Asia Pacific Insurance - Japan

Guide for Directors and Senior Managers of Insurance Companies

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# 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.

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