

## Asia Pacific Insurance NEWSLETTER



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## AUSTRALIA

### Recent Reforms

Treasury has consulted on proposed legislation to change the law of disclosure as it applies to "consumer" insureds, while they incept policies of insurance. A "consumer" insurance contract is one that is obtained predominantly for the personal domestic household purposes of the insured. This replaces the duties formerly in place under the Insurance Contracts Act 1984 (sections 21 and 28) which will now only apply to non-consumer policies. The new duty for consumer insureds, is "to take reasonable care not to make a misrepresentation to the insurer before the relevant contract of insurance is entered into" and is tested with regard to all the 'relevant circumstances.' Failure to provide an answer is not assumed to constitute misrepresentation. Exposure draft law has been published by the Australian Government Treasury.

In addition, claims handling will soon be classed as a financial service under the Corporations Act 2001 ("Act") such that it will require claims managers to be licensed under the Act or be authorized representatives of an Australian Financial Licensee. There is an exemption for insurers who provide claims services only to wholesale clients. Claims handlers will have an overarching requirement to provide their services to the consumer efficiently, honestly and fairly. Exposure draft law has been published by the Australian Government Treasury.

Due to COVID-19, the Australian Prudential Regulation Authority (**APRA**) had suspended its planned policy and supervision initiatives and the issuance of new licenses. Although it has in August commenced the issuance of licenses, its reforms have been scaled back to include only the cross-industry prudential standards on remuneration, Authorised Deposit Institutions (**ADI**) capital reforms, including measures to improve transparency, comparability and flexibility, capital reforms to incorporate changes in the accounting framework and the prudential standard for insurance in superannuation and updated guidance on the sole purpose test. It is envisioned that from March 2021, new licenses may be issued.

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## CBIRC supports foreign reinsurers to increase investment in China

With the aim of developing China's insurance industry in a more market-oriented, international and open environment, the China Banking and Insurance Regulatory Commission (**CBIRC**) has been continuously pushing forward the high-level opening up of the banking and insurance sectors, supporting the participation of foreign reinsurers in China's reinsurance market, and promoting the healthy development of foreign reinsurance companies in China. In December 2019, the Shanghai branch of a Korean reinsurer was allowed to open for business, and this has increased the number of foreign reinsurance companies operating in China to seven, surpassing Chinese reinsurance companies. Between November 2019 and May 2020, the CBIRC has also approved the increase of registered capital of various reinsurers.

## Three-year property insurance industry action plan unveiled in China

The China Banking and Insurance Regulatory Commission has recently issued a three-year action plan to promote the high-quality development of the property insurance industry, which consists of six parts. Part 1 sets out the basic principles of the plan, which is guided by Xi Jinping's ideology on socialism with Chinese characteristics in the new era. It focuses on growth of the insurance industry to create a healthy and orderly market. Parts 2-6 set out the objectives of the plan, including: (i) the modernization of the industry by technological innovation and improving the corporate governance system; (ii) supporting the development of the national economy by enhancing the insurance services provided to them; (iii) opening up the industry and increasing the level of international influence. The plan encourages insurance companies to "go global" and accelerate the development of the insurance market; (iv) implementing high-quality supervision and regulatory policies; and (v) improving communication and coordination between regulatory bodies and insurance companies.

## "Opinions on Financial Support for the Development of the Guangdong-Hong Kong-Macao Greater Bay Area" and the implementation plan promulgated by the Guangdong government

On 24 April 2020, the People's Bank of China, China Banking and Insurance Regulatory Commission, China Securities Regulatory Commission and State Administration of Foreign Exchange jointly released the "*Opinions on Financial Support for the Development of the Guangdong-Hong Kong-Macao Greater Bay Area*" ("**Opinions**") and shortly after, on 31 July 2020, the Guangdong government promulgated the "*Implementation Plan for Execution of the Opinions on Financial Support for the Development of the Guangdong-Hong Kong-Macao Greater Bay Area*" for implementing the various measures under the Opinions for the development of the Guangdong, Hong Kong and Macao Greater Bay Area (**GBA**).

The measures under the Opinions are made with respect to the following five aspects:

- (1) promoting facilitation of cross-border trade, investment and financing in the GBA, including facilitating mainland banks in the GBA to provide cross-border fund remittance and exchange services such as claims settlement, renewal or surrender of insurance policy, etc.
- (2) further opening up the financial industry, and deepening the financial cooperation between Mainland China and Hong Kong-Macao, in particular: (i) supporting overseas financial institutions to participate in establishing and investing in the shareholdings of wealth management subsidiaries of commercial banks; (ii) attracting Hong Kong-Macao and multinational financial institutions to establish joint venture securities, funds and futures legal entities in Guangdong; and (iii) encouraging insurance asset management companies to establish specialized asset management subsidiaries in cities within the GBA
- (3) promoting the diversification of financing channels among Guangdong, Hong Kong and Macao, and facilitating the interconnection between financial markets and financial infrastructure, including supporting Hong Kong and Macao financial institutions to participate in the establishment of the Guangzhou green financial reform pilot zone
- (4) further improving the innovation level of financial services in the GBA, including: (i) supporting insurance funds and eligible asset management products to invest in science-and-technology-enterprise-oriented venture capital funds, equity investment funds, etc.; and (ii) further expanding the scope of pilot schemes for cross-border financial block chain service platforms and building up a cross-border credit service system gradually

- (5) practical prevention of cross-border financial risks, including improving and strengthening the communication, coordination, exchange and sharing of information between the financial regulatory authorities in Guangdong-Hong Kong-Macao in respect of financial regulation, risk monitoring and the regulation of protection of financial consumers and investors etc.

## National Security Law in Hong Kong

The Standing Committee of the National People's Congress of the People's Republic of China (**NPCSC**) passed the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region ("**National Security Law**") on 30 June 2020. It is in Annex III of the Basic Law as part of the national laws that apply in the Hong Kong Special Administrative Region (**HKSAR**). The National Security Law took effect at 11 pm on 30 June 2020 upon gazettal in the HKSAR.

The National Security Law criminalizes four types of acts: (1) secession; (2) subversion; (3) terrorist activities; and (4) collusion with a foreign country or with external elements to endanger national security, and stipulates the corresponding penalties which, in the most serious cases, could result in life imprisonment.

The HKSAR has established a new Committee for Safeguarding National Security of the HKSAR ("**National Security Committee**"), led by the chief executive of the HKSAR ("**Chief Executive**"), to be responsible for safeguarding national security in the HKSAR. The HKSAR police force and the Department of Justice have set up designated departments to handle crimes against national security. The Chief Executive will designate relevant judges to adjudicate such crimes. Except for specified circumstances, the HKSAR will exercise jurisdiction over offenses under the National Security Law.

The Central People's Government (**CPG**) has established the Office for Safeguarding National Security of the CPG in the HKSAR to oversee and guide the work of the HKSAR in safeguarding national security. In case of conflict between local laws of the HKSAR and the National Security Law, the National Security Law will prevail. The NPCSC has the authority to interpret the National Security Law.

In carrying out business activities in the HKSAR, companies and organizations should be mindful, in particular, of the offenses under Articles 21 and 23 of the National Security Law, which stipulate that a person who incites, assists in, abets or provides pecuniary or other financial assistance or property for the commission by other persons of the offenses of secession and/or subversion under the National Security Law shall be guilty of an offense. Articles 31 and 32 of the National Security Law stipulate that an incorporated or unincorporated body such as a company or an organization that commits an offense under the National Security Law will be imposed with the following criminal penalties: (1) criminal fine; (2) suspension of operation; (3) revocation of license or business permit; and/or (4) seizure and confiscation of proceeds, funds and tools used or intended to be used in the commission of the offense.

## Implementation Rules for Article 43

Article 43 of the National Security Law stipulates various measures that the designated department of the HKSAR police force ("**Police Department**") may take when handling cases concerning offenses endangering national security, and authorizes the Chief Executive, in conjunction with the National Security Committee, to make relevant implementation rules for the purpose of applying the measures stipulated under Article 43. The Chief Executive, in conjunction with the National Security Committee, has exercised power under Article 43 and the Implementation Rules for Article 43 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region ("**Implementation Rules**") took effect on 7 July 2020 upon gazettal in the HKSAR.

The Implementation Rules provide for seven categories of specific measures: (1) search of places for evidence; (2) restriction on persons under investigation from leaving the HKSAR; (3) freezing, restraint, confiscation and forfeiture of property related to offenses endangering national security; (4) removal of messages endangering national security and requests for assistance; (5) requiring foreign and Taiwan political organizations and agents to provide information on activities concerning the HKSAR; (6) application on authorization for interception of communications and covert surveillance; and (7) requirement to furnish information and produce materials. These measures are in addition to those currently available under Hong Kong law for investigating serious crimes.

As far as companies and organizations are concerned, we would like to highlight the scope of powers of the Police Department relating to the following two specific measures under the Implementation Rules:

- (1) search of places for evidence: the Police Department may, **with a warrant**, enter and search any place and inspect, examine, search, seize, remove and hold any evidence. If for any reason it would not be reasonably practicable to obtain a warrant, the search may be conducted **without a warrant**, provided that the authorized officer is satisfied that there is reasonable ground for: (i) suspecting that any

specified evidence is in the relevant place; and (ii) believing that the evidence is necessary for investigating an offense endangering national security, procuring and preserving evidence of such an offence or protecting the safety of any persons

- (2) requirement to furnish information and produce materials: the Police Department may require a person **suspected** on reasonable grounds of having in their possession information or material relevant to an investigation, to answer questions and furnish such information or produce such material. Note that these measures require an order from the Court of First Instance of the HKSAR.

Client insights are now available on the [Hong Kong National Security Law website](#).

## US sanctions

In response to the unilateral sanctions recently imposed by the United States government on a number of individuals in the Mainland and Hong Kong on 7 August 2020, the Insurance Authority reminded insurers that in assessing potential impact arising from the sanctions, they should take into account the full spectrum of legal, business and commercial risks to which they are exposed. This may involve complex operational issues, varying with the structure, size and business portfolio of an insurer or insurance intermediary as well as its overseas affiliates. Above all, the Insurance Authority will expect customers to be treated fairly and transparently in the formulation of any responses to the sanctions.

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## INDONESIA

### Reminder of certain Indonesian deadlines

By 17 October 2020, each insurance company that has *sharia* business must submit an action plan to the Indonesian Financial Services Authority (**OJK**) on their plan to spin off their respective *sharia* business into separate entities. The spin-off itself must be completed on or before 17 October 2024.

### The OJK issues several regulations to address several industry concerns due to the COVID-19 situation in Indonesia

The OJK has issued three new regulations addressing the following concerns:

- **Offshore data center.** The OJK has issued OJK Regulation No. 38 of 2020, which allows Indonesian insurance companies to operate offshore data centers and disaster recovery centers, subject to several requirements.
- **Offshore reinsurance support.** The OJK has issued OJK Regulation no. 39 of 2020, which allows Indonesian insurance companies to obtain reinsurance support from offshore reinsurance companies directly, provided that the country where such offshore reinsurance companies are licensed has a bilateral government-to-government agreement with the government of the Republic of Indonesia.
- **Distressed insurance companies.** The OJK has issued OJK Regulation No. 40 of 2020, which authorizes the OJK to issue written orders to distressed insurance companies and non-distressed insurance companies to participate in a merger, acquisition or consolidation.

### The OJK issues a draft regulation on information technology integrated risk management

The OJK has issued a draft regulation on information technology integrated risk management. The key proposed provisions of this draft are as follows:

- Insurance companies' board of commissioners are given the additional role of conducting active supervision regarding the insurance companies' information technology risk management plans. This obligation is new.
- Insurance companies must have written disaster recovery plans, which must be reviewed periodically. Further, insurance companies must conduct periodic stress tests of their information technology systems. These obligations are new.

## The OJK sets a new unwritten policy on directors' and commissioners' fit and proper test criteria

In 2019, the OJK established a new unwritten policy that all directors and commissioners in insurance companies must have risk management certificates (mostly locally sourced) before they can pass the fit and proper test with the OJK. We are not aware if this policy has resulted in candidates being rejected by the OJK. However, this adds more administrative documents to fit and proper test applications insurance companies must prepare before they can sponsor candidates. This policy is expected to remain in place in 2020.

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## JAPAN

### Stewardship Code: 285 institutional investors signed up to the Principles for Responsible Institutional Investors

The Council of Experts Concerning the Japanese Version of the Stewardship Code published the Principles for Institutional Investors ("**Code**") on 26 February 2014. The Council of Experts revised the Code on 29 May 2017 and 24 March 2020. The second revised version can be referred to [here](#).

The Financial Services Agency (**FSA**) publishes the list of institutional investors who have notified the FSA of their intention to accept the Code. The FSA will update the list any time when it receives notification of acceptance of the Code from institutional investors. As of 31 July 2020, there are 285 institutional investors including 23 major Japanese and foreign insurance companies (among 95 insurance companies licensed by the FSA) in the list.

The revised Code describes in its preamble the recommended process of the publication of the list of institutional investors who accept the code such as: (i) publicly disclosing their intention to accept the Code and certain disclosure items on their website; (ii) annually reviewing and updating the disclosed information and publicly disclosing such update if it takes place; and (iii) notifying the FSA of the address of their website (the URL) used to disclose the information above.

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## MALAYSIA

### New policy documents for insurers

#### *(a) Policy document on risk management in technology ("RMiT Policy Document")*

Bank Negara Malaysia (**BNM**) has updated the RMiT Policy Document to provide additional guidance to insurers who offer internet insurance or internet *takaful* services ("**Services**"):

- (i) Insurers must notify BNM and submit the necessary information prior to offering such Services.
- (ii) Where enhancements are introduced to such Services, assessments must be made to determine if the enhancement falls within the prescribed list in the RMiT Policy Document.
- (iii) Insurers can continue to introduce enhancements that do not materially alter the prior assessments made by the insurers, without prior BNM approval.

There is no transitional period for the changes. Insurers who have introduced enhancements to their Services must immediately assess whether such changes will trigger the notification process.

#### *(b) Policy document on electronic know-your-customer ("e-KYC Policy Document")*



The e-KYC Policy Document applies to licensed life insurers only and governs the implementation of e-KYC solutions for the identification and verification of individuals by insurers. In summary, insurers will have to comply with the following requirements when implementing e-KYC solutions:

- (i) obtain approval from their board of directors for the implementation of the e-KYC solution.
- (ii) notify BNM on the implementation of the e-KYC solution.
- (iii) where artificial intelligence, machine learning or other forms of predicative algorithms ("**Automated e-KYC Solutions**") are used to identify and verify individuals, insurers are required to:
  - conduct audits to ensure that the Automated e-KYC Solutions are able to distinguish between genuine and non-genuine cases
  - ensure that the overall False Acceptance Rates do not exceed 5%
  - maintain a record of the performance of the Automated e-KYC Solutions on a monthly basis and submit such records on a half-yearly basis to BNM

Insurers are encouraged to review and revise their existing systems and frameworks to ensure that they comply with the abovementioned standards and requirements.

## **Public consultation paper (PCP) on the review of the Personal Data Protection Act 2010 ("PDPA")**

The Malaysian Personal Data Protection Commissioner ("**Commissioner**") has issued a PCP that proposes various amendments to the PDPA. These include:

- (a) imposing direct obligations under the PDPA on data processors
- (b) requiring data users to appoint a data protection officer (**DPO**) and to issue a guideline on the mechanism of having a DPO
- (c) imposing obligations on data users to notify the Commissioner of any data breach incidents
- (d) requiring data users to establish a Do Not Call Registry, which allows data subjects to opt out from receiving unsolicited direct marketing materials
- (e) issuing new guidelines on the processing of personal data using cloud computing
- (f) issuing new guidelines on the mechanism and implementation of cross-border data transfers in relation to the exchange of personal data for data users with an entity located outside of Malaysia
- (g) extending the PDPA to data users outside of Malaysia that monitor and profile Malaysian data subjects

Insurers should closely monitor the developments of the PCP and conduct a gap analysis of existing data privacy policies.

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## **PHILIPPINES**

### **Philippine Insurance Commission issues guidelines governing the regulatory sandbox framework for insurance technology innovations**

On 14 June 2020, the Philippine Insurance Commission (**IC**), through Circular Letter No. 2020-73, issued guidelines governing the adoption of a regulatory sandbox framework for insurtech innovations.

Under these guidelines, a regulatory sandbox is defined as a controlled environment where a licensed insurance provider, in collaboration with another person or entity, whether licensed or otherwise, sets up a

system for small-scale and live testing of technical innovations in insurtech. Under this framework, technical innovations operate under special circumstances, allowances, and other limited and time-bound supervisions.

The guidelines require that the operation of a regulatory sandbox be done in experimentation cycle/s. An experimental cycle will last for a maximum period of one year, extendible for a maximum period of six months for justifiable reasons.

Participation in the regulatory sandbox requires submission of a formal proposal to the Insurance Commission, and this proposal must include an outline of the business model for the product, solution or service, and an exit plan, among others. The Insurance Commission will consider the following parameters in evaluating the proposal:

- (a) innovative idea(s)
- (b) insurance inclusion, indicative that the proposed technological solution can promote or provide equal opportunity to access insurance services and will increase insurance literacy
- (c) consumer benefits and protection
- (d) readiness for testing indicative of the adequate resources to support the testing and clear methodology and control, among others
- (e) soundness of the exit plan

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## SINGAPORE

### MAS proposes new omnibus act for a financial sectorwide regulatory approach

The Monetary Authority of Singapore (**MAS**) has proposed a new omnibus act that will contain the following:

- current Monetary Authority of Singapore Act (Cap 186) provisions relating to:
  - the prevention of money laundering and terrorism financing
  - the control and resolution of financial institutions
  - the oversight of financial sector dispute resolution scheme
- new provisions to:
  - expand MAS' prohibition order powers
  - regulate individuals or entities in Singapore providing or performing digital token services outside Singapore to international standards, including imposing licensing and ongoing requirements and anti-money laundering, countering of financing of terrorism regulations
  - impose technology risk management requirements
  - protect Financial Industry Disputes Resolution Centre personnel

Please see here the [MAS Consultation Paper on a New Omnibus Act for the Financial Sector](#), and the corresponding [Client Alert](#) published by Baker McKenzie.

### Information Paper: Enhancing Robustness of Enterprise-Wide Risk Assessment on Money Laundering And Terrorism Financing

After MAS conducted a thematic inspections of selected banks in the first quarter of 2020 to assess the robustness of their enterprisewide money laundering and terrorism financing risk assessment (**EWRA**), it published an information paper which:

- provides in detail some sound practices as well as gaps revealed by MAS' inspections
- sets out MAS' supervisory expectation of effective EWRA frameworks and processes

The case studies in the information paper show banks that they have room to improve:

- the rigor of management oversight of EWRA processes
- the robustness of the design of EWRA methodologies
- the effectiveness of EWRA implementation

Please see here the [Information Paper](#).

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## TAIWAN

### Regulations

#### **Guidelines governing the cross-industry collaboration of insurance enterprises, insurance agent and insurance broker in soliciting the associated insurance policy**

The Guidelines Governing the Cross-Industry Collaboration of Insurance Enterprises, Insurance Agent and Insurance Broker in Soliciting the Associated Insurance Policy (“**Guidelines**”) were amended at the end of June 2020. The Guidelines streamline the process for purchasing insurance policies by broadening the cross-industry collaboration scope, which can be entered into by the insurance company, insurance agent and insurance broker. Before the amendment, the Insurance Bureau allowed very few cross-industry partnerships in the insurance sector, such as permitting mobile manufacturers to sell the mobile protection insurance and traveling app providers to sell the travel insurance in the app. With this amendment, the post offices, the electric vehicle manufacturers and the diabetic management services providers can sell insurance policies associated with their products or services directly through their websites, platform, and app to end customers, without directing them to another insurance agent or broker.

#### **The draft amendment of Regulations Governing Online Insurance Business and Online Insurance Services of Insurance Agent Companies and Insurance Broker Companies.**

To correspond to the developing digital-only banking, streamlining of the online insurance business, and improving consumer protection, the Financial Supervisory Commission (**FSC**) published the draft amendment to the Regulations Governing Online Insurance Business and Online Insurance Services of Insurance Agent Companies and Insurance Broker Companies. And the FSC is now seeking and collecting comments/suggestions from the public. The draft amendment focuses on five aspects:

- (1) the open-to-cross-industry collaboration in online insurance policy purchases
- (2) additional financial/operating requirements for digital-only banks’ online insurance business
- (3) possible identity verification through clients’ existing online bank accounts or digital saving accounts
- (4) the establishment of a supervision system for the investing-linked annuity
- (5) the inclusion of revisions above in the internal control, audit and business solicitation system of the insurance agent/broker companies

### News

The Insurance Bureau has been developing the e-insurance policies’ authentication and storage system. When disputes regarding the content of policy arise, and when the policyholders lose the original copy of such policy, they might have no choice but to rely on the insurance company to provide the policy. However, they might have concerns about the authentication of such a copy offered. Considering this issue, establishing a third-party authentication mechanism to verify and store the e-insurance policy may serve as a solution. Specifically, the authority appoints different entities to build the third-party authentication mechanism, and such appointment hinges on the insurance policy’s classification. In the context of life insurance, the Life Insurance Association will be in charge of providing verification and storage, while the Taiwan Insurance Institute is responsible for property insurance.

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## Vietnam's commitments under the EV-FTA for the insurance business sector

Vietnam and the European Union recently approved and ratified the EU - Vietnam Free Trade Agreement (EVFTA), which came into effect on 1 August 2020.

Generally, Vietnam maintains the level of most commitments in the WTO Schedule and Vietnam's domestic regulations regarding direct insurance, but expands market access commitments in terms of reinsurance.

### 1. Insurance business

For direct insurance business operations (life insurance, non-life insurance, health insurance), Vietnam's commitments under the EVFTA generally retain similar commitments in comparison with those under the WTO Schedule of Commitments, except for health insurance.

Particularly, under WTO, health insurance is excluded from the scope of commitment. Under EVFTA, health insurance service provided by foreign-invested life insurance companies in Vietnam is allowed. However, this change is not expected to significantly impact the operation of foreign-invested life insurers in Vietnam, since these insurers have been permitted to underwrite and sell health insurance products under the domestic regulations (Law on Insurance Business and guiding legal documents).

### 2. Reinsurance business

For the reinsurance sector, in comparison with the WTO Schedule of Commitments and the domestic regulations, Vietnam has expanded its commitments in the following respects:

- Vietnam permits other members of EVFTA to provide "retrocession services" to Vietnamese entities on a cross-border basis, without any market access restriction.
- After three (3) years from the effective date of the EVFTA (around 1 August 2023), foreign insurance enterprises domiciled in an EVFTA contracting state may open a "branch" in Vietnam to engage in reinsurance activities. Before the EVFTA, both the WTO Schedule of Commitments and Vietnam's domestic regulations only permit foreign non-life insurers to open a branch in Vietnam to engage in non-life insurance business.

Despite the expanded market access commitments mentioned above, we note that the domestic regulations in Vietnam remain silent on a foreign investor's right to invest, as permitted above under the EVFTA. Absent and pending such provisions under the domestic regulations, there are certain issues to be addressed, including whether foreign EU-based investors need to wait until such international commitment is codified into Vietnam's domestic regulations.

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