



The Legal 500 Country Comparative Guides

Taiwan: Insurance & Reinsurance

This country-specific Q&A provides an overview to insurance & reinsurance laws and regulations that may occur in Taiwan.

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1. How is the writing of insurance contracts regulated in your jurisdiction?

Pursuant to Article 144 of the Insurance Act, the Financial Supervisory Commission (i.e., the competent authority; "FSC") may regulate insurance policies by implementing relevant regulations. Such regulations include but not limit to "Regulations Governing Pre-sale Procedures for Insurance Products", "Guidelines for the Examination of Non-life Insurance Products" and "Guidelines for the Examination of Life Insurance Products". Under these regulations, the insurer is required to specify certain clauses and provisions in the policy.

2. Are types of insurers regulated differently (i.e. life companies, reinsurers?)

Non-life insurers and life insurers are generally regulated in the same manner. However, pursuant to Article 138(1) of the Insurance Act, an insurance enterprise must not concurrently engage in non-life insurance and life insurance at the same time except where a non-life insurer is approved by the FSC to engage in personal injury insurance or health insurance.

It is more difficult for a reinsurer to obtain a license in Taiwan for reinsurance business because a reinsurer usually is required to have a high autonomous management capability. For example, the reinsurer has to receive a credit rating above a certain level from an international credit rating agency and allocate certain special reserves. In practice, however, the operation of the reinsurers is less heavily regulated after the license is granted.

3. Are insurance brokers and other types of market intermediary subject to regulation?

Pursuant to Article 163 of the Insurance Act, an insurance agent, broker or surveyor shall obtain a permission from the FSC, post a bond, purchase certain insurance (such as liability insurance for insurance agents and surveyors, and liability insurance as well as bonding insurance for insurance brokers) and receive a business license before the commencement of business operation.

In addition, the qualifications and eligibility as well as the management, education and training etc. of insurance agents, brokers and surveyors are regulated separately under Regulations Governing Insurance Agents, Regulations Governing Insurance Brokers and Regulations Governing Insurance Surveyors.

4. Is authorisation or a licence required and if so how long does it take on average to obtain such permission? What are the key criteria for authorisation?

Article 137(1) of the Insurance Act provides that, an insurance enterprise may not commence operations unless it has obtained permission from the FSC ("Special Permit"), completed

establishment registration, posted a bond, and secured a business license in accordance with the law. It would take 6 to 8 months to obtain the Special Permit and the documents required are stipulated under Article 6 of the Regulations for Establishment of Insurance Enterprises (“Regulations for Establishment of Insurance Enterprises”).

In addition, there is a requirement for the minimum paid in capital (Please see Question 10) and that the promoters shall make share payments equivalent to at least 20% of the minimum paid-in capital at the time of application for the establishment registration (It usually takes 1 to 2 months to complete). Furthermore, a bond equal to 15% of the total amount of its paid-in capital should be deposited with the National Treasury. Then within 3 months after establishment registration, the insurance enterprise shall submit the documents stipulated under Article 11 of the Regulations for Establishment of Insurance Enterprises and apply for the business license to be issued by the FSC, which would usually take around 1 to 2 months. The time mentioned is for reference only, and it will be decided on case by case basis.

5. Are there restrictions or controls over who owns or controls insurers (including restrictions on foreign ownership)?

Pursuant to Article 139-1 of the Insurance Act, the same person or the same party concerned who singly, jointly or collectively acquires more than 5% of the total outstanding voting shares of an insurance company shall report such fact to the FSC 10 days from the day of acquisition; the same shall apply where the shares held by the same person or the same party concerned changed by 1% thereafter.

Furthermore, the same person or the same party concerned who plans to solely, jointly or collectively hold more than 10%, 25% or 50% of the total outstanding voting shares of an insurance shall first obtain the approval from the FSC and meet certain requirements in accordance with the Regulations Governing the Same Person or the Same Party Concerned Holding a Certain Percentage or More of the Outstanding Voting Shares of Insurance Company. Such requirements include eligibility and capability (such as to comply with the Regulations Governing Required Qualifications for Responsible Persons of Insurance Enterprises and Regulations Governing Responsible Persons of Insurance Enterprises), management capacity and the financial soundness (including that the sources of funds must meet the regulatory requirements).

6. Is it possible to insure or reinsure risks in your jurisdiction without a licence or authorisation? (i.e. on a non-admitted basis)?

There is no exception to Article 137(1) of the Insurance Act (Please see Question 4). The violation of which shall be subject to penalty provided in Article 166 (Please see Question 7).

In addition, an enterprise other than insurance enterprises shall not (concurrently) engage in insurance business in accordance with Article 136(2) of the Insurance Act. The violation of

which shall be subject to penalty provided in Article 167 (Please see Question 7). Foreign insurers, however, could write reinsurance to Taiwan insurers without a license or authorization in Taiwan if such operation can be considered as conducting insurance business outside Taiwan.

7. What penalty is available for those who operate in your jurisdiction without appropriate permission?

Pursuant to Article 166 of the Insurance Act, in addition to a fine between NTD 3,000,000 (around USD100,000) and NTD 30,000,000 (around USD1,000,000), enterprises engaging in insurance business without obtaining permission from the FSC shall be ordered to suspend the business.

Moreover, where an enterprise other than insurance enterprises engage in insurance business, the violator shall be subject to imprisonment between 3 to 10 years, and may be imposed with a fine between NTD 10,000,000 to NTD 200,000,000. Where the gain from the violation of Article 136(2) are valued at NTD 100,000,000 or more, such violator shall be subject to imprisonment not more than 7 years, and may be imposed with a fine between NTD 25,000,000 and NTD 500,000,000. In addition, where the representative, agent, employee or other staff of a legal entity violates Article 136(2) of the Insurance Act, such legal entity shall be subject to the above fine as well.

8. How rigorous is the supervisory and enforcement environment? What are the key areas of its focus?

The insurance industry is highly regulated in Taiwan and enterprises may not conduct insurance business without the approval from the FSC (Please see Question 6). In addition, insurance enterprises are strictly supervised in terms of corporate governance and utilization of fund (Please see Question 16). There are also ongoing requirements/restrictions announced by the FSC from time to time that insurance enterprises must comply with. In addition, Insurance policies sometime may have to submit to the FSC for review in advance (Please see Question 17).

9. How is the solvency of insurers (and reinsurers where relevant) supervised?

Pursuant to Article 143-4 of the Insurance Act, the capital adequacy ratio of an insurance enterprise is 200%. The capital adequacy ratio is categorized into 4 different levels, i.e., adequate capital (200% or above), inadequate capital (150%-200%), significantly inadequate capital (50%-150%) and seriously inadequate capital (lower than 50%).

Depending on the level of the capital adequacy, the FSC shall take measures such as: order the insurance enterprise or its responsible person to propose a plan for capital

increase, order the insurance enterprise to cease selling insurance products or restrict its launch of new insurance products, restrict the scope of capital utilization, restrict the remuneration pay to its responsible person, assume conservatorship or receivership over the insurance enterprise, order the enterprise to suspend and wind up the business, or liquidate the enterprise.

10. What are the minimum capital requirements?

Pursuant to Article 2 of the Regulations for Establishment of Insurance Enterprises, the minimum paid-in capital for the application to establish an insurance company is NTD 2,000,000,000 (around USD 66,666,667). If the insurance company is a branch of foreign insurance company and the foreign insurance company has not been established for 3 years, the minimum paid-in capital is required in the amount of NTD 200,000,000 (around USD 6,666,667) in accordance with Article 6 of the Regulations for Establishment and Administration of Foreign Insurance Enterprises.

11. Is there a policyholder protection scheme in your jurisdiction?

The Stabilization Fund is established for the protection of policyholders' rights, and insurance companies are required to contribute to the Stabilization Fund in accordance with the rate set by the FSC. The functions of the Stabilization Fund, among others, include advancing the payment of insurance claims which the insureds or the beneficiaries are entitled to under the effective insurance contracts where the insurance enterprise is placed into receivership, ordered to suspend business and undergo rehabilitation, or ordered to dissolve, or when a receiver of the insurance enterprise applies to a court for reorganization.

12. How are groups supervised if at all?

The Financial Holding Company Act regulates the establishment, administration and supervision of financial holding companies, which are defined as companies established in accordance with this Act and having a controlling interest in a bank, insurance company and/or securities firm ("financial firm"). "Controlling interest" is further defined as the same person or the same concerned party who holds 25% or more of the outstanding voting shares or capital of a bank, insurance company or securities firm, or otherwise having the direct or indirect power to elect or designate the majority of the directors of a financial firm.

A financial holding company can only be incorporated in the form of company limited shares and its shares shall be publicly traded unless otherwise approved by the FSC. The minimum paid-in capital of a financial holding company is NTD 60,000,000,000 (around USD 2,000,000,000). In addition, the financial soundness, the management capacity, the capital adequacy ratio, the market competition as well as the public interest shall be taken into account before the application of a financial holding company is approved by the FSC. The merge, acquisition, allocation of funds, audition etc. of financial holding companies are also governed under the Financial Holding Act.

13. Do senior managers have to meet fit and proper requirements and/or be approved?

There are both positive lists and negative lists for the requirements to be met for the senior managers (including general managers, vice general managers, assistant vice general managers, and managers) of insurance companies, failing which the FSC will not issue the business license to the insurance company.

Pursuant to Article 2 of the Regulations Governing Responsible Persons of Insurance Enterprises, those who have been convicted of certain criminal offenses (such as forgery or fraud), violated certain financial codes (including the Insurance Act, the Banking Act or the Securities and Exchange Act) or have financial difficulties (for example, being declared bankrupted), may not serve as a senior manager of the insurance companies.

In addition, Article 4 and Article 5 of the Regulations Governing Responsible Persons of Insurance Enterprises set out the qualifications that the senior managers of the insurance companies should possess. For example, they should have certain education level and/or experience in an insurance company with a management position for certain years or that they should prove their possession of insurance knowledge or experience to effectively manage insurance operations.

14. To what extent might senior managers be held personally liable for regulatory breaches in your jurisdiction?

Pursuant to Article 8(2) of the Company Act, managers are deemed as responsible persons of a company only within the scope of their duties, and in principle, only responsible persons of the insurance enterprises would be subject to personal liabilities under the Insurance Act.

Nevertheless, according to Article 172-1 of the Insurance Act, where the managers of the insurance enterprise fail to cooperate with the competent authority under the circumstances that the insurance enterprise is ordered into conservatorship, receivership, or suspension of business and rehabilitation, they shall be subject to imprisonment between 1 to 7 years, and may be imposed with a fine not more than NTD 20,000,000 (around USD 666,667).

15. Are there restrictions on outsourcing services relating to the business?

The outsourcing of insurance business is governed by the Directions for Operation Outsourcing by Insurance Enterprises. Unless otherwise provided by laws or regulations, the business operations that may be outsourced are limited to the 12 items stipulated under Article 3 of such Directions.

16. Are there restrictions on the types of assets which insurers or reinsurers can invest in or capital requirements which may influence the type of investments held?

Pursuant to Article 146(1) of the Insurance Act, besides savings deposits, an insurance

enterprise shall only allocate its funds to (1) securities, (2) real estate, (3) loans, (4) special projects and investments in public utilities and social welfare enterprises, with the approval of the competent authority, (5) foreign investments, (6) investment in insurance-related businesses, (7) derivatives transactions and (8) other allocations as approved by the competent authority. There are further restrictions on each of these categories under the Insurance Act.

In addition, Article 146-7 of the Insurance Act imposes limits on insurance enterprises making loans or engaging in other transactions (such as purchase of securities, real property or other assets) with the same person or the same party concerned.

17. How are sales of insurance supervised or controlled?

Regulations Governing Pre-sale Procedures for Insurance Products (“RGPPIP”) is promulgated in accordance with Article 144 of the Insurance Act (Please see Question 1). Pursuant to Article 2 of the RGPPIP, before the selling any type of insurance product, an insurance enterprise shall comply with all of the procedures set out in the RGPPIP, except where otherwise provided by applicable acts or where the competent authority has given approval for a product of a special nature. The pre-sale procedures include procedures for the design, review and preparation for the sale of insurance products; each procedure is highly regulated.

18. Are there specific or additional rules pertaining to distance selling or online sales of insurance?

The Regulations Governing Online Insurance Business and Online Insurance Services of Insurance Agent Companies and Insurance Broker Companies, effective since October 2018, is the rule to govern online sales of insurance.

“Online insurance business” is defined as the business which allows a natural person to negotiate or enter into an insurance contract with an insurance company through the online platform of the insurance agent/broker company after completing the first-time registration and identity verification process. “Online insurance services” is defined as the provision of insurance services, other than purchasing insurance online, to existing customers using the online platform of the insurance agent/broker company.

To protect the interests of customers, certain requirements must be met for an insurance agent/broker company to engage in online insurance business. For example, the insurance agent/broker company must be ISO 27001 certified and confirm the intent of applicants purchasing insurance online. In addition, the insurance agent/broker company should ensure that the insurance company it works with will reflect the cost saved in the surcharges of the insurance products.

19. Are consumer policies subject to restrictions? If so briefly describe the range of protections offered to consumer policyholders

Article 54-1 of the Insurance Act provides that, an insurance policy contains any term or condition as follows, and such term or condition is clearly unfair under the circumstances at the time of signing, that part of the contract will be void:

1. Any term or condition that exempts or reduces the insurer's obligations provided under the Insurance Act.
1. Any term or condition that causes the proposer, beneficiary, or insured to waive or limit any right it enjoys under the Insurance Act.
1. Any term or condition that increases the obligations of the proposer or insured.
1. Any other term or condition that is materially disadvantageous to the proposer, beneficiary or insured.

Furthermore, as insurance companies are considered as enterprises providing financial services, it is also subject to the Financial Consumer Protection Act. Articles 6 the Financial Consumer Protection Act provides that the liabilities of a financial services enterprise to a consumer sets out in this Act shall not be limited or exempted by a prior agreement, and such agreement will be null and void. In addition, pursuant to Article 7(2) of the Financial Consumer Protection Act, provisions under a contract entered into by a financial services enterprise and a consumer are invalid if they are clearly unfair. Where there is doubt, the interpretation should be made favourable to the financial consumer.

20. Are the courts adept at handling complex commercial claims?

There is no special court especially made for the handling of complex commercial claims at the moment. Nevertheless, there are divisions in certain courts that are assigned to review insurance claims. Usually, those judges from the special divisions are more familiar with the commercial claims and therefore have enough experiences to handle such cases.

21. Is alternative dispute resolution well established in your jurisdictions?

The parties to an insurance or reinsurance contract may choose to submit a dispute to arbitration. The Arbitration Act of the R.O.C., modeled after 1985 UNCITRAL Model Law, is to govern the arbitration in Taiwan. In addition, the Chinese Arbitration Association ("CAA"), established in 1955, is the arbitration institution in Taiwan. Depending on the seat of arbitration (i.e., inside or outside Taiwan), CAA has different rules for the arbitration procedure.

Besides, the parties may also choose to initiate court mediation before or after the case is pending on the court. The court mediation is conducted by a judge (i.e., as a mediator); therefore, if an agreement is successfully reached, such agreement has the same legal effect as a final judgement and thus the parties would be bound by it. On the other hand, if no agreement can be made from the court mediation, the application for court mediation will be deemed as the initiation of a civil lawsuit. Through this way, the parties' interests in statute limitation are protected.

22. Is there a statutory transfer mechanism available for sales or transfers of books of (re)insurance? If so briefly describe the process.

Except the answers to Question 9 and Question 11, there is no statutory transfer mechanism for the sales or transfers of books of (re)insurance. Nevertheless, The Regulations Governing Insurance Enterprises Engaging in Operating Reinsurance and Other Risk Spreading Mechanisms sets out certain restrictions and requirements relating to the transfer of risk by insurance or reinsurance companies. For example, a property insurance enterprise must not assume reinsurance ceded by a personal insurance enterprise and vice versa unless otherwise approved by the FSC in accordance with Article 138(1) of the Insurance Act; however, this restriction does not apply to insurance enterprises exclusively engaging in reinsurance business.

23. What are the primary challenges to new market entrants?

Insurance is a highly regulated industry in Taiwan where a Special Permit is required. Enterprises that intend to enter the insurance market in Taiwan have to comply with the numerous requirements set out in Insurance Act as well as other related regulations (Please see Question 4 and Question 10).

Moreover, where foreign insurers wish to set up a subsidiary in Taiwan, in addition to requirements mentioned-above, Foreign Investment Approval ("FIA") from the International Commission is also required, which may take up to 5 months before the issuance of the FIA.

24. To what extent is the market being challenged by digital innovation?

The Financial Technology Development and Innovative Experimentation Act ("Experimentation Act"), effective since in April 2018, is enacted for the purpose of creating a safe environment for experimentation involving innovative financial technologies to develop technology-based innovative financial products or services. Besides, the Insurance Act was also amended to allow regulatory sandbox to encourage experimentation in financial technology innovation. Under Article 136-1 of the Insurance Act, for the purpose of facilitating the development of inclusive finance and financial technologies, insurance enterprises, brokers, agents and surveyors may apply for approval to undertake an innovative experimentation of insurance business in accordance with the Experimentation Act.

Moreover, the insurance industry is also developing with the challenge arising from digital innovation; the enactment of the Regulations Governing Online Insurance Business and Online Insurance Services of Insurance Agent Companies and Insurance Broker Companies (Please see Question 18) is one example. In addition, the insurance products that are denominated in NTD is categorized as “financial products or services which is approved by the FSC to make the payment through an agent” in accordance with the Act Governing Electronic Payment Institutions. Therefore, the insurance customers are able to utilize electronic payment to pay the premiums and other fees. In this way, not only the customers may enjoy more convenience, the insurance industry as well as “electronic payment institution” may also be benefit from it.

25. To what extent is insurers' use of customer data subject to rules or regulation?

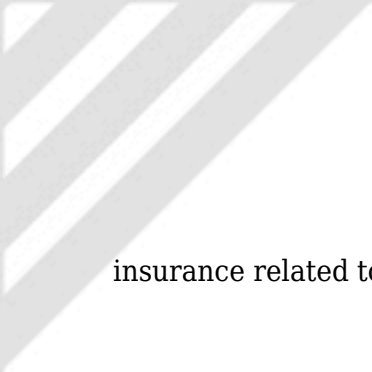
Personal Data Protection Act is the general law to govern the collection, use and process of personal information. Where there is no stipulation under the Insurance Act, the Personal Data Protection Act shall apply. According to the definition of the Personal Data Protection Act, “personal data” refers to a natural person’s name, date of birth, ID Card number, passport number, features, fingerprints, marital status, family information, education background, occupation, medical records, healthcare data, genetic data, data concerning a person’s sex life, records of physical examination, criminal records, contact information, financial conditions, data concerning a person’s social activities and any other information that may be used to directly or indirectly identify a natural person.

In addition, Pursuant to Article 177-1 of the Insurance Act, sensitive information such as medical records, medical treatment or health examination may only be used with the written consent of the individual and under one of the following circumstances:

1. Insurance enterprises, insurance agents, brokers, and surveyors that operate or practice business in accordance with the Act;
1. Legal entities commissioned by insurance enterprises to provide assistance in confirming or performing their obligations under an insurance contract;
1. Insurance foundations established with the permission of the competent authority to handle disputes and matters relating to compensation for victims of motor vehicle accidents.

26. Over the next five years what type of business do you see taking a market lead?

With the advance of technology, the interplay of big data and insurance industry will come to the spotlight. For example, Usage-Based Insurance calculates the insurance premium based on the driving habits of drivers. In terms of life insurance, the Spillover Effect Policy is also getting more and more attention. On the other hand, the development of technology also brings the concern over privacy. Therefore, the insurance regarding the Cyber Protection also sees the potential to grow. Furthermore, disasters due to the change of nature as well as human diseases are getting more and complicated, thus the



insurance related to these areas can be expected to grow, too.