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Insurance & Reinsurance 2025

14th Edition

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Industry Chapter

Expert Analysis Chapter

Q&A Chapters

Q&A Chapters Continued

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Japan

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1 Regulatory

1.1 Which government bodies/agencies regulate insurance (and reinsurance) companies?

The Financial Services Agency (the "FSA") regulates both insurance and reinsurance companies.

1.2 What are the key requirements/procedures for setting up a new insurance (or reinsurance) company?

Any foreign insurer may operate an insurance business in Japan through either a subsidiary or a branch. If establishing a branch, the foreign insurer is required to obtain a licence as a "foreign insurer" under Article 185(1) of the Insurance Business Act (the "IBA"). If establishing a subsidiary, the subsidiary is required to obtain a licence as an "insurance company" under Article 3(1) of the IBA. The standards for granting both licences are basically the same. However, when establishing an insurance company, the foreign insurer is additionally required to be authorised as a major shareholder of the insurance company under Article 271-10(1) of the IBA.

Under Article 246(1)(i) and (xiv) of the Enforcement Order of the IBA, the FSA endeavours to make decisions whether to grant a licence within 120 days after its receipt of the licence application. This is called the "standard processing period". However, this period is only required to be followed on a best endeavour basis, and interpreted to commence when the formal application documents are filed. In practice, the foreign insurer or its subsidiary would hold many discussions about the application documents with the FSA before the formal filing. Such discussions will take at least one year.

1.3 Are foreign insurers able to write business directly or must they write reinsurance of a domestic insurer?

Under Article 186(1) of the IBA, without the licence described in question 1.2 above, foreign insurers are prohibited from concluding any insurance contracts that insure any persons with an address, residence or property in Japan, or a vessel or aircraft registered in the country. However, this prohibition does not apply to the following contracts:

- reinsurance contracts;
- marine insurance contracts that cover vessels registered in Japan, cargo transported by such vessels, or liabilities that arise therefrom;
- aviation insurance contracts that cover aircraft registered in Japan, cargo transported by such aircraft, or liabilities that arise therefrom;
- space insurance contracts that cover launches into outer space, cargo transported by such launches, or liabilities that arise therefrom;
- insurance contracts that cover cargo originating in Japan and in the process of being shipped overseas; and
- overseas travel insurance contracts that cover injury, illness or death, or cargo of overseas travellers.

Furthermore, the prohibition does not apply for contracts, other than the above, if the insurance contract applicant obtains permission in advance from the FSA.

1.4 Are there any legal rules that restrict the parties' freedom of contract by implying extraneous terms into (all or some) contracts of insurance?

Article 10 of the Consumer Contract Act voids any clauses in any consumer contract that restricts the rights or expands the duties of consumers beyond the application of provisions unrelated to public order in the civil law, and that unilaterally impairs the interests of consumers in violation of the fundamental principle prescribed in Article 1(2) of the Civil Code. Additionally, mandatory provisions in the Insurance Act void any agreements that, contrary to such provisions, treat policyholders adversely.

1.5 Are companies permitted to indemnify directors and officers under local company law?

Under Article 424 of the Companies Act, the liabilities of directors or executive officers cannot, in general, be indemnified unless all shareholders unanimously consent to the indemnification. However, such liabilities may be reduced to some extent under certain circumstances. For example, the board of directors may make a resolution, or the company may enter into certain agreements with non-executive directors to reduce the liabilities in certain cases pursuant to its articles of incorporation.

1.6 Are there any forms of compulsory insurance?

Examples of compulsory insurance in Japan include:

- automobile accident compensation insurance; and
- industrial accident compensation insurance.

2 (Re)insurance Claims

2.1 In general terms, is the substantive law relating to insurance more favourable to insurers or insureds?

In general, the substantive laws of Japan, such as the Insurance Act and the Consumer Contract Act, are more favourable to the insured, as mentioned in question 1.4 above.

2.2 Can a third party bring a direct action against an insurer?

In general, any third party who is neither insured nor a beneficiary of an insurance contract cannot bring a direct action against any insurers. However, certain special laws authorise third-party actions. For example, under Article 16 of the Act on Securing Compensation for Automobile Accidents, any aggrieved party has the right to claim damages directly against the insurer.

2.3 Can an insured bring a direct action against a reinsurer?

No, the insured cannot bring a direct action against any reinsurers.

2.4 What remedies does an insurer have in cases of either misrepresentation or non-disclosure by the insured?

Under Articles 4, 37 and 66 of the Insurance Act, all policyholders or the insured are obligated to disclose any material matters regarding the risks covered by insurance contracts and as requested to be disclosed by the insurer. If any policyholder or the insured violates this obligation intentionally or with gross negligence, the insurer may cancel the insurance contract. However, the insurer cannot do so in the following cases:

- when the insurer knew of the violation or did not with gross negligence;
- when an agent of the insurer interferes with the disclosure; or
- when an agent of the insurer solicits non-disclosure or false disclosure by the policyholder or the insured.

The insurer's right to cancel will be extinguished one month after the insurer knew of the cause of cancellation or five years after the contract was concluded. If the insurer cancels the insurance contract, the insurer will be discharged from its liability for insurance payments, except for any damages not caused by any undisclosed matters.

2.5 Is there a positive duty on an insured to disclose to insurers all matters material to a risk, irrespective of whether the insurer has specifically asked about them?

The obligation described in question 2.4 above does not arise if the insurer does not request the policyholder or the insured to disclose all matters material to certain risks. Articles 4, 37 and 66 of the Insurance Act are prescribed as mandatory provisions, which void any agreements that, contrary to such provisions, treat policyholders adversely. However, the following contracts are not subject to these mandatory provisions, meaning that insurers are authorised to provide other provisions that prescribe broader obligations for policyholders than those prescribed in Article 4 of the Insurance Act:

- maritime insurance contracts prescribed in Article 815(1) of the Commercial Code;
- insurance contracts that cover aircraft, cargo transported by such aircraft, or liabilities that arise from aircraft accidents;
- insurance contracts that cover nuclear facilities or liabilities that arise from nuclear facility accidents; and
- non-life insurance contracts that cover damages arising from business activities.

2.6 Is there an automatic right of subrogation upon payment of an indemnity by the insurer or does an insurer need a separate clause entitling subrogation?

Under Articles 24 and 25 of the Insurance Act, the insurer is entitled to be subrogated to any salvage of the object for which an insurance payment was made, or to the right to seek damages or other compensation recovered by the insured through an insured event for which an insurance payment was made.

3 Litigation – Overview

3.1 Which courts are appropriate for commercial insurance disputes? Does this depend on the value of the dispute? Is there any right to a hearing before a jury?

Under Article 4 of the Code of Civil Procedure, disputes are generally heard before the court with jurisdiction over the area where the defendant resides. However, a jurisdiction clause in the insurance policy may change the court that hears the dispute. Depending on the value of the dispute, it is resolved in either a district or summary court. Since Japanese law does not adopt a jury system, there is no right to a hearing before a jury.

3.2 What, if any, court fees are payable in order to commence a commercial insurance dispute?

Court fees depend on the value of the dispute. For instance, it costs 320,000 yen to commence an action for a claim of 100,000,000 yen.

3.3 How long does a commercial case commonly take to bring to court once it has been initiated?

The first trial date is scheduled within one month after the suit is filed. The trial period depends on the case, but it generally takes around one year until the final decision is rendered. If the case is settled, the trial may be terminated earlier. On the other hand, if the case is appealed, it will take more time.

4 Litigation – Procedure

4.1 What powers do the courts have to order the disclosure/discovery and inspection of documents in respect of (a) parties to the action, and (b) non-parties to the action?

Under Article 223 of the Code of Civil Procedure, the court may order the submission of certain documents by the holders of such documents if the court finds them necessary for the trial and the document holders have no grounds to refuse the court's order. This order can be issued regardless of whether

the document holder is a party to the action. Under Article 220 of the same Code, the document holder may not refuse to submit a document in the following cases:

(i) a party possesses the document as cited in the suit by the same party;
(ii) the party who intends to submit the document as evidence has the right to request delivery or inspection of the document;
(iii) the document was prepared in the interest of the party who intends to submit the document as evidence or with regard to the legal relationship between the party and the document holder; or
(iv) the document does not fall under any of the following:
- it states any matters for which the document holder, his/her family members, etc., can be prosecuted;
- it relates to any secrets regarding a public officer's duties that, if submitted, may harm the public interest or substantially interfere with the performance of such duties;
- it states any matters that a physician, dentist, pharmacist, seller of medicine, birth attendant, attorney, notary or priest knew while performing their occupational duties, or any matters relating to technical or occupational secrets, neither of which are released from the duty of confidentiality;
- it was prepared exclusively for use by the document holder (excluding any documents held by a government and used by a public officer for an organisational purpose); or
- it relates to a suit pertaining to a criminal case or a record of a juvenile case, or a document seized in these cases.

Under Article 224 of the same Code, if any party to the action does not comply with an order to submit a document or has caused the document to be lost or otherwise unusable in order to prevent the opposing party from using it, the court may conduct fact-finding concerning the alleged statements made in the opposing parties' documents. If any non-party to the action does not comply with the order, the court may impose a non-criminal fine of not more than 200,000 yen on the non-party.

4.2 Can a party withhold from disclosure documents (a) relating to advice given by lawyers, or (b) prepared in contemplation of litigation, or (c) produced in the course of settlement negotiations/attempts?

The Code of Civil Procedure does not explicitly authorise any party to withhold from such disclosure documents. However, these documents do not always contain first-hand information relating to facts. Therefore, the document holder could argue that these documents are not necessary for the trial and that the petition for the order should be dismissed.

4.3 Do the courts have powers to require witnesses to give evidence either before or at the final hearing?

Under Article 190 of the Code of Civil Procedure, the court may examine any person as a witness. If any witness does not appear before the court without justifiable grounds, the court will order that the witness shall bear any court costs incurred from the non-appearance and impose a non-criminal fine of not more than 100,000 yen on the witness.

4.4 Is evidence from witnesses allowed even if they are not present?

Under Article 205 of the Code of Civil Procedure, the court may have witnesses submit documents *in lieu* of being examined if the court finds it appropriate and the parties do not object.

4.5 Are there any restrictions on calling expert witnesses? Is it common to have a court-appointed expert in addition or in place of party-appointed experts?

The Code of Civil Procedure does not explicitly prescribe any restrictions on calling expert witnesses, and it is not common to have a court-appointed expert in addition to or in place of party-appointed experts.

4.6 What sort of interim remedies are available from the courts?

Even if a final decision has not been rendered, under Article 20 of the Civil Preservation Act, any party may file a petition for an order for provisional seizure over another party's assets if a compulsory execution with regard to a claim for monetary payment is impossible or extremely difficult. Also, under Article 23 of the same Act, any party may also file a petition for an order for provisional disposition with regard to a disputed subject matter if an exercise of rights is impossible or extremely difficult due to changes to the existing state of the subject matter.

4.7 Is there any right of appeal from the decisions of the courts of first instance? If so, on what general grounds? How many stages of appeal are there?

In general, there are two stages of appeal. First, the losing party may appeal to the upper court based on any grounds if such party objects to the decision rendered by the court of first instance. The final court is the Supreme Court; however, it only has jurisdiction over material violations of law, precedent cases and the Constitution, and it basically does not determine facts.

4.8 Is interest generally recoverable in respect of claims? If so, what is the current rate?

Regardless of whether the case is disputed in court, the party who failed to perform its obligation must pay delinquency interest, which is calculated at 5% or 6% unless otherwise agreed between the parties. This rate was lowered to 3% from April 2020 by amendment of the Civil Code.

4.9 What are the standard rules regarding costs? Are there any potential costs advantages in making an offer to settle prior to trial?

In general, any court decision requires the losing party to bear court costs. If a settlement is made, the costs are generally borne by both parties. The parties may save any trial costs including the costs for witnesses by settling prior to trial.

4.10 Can the courts compel the parties to mediate disputes, or engage with other forms of Alternative Dispute Resolution? If so, do they exercise such powers?

Courts cannot compel the parties to mediate disputes or engage in other forms of Alternative Dispute Resolution. However, under Article 89 of the Code of Civil Procedure, courts may recommend that the parties settle their dispute regardless of its status. This recommendation is commonly made before and after the trial for witnesses. If the parties accept the recommendation before the trial, they can save the cost of the trial. After the trial, the court may provide more detailed implications for its final decision which may motivate the parties to accept the recommendation.

4.11 If a party refuses a request to mediate (or engage with other forms of Alternative Dispute Resolution), what consequences may follow?

Even if a party refuses a court's settlement recommendation, no sanctions will be imposed for such refusal. However, through the recommendation procedure, the parties may at times infer the direction of the final decision if no settlement is made. In consideration of the possibility of winning the case, the parties will decide whether to accept the court's recommendation.

5 Arbitration

5.1 What approach do the courts take in relation to arbitration and how far is the principle of party autonomy adopted by the courts? Are the courts able to intervene in the conduct of an arbitration? If so, on what grounds and does this happen in many cases?

Under Article 14 of the Arbitration Act, the court in charge must dismiss an action upon the defendant's petition if it finds that the dispute in the action is subject to an arbitration agreement.

5.2 Is it necessary for a form of words to be put into a contract of (re)insurance to ensure that an arbitration clause will be enforceable? If so, what form of words is required?

Article 13(2) of the Arbitration Act states that arbitration agreements are required to be made in writing but does not explicitly prescribe any form of words that must be put into the agreement.

5.3 Notwithstanding the inclusion of an express arbitration clause, is there any possibility that the courts will refuse to enforce such a clause?

The court will refuse to enforce an arbitration clause in the following cases:

- when the arbitration agreement is invalid;
- when execution of the arbitration agreement is impossible; or
- when the defendant has made statements in the court hearing procedure.

5.4 What interim forms of relief can be obtained in support of arbitration from the courts? Please give examples.

Article 15 of the Arbitration Act states that an arbitration agreement does not preclude the parties of a dispute subject to the agreement from petitioning for a provisional disposition by the courts.

5.5 Is the arbitral tribunal legally bound to give detailed reasons for its award? If not, can the parties agree (in the arbitration clause or subsequently) that a reasoned award is required?

Under Article 39(2) of the Arbitration Act, the arbitral tribunal is required to state the reasons for its award unless otherwise agreed by the parties.

5.6 Is there any right of appeal to the courts from the decision of an arbitral tribunal? If so, in what circumstances does the right arise?

The decision of an arbitral tribunal has the same effect as the court's final decision. Therefore, in general, the parties to an arbitration cannot appeal the arbitral tribunal's decision to the courts. However, under Article 44 of the Arbitration Act, the parties may file a petition with the court to set aside the arbitral award in the following cases:

- the arbitration agreement is invalid due to the limited capacity of a party;
- the arbitration agreement is invalid on grounds other than the limited capacity of a party pursuant to the laws and regulations designated by agreement between the parties as those to be applied to the arbitration agreement;
- the petitioner did not receive notice as required under Japanese laws and regulations in the arbitrator appointment procedure or the arbitration procedure itself;
- the petitioner is unable to defend in the arbitration procedure;
- the arbitral award contains a decision on matters beyond the scope of the arbitration agreement or of the petition presented in the arbitration procedure;
- the composition of the arbitral tribunal or the arbitration procedure violates Japanese laws and regulations;
- the petition filed in the arbitration procedure is concerned with a dispute that may not be subject to an arbitration agreement pursuant to Japanese laws and regulations; or
- the content of the arbitral award is contrary to public policy in Japan.

6 Hot Topics

6.1 In your opinion, are there any current hot topics which relate to insurance and reinsurance issues in your jurisdiction? If so, please set out briefly any which are of particular note.

Japan will introduce economic value-based solvency regulations in 2025. Under the new regulations, the economic value-based solvency ratio (the "ESR"), as an indicator of the financial soundness of insurers, will be calculated by assessing the assets and liabilities of insurers on an economic value basis. The FSA is preparing to align the implementation of the regulations, targeting adoption from the beginning of the fiscal year ending 31 March 2026, with the scheduled introduction of the Insurance Capital Standard agreed by the International Association of Insurance Supervisors. In October 2024, the FSA announced a draft amendment to the current laws and regulations concerning the new regulations.

Due to the introduction of the new economic value-based solvency regulations, many Japanese insurance companies, especially life insurance companies, are considering entering into new reinsurance agreements, which are sometimes called "block reinsurance" or "funded reinsurance", with reinsurers. The ESR can be profoundly affected by fluctuations in interest rates especially when an insurer has existing blocks of insurance contracts with high scheduled interest rates and long-term interest rate durations. One solution being considered by insurance companies is to address the new regime by entering into such reinsurance agreements.

Under the IBA, "insurance business" includes any business that receives insurance premiums in exchange for an agreement to compensate someone for damages caused by uncertain events. This definition is broad enough to capture reinsurance businesses. Generally, insurance businesses must be licensed. The exceptions to this licensing requirement are reinsurance transactions carried out "offshore" (i.e., outside Japan) as they are exempted from regulations on overseas direct insurance. If a reinsurer operates a "(re)insurance business" on an "offshore" basis (i.e., it carries out all underwriting, claims handling, contract negotiations, and other activities from outside Japan and does not utilise its own employees or agents to conduct any such activities domestically), then it is not required to obtain an insurance business licence under the IBA and thus is not subject to supervision by the FSA, any regulatory (including reporting) obligations or any capital requirements, regardless of the amount of business it conducts with Japanese cedants.

However, cedants must pay attention to regulatory requirements for them to obtain credit for reinsurance on their financial statements. Licensed cedants (insurers) in Japan must hold policy reserves for the policies they have insured. However, there is an exemption for policies that have been reinsured, which is available without limitation for reinsurance transactions concluded by licensed reinsurers in Japan. Foreign reinsurers without a licence in Japan may also invoke this exemption but only to the extent that the reinsurance would not impair the financial soundness of the cedants considering the foreign reinsurer's businesses and financial conditions. There is no bright-line test based on specific monetary thresholds or limits under the IBA; however, if, for example, the maximum reinsurance payment is less than 1% of the total assets of the cedant and there is no concern that the foreign reinsurer would fail to make the reinsurance payments due to insolvency or other reasons, then this exemption may be invoked according to the Supervisory Guidelines for Insurers published by the FSA. Japanese insurance companies (cedants) may ask foreign reinsurers for information, materials or other evidence regarding the foreign reinsurer's businesses and financial conditions from this perspective.

Along with the increase in reinsurance transactions, increasing numbers of companies have registered or are preparing to register as insurance brokers under the IBA. Under the law, there are two types of insurance intermediary (insurance solicitation) licences: (i) insurance broker (*hoken nakadachi-nin*) registration; and (ii) insurance agent (*hoken dairi-ten*) registration. While insurance brokers act as intermediaries for the conclusion of insurance contracts on behalf of insurance policyholders (cedants in reinsurance transactions), insurance agents act on behalf of insurers (reinsurers in reinsurance transactions). Regarding these two intermediary licences, there are no overseas or reinsurance exemptions under the IBA. In other words, those who act as intermediaries for the conclusion of (re)insurance contracts must obtain either licence, even if they act as intermediaries from abroad or for reinsurance. In addition, the insurance agent registration is in place only for insurance agents who act as intermediaries on behalf of Japanese licensed insurers and is not available to those who act on behalf of unlicensed reinsurers. Therefore, the only option for those who act as intermediaries for the conclusion of insurance contracts with unlicensed reinsurers is to obtain the insurance broker registration and to act on behalf of insurance policyholders (cedants in reinsurance transactions). It is worth noting that insurance brokers are required to act as intermediaries to conclude insurance contracts in good faith on behalf of their insurance policyholder customers (cedants in reinsurance transactions).

Kazuo Yoshida is a partner at Mori Hamada & Matsumoto ("Mori Hamada"). He has a broad range of experience in insurance law and regulations. He was assigned to the Insurance Business Division of the Supervisory Bureau of the Financial Services Agency of Japan from 2012 to 2014 as a fixed-term government employee (Deputy Director). With this background and expertise, he has worked with many domestic and foreign insurance companies on insurance law and regulatory issues, corporate governance matters, and dispute resolutions. He frequently writes articles and appears as a lecturer at public seminars on insurance issues. In particular, his book titled "Commentary on the Insurance Business Act" (KINZAI, 2023, Second Edition) is read and used broadly in practice by many staff at insurance companies. He earned his LL.M. from Columbia University School of Law in 2015 (Harlan Fiske Stone Scholar).

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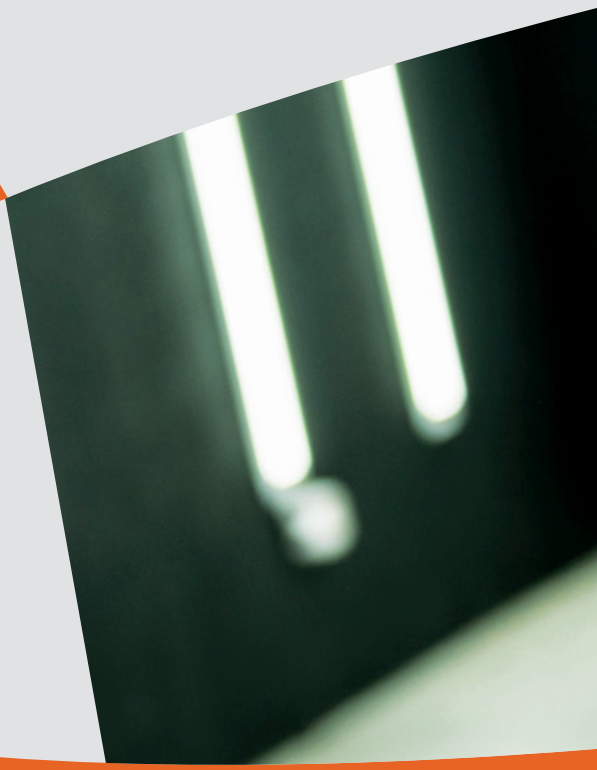
- Regulatory Authorities and Procedures
- (Re)insurance Claims
- Litigation
- Arbitration
- Hot Topics



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