

Insurance & Reinsurance

Contributing editors

William D Torchiana, Mark F Rosenberg and Marion Leydier



2016

GETTING THE
DEAL THROUGH 

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Insurance & Reinsurance 2016

Contributing editors

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Regulation

1 Regulatory agencies

Identify the regulatory agencies responsible for regulating insurance and reinsurance companies.

The Financial Services Authority (OJK) is responsible for regulating and supervising the financial services sector in Indonesia, including insurance and reinsurance companies. Specifically, the insurance and reinsurance sector is under the jurisdiction of the Head Executive Supervisor of Non-bank Financial Institutions of the OJK.

OJK was formed under Law No. 21 of 2011 on Financial Services Authority, and on 1 January 2013 assumed the authority to supervise and regulate capital markets and non-bank financial institutions (including insurance and reinsurance companies) from the predecessor agency, the Capital Markets and Financial Institutions Supervisory Agency (Bapepam-LK) of the Ministry of Finance (MOF).

On 17 October 2014, Law No. 40 of 2014 on Insurance (New Insurance Law) entered into force, replacing Law No. 2 of 1992 on Insurance Business (1992 Law). A number of regulations will be issued to implement provisions of the New Insurance Law and to accommodate the shift of authority over the insurance sector to the OJK. In the meantime, all relevant regulations of the MOF and Bapepam-LK remain in force until revoked or amended.

2 Formation and licensing

What are the requirements for formation and licensing of new insurance and reinsurance companies?

Pursuant to the New Insurance Law, to conduct insurance and reinsurance business in Indonesia (other than operating social insurance programmes), a company must hold a business licence issued by the OJK. To obtain a business licence from the OJK, the entity must be established as a limited liability company (PT), cooperative or mutual fund (only mutual funds already in existence prior to the enactment of the New Insurance Law may continue operating; no new licences will be granted to mutual fund insurance companies). The PT is the most common form of entity.

Insurance and reinsurance companies may be founded by Indonesian nationals or Indonesian legal entities that are wholly Indonesian-owned or by local insurance or reinsurance companies in a joint venture with a foreign legal entity. (See question 13 for information on what constitutes a foreign shareholding.)

The definition of insurance business under the New Insurance Law covers life insurance (conventional or shariah), general insurance (conventional or shariah), reinsurance (conventional or shariah), insurance brokers, reinsurance brokers and insurance loss adjusters. Indonesian insurance laws and regulations do not recognise the principle of composite insurance; therefore, it is not possible for an insurance company to engage in more than one type of insurance business simultaneously, with the exception that general insurance companies are permitted to provide reinsurance.

Once the company has been established, it can apply for an insurance business licence from the OJK. MOF Decree No. 426/KMK.06/2003 on Licences and Organisation of Insurance and Reinsurance Companies (KMK 426/2003) sets forth procedures and application requirements, including:

- evidence that the company has complied with minimum paid-up capital and security fund requirements;
- evidence that the company's articles of association have been approved by the Minister of Law and Human Rights;

- structure of the company's organisation and management;
- curriculum vitae of the directors, commissioners and appointed experts, along with a statement letter from the directors and the appointed experts declaring that they do not hold a position in any other company, in accordance with applicable regulations;
- for a joint venture company, a cooperation agreement between the local investor and the foreign party, which covers at least the required capital composition, composition of the board of directors and board of commissioners, as well as the foreign investor's obligation to provide training; and
- statement from the shareholders that the funds allocated for capital injection have not been derived from criminal acts (in accordance with the Money Laundering Law).

3 Other licences, authorisations and qualifications

What licences, authorisations or qualifications are required for insurance and reinsurance companies to conduct business?

Pursuant to KMK 426/2003, an insurance or reinsurance company must become a member of an association of similar companies, such as the Indonesian General Insurance Association for general insurers.

4 Officers and directors

What are the minimum qualification requirements for officers and directors of insurance and reinsurance companies?

Under OJK Regulation No. 2 of 2014 on Good Corporate Governance for Insurance Business Companies (OJK 2/2014), insurance and reinsurance companies must have at least three directors and three commissioners. Directors and commissioners must pass the 'fit and proper test' before holding the position. Fit and proper procedures are governed under OJK Regulation No. 4 of 2013 on Obligatory Fit and Proper Test for Positions in Non-Banking Financial Services (OJK 4/2013).

In addition, financial services conglomerates are required to establish good corporate governance procedures for the management of the entire group of companies.

OJK 2/2014 provides that a position may not be held by any person who has served as a director or a commissioner of an insurance company that has been penalised with restriction of business, a financial services company whose licence has been revoked for violations, or a financial services company or non-financial services company that has been declared legally bankrupt in the past five years. Law No. 40 of 2007 on Limited Liability Companies (Company Law) also applies general restrictions on persons disqualified from holding positions as director or commissioner.

Insurance and reinsurance companies must appoint at least one certified expert from the Indonesian Insurance Management Expert Association (AAMAI), or from a foreign association that is acknowledged by the AAMAI and who is registered as an expert with the OJK. Insurance companies must also appoint one expert actuary certified by the Indonesian Actuaries Society (PAI), or a foreign actuarial association that is acknowledged by PAI, who is registered as an actuary with the OJK.

The fit and proper requirements apply generally to all appointed experts in insurance and reinsurance companies.

5 Capital and surplus requirements

What are the capital and surplus requirements for insurance and reinsurance companies?

Under Government Regulation No. 73 of 1992 on Provisions on Insurance Business, most recently amended by Government Regulation No. 81 of 2008 (GR 73/1992), insurance and reinsurance companies must have minimum paid-up capital of 100 billion and 200 billion rupiah, respectively.

As part of the obligation to secure policyholders' interests, insurance and reinsurance companies must allocate at least 20 per cent of their paid-up capital in the form of a time deposit, debt securities or other commercial paper issued by the government. The time deposit must be self-renewing in a non-affiliated commercial bank in Indonesia.

Moreover, the New Insurance Law requires insurance and reinsurance companies to establish a guarantee fund to protect policyholders' interests in the event that the company is liquidated. The obligation for insurance companies will discontinue once the mandatory public guarantee programme is established (to be provided under separate legislation within three years after the enactment of the New Insurance Law). Reinsurers will not participate in the public guarantee programme; therefore, they will continue to maintain their own guarantee funds.

In addition to the minimum capital requirement, insurance and reinsurance companies are required to meet minimum solvency margins. Under MOF Regulation No. 53 of 2012 on the Financial Health of Insurance and Reinsurance Companies (PMK 53/2012), the minimum solvency margin ratio is 100 per cent, but the solvency target is 120 per cent. The calculation of the margin is based on the minimum risk-based capital. If the margin is below 120 per cent, the company must submit a solvency improvement plan to the OJK to increase to 120 per cent within the following year, and will be prohibited from paying dividends. If the margin goes below 40 per cent, the OJK can issue a first and final warning letter. PMK 53/2012 authorises the OJK to require financially troubled insurers to transfer their insurance portfolio to another company if needed to protect the interests of policyholders.

6 Reserves

What are the requirements with respect to reserves maintained by insurance and reinsurance companies?

Technical reserves (premium and claim reserves) are governed by the OJK under PMK 53/2012 and Head of Bapepam-LK Regulation No. 9 of 2012 (BLK 9/2012). BLK 9/2012 provides that insurance and reinsurance companies must set up technical reserves that are:

- in accordance with product characteristics and relevant risk profile;
- consistent for different products in the same product group;
- ensure recognition of liability is reasonable and fair to all policyholders; and
- are pursuant to actuarial practices and standards in Indonesia.

In the event that the OJK identifies irregularities with technical reserves, the OJK may request revaluation of all or part of the technical reserves that are considered improper.

7 Product regulation

What are the regulatory requirements with respect to insurance products offered for sale? Are some products regulated by multiple agencies?

Pursuant to OJK Regulation No. 23/POJK.05/2015 on Insurance Products and Marketing of Insurance Products (OJK 23/2015), insurance products are classified as follows:

- insurance products attributed to investment: insurance products that at least cover the risk of death by providing benefits based on the investment of the funds collected specifically for the insurance products;
- joint insurance products: insurance products designed to be marketed and covered or managed by two or more insurance companies;
- standard insurance products: general insurance products or life insurance products; and
- microinsurance products: insurance products designed to cover financial risks faced by low-income communities.

Insurance products must be notified to the OJK to secure an approval or registration letter before they are offered for sale to customers. An approval must be obtained for insurance products attributed to investment, joint

insurance products, and micro insurance products, while standard insurance products need only be registered. The notification for approval and registration must be accompanied with, inter alia, premium revenue projections or contributions and expenses attributed to the marketing of the insurance products for the period of three years (for approval only), details of the insurance product, specimens of the policy and technical marketing and operation scheme, a statement letter from shariah supervisory board (if applicable) and a copy of the cooperation agreement for joint insurance products. Insurance companies that fail to maintain the minimum solvency margin and are penalised with administrative sanctions are prohibited from offering new products until improvement plan targets are met.

8 Regulatory examinations

What are the frequency, types and scope of financial, market conduct or other periodic examinations of insurance and reinsurance companies?

The OJK can carry out examinations periodically or whenever they deem an examination is necessary. The frequency of periodical direct examinations will be determined by the OJK based on the risk management plan of the company. Other than periodical examinations, a direct examination can be conducted at any time if there are indications of high-risk exposure or violations of prevailing laws and regulations. Procedures for direct examination are regulated under OJK Regulation No. 11/POJK.05/2014 regarding Direct Examination of Non-Banking Financial Services Institutions.

9 Investments

What are the rules on the kinds and amounts of investments that insurance and reinsurance companies may make?

Pursuant to PMK 53/2012, insurance companies are limited to investing in the following financial instruments:

- time deposits and non-negotiable certificates of deposit in commercial banks, up to 15 per cent of the total investment;
- shares traded on a stock exchange, up to 10 per cent of the total investment per issuer and 40 per cent in aggregate;
- corporate debt securities, corporate sukuk or bonds issued by a multinational institution in which the state is a stakeholder, up to 15 per cent of the total investment per issuer and 50 per cent in aggregate;
- government bonds issued by states other than Indonesia, up to 10 per cent of the total investment per issuer;
- mutual funds, up to 15 per cent of the total investment per fund manager and 50 per cent in aggregate;
- asset-backed securities, up to 10 per cent of the total investment per fund manager and 20 per cent in aggregate;
- real estate investment funds, up to 10 per cent of the total investment per fund manager and 20 per cent in aggregate;
- direct capital participation in shares not listed on a stock exchange, up to 10 per cent of the total investment;
- strata title based buildings, up to 10 per cent of the total investment;
- refinancings and net performing loans, up to 10 per cent per party and 20 per cent of the total investment;
- gold, up to 10 per cent of the total investment; and
- loans guaranteed by mortgage, up to 10 per cent of the total investment.

There are also cumulative limits on combinations of certain types of investments, as well as specific limits on investments in affiliates.

10 Change of control

What are the regulatory requirements on a change of control of insurance and reinsurance companies? Are officers, directors and controlling persons of the acquirer subject to background investigations?

All changes of share ownership (acquisition, merger or consolidation) in insurance and reinsurance companies, regardless of whether there is a change of control, are subject to the OJK's prior approval. Non-change of control transfers of shares listed on the stock exchange are exempt from the approval requirement. In cases of acquisition of an Indonesian insurance company by another Indonesian insurance company, each company needs to obtain a separate approval from the OJK. The same applies to reinsurance companies. The OJK's objective is to ensure the financial soundness and the interests of the insured, so that if a new shareholder is approved,

no policy issued by the new shareholder will be detrimental to the existing insureds. For insurance and reinsurance companies established in the form of a PT, acquisition procedures under the Indonesian Company Law also apply.

Following the issuance of OJK 4/2013, acquirers of shares in insurance and reinsurance companies must pass the fit and proper test to become controlling shareholders if the value of the acquired shares with voting rights exceeds 25 per cent, or if the acquired shares are less than 25 per cent but the proposed acquirer will have an element of control over the company. Currently, there is no clear guideline on how to measure control when the acquired shares are less than 25 per cent.

If a change of control meets certain thresholds it also needs to be notified to the Indonesian Antitrust Authority for review and assessment.

In addition, the New Insurance Law introduced the concept of a 'controller' (not a controlling shareholder), which is defined as a party who possesses the direct or indirect power to appoint or influence the directors or commissioners. Every insurance and reinsurance company must appoint at least one controller, who must pass the fit and proper test and be notified to the OJK. The OJK will appoint a controller if the company does not do so. Once appointed, a controller is prohibited from withdrawing without the prior approval of the OJK.

11 Financing of an acquisition

What are the requirements and restrictions regarding financing of the acquisition of an insurance or reinsurance company?

There is no specific requirement or restriction related to financing. In general, the OJK will review the financial situation and solvency of the acquiring party during the approval process to ensure the proposed shareholder is financially sound and capable of contributing additional capital if required. The OJK requires the proposed shareholder to submit a statement confirming that the funds to acquire the insurance or reinsurance company did not originate from money laundering or other illegal activities.

12 Minority interest

What are the regulatory requirements and restrictions on investors acquiring a minority interest in an insurance or reinsurance company?

There are no specific requirements applicable to minority shareholders of insurance and reinsurance companies. The same rules apply to minority shareholders in insurance and reinsurance companies as would apply to any other type of company. As mentioned in question 10, acquirers of more than 25 per cent of the shares of a company are deemed to be controlling shareholders, and must pass the fit and proper test.

Holders of 5 per cent or more of the shares in a public company are obliged to disclose their shareholding to the OJK and the Indonesia Stock Exchange within 10 days of the transaction.

13 Foreign ownership

What are the regulatory requirements and restrictions concerning the investment in an insurance or reinsurance company by foreign citizens, companies or governments?

The New Insurance Law only allows direct participation by a foreign party in an Indonesian insurance or reinsurance company by means of a joint venture with an Indonesian partner, and only if the foreign party is a legal entity in the same type of insurance business (ie, a foreign life insurance company may only participate in a joint venture life insurance company) or a holding company, provided that one of its subsidiaries is a similar type of insurance company (not necessarily in Indonesia). Indonesian foreign investment (PMA) companies can qualify as the local partner if the ultimate shareholders of the PMA company are all Indonesian citizens. This is in contrast to the treatment of PMA companies in other sectors, as they are generally considered 'foreign investors' for purposes of determining foreign shareholding. Foreign individuals may only hold shares in insurance businesses through the stock exchange.

GR 73/1992 stipulates that at the time of establishment, direct investment by a foreign party in an insurance or reinsurance company shall not exceed 80 per cent, which is consistent with the maximum foreign ownership allowed under the Indonesian Negative Investment List. However, GR 73/1992 creates the possibility that a foreign party can increase its

ownership percentage after the joint venture company has been incorporated, provided that the Indonesian party's capital is maintained. The paid-up capital invested by the Indonesian party may not be reduced if the foreign party already owns 80 per cent. However, the Indonesian party's ownership percentage may be reduced by dilution when further capital is contributed by the foreign shareholder. The additional capital contribution is subject to the OJK's prior approval.

Further, KMK 426/2003 requires a foreign shareholder in a joint venture insurance or reinsurance company to meet the following requirements:

- have a minimum rating of A or its equivalent from an internationally acknowledged rating institution (applicable only for foreign insurance or reinsurance companies);
- have capital of at least five times the amount of its direct participation in the joint venture company;
- have had a healthy level of financial soundness for the past two years, as evidenced by audited financial statements; and
- submit to the OJK a cooperation agreement or joint venture agreement between the foreign shareholder and the Indonesian shareholder.

In practice, if deemed necessary, the OJK may request additional documentation to consider in issuing the approval. New foreign controlling shareholders are subject to the fit and proper test (see question 10).

14 Group supervision and capital requirements

What is the supervisory framework for groups of companies containing an insurer or reinsurer in a holding company system? What are the enterprise risk assessment and reporting requirements for an insurer or reinsurer and its holding company? What holding company or group capital requirements exist in addition to individual legal entity capital requirements for insurers and reinsurers?

The OJK has established two regulatory frameworks to supervise financial conglomerates, namely OJK Regulation No. 17/POJK.03/2014 regarding Implementation of Integrated Risk Management for Financial Conglomerates (OJK 17/2014), and OJK Regulation No. 18/POJK.03/2014 regarding Implementation of Integrated Management for Financial Conglomerates (OJK 18/2014). The OJK has also established group minimum capital requirements under OJK Regulation No. 26/POJK.03/2015 on Integrated Minimum Capital Requirements for Financial Conglomerates (OJK 26/2015).

Under OJK 17/2014 and OJK 18/2014, a financial conglomerate must identify the main holding company and subsidiary companies.

OJK 17/2014 requires financial conglomerates to assess various types of risks, including credit, market, liquidity, operational, legal, strategic, compliance and insurance risks. The main holding company must submit an integrated risk profile report to the OJK, which contains a general description of all potential risks or exposures, every semester.

OJK 18/2014 requires the main holding company to establish an integrated management framework with the following obligations:

- requirements for the board of directors and board of commissioners of the main holding company;
- implementation of duties and responsibilities of the board of directors and board of commissioners of the main holding company;
- establishment of an integrated management committee;
- establishment of an integrated compliance work unit responsible for monitoring and evaluating compliance in each subsidiary;
- establishment of an integrated internal audit work unit responsible for evaluating internal audit mechanisms in each subsidiary;
- integrated risk management by the main holding company pursuant to OJK Regulation 17/2014; and
- establishment of integrated management guidelines.

For the minimum capital requirements, OJK 26/2015 provides that a financial conglomerate must provide integrated minimum capital of at least 100 per cent of the aggregate regulatory capital requirement. The aggregate regulatory capital requirement shall be calculated by the main holding company, derived from the ratio between the aggregate net equity of the group and the aggregate capital requirements for each financial services company in the group in accordance with financial sector requirements. However, OJK is authorised to stipulate higher minimum requirements if deemed necessary to cover the risks faced by a particular group of companies.

15 Reinsurance agreements

What are the regulatory requirements with respect to reinsurance agreements between insurance and reinsurance companies domiciled in your jurisdiction?

All insurance companies (both life and general) must carry treaty reinsurance for each line of insurance business marketed.

Insurance companies (both life and general) are obliged to obtain facultative reinsurance in cases where sufficient treaty reinsurance is unavailable because of the following conditions: the specific characteristic of the insurance business line, the marketing of a new insurance business line or a particular risk based on a request from a policyholder.

There are no requirements regarding the minimum provisions that must be included in a reinsurance agreement, although insurance and reinsurance companies are required to submit their reinsurance schemes to the OJK for evaluation. Ultimately, the provisions will depend on the terms agreed between the insurer and reinsurer.

16 Ceded reinsurance and retention of risk

What requirements and restrictions govern the amount of ceded reinsurance and retention of risk by insurers?

Insurance companies must obtain a certain portion of their reinsurance from Indonesian reinsurance companies, based on the capacity of local providers, although foreign reinsurance companies may provide back-up reinsurance after the local reinsurance requirements are fulfilled or if the insurance company is unable to obtain sufficient support from a local reinsurance company. Under OJK Regulation No. 14/POJK.05/2015 on Self-Retention and Domestic Reinsurance Support (OJK 14/2015), OJK exhorts all insurers to maximise their reliance on local reinsurance companies. For life insurance companies, reinsurance must be provided by at least two local reinsurance companies. For general insurance companies, reinsurance must be provided by at least two local reinsurers provided that if the general insurance company is unable to obtain sufficient support from two local reinsurance companies, the company may obtain support from one reinsurance company and one general insurance company offering reinsurance support. In addition, insurance companies are obliged to obtain 100 per cent reinsurance support from domestic reinsurers for their simple risk insurance. This requirement is not applicable to certain insurance products, namely worldwide insurance products, insurance products specifically designed for multinational companies, or new insurance products developed by foreign reinsurers with limitations approved by OJK. Under OJK 14/2105, foreign reinsurance companies need to maintain at least a BBB or equivalent rating from an internationally recognised rating agency in order to be considered qualified. These requirements apply equally for treaty reinsurance and facultative reinsurance.

Under OJK 14/2015 and OJK Circular Letter No. 31/SEOJK.05/2015 on Self-Retention Limit, Reinsurance Support and Retrocession/Reinsurance Program Reports (OJK Letter 31/2015), the calculation depends on financial capacity and the encountered level of risk. The determination of minimum and maximum self-retention amounts shall be based on the risk and loss profile, namely, a certain percentage of capital for every risk, and the amount of gross premiums that must be retained for every line of business. OJK Letter 31/2015 sets mandatory maximum limits for self-retention at 10 per cent of capital for every risk.

17 Collateral

What are the collateral requirements for reinsurers in a reinsurance transaction?

There are no collateral requirements for reinsurers.

18 Credit for reinsurance

What are the regulatory requirements for cedents to obtain credit for reinsurance on their financial statements?

Reinsurance is classified as an asset under the financial statements of insurance companies according to MOF Regulation No. 53/PMK.010/2012 regarding Financial Soundness of Insurance Companies and Reinsurance Companies.

Bapepam-LK Regulation No. PER-02/BL/2009 regarding Guidelines for Calculation of Minimum Solvency Threshold for Insurance Companies and Reinsurance Companies assigns different risk factors when calculating

the solvency ratio of an insurance company, depending on the status of the reinsurer.

The risk factor is the percentage of the reinsurance value that determines the amount of capital required to neutralise the risk of reinsurance failure. The risk factor for all domestic reinsurance and foreign reinsurance companies rated BBB and above is 4 per cent, whereas for foreign reinsurance companies rated less than BBB it is 8 per cent. Unrated foreign reinsurance is assigned a risk factor of 24 per cent. The difference in the risk factor will ultimately affect the financial statement of an insurance company, as capital provision will have to be made to fulfil the risk factor percentage.

19 Insolvent and financially troubled companies

What laws govern insolvent or financially troubled insurance and reinsurance companies?

Liquidation, dissolution and bankruptcy are well regulated under the New Insurance Law and OJK Regulation 28/POJK.05/2015 on the Dissolution, Liquidation, and Bankruptcy of Insurance, Sharia Insurance, Reinsurance and Sharia Reinsurance Companies (OJK 28/2015). The New Insurance Law and PMK 53/2012 set forth administrative procedures and the OJK's range of powers in respect of financially troubled insurance or reinsurance companies. The OJK is authorised to take certain measures in order to revitalise insurance and reinsurance companies under supervision. If an insurer does not comply with the solvency ratio, the company must submit a plan to improve its financial capability. If a company is financially troubled, the OJK can appoint a statutory administrator to replace the company's management, with the following duties:

- to rescue the funds of the company's participants;
- to control and manage the company in accordance with the New Insurance Law;
- to prepare measures if the company can be rescued; and
- to propose recommendations to the OJK to revoke the company's licence if it is considered not rescuable.

PMK 53/2012 also authorises the OJK to require financially troubled insurers to transfer their insurance portfolio to another company to protect the interests of policyholders.

Financially troubled insurance and reinsurance companies are also subject to Law No. 37 of 2004 on Bankruptcy and Suspension of Payments (Bankruptcy Law). Under the Bankruptcy Law, any creditor may file a bankruptcy petition against a debtor that has at least two creditors and has failed to repay at least one due and payable account. Under the New Insurance Law and OJK 28/2015, a bankruptcy petition (or suspension of debt payment submission) for insurance and reinsurance companies may only be filed by the OJK. Nevertheless, creditors can submit a bankruptcy petition request to the OJK, and the OJK will determine whether to proceed with filing a claim. Under OJK 28/2015, for the interest of consumers, the OJK may submit a bankruptcy claim without any request from creditors.

Insurance companies who wish to discontinue business activities must initially submit a report to the OJK and then settle all of their obligations before the OJK will revoke their licence. Liquidation proceedings are also set forth under the New Insurance Law. Guarantee funds can be used as the last resort to protect the interests of policyholders, insureds and participants.

20 Claim priority in insolvency

What is the priority of claims (insurance and otherwise) against an insurance or reinsurance company in an insolvency proceeding?

The New Insurance Law stipulates that policyholders and insured parties will be prioritised over concurrent creditors in an insolvency or bankruptcy proceeding. According to Constitutional Court Decision No. 67/PUU-XI/2013, dated 11 September 2014, the wages of an insurance company's employees will be prioritised ahead of the satisfaction of secured creditors.

21 Intermediaries

What are the licensing requirements for intermediaries representing insurance and reinsurance companies?

The 1992 Law recognised three types of intermediaries – agents, adjusters and brokers – all of which were considered 'insurance supporting

businesses' required to secure a business licence from the OJK before entering the market. The concept of insurance supporting business is no longer used in the New Insurance Law. Instead, brokerage firms and claims adjuster companies are categorised as insurance business entities (along with insurance and reinsurance companies) and are still required to secure a business licence from the OJK, whereas insurance agents are no longer considered part of the insurance business, and are only addressed with minimal provisions.

Insurance agents can be either sole proprietors or employees of an agency and must be registered with the OJK.

The New Insurance Law also covers professions that provide services for insurance companies, including actuaries, public accountants and appraisers. Individuals working in these professions must register with the OJK prior to providing services for insurance companies. Other professions may also be determined to be subject to this obligation by the OJK.

Insurance claims and coverage

22 Third-party actions

Can a third party bring a direct action against an insurer for coverage?

In principle, third parties generally may not bring direct actions against insurance companies unless the right of the third party is recognised under the insurance policy (eg, banker's clause) or granted under laws and regulations.

23 Late notice of claim

Can an insurer deny coverage based on late notice of claim without demonstrating prejudice?

There is no specific regulation authorising an insurer to deny a claim due to late notice. In practice, the timeframe for submitting a notice of claim is set forth under the insurance policy.

OJK Regulation No. 1 of 2013 on Consumer Protection in the Financial Services Sector requires insurance companies to inform their policyholders about the procedures for acceptance, postponement or denial of a claim, including information on the period of time available to file a claim under the policy.

In addition, GR 73/1992 prohibits insurance companies from including in their policies any provision that restricts the insured's rights to pursue legal action, including provisions related to refusal of claim.

24 Wrongful denial of claim

Is an insurer subject to extracontractual exposure for wrongful denial of a claim?

As a general rule, the insurer shall provide coverage if the risk is claimable. However, if an insurer wrongfully denies a claim, such conduct may be subject to administrative sanction by the OJK, ranging from a warning letter to revocation of the business licence, based on a report from the insured. The insured may also pursue a claim in tort to the extent the denial of claim is considered an unlawful act.

25 Defence of claim

What triggers a liability insurer's duty to defend a claim?

There is no duty for a liability insurer to defend a claim, as the decision to defend is the prerogative of the insurer as normally granted under the policy. It is common practice for a policy to contain provisions regarding the insurer's right to manage any settlement or litigation proceedings in the name of the insured.

26 Indemnity policies

For indemnity policies, what triggers the insurer's payment obligations?

In general, the insurance company must indemnify the insured for all insured events or accepted risks. The insured and insurer are allowed to agree upon the accepted risk, including any losses, damages or legal liability that may be borne by third parties. Therefore, the trigger for the obligation depends on the accepted risks as agreed in the insurance policy.

27 Incontestability period

Is there an incontestability period beyond which a life insurer cannot contest coverage based on misrepresentation in the application?

Under MOF Decree No. 422 of 2003 on the Operation of Insurance and Reinsurance Companies, the incontestability period is one of the mandatory provisions that must be contained in all insurance policies. There is no specific time period stipulated under the regulation, but in practice, insurers usually provide a two-year incontestability period.

28 Punitive damages

Are punitive damages insurable?

Punitive damages are not insurable.

29 Excess insurer obligations

What is the obligation of an excess insurer to 'drop down and defend', and pay a claim, if the primary insurer is insolvent or its coverage is otherwise unavailable without full exhaustion of primary limits?

Indonesian law is silent on the obligation of an excess insurer to 'drop down and defend', and pay a claim, if the primary insurer is insolvent.

30 Self-insurance default

What is an insurer's obligation if the policy provides that the insured has a self-insured retention or deductible and is insolvent and unable to pay it?

The obligation of the insurer will depend on the provisions of the insurance policy, which may govern the range of the insurer's obligations if the insured is unable to pay the deductible.

31 Claim priority

What is the order of priority for payment when there are multiple claims under the same policy?

Multiple claims arising from multiple occurrences will be paid in order of occurrence. Indonesian insurance regulations do not acknowledge priority of payment with respect to multiple claims arising from a single occurrence.

32 Allocation of payment

How are payments allocated among multiple policies triggered by the same claim?

Under the Indonesian Commercial Code (ICC), an insured may only recover up to the full amount of loss. If the first policy purchased is insufficient to cover the loss, the additional policies shall contribute in the order that coverage was purchased, until the claimable amount is paid in full, or policy limits are reached.

33 Disgorgement or restitution

Are disgorgement or restitution claims insurable losses?

There are no regulations governing whether disgorgement or restitution are insurable losses. However, article 249 of the ICC provides that the insurer is not obligated to assume liability for damages or losses occurring due to defect or self-decay, unless the insurance is specifically for such purpose. Accordingly, disgorgement or restitution claims are insurable for as long as they are agreed under the insurance policy.

34 Definition of occurrence

How do courts determine whether a single event resulting in multiple injuries or claims constitutes more than one occurrence under an insurance policy?

There are no regulations defining occurrence, but in practice one event gives rise to one occurrence.

Update and trends

The issuance of the New Insurance Law marked a significant change in Indonesia's insurance regulatory framework. In addition to facilitating the recently acquired authority of the OJK over the insurance sector, it also attempts to revamp the insurance industry, which has changed drastically over the decades since the Old Insurance Law was enacted.

As mandated by the New Insurance Law, a number of regulations are expected to be issued by the OJK, including regulations on the scope of the business of insurance companies, licensing requirements and procedures, reporting obligations, financial soundness and risk mitigation, and specific merger and acquisition requirements and procedures. Currently, these matters are governed under MOF and Bapepam-LK legal instruments that were issued before the New Insurance Law, and that will remain valid until a superseding regulation is issued by the OJK.

At the time of writing, the OJK regulation Business Licensing and Institutional Aspects of Insurance and Reinsurance Companies is being drafted. Notable provisions include new developments in OJK extending its interpretation of who can qualify as a local shareholder. Under the draft regulation, a publicly listed company, regardless of foreign capital element or control, shall be considered an Indonesian shareholder.

Another critical change brought about by the New Insurance Law is the mandatory guaranty programme for insurance companies, which will be regulated under separate legislation. This programme will provide additional protection for policyholders in a way that is similar to how bank deposits are insured by the Indonesia Deposit Insurance Corporation.

35 Rescission based on misstatements

Under what circumstances can misstatements in the application be the basis for rescission?

According to article 251 of the ICC, any misstatements can be the basis for rescission of insurance policy, including unintentional non-disclosure, concealment, innocent misrepresentation and fraudulent misrepresentation.

Reinsurance disputes and arbitration

36 Reinsurance disputes

Are formal reinsurance disputes common, or do insurers and reinsurers tend to prefer business solutions for their disputes without formal proceedings?

Formal reinsurance disputes are not that common in Indonesia, and in general disputes are resolved without formal proceedings. According to OJK Regulation No. 1/POJK.07/2014 on Alternative Dispute Resolution in the Financial Services Sector (OJK 1/2014), parties to a dispute must first attempt amicable settlement. If settlement cannot be reached, the parties may resort to litigation or alternative dispute resolution, depending on the forum chosen in the relevant agreement. OJK 1/2014 requires all financial services companies (including insurance and reinsurance companies) to become members of sector-specific alternative dispute resolution bodies stipulated by the OJK, which may include mediation, adjudication and arbitration bodies.

37 Common dispute issues

What are the most common issues that arise in reinsurance disputes?

Reinsurance disputes can arise when there is an outstanding debt between the insurance and reinsurance company, breach of reinsurance agreement or delay of claim settlement.

38 Arbitration awards

Do reinsurance arbitration awards typically include the reasoning for the decision?

Arbitration proceedings, including reinsurance arbitration, are governed under Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution (Arbitration Law). According to article 54 of the Arbitration Law, the reasoning is a necessary element of an arbitration award.

39 Power of arbitrators

What powers do reinsurance arbitrators have over non-parties to the arbitration agreement?

Arbitrators do not have power over non-parties to the arbitration agreement. However, the Arbitration Law does allow third parties who have a relevant interest to join the arbitration proceeding upon approval of the parties involved and the panel of arbitrators.

40 Appeal of arbitration awards

Can parties to reinsurance arbitrations seek to vacate, modify or confirm arbitration awards through the judicial system?

What level of deference does the judiciary give to arbitral awards?

The Arbitration Law clearly stipulates that arbitration awards are final and binding; therefore, they cannot be appealed. In order to execute an arbitration award, within 30 days after the decision being duly read out by the arbitrators, the award must be registered with the relevant district court. If a party does not voluntarily execute the award, the disputing party may request the head of the district court to order the disputed party to execute the award. Foreign awards shall be brought to the Central Jakarta District Court for enforcement in Indonesia.

Reinsurance principles and practices

41 Obligation to follow cedent

Does a reinsurer have an obligation to follow its cedent's underwriting fortunes and claims payments or settlements in the absence of an express contractual provision? Where such an obligation exists, what is the scope of the obligation, and what defences are available to a reinsurer?

There are no regulations governing the obligation of reinsurers to follow their cedents' underwriting fortunes, claim payments or settlements in the absence of express contractual provision. This issue falls under the terms of the reinsurance agreement, which may contain provisions to follow the fortune. Under treaty reinsurance, the reinsurer may agree in advance to accept partially or wholly the cedent's coverage portfolio.

42 Good faith

Is a duty of utmost good faith implied in reinsurance agreements? If so, please describe that duty in comparison to the duty of good faith applicable to other commercial agreements.

All commercial agreements in Indonesia are governed by the duty of good faith. However, Indonesian insurance doctrine recognises an implicit duty of utmost good faith to be observed in insurance and reinsurance agreements. The duty of utmost good faith is stricter than in other commercial agreements, as stipulated in article 251 of the ICC, which states that any insurance contract made without correct disclosure will be void.

43 Facultative reinsurance and treaty reinsurance

Is there a different set of laws for facultative reinsurance and treaty reinsurance?

No: both are subject to the same regulations, namely PMK 53/2012 and OJK 14/2015.

44 Third-party action

Can a policyholder or non-signatory to a reinsurance agreement bring a direct action against a reinsurer for coverage?

A policyholder does not have any right to bring direct action against a reinsurer of the risk covered by the agreement. This is due to the fact that the policyholder has no contractual relationship with the reinsurer, and the reinsurance agreement is a separate agreement for the benefit of the insurer rather than the policyholder. In other words, the reinsurance company has no duty to pay claims directly to the policyholder.

45 Insolvent insurer

What is the obligation of a reinsurer to pay a policyholder's claim where the insurer is insolvent and cannot pay?

GR 73/1992 strictly regulates that the reinsurance agreement must provide for the event that the reinsurer or cedent is liquidated. The rights and obligations between the reinsurer and cedent under reinsurance transactions shall remain binding until either the reinsurer or the cedent, or both, have been liquidated.

46 Notice and information

What type of notice and information must a cedent typically provide its reinsurer with respect to an underlying claim? If the cedent fails to provide timely or sufficient notice, what remedies are available to a reinsurer and how does the language of a reinsurance contract affect the availability of such remedies?

Generally, there is no regulation that governs the type of notice and information that must be provided by a cedent with respect to a claim under Indonesian law. In practice, it depends on the provisions agreed by the parties in the reinsurance agreement.

47 Allocation of underlying claim payments or settlements

Where an underlying loss or claim provides for payment under multiple underlying reinsured policies, how does the reinsured allocate its claims or settlement payments among those policies? Do the reinsured's allocations to the underlying policies have to be mirrored in its allocations to the applicable reinsurance agreements?

OJK 14/2105 does not specifically mention the allocation of underlying claim payments or settlement. In light of this, certain provisions under Bapepam-LK Regulation No. 11 of 2012 on Reinsurance Support, Self-Retention Limit, and the Form and Composition of Reinsurance Programme Reports (BLK 11/2012) are still applicable. Under BLK 11/2012, treaty reinsurance comprises proportional treaty reinsurance along with self-retention (quota share), proportional treaty reinsurance directly after self-retention (surplus) and treaty reinsurance for excess loss. In the event that quota share and surplus treaty reinsurance both apply, the quota share treaty must be prioritised over the surplus treaty for the allocation of claim payments or settlements.

48 Review

What type of review does the governing law afford reinsurers with respect to a cedent's claims handling, and settlement and allocation decisions?

There are no regulations that regulate specific rights of review afforded to reinsurers.

49 Reimbursement of commutation payments

What type of obligation does a reinsurer have to reimburse a cedent for commutation payments made to the cedent's policyholders? Must a reinsurer indemnify its cedent for 'incurred but not reported' claims?

There are no regulations that govern such obligation. It depends on the terms agreed by the parties.

50 Extracontractual obligations (ECOs)

What is the obligation of a reinsurer to reimburse a cedent for ECOs?

Unless agreed otherwise, a reinsurer is not obligated to reimburse a cedent for ECOs pursuant to the ICC.

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