Are insurance companies and banks required to hold any specific license (whether to be obtained on an ad hoc or ongoing basis) in order to enter into the distribution agreements to provide bancassurance services and products?

Yes, the bank serving as an insurance agent shall be registered with the competent regional financial bureau to carry on insurance solicitation in Japan.

## Are there any legal or regulatory restrictions on the insurance company or the bank providing exclusivity to the other party?

There is no regulatory restriction for the insurance company or the bank to provide exclusivity, although it may be prudent to undertake a competition analysis as set forth in the answer to the Question 10.

## Assuming full exclusivity is not possible for legal or regulatory reasons, would the bank be able to grant the insurance company preferential treatment? If yes, under what conditions?

Yes, preferential treatment is permissible. The form of the preferential treatment is a matter of negotiation.

## What type of engagement (if any) with the regulators would be legally required in connection with the negotiation/entering into of the distribution agreements?

No regulatory approval is necessary.

## Would the insurance company and/or the bank be required to submit the distribution agreements (and any ancillary documents) to the regulators as part of any notification/approval process? If yes, do the regulators require any specific terms to be included in the distribution agreements?

No statutory or regulatory requirement to submit the agreement(s).

## If the distribution agreements are submitted, would the regulators review/provide comments and require that the agreements be modified?

Not applicable.

## Would any antitrust/competition analysis have to be conducted with respect to the insurance company and/or the bank prior to entering into the distribution agreements?

It may be prudent to undertake a competition analysis given that the broad application of, and significant penalties for breach under, the Antimonopoly Act in Japan.

## What are the competition law considerations that might impact the term (e.g., duration) of a distribution agreement?

Various terms and conditions would be considered, especially exclusivity, amount of compensation and amount of insurance products to be offered, as well as market shares of the parties, business justification for entering into the agreements and the general market circumstances such as the level of concentration in the market for the relevant products or services.

## Under applicable laws and regulations, would the insurance company be allowed to use customer information (consisting of certain personal and demographic data) possessed by the bank to: (a) develop new products and refine marketing strategies, among others; (b) conduct its own telemarketing or direct mail activities; and (c) cross-sell products?

No, unless the bank obtains the customers’ consent when the bank discloses customer information to the insurance company for the purpose as set forth above.

## Are there any laws or regulations limiting or prohibiting the dissemination of customer information without the customers’ consent? Are customers allowed to waive any of these limitations or prohibitions?

Yes, the Act on the Protection of Personal Information prohibits the dissemination of customer information without the customers' consent. Also the regulations under the Insurance Business Act and the relevant guidelines of the FSA are applicable to the sharing of customer information. Yes, customers can provide comprehensive consent when they disclose their personal information.

## Are there any other prohibitions or limitations resulting from applicable privacy laws relating to the sharing of customer information for purposes of marketing and distribution of insurance products?

None.

## Are there any prohibitions or limitations in respect of compensation arrangements for bancassurance transactions (up-front/staggered payments, commission payments, bonus payment schemes)?

Yes, the insurance company is required to set the appropriate amount of the compensation in the distribution agreement in terms of ensuring the soundness in management of the insurance company and the fairness of the insurance solicitation by the bank under the relevant guideline.

## What are the sanctions for non-compliance with the prohibitions or limitations in respect of compensation arrangements?

The insurance company that is not in compliance with the regulation mentioned in the answer to Question 15 above may be subject to the administrative sanction by the FSA.

## Would the regulators request information on compensation arrangements (for specific jurisdictions or globally)?

It is unlikely that the FSA requests information on compensation arrangements between the insurance company and the bank except where the insurance company is suspected
to be in violation of the regulation mentioned in the answer to Question 15 above.

## Are there any restrictions in relation to the classes of insurance products which may be offered pursuant to a bancassurance arrangement?

No restrictions.

## Are there any products or product lines that the insurance company would be unable to offer to and distribute through the bank?

None.

## Would the policy forms used by the insurance company have to be approved by any regulator? Would the insurance company own the intellectual property rights relating to such policy forms?

Yes, the contents of the insurance policy need to be examined and approved by the FSA under the Insurance Business Act.

There are no specific provisions in Japanese IP laws or court cases supporting the view that the insurance company owns the IP rights to its policy forms.

## Are there any prohibitions or limitations in respect of co-branding between the bank and the insurance company?

None.

## Would the bank personnel be required to hold any specific license in order to distribute the insurance products? Are there any reasons why bank personnel may be prohibited from distributing insurance products?

It is not customary for the sales personnel employed by the insurance company to carry on bancassurance services at the bank’s branches except when the sales personnel of the insurance company is seconded to the bank to engage in bancassurance services.

## If the sales person is employed by the bank: (a) is the insurance company required to have oversight or provide special training; and (b) are there applicable laws and regulations allowing the insurance company to compensate the bank for the service provided by its sales personnel?

Yes, the insurance company is required to monitor and oversee the circumstance of the insurance solicitation made by the bank under the relevant guideline.

There are no specific restrictions on such compensation arrangement. Where bancassurance services are provided by the sales personnel employed by the bank, which is a popular mode of bancassurance in Japan, compensating the bank personnel will not be applicable. On the other hand, where bancassurance services are provided by the bank sales personnel who is a secondee from the insurance company, it would be a matter of negotiation whether the salary of such seconded employee is paid by the insurance company or the bank.

## If the sales person is employed by the insurance company, are there any restrictions on their access to the bank’s branches?

It is not customary for the sales personnel employed by the insurance company to carry on bancassurance services at the bank’s branches except when the sales personnel of the insurance company is seconded to the bank to engage in bancassurance services.

## Are banks allowed to lease space to insurance companies to market its products in the bank’s branches?

It is not customary that bank leases spaces to insurance company to market insurance products in the bank’s branches because the sales personnel of the insurance company usually does not carry on bancassurance services at the bank’s branches (see the response to Question 24 above). For your information, if the insurance company is to establish its sales office at the premises of others (including the bank), such insurance company needs to implement appropriate measures to avoid misunderstanding by customers, to protect customer information and to prevent crimes under the relevant guideline.

## Are there any investment requirements (e.g., minimum stake to be held by the insurance company in its distribution partner) or any other similar legal or regulatory obligations that may affect the insurance company’s ability to enter into the distribution agreements?

None.

## Are there any recent (or pending) developments in laws and regulations that may be relevant to the negotiation and/or the entering into of the distribution agreements (or the provision of services by the insurance company and/or the bank pursuant thereto)?

None.

## Are there any other issues that may affect the insurance company’s ability to enter into the distribution agreements and provide bancassurance services on an ongoing basis to the bank?

None.

# Top 10 Issues to Consider in a Regional Bancassurance Deal

## What are the issues to consider in respect of exclusivity rights in a bancassurance agreement?

There is no regulatory restriction for the insurance company or the bank to provide exclusivity, although it may be prudent to undertake a competition analysis given the broad application of, and significant penalties for breach under, the Antimonopoly Act in Japan.

## What are generally the obligations of an insurer in terms of providing manpower support?

Although it may not be an insurer’s typical obligation, it is possible to oblige an insurer to provide support to the bank by sending individuals to guide and train the bank’s staff or second personnel to assist with the marketing and sale of the bancassurance products.

## What are the typical rights and provisions in relation to insurer’s right to access the bank’s customer database and also the obligations of an insurer that is in receipt of such information?

As the banks are under a strict duty to maintain confidentiality and secrecy, banks may not normally allow the insurer the right to access their customer database especially non-public financial information, unless the customer gives consent.

## What are the issues to consider in respect of compensation payable by the insurer to the bank and cost of distribution of bancassurance products?

We are generally not aware of any issues related to compensation/cost of distribution of bancassurance products.

## What can parties do if the insurer is unable to develop or refuses to develop a bancassurance product or cease offering a bancassurance product?

It is possible to have a provision allowing the bank to terminate the exclusive relationship if the insurer is unable to develop or refuses to develop a bancassurance product or cease to offer a bancassurance product.

## What are the possible terms and issues relating to intellectual property that has been jointly developed (JDIP) pursuant to a bancassurance agreement?

We are generally not aware of any issues related to JDIP. It may not be common for insurers and banks to jointly develop intellectual property.

## What happens to the facilitation fee for the promotional and marketing activities paid by the insurer to the bank in the event of an early termination?

The position will vary depending on the reason for the early termination and which party is at fault.

## A pro-rata refund of the facilitation fee in the event of an early termination may not be fair to the banks as the banks would typically invest and incur more costs and expenses during the initial years of a bancassurance agreement to promote and market and put in place a business structure to supports the objectives of the bancassurance agreement. How can the parties address this issue?

The parties can have a provision requiring the insurer to pay a larger amount in the first period among some separate periods.

## Can a party ask for an indemnity for any losses, expenses and damages suffered as a result of an act by a bank staff and conversely can a bank to ask for an indemnity or any losses, expenses and damages suffered which is attributed to the other party?

Yes, it is possible to have such indemnity clause in the bancassurance agreement.

## What are the issues to consider when forming a bancassurance steering committee?

Composition of bancassurance steering committee (**BSC**); frequency of BSC meetings; quorum for BSC meetings; matters falling within the scope of the BSC; decision-making process and proposed resolutions if there is a deadlock in the BSC are typical issues to consider when forming a BSC.

# Digitalization in Insurance Guide

## Is there any specific regulation governing the sale of insurance through online platforms?

Yes. The Ordinance for Enforcement of the Insurance Business Act and the Comprehensive Guidelines for Supervision of Insurance Companies have specific provisions which regulate the matters to be considered when the Financial Services Agency (FSA) examines for approval the statement of business procedures containing sales of insurance products through the Internet.

## Is the sale of insurance through mobile applications subject to the same requirements as the online sale?

Yes.

## Set out three key regulatory requirements for the distributions of products online or through mobile applications.

Three key regulatory requirements are: (i) the insurer must establish a system which enables the insurer to provide information or explanation at the same level as face-to-face channels; (ii) the insurer is required to make sure that an applicant for an insurance contract is a legitimate party to sign a contract; and (iii) the insurer must take security measures to prevent the use of the Internet from causing a leak of information concerning insurance policies and policyholders.

## Do the current insurance regulations in your jurisdiction allow the KYC process be done online or electronically? If so, what are the key requirements?

Yes, KYC process can be done online or electronically. Under the Comprehensive Guidelines for Supervision of Insurance Companies, the insurer is required to make sure that an applicant for an insurance contract is a legitimate party to sign a contract.

## Do the insurance regulations permit insurance policies/contracts to be concluded through digital means? For example, through a “click-through” or “e-signature”, without any wet signature.

Yes, insurance policies may be concluded through digital means such as a click-through.

## Is there any specific regulation governing the advertising of insurance products through online platforms or the use of aggregators?

Advertising of insurance products through online platform is subject to the same regulation as advertising through other means. If an aggregator receives compensation from an insurer or an insurance solicitor and recommends or explains any particular insurance product, such action may be deemed as insurance solicitation and be subject to the regulations regarding insurance solicitation.

## Are there any customer service requirements if the insurers sell their products online?

Under the Comprehensive Guidelines for Supervision of Insurance Companies, the insurer must establish a system which enables the insurer to provide information or explanation at the same level as face-to-face channels, including showing the customer the content of the insurance policy and attention attracting information electronically in order for the customer to be fully aware that such information is important.

## If an obligation is imposed on insurers to allow customers to amend or update their policies online, are there any specific regulatory requirements governing that process?

There is no such obligation imposed yet.

## Are insurers required to apply for specific insurance licenses in order to conduct online sales?

No. Any specific license is required for insurers to conduct online sales.

## In order to conduct online sales, are insurance intermediaries required to apply for any specific insurance licenses?

No, any specific license is required for insurance intermediaries to conduct online sales.

## Are there specific requirements on the commission rates paid to insurance intermediaries for online sales? Please specify if these rates are different from the rates applicable in the case of insurance sale through other means.

No. There is no difference on the commission rates paid between online sales and other means.

## Where the insurers do not engage in online insurance sales themselves, but engage intermediaries to do so, would the insurers be deemed as offering or selling insurance products online?

No.

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