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INSURANCE LAWS & REGULATIONS OF SELECTED ASEAN COUNTRIES : A COMPARATIVE ANALYSIS



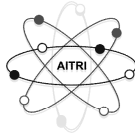


Table of Contents

| | Page |
|---|------|
| Introduction | 1 |
| I. Structure of Insurance Markets | |
| a. Size and Nature of Insurance Market | 6 |
| b. Classifications of Insurance Business | 10 |
| c. Types of Licensed Business | 13 |
| d. Admitted & Non-Admitted Policies | 15 |
| II. Organizational Structure of Insurance Regulators and Supervisory Authority | |
| (a) Insurance Regulators & Supervisory Bodies | 19 |
| (b) Powers of Supervisory & Regulatory Authorities | 23 |
| III. Laws & Adjudication | |
| (a) Laws & Regulations Governing Selected ASEAN countries | 35 |
| (b) Alternative Dispute Resolution (ADR) | 40 |
| (c) Enforcement of Laws & Limitation Period | 44 |
| <i>Enforcement of Laws (Jurisdiction, Reciprocity)</i> | 44 |
| <i>Limitation Period</i> | 47 |



IV. Licensing, Management & Operations

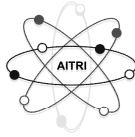
| | |
|--|----|
| (a) Licensing requirements | 50 |
| (b) Licensing Procedures | 53 |
| (c) Licensing/ Registration Authority | 62 |
| (d) Legal Form Requirements | 64 |
| (e) Forms of License issued | 68 |
| (f) Annual Fees | 71 |
| (g) Cancellation, Appeal and Effects of Cancellation of License | 73 |
| (h) Management of Licensee | 77 |
| (i) Minimum paid up Share Capital or Deposits | 83 |
| (j) Register of Policies and Claims | 88 |
| (k) Establishment of Specific Funds by Insurers and Allocation of Surplus | 89 |
| (l) Investment of Assets | 92 |

V. Solvency Requirements & Supervision

| | |
|-------------------------------------|-----|
| (a) Minimum solvency requirements | 97 |
| (b) Insurance Accounting Principles | 103 |
| (c) Reporting | 105 |
| (d) Inspections and Investigations | 110 |
| (e) Investment Regulations | 113 |

VI. Insurance Companies in Financial Difficulties

| | |
|---|-----|
| (a) Non-compliance of Solvency Margins | 117 |
| (b) Winding Up & Liquidation Procedures | 125 |
| (c) Policyholders' Protection Fund | 129 |



VII. Related Issues

(a) Tariff Ratings

(b) Insurance Industry Associations :

Self Regulatory Functions 132

Summary of Findings 136

Conclusion 140

Recommendations 142

Matrices 145



INSURANCE LAWS AND REGULATIONS OF SELECTED ASEAN COUNTRIES: A COMPARATIVE ANALYSIS.

Introduction

Over the past few years it has become apparent that a number of commonly identified external drivers of change are shaping the global insurance industry. These are:¹

1. Increasing consolidation, convergence and globalization;
2. An evolving socioeconomic and political context;
3. Changing consumer concerns and buying behavior;
4. Rapidly developing technology;
5. Broadening distribution patterns and
6. Shifting regulations.

The above factors are concerns that need to be addressed in the policy and legislative frameworks of Asian and developing insurance markets. They are widely seen as opportunities for existing global players. Furthermore, it is a realistic expectation that strong Asian-based global insurers will also emerge if they choose appropriate strategies with implementation linked to constant innovation.

¹ John s. Scheid (2001). *Global Insurance Industry Trends: What are the implications?* In Risk & Insurance, October 2001, Axon Group.



Undeniably, the potential for growth of the insurance and reinsurance markets in Asia is tremendous in view of the current trend towards the liberalization of insurance markets and internationalization of insurance companies. Analysts expect Asia to become one of the world's major insurance regions in the future.²

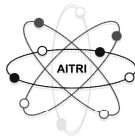
Insurers are facing new risks as they foray deeper into financial markets, both as investors and as intermediaries, in pursuit of higher profitability. Additionally, other global developments are equally impacting upon the insurance world. Insurers are coping with extraordinary losses arising from the September 11 tragedy. High profile corporate scandals involving well-reputed corporations such as Enron and WorldCom are depressing market sentiments. The net result of sustained declines in asset values is such that insurers can no longer rely on investment returns to offset poor underwriting results.³

It is imperative that regulators keep pace with ongoing developments. Regulations can no longer focus merely on insurance risks and protecting policyholders. There has to be a ***change in the objectives of regulation***, in the sense that the focus is on ***maintaining systemic stability and protecting the interests of the customer***.⁴ The IMF has concluded that the insurance industry, while not systemically critical, has taken up a definite systemic relevance. The greater engagement of insurers in financial markets

² Goh & Low (2001). Insurance Law, Chap.15, pp255 on Insurance Trends in Asia.

³ Keynote address by Mr. Lee Hsien Loong at the International Insurance Society's 38th Annual Seminar Singapore, 15 July 2002.

⁴ Y.V.Reddy: Issues in choosing between single and multiple regulators of financial systems. BIS Review 44/2001



raises important questions concerning their impact on financial stability. Maintaining systemic stability is important because the social costs of financial distress are high in the form of the ***contagion effect both at regional and global levels.***

The Asian financial crisis highlighted the systemic risks resulting from a prolonged vulnerability of the financial sector. Insurance is one of the most important components of the financial sector in any national economy as it is taking on an increasingly important role in supplementing social security schemes. Although the share of insurance premium of GDP in a number of Asian economies is significantly less than in most developed countries, the insurance sector needs to proceed strategically to ensure stability and security for consumers while delivering economic benefits to suppliers.⁵

A Comparative Analysis of Insurance Regulation and Supervision in Selected ASEAN Countries

Deregulation worldwide is encouraging the emergence of universal financial services organizations like Zurich Financial Services to replace stand-alone banks, insurers, and brokerage firms. It is also enabling new and non-traditional players, such as Virgin of the United Kingdom to enter the market. The newly emerging banc assurance models will experience challenges as a

⁵ Eric Burgeat (1999). OECD Proceedings on Insurance Regulation and Supervision in Asia.



result of these developments. This trend is already affecting Asia where the Malaysian and Singapore industries are classic examples of deregulatory forces at work. Big Bang in Japan is another. This trend is expected to continue.

Consequently, the supervision of the insurance sector requires an adequate regulatory framework and efficient regulatory institutions that are able to keep up with global developments. The institutional structure for regulation needs to be considered with an initial broad understanding of the rationale for regulation, regulatory coverage, policy frame and operational aspects.

What constitutes regulation? Regulation in the broadest sense includes establishing specific rules of behavior, or the regulatory aspect per se, monitoring or tracking observance of behavior along with disincentives and penal provisions for non-compliance. There are some arguments in favor of formally separating the regulatory aspects from the supervisory aspects but current international practice favors the two functions being viewed together.



Several criteria will be utilized in this study to enable a comparative analysis to be made of the insurance laws and regulations of Malaysia, Singapore, Brunei, The Philippines, Indonesia, Thailand, Vietnam and Cambodia. These criteria are:

- I. Structure of insurance markets.
- II. Types and Structure of Supervisions.
- III. Laws & Adjudication.
- IV. Licensing, Management & Operations.
- V. Solvency Requirements & Supervision.
- VI. Insurance Companies in Financial Difficulties.
- VII. Related Issues.



I. Structure of Insurance Markets

a. Size and Nature of Insurance Markets

As of 2002,⁶ there were a total of 129 licensees in the insurance industry in Malaysia. This consists of 43 direct insurers (41 locally incorporated & 2 foreign incorporated), 3 Takaful insurers, 10 professional reinsurers (2 locally incorporated & 8 foreign incorporated), 35 insurance brokers and 40 adjusters.⁷ The Malaysian insurance industry remains largely agency based and the premium income as a percentage of nominal GNP improved marginally to 5.4 percent in 2001 but dropped to 5.0 percent in 2002.⁸

As of 29 July 2003, there were a total of 147 registered insurers in Singapore, comprising 57 direct insurers, 33 professional reinsurers, 51 captives and 57 general brokers. Of the 109 direct insurers and professional reinsurers, 89 were foreign owned.⁹ This is in contrast to Malaysia where locally incorporated companies have dominated the insurance industry. Singapore has a very competitive and cosmopolitan insurance market and implements a very selective admission policy for direct insurers. According to a report by Monetary Authority of Singapore, a large number of major international insurers, reinsurers and intermediaries providing a full

⁶ Insurance Annual Report 2002.

⁷ Insurance Regulation Department, Bank Negara (1999). *The Malaysian Insurance Industry: Main Features, Regulation and Current Policy Issue* from the OECD Proceedings on Insurance Regulation and Supervision in Asia.

⁸ Bank Negara Malaysia Insurance Annual Report 2002.

⁹ As at November 1998 based on OECD Proceedings (1999): Insurance Regulation and Supervision in Asia



range of insurance services are based in Singapore. Insurers with expertise and specialized and innovative risk solutions have also emerged. In addition to meeting the needs of the domestic markets, numerous reinsurers and captive insurers have used Singapore as a base to write risk for the Southeast Asian region. Singapore has been the largest domicile for captive insurers in Asia.¹⁰ Total premiums recorded by the Singapore insurance industry amounted to S\$16.7 billion in 2002, a decrease of 9.4% over 2001.¹¹ In comparison, the combined premium income of life and general insurance in Malaysia amounted to RM16.8 billion in 2002.

In Brunei there were more than 100 companies registered, as at 2002, to transact insurance business but only 21, including 3 Takaful insurers, 3 life insurers and 1 captive insurer were active. In the year 2002, total non-life premiums amounted to BRD48.4 million (excluding Takaful insurance). This represents a reduction of 5.2% from the previous year.¹² This was quite possibly due to the increased participation of Takaful Insurance.

As of the year 2000, there were 156 insurance companies authorized by the Insurance Commission to transact business in The Philippines.¹³ However, as of 31 January 2003, the list of authorized companies was as follows: 4 composite (life and non-life); 31 life companies; 100 non-life companies and 3 professional reinsurers.¹⁴

¹⁰ MAS: Incentive for Investors – Opportunities in Singapore

¹¹ Singapore Insurance Report 2002

¹² AXCO Insurance Market Reports on Brunei – Non Life (2003)

¹³ The Insurance Commission of Philippines (2000). Statistics and Performance at <http://www.ic.gov.ph>

¹⁴ The Insurance Commission of Philippines (2003). Statistics and Performance at <http://www.ic.gov.ph>



In the year 2000, the insurance industry attained a growth rate of 9.51% in terms of premium production as it posted Php 37.64 billion from the previous year's 34.07 billion amidst the economic slowdown in the country.

In Indonesia, an insurance company may only be founded by:

1. an Indonesian citizen and/or Indonesian legal entity which is fully owned by an Indonesian citizen and or an Indonesian legal entity; OR
2. an insurance company which is jointly owned by (1) above and a foreign insurance company;¹⁵

As of the year 2003, there were 104 insurance companies registered for business in Indonesia comprising:

1. 3 state-owned (Asuransi Jasa Indonesia, Asuransi Ekspor Indonesia, Asuransi Kredit Indonesia);
2. 79 domestic; and
3. 22 joint ventures involving foreign companies.

Currently, foreign ownership in an insurance company may exceed 80% in the light of changes introduced by legislation in 1999 which affords greater flexibility in ownership subject to maintenance of the Indonesian counterpart's paid-up capital.

¹⁵ Article 8, Law No.2 of 1992



Recent studies seem to suggest that the number of joint venture companies is increasing. However, it is believed that these numbers will reduce in the near future through the exercise of mergers and acquisitions in view of market liberalization.

The insurance market in Indonesia has been volatile in that the premium income between the years 1995 and 1999 had been fluctuating and indicated a downward trend. Although the market is developing, the progress is not as rapid in comparison to other ASEAN countries, bearing in mind that third-party motor insurance is not compulsory, thus reducing the proportion of premium income.

Further, the political and economic climate in Indonesia has inevitably affected the Insurance business in general and, in view of this, there appears to be a need for the restructuring of their financial, economic and political systems.

In Thailand, as of June 2002, there were a total 103 insurance companies: 76 non life insurers, 25 life insurers and 2 reinsurers. The ratio of locally incorporated companies against foreign companies was 8:1. The total premiums for non life insurance companies as of 2002 were estimated to be about 60,000 million baht and for life insurance it was estimated to be approximately 120,000 million baht.

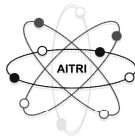


As at the end of 2001, there were 10 non-life insurers, 4 life insurers, 1 reinsurer and 1 insurance brokerage in Vietnam. The total non life insurance premiums for 2002 were VND 3,070 billion and life insurance premiums were VND 4,615 billion.

For Cambodia, as at the end of 2002, there was one insurer, one reinsurer and 4 licensed agents.

b. Classifications of Insurance Business

Classification of the Insurance business is done similarly under the Malaysian and Singapore Acts respectively. Section 4(1) of the Malaysian *Insurance Act, 1996* has divided the insurance business into two classes (a) life business concerned with and incidental to life policies and (b) general business. Reinsurance of liabilities is also treated as insurance business according to Section 4(2) of the said Act. In addition, there exists a separate category of insurance called Takaful which is underwritten in accordance with Islamic principles and regulated by the *Takaful Act, 1984*. The Singapore *Insurance Act (Chapter 142)* has similarly divided the insurance business into two classes in accordance with Section 2 (1): (a) life business concerned with and incidental to life policies and (b) general business. In accordance with Section 2(2), reinsurance of liabilities under insurance policies shall also be treated as insurance business.



Unlike Malaysia and Singapore, Brunei does not have a separate insurance legislation that governs the insurance industry although certain aspects of the business are dealt with through specific statutes; Ministerial and/or Administrative directives; the *Motor Vehicles Insurance (Third Party Risks) Act Chapter 90*; the *Workmen's Compensation Act Chapter 74* ; and *Administrative Measure of 1995*. While no statutory classification has been provided for, insurance business undertaken in Brunei can be broadly categorized to include life insurance, non-life insurance and Takaful insurance save for specific legislation which controls third party liability motor vehicle insurance¹⁶ and workmen's compensation¹⁷.

Insurance contracts in The Philippines may be classified into: (1) life insurance contracts and (2) non-life insurance contracts (including property insurance and liability insurance like suretyship)¹⁸. In The Philippines, no insurance company may be authorized to transact life and non-life businesses concurrently unless specifically authorized to do so. The term life and non-life insurance includes health, accident and disability insurance.¹⁹ The five (5) classes or kinds of insurance expressly recognized and governed by the *Insurance Code (PD No.612)* of The Philippines are as follows: (a) Marine Insurance²⁰ (which includes insurance against loss or damage to all other kinds of property and interests therein as well as

¹⁶ Motor Vehicle Insurance (Third Party Risks) Act Chapter 90

¹⁷ Workmen's Compensation Act Chapter 74

¹⁸ Nollado, J.N. (2001), *The Insurance Code of the Philippines*, National Book Store

¹⁹ Section 187 of the Insurance Code of Philippines

²⁰ Section 99 of the Insurance Code of Philippines



marine protection and indemnity insurance); (b) Fire Insurance²¹; (c) Casualty Insurance²²; (d) Suretyship²³; and (e) Life Insurance²⁴.

Article 3 of Law No.2 Year 1992 concerning the insurance business in Indonesia has broadly classified the insurance business into two types:

1. Insurance business which consists of two types i.e., Life and Non Life Insurance.
2. Insurance supporting business.

In Thailand, the insurance business is divided into Life²⁵ and Non Life²⁶ insurance business in accordance with legislations in these respective areas.

The Law on Insurance Business in Vietnam has divided the insurance business into two classes, that is, Life Insurance and Non Life Insurance. Additionally, Article 60 (2) of the *Law on Insurance Business* stipulates that Insurance Enterprises are not allowed to carry out both life and non life insurance businesses at the same time except where a life insurance enterprise engages in health and personal accident insurance as auxiliary products of its life business.

²¹ Section 167 of the Insurance Code of Philippines

²² Section 174 of the Insurance Code of Philippines

²³ Section 175 of the Insurance Code of Philippines

²⁴ Section 179 of the Insurance Code of Philippines

²⁵ Life Insurance Act B.E.2535(1992)

²⁶ Non-Life Insurance Act B.E.2535(1992)



Insurance Law in Cambodia has divided the insurance business into Property Insurance, Individual Insurance and Compulsory Insurance.

c. Types of Licensed Business

In Malaysia, the types of licensed business in existence are the insurance business (including reinsurance), the insurance broking business and the adjusting business.

In Singapore, the types of licensed business are the direct insurance business, the reinsurance business, the captive insurance business, the insurance broking business and financial advisors.

In Brunei, licensing requirements are not dictated by statute. However, The Financial Institutions Division (FID), apart from monitoring and supervising the insurance businesses, is responsible for granting approval. Insurance businesses are primarily operated through companies incorporated in accordance with the provisions of the *Companies Act, Chapter 39*. As in other jurisdictions, the insurance business transacted in Brunei includes the direct insurance business, the reinsurance business, the insurance broking business and the captive insurance business.



The types of licensed business currently in existence in The Philippines are the insurance business²⁷, the reinsurance business²⁸ and the adjusting business²⁹.

The types of licensed businesses currently in existence in Indonesia are the loss insurance business, the life insurance business (health insurance, personal accident insurance, the annuity business and management of pension funds)³⁰ and the reinsurance business, the insurance brokerage business, the reinsurance brokerage business, the loss adjusting business, the actuarial consultancy business and the insurance agency business. Another type of insurance business that is peculiar to the Indonesian market is the Social Insurance Program which is administered by state-owned companies.³¹ Notwithstanding the law on which such companies are incorporated, the Minister has the right and responsibility to supervise the companies which carry out the social insurance program while supervision of the social insurance program concerned shall be exercised by the Technical Minister based on the law which provides for such social insurance programs.

²⁷ Section 299 of the Insurance Code of Philippines

²⁸ Section 311 of the Insurance Code of Philippines

²⁹ Section 323 of the Insurance Code of Philippines

³⁰ Article 4, Law No.2 of Year 1992

³¹ Article 14, Law No.2 of Year 1992



In Thailand, the types of licensed businesses under the *Non Life Insurance Act* are Insurance Companies, Insurance Brokers and Insurance Agents while under the *Life insurance Act*, they are Life Insurance Companies, Life Insurance Brokers and Life Insurance Agents.

In Vietnam, the types of licensed business as stated in *Article 60 (1)* are the insurance business (which includes reinsurance, prevention and mitigation of risks and losses, loss surveys, claim settlement agents, third party claim agents, fund management and investment) and the insurance broking business.

In Cambodia, the types of licensed businesses in existence are the insurance business (including reinsurance), the insurance broking business, insurance agents and Insurance Risk Inspecting.

c. Admitted & Non-Admitted Policies

In Malaysia, Section 140 of the *Insurance Act 1996* restricts the insuring of property³² or liability³³ with an insurer other than a licensed general insurer except with the prior approval of Bank Negara Malaysia. In particular, Section 140(2) allows Bank Negara Malaysia to approve the insurance of property or liability to be effected outside of Malaysia only where there is no licensed general insurer available and after consultation and approval with the

³² Section 140(5)(a) defines 'property' as moveable or immoveable property located in Malaysia and includes any ship or aircraft registered in Malaysia.

³³ Section 140(5)(b) defines 'liability' as the liability of a person resident in Malaysia to a third party.



Minister. The Singapore Insurance Act contains a similar clause (section 33) to that of Malaysia's in that MAS has the discretion to allow some risks to be placed with insurers outside Singapore (not registered in Singapore) if there is no registered insurer that can reasonably write this risk. Such applications must be submitted to MAS for case-by-case consultations and approvals. However, the compulsory classes of insurance such as motor and workmen's compensation can only be issued by Singapore registered local insurers.

In Indonesia, foreign insurance companies may operate in Indonesia by forming a joint venture company with local insurance companies: Chapter II, Article 2 of *Law No.73 of year 1992*.

In Brunei, all policies can only be issued by insurance companies registered by Ministry of Finance.

In The Philippines, all insurance companies can underwrite motor car policies. However, with respect to CMVLI, only companies licensed by the Commissioner can underwrite pursuant to Section 375 of the Insurance Code and the same are treated as admitted assets.

In Thailand, Section 78 of the *Non Life Insurance Act B.E.2535 (1992)* states "No person shall induce, advise, or in any manner act so as to cause any person to enter into a non life insurance contract with a non life insurer abroad, or with any person



except a person licensed to engage in the Non Life insurance business under this Act.”

In Vietnam, Article 4 of *Decree 42/2001/ND-CP* states,

1. “Organizations which and individuals who have demand for insurance may only take out insurance with insurance enterprises authorized to operate in Vietnam.
2. In the following cases, organisations which and individuals who have demand for insurance may take out insurance with insurance enterprises which are not headquartered in Vietnam:
 - a) Insurance enterprises authorised to operate in Vietnam do not provide the kind of insurance products that are sought after by organisations which and individuals who have demand for insurance;
 - b) The acquisition of insurance from an overseas insurance enterprise is permitted under the provisions of international treaties to which the government of the Socialist Republic of Vietnam is a signatory or a participant.



3. Insurance contracts that are entered into between Vietnamese organisations or individuals and insurance enterprises that are not headquartered in Vietnam in contradiction with clause 2 of this Article shall be null and void.”

In Cambodia, Article 32 of the *Sub decree* in respect of Compulsory Motor Insurance, Article 41 in respect of Compulsory Construction Insurance and Article 44 in respect of Compulsory Insurance for Passenger Transport require the insurance policies for such insurances to be issued by an insurance company duly registered in the commercial register and licensed to operate the insurance business in Cambodia. There are no other provisions in respect of other policies.



II. Organizational Structure of Insurance Regulators and Supervisory Authorities

a. Insurance Regulators & Supervisory Bodies

In Malaysia, as well as in Singapore, a central bank or a *de facto* central bank is responsible for the regulation and supervision of all financial institutions including insurance companies. In other Asian economies such as Brunei, Indonesia, The Philippines, Thailand and Vietnam, a division or a department within a Ministry is responsible for the regulation and supervision of insurance companies. The relevant Ministries are usually the Ministries responsible for financial matters. These authorities are financed by State Budgets.

Bank Negara Malaysia (BNM) is the regulatory authority responsible for the supervision of the insurance industry in Malaysia. BNM, which is a self-financing authority, has two departments responsible for insurance. One is responsible for the regulatory aspects while the other is responsible for the supervisory aspects. BNM performs these functions mainly through its administration of the Malaysian *Insurance Act, 1996*, which provides the legislative framework for the regulation of the insurance industry.³⁴ Under the Act, BNM is empowered to issue administrative guidelines and circulars to implement supervisory and regulatory policies. BNM enforces the Act and regulatory policies and guidelines primarily through regular on-site examinations, off-site analyses of the

³⁴ Section 3 of the Insurance Act provides that the Central Bank of Malaysia shall have all the functions conferred on it by this Act.



financial statements of licensees, and the review of public complaints and other statistical returns submitted by licensees.

The central supervisory authority for insurance companies in Singapore is the Monetary Authority of Singapore (MAS)³⁵, which was established under the *MAS Act*. MAS supervises, reviews and inspects the operations of insurance companies in Singapore. It is also responsible for conducting field inspections to ensure that insurance companies observe sound and prudent practices and comply in fact and in spirit with the laws, regulations and guidelines issued by MAS in order to ensure the integrity of the insurance sector. The Singapore *Insurance Act* requires all insurers to submit to MAS, Annual Returns that comprise all information necessary to assist in supervising insurance companies in accordance with the *Insurance Act*. MAS will audit these annual returns. Quarterly returns also need to be submitted but MAS does not audit these returns.

The authority to supervise insurance companies in Brunei has been tasked to the relevant department/division of the Ministry of Finance. Historically, the Economic Development Board supervised the insurance industry but, since 1993, the Financial Institutions Division (FID) has supervised and monitored financial institutions and insurance companies. Although FID is empowered to monitor the activities of the insurance industry, its level of supervision remains limited probably due to the fact that there is no legislation in force at present. In light of this, the General Insurance Association of Negara

³⁵ This is in accordance to the provision in section 3 (1) of the Insurance Act of Singapore.



Brunei Darussalam (GIAB) has adopted informal self-regulation within the industry.

In The Philippines, the government agency mandated to enforce the provisions of the *Insurance Code of 1978* is the Insurance Commission, which is placed under the Department of Finance. Under the present set-up, the Commission is headed by the Insurance Commissioner whose duty is to ensure that all laws relating to insurance are faithfully executed. The Commissioner may issue rulings, instructions, circulars, and decisions in order to carry out the multi-faceted tasks. Another major concern of the Commission is the solvency monitoring of all insurance companies including reinsurance companies as per section 246 of the *Insurance Code*.

The Ministry of Finance (MOF) of Indonesia is the regulatory body for the insurance industry in Indonesia. A separate division within the Ministry headed by the Director of Insurance who reports to the Director General of Financial Institutions administers and monitors the performance of insurance companies in Indonesia. The Insurance Directorate has four departments, namely: licensing, operations, financial analysis and audit. The Insurance Council of Indonesia known as Dewan Asuransi Indonesia (DAI), is an umbrella organization for various insurance associations such as Association of Life Insurance of Indonesia (AAJI) and General Insurance Association of Indonesia (AAUI). It also acts in partnership with the Insurance Directorate in its day-to-day supervision of the Insurance market.



The general provisions relating to the supervision of the insurance business undertaken by the Minister is found in Chapter IX, Articles 10-19 of *Law No: 2 Year 1992*. Article 15 of *Law No: 2 Year 1992* concerning the insurance business provides the Minister with the relevant powers to examine, scrutinize and monitor the performance of insurance companies.

In Thailand, the supervisory function is carried out by the Department of Insurance under the Ministry of Commerce, which is headed by the Director General of the Insurance Department who is also the Insurance Commissioner.

In Vietnam, the Ministry of Finance is both the licensing authority as well as the supervisory authority. The Ministry is responsible for monitoring, providing guidance and ensuring the compliance of the relevant insurance laws.

In Cambodia, the supervising authority is the Ministry of Economy and Finance.



b. Powers of Supervisory & Regulatory Authorities

The powers of Bank Negara Malaysia as provided by the Act are as follows:

- Prohibition or restriction of the insurance business [s.6], the annuity certain business or the investment - linked insurance business [s.7] ;
- Imposition of the requirements and conditions in the carrying out of certain classes of insurance business [section 12(2)] ;
- Issuance of licenses for the insurance broking business or the adjusting business [section 13] ;
- Making recommendations to the Minister on the granting of licenses and any conditions to be imposed [section 16(1)] ;
- Examination of the document of the licensee [section 99] ;
- Collection of license fees paid by licensed insurers [section 21] ;
- Imposition of conditions on licenses as well as amendment of any conditions imposed [section 23] ;
- Specification of forms of license [section 24] ;
- Revocation of licenses[section 31] ;
- Provision of directions in relation to the investment of assets [section 45] ;
- Prescription of the margins of solvency in respect of each class of business [section 46(2)] ;



- Provision of approval in special circumstances and in such amounts for the granting of credit facility [section 49(1)(b)] ;
- Imposition of restrictions or prohibitions on certain class of properties which may be provided as security [section 52] ;
- Imposition of restrictions in terms of pledging or the charging any of its assets or securities [section 53] ;
- Provision of approval for the appointment of director, chief executive officer or manager [section 70(1)] ;
- Provision of approval for the appointment of auditor by the licensee [section 74(1)] and the appointment of actuary by life insurer [section 83] ;
- Appointment of investigating officer [section 103(1)] ;
- Inspection of particulars of reinsurance arrangements [section 57] ;
- Provision of directions to improve or restore the margin of solvency of a licensed insurer [section 58(2)] ;
- Control of proposal form, policy or brochure [section 149(1)];
- Petition for the winding up of a licensed insurer [section 58(4)] ;
- Institution of action against insurer, employee or director [section 59] ;
- Removal from employment or office an employee or director of the licensed insurer [section 59(3)(a)] as well as appointment of a person to advise the licensed insurer [section 59(3)(b)] ;



- Assumption of control of licensed insurer's property, business and affairs or appointment of a person to do so on behalf of the Bank [section 59(4)(a)] ;
- Powers of cancellation or issuance of additional capital after obtaining order from the Court [section 64] ;
- Provision of approval for the acquisition or disposal of aggregate of 5% interest in shares [section 67] ;
- Establishment and maintenance of the insurance guarantee scheme fund [section 173] as well as the investment [s. 174] and borrowing of moneys [s.175] in relation to the said fund ;
- Payment of claim under section 178 out of the insurance guarantee fund any time after a winding up order [section 182] ;
- Provision of approval to act as agent and insurance broker [section 184] ;
- Enforcement of the Act if a person defaults in complying with the provision [section 187] ;
- Power of issuance of guidelines relating to the conduct of business and affairs of the licensee [section 201] ;
- Power of making regulations for carrying into effect the object of the Act [section 202] .



The powers of The Monetary Authority of Singapore (MAS) as provided by the Act are as follows:

- c. Examination of persons (calling for or inspection of books, accounts and records) as per section 7(1) ;
- Registration of Singapore Insurers by the Authority as per section 8 ;
- Giving of order of cancellation of registration as per section 12 ;
- Retention of deposits in respect of any class of insurance business as per section 14(4) ;
- Requirement of the establishment of insurance funds as per section 17 and Policy Owners' Protection Fund as per section 46 ;
- Prescription of different margins of solvency under section 18(1) ;
- May direct the maintenance of assets in Singapore as per section 21(1) ;
- Control of form of proposals, policies and brochures as per section 25(1) ;
- Control of takeovers of insurers as per section 27(2) as well as arrangements affecting control of insurers incorporated in Singapore as per section 28(1) ;
- Control of substantial shareholdings of insurers incorporated in Singapore, as per section 29 ;



- Requirement of an insurer incorporated in Singapore to obtain information as to beneficial interests in shares of insurer as per section 30 ;
- Provision of approval of directors and principal officers of insurers as per section 31(1) ;
- Requirement of the furnishing of information for the discharge of its functions under the Act as per section 50 ;
- Inspection and investigation of affairs of the insurer which includes inspecting books, accounts and other documents, instituting an investigation on the business of the insurer and entry into the premises of the insurer as per section 40(1) ;
- Power of issuance of directions as per section 41(1) when the insurance business is conducted in a manner detrimental to public interest / policy owners or prejudicial to the interests of the insurer ;
- Presentation of petition for winding up of the affairs of an insurer, as per section 42(2) if the insurer has failed to comply with the provisions of the Act ;
- Issuance of directions to cease insurance business by reason of insolvency of funds maintained by the insurer as per section 43(1) ;
- Appointment of assistants to assist it in the exercise of its function and duties under the Act ;
- Exemption of persons or class of persons from all or any of the provisions in the Act as per section 52 ;



- Making of regulations for carrying into effect the objects of the Act and for prescribing anything as required by the Act as per section 64(1) ;
- Issuance of directions necessary for attaining the objects of the Act as per section 64(2).

Regrettably, in Brunei there is no legislation detailing FID powers of supervision of the insurance industry. It is expected that the proposed Insurance Act will provide and empower FID with the necessary sanction to monitor and regulate the insurance industry so as to streamline the practices therein.

Although this is the case, FID also issues administrative measures, which are generally applicable to the non-life insurance business that transact motor insurance including guidelines and directives regarding the appointment of motor insurance agents. GIAB administers these directives and guidelines.

However, in relation to off-shore businesses including insurance, the Brunei International Financial Centre (BIFC) was established to attract foreign business and investments. BIFC has introduced the *International Insurance and Takaful Order 2002*, which outlines detailed regulations governing those businesses.



In the Philippines, the powers of the Insurance Commissioner are provided under Chapter VIII of the *Insurance Code* of the Philippines as follows:

- Authority for the regulation of the issuance and sale of variable contracts as per section 232 (Sec.414) ;
- Provision for the licensing of persons selling variable contracts (Sec. 414) ;
- Issuance of Rules and Regulations governing variable contracts ;
- Issuance of rulings, instructions, circulars, orders and decisions to secure the enforcement of the provisions of the *Insurance Code* subject to the approval of the Secretary of Finance ;
- Imposition of fines or suspension or, after due hearing, removal of directors and/or officers and/or agents for any willful failure or refusal to comply with or for any violation of any provisions of the *Insurance Code* (Sec 415).
- Adjudication of claims and complaints involving any loss, damage or liability for which an insurer may be liable in relation to the insurance business and reinsurance business ;



- Issuance or renewal of certificates of authority, licenses and certificates of registration pursuant to the provisions of the *Insurance Code* ;
- Collection and receipt of fees (Sec 417) ; and
- Promotion of national interest.

The regulation of the insurance industry in Indonesia between 1964 and 1984 was dependant upon Presidential Decrees. However, in February 1992, legislation governing the Insurance industry was passed. Whilst this remains the law, amendments to the same are made by a series of regulations and decrees.

The powers of supervision undertaken by the Minister of Finance in Indonesia currently include:

- Financial soundness of loss insurance companies, life insurance companies and reinsurance companies, including solvency margins, retention sums, reinsurance, investments and technical reserves [Article 11(1)(a)] ;
- Prescription of terms and conditions of insurance policies, rate of premiums, claims settlements, requirements of underwriting expertise and other provisions relating to business conduct [Article 11(1)(b)];
- Requirement & Monitoring of statutory deposits [Decree No.481/KMK 017/1999 & 303/KMK 017/2000];
- Issuance of company licensing (Article 9) & requirements;



- Licensing of intermediaries including reinsurance, brokers and actuarial consultants [Article 9 & Regulation No. 63-1999].

With regard to Thailand, the Insurance Commissioner has the power under Section 37 of the *Non-Life Insurance Act B.E.2535 (1992)* and Section 38 of the *Life Insurance Act B.E.2535 (1992)* to prescribe to the insurance company the following matters to be complied with:

- i. Collections of premiums ;
- ii. Appraisal of value of assets and liabilities of the company ;
- iii. Reinsurance ;
- iv. Classification of categories of expenses ;
- v. Wages or commissions rates for agents and brokers ;
- vi. Surrender value rates of the Insurance policy and conditions of payment (applicable only to life) ;
- vii. Allocation of reserves against risk into categories (applicable only to the non-life business) ;
- viii. Forms, dimensions, lettering and text of power of attorney of the company including documents showing receipt of money by the company.

In addition, the Insurance Commissioner of Thailand has the following powers under various sections of the *Non- Life Insurance Act*:



1. For the purpose of the supervision of fire insurance, the Insurance Commissioner has the following powers:
 - (a) To order the Insurer to terminate the Insurance contract where the Insurer is unable to verify the value of the property insured (S.40);
 - (b) To order the Insurer to reduce the sum Insured where the value of the property insured is less than the sum insured [S 41];
 - (c) To order the Insurer to suspend payment in instances where a peril has occurred to the Insured property and there are reasonable grounds to suspect that peril was caused by an act of bad faith of the Insured or beneficiary under the Insurance policy [S.43].
2. To order the insurance company to remove directors/managers where the operation of the company is such that damage is caused to the insured / public.

In instances where the company fails to remove such persons or removes but does not replace them, the Insurance Commissioner has the power to appoint replacements in relation to the persons removed with the consent of the Minister of Commerce [S.53 *Non Life Insurance Act* and S.54 *Life Insurance Act*].



3. To order the seizure and attachment of properties of persons who commit either a civil or criminal offence in the operation of the insurance company [S.110 *Non Life Insurance Act* and S.116 *Life Insurance Act*].

The responsibilities of the Ministry of Finance of Vietnam for the state management of the Insurance business as laid out in *Article 46* of the *Decree 42* are as follows:

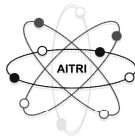
- Providing guidance on the implementation of legal documents governing the insurance business, formulating policies and regimes relating to the insurance business, strategies, master plans, plans and policies on the development of Vietnam's insurance market.
- Granting and withdrawing of licenses for the establishment and operation of insurance enterprise, insurance brokerage enterprise and licenses for the establishment of the representative offices of foreign insurance enterprises.
- Issuing, approving and providing guidance on the implementation of terms and conditions of insurance, tariffs and insurance commissions.
- Taking necessary measures to ensure that insurance enterprises meet the statutory financial requirements and fulfill commitments to the insurance buyer.



- Organizing the information regarding and providing forecast of the insurance market in Vietnam.
- Undertaking international cooperation in insurance business.
- Approving overseas activities by insurance enterprise and/or insurance brokerage activities.
- Administering the operation of representative office of foreign insurance enterprise and foreign insurance brokerage enterprise in Vietnam.
- Organizing the training and development of managerial and technical staff for the insurance industry.
- Inspecting, monitoring and supervising insurance business, dealing with complaints, claims and breaches of insurance business laws.
- Organizing the education and dissemination of insurance business laws.
- Setting up the organizational structure and training staff to undertake State administration of the insurance business.

In Cambodia, the powers of the Ministry of Economy and Finance include the following:

- Issuance and revocation of licenses ,
- Appointment of insurance controlling officers ,
- Imposition of fines for breaches of the laws ,
- Approval of policy wordings and rates ,
- Monitoring of solvency margins.



III. Laws & Adjudication

a. Laws & Regulations Governing Selected ASEAN countries

In Malaysia, the following laws deal with the insurance business:

1. Insurance Act 1996 , (Act 553) ;
2. Insurance Regulations ,1996 ;
3. Insurance (Exemption) Order, 1999 ;
4. List of Licensed Insurers 2000 ;
5. Insurance (Exemption) (No 2) Order 2001 ;
6. Insurance (Financial Guarantee Insurance) 2001;
7. Takaful Act 1984

In Singapore, the following laws impinge on the Insurance business:

1. Insurance Act (Cap.142) ;
2. Financial Advisors Act;
3. Insurance (Amendment) Act 2001;
4. Insurance (Exemption) Regulations 2002;
5. Insurance (Exemption and Provisions Applicable for Direct Life Insurers) Regulations 2002;
6. Insurance (Protection and Indemnity Clubs) Regulations 2002;



7. Insurance (Amendment) Act (Commencement) (No. 2) Notification 2002.

In Brunei, the following laws impact on the insurance business:

1. Companies Act, Chapter 39;
2. Motor Vehicle Insurance (Third Party Risks) Act, Chapter 90;
3. Workmen's Compensation Act, Chapter 74;
4. Administrative Measure of 1995;
5. International Insurance and Takaful Order & Regulations 2002.

Further, the General Insurance Association of Negara Brunei Darussalam (GIAB) has issued a General Insurance Agents' Registration Regulation to regulate, supervise and monitor agents.

The Insurance Code of the Philippines is American in origin, having been principally patterned on the Civil Code of California. This being the case, even today, general principles relating to Insurance in America , particularly in the State of California, may find applicability. The following laws are currently related to the Philippine insurance business:

1. Insurance Code 1978 (Presidential Decree No. 1460 which superseded Presidential Decree No. 612),



2. Special laws, and partly in the provisions of the Civil Code, namely Articles 749 and 2012 on void donations, Article 2011 on the applicability of the Civil Code, Articles 22021-2027 on life annuities, and Article 2186 on compulsory motor vehicle liability insurance.
3. Property Insurance Law (Republic Act No. 656 as amended by Pres. Decree No. 245) which deals with government property.
4. Article 2011 of the Civil Code states that if the Insurance Code does not specifically provide for a particular matter in question, the provisions of the Civil Code regarding contracts shall govern. As to the hierarchy of laws, therefore, insurance contracts are governed primarily by the Insurance Code and subsidiarily by the Civil Code. In case of conflict, the Insurance Code will apply.



The main legislation governing the insurance industry in Indonesia came into force with the enactment of Laws No.2, Year 1992 of the Republic of Indonesia, which has been subject to various amendments through a series of regulations, rules and decrees. Prior to this enactment, the regulatory framework was founded and depended upon Presidential Decrees³⁶.

Changes in regulation introduced by the government to regulate the business conduct of Insurers, Reinsurers and other insurance supporting businesses, amongst others, include: -

- Revision in the minimum capital requirement ;
- Changes to foreign investment requirements ;
- Licensing requirements;
- Revision to company licensing requirements ;
- Licensing of intermediaries ;
- Reinsurance support and guidelines, in particular, rules governing security to be provided by reinsurers in cases where reinsurance is placed abroad ;

³⁶ Law of the Republic of Indonesia No.2, Year 1992 on Insurance Business, Government Regulations of the Republic of Indonesia No. 73, Year 1992 on Insurance Business Conduct, Government Regulation of Indonesia No.63, Year 1999 concerning amendment Government Regulation No.73 of Year 1992, Decree of Minister of Finance of the Republic of Indonesia No. 223/KMK.017/1993 on Licensing of Insurance and Reinsurance Companies, Decree of the Minister of Finance of the Republic of Indonesia No. 481/KMK.017/1999 on Financial Soundness of Insurance and Reinsurance companies (replacement of the Decree of the Minister of Finance No.224/KMK.017/1993, Decree of the Minister of Finance of the Republic of Indonesia No. 225/KMK.017/1993 on business conduct of Insurance and Reinsurance companies, Decree of Minister of Finance of the Republic of Indonesia No. 226/KMK.017/93 on Licensing of Business Conduct of Insurance supporting companies and Decree No. 303/KMK.017/2000 & Decision No. 5314/LK/1999.



- Key Performance indicators relating to financial soundness and management information reports.

On the other hand, the Presidential Decrees provide, among others, rules and guidelines for the following:-

- Minimum self retentions ;
- Reinsurance ;
- RBC (Risk Based Capital) of on solvency ;
- Capitalization requirement for new insurance companies ;
- Liabilities and technical reserves ;
- Statutory deposits including time deposits.

As in Malaysia and Singapore, the *Consumer Protection Act* has also been introduced in Indonesia to safeguard and protect the interest of consumers.

In Thailand, the applicable insurance laws are:

1. Non Life Insurance Act B.E 2535 (1992) ;
2. The Protection for Motor Vehicle Accident Victims Act B.E. 2535 (1992) ;
3. Life Insurance Act B.E 2535 (1992) .

In Vietnam, the following laws deal with the Insurance business:

1. Law No 24/2000/QH10 ;
2. Decree No 42/2001/ND-CP ;
3. Decree No 43/2001/ND-CP ;
4. Circular No 71/2001/TT-BTC



In Cambodia, the following laws deal with the Insurance business:

1. Insurance Law Act 2000 (6th July 2000) ;
2. Sub Decree on Insurance 2001 (6th October 2001).

b. Alternative Dispute Resolution (ADR)

In the interests of the public, many governments in the ASEAN region have set up formal arbitration forums.

In Malaysia, the existence of the *Arbitration Act 1952* statutorily provides for arbitration proceedings. In addition, the Insurance Mediation Bureau (IMR) was established by the insurance industry in 1991 to provide independent and impartial methods of resolving disputes between its members and policyholders up to a value of RM100, 000. The independence of the mediator is assured by the IMR Council whose membership consists of people representing public and consumer interests as well as representatives of the Bureau. Although insurers bind themselves to the mediator's decision, policyholders are free to accept or decline the ultimate decision and to seek legal redress. No appeal or discovery of documents lies from the mediator's decision.



In Singapore, the Insurance Dispute Resolution Organization (IDRO) was set up by the insurance industry as an alternative and independent channel for resolving disputes. It acts as a one-stop service center to insurance-related enquiries and complaints. It was launched on 27 February 2003 to replace the functions of the Insurance Ombudsman Bureau and the Tribunal for Motor Third Party Property Damage Claims.

The board of IDRO comprises representatives from the Consumers Association of Singapore (CAS), the Automobile Association of Singapore (AAS), the General Insurance Association of Singapore (GIA) and the Life Insurance Association of Singapore (LIA) and is chaired by a retired Supreme Court Judge.

The limits of IDRO jurisdiction are as follows:

- Up to S\$100,000 for insurance disputes between insured and insurers for both life and general insurance matters;
- Up to S\$50,000 for third party claims ; and
- Up to S\$10,000 for claims relating to market conduct and service standards.

In the case of any dispute, insurance companies are bound by IDRO findings whilst consumers are at liberty to pursue other resolution options at their discretion.

Additionally, Singapore has the Motor Insurers' Bureau of Singapore (MIB) which was set up to deal with situations in which



either the negligent driver(s) cannot be traced or has invalid insurance policies. MIB then undertakes to compensate the victim (or his/her family) for injuries or death up to the amount required by law.

However compensation is not provided for property damage. MIB is financed by contributions from all registered insurers in Singapore.

In Brunei, the *Brunei Arbitration Order* incorporates the *Arbitration Act Chapter 173*. Parties are free to enter into an agreement to settle disputes through arbitration. More often than not, insurance policies issued contain arbitration clauses. FID is usually called upon to mediate disputes between parties as there is no insurance Ombudsman. These disputes are generally resolved in an informal and moral suasion manner.

In the Philippines, arbitration laws allow voluntary arbitration between parties to a contract. In addition, in respect of dispute resolution through mediation, the Insurance Commissioner has powers to decide on matters involving liabilities of up to P100,000 in any single risk. However, this avenue is seldom used. In Brunei too, disputes are seldom resolved through ADR even though there is in existence the *Brunei Arbitration Order 1993* which incorporates the *Arbitration Act Chapter 173*. Little actual arbitration work is carried out as legal advice is normally given to incorporate a foreign jurisdiction arbitration clause.

The Indonesian legal framework, amongst others, provides other alternative dispute resolution forums such as arbitration.



Although decisions reached at arbitration is binding on parties involved, it is not a popular resolution forum. *Badan Pra Arbitrasi* (under the supervision of the Insurance Council of Indonesia – Dewan Asuransi Indonesia) acts as a pre-arbitration committee for all disputes. In addition, a governmental agency known as *Badan Arbitrasi Nasional Indonesia* (BANI) administers arbitration proceedings. Notwithstanding this, Dewan Asuransi Indonesia also acts as a complaints bureau and often handles disputes relating to insurance policies and claims. Apart from laws relating to claims settlement practices mentioned hereunder, it would appear that, by far and large, claimants are guided by the terms and conditions of their insurance policies.

Whilst there does not appear to be a broad framework for claims settlement and practices as seen in Malaysia or Singapore, Indonesia's practices in this respect appear to be entrenched in *Chapter V Articles 23 of Government Regulation No. 73 Year 1992* read in conjunction with Articles 14 and 15 of the *Decree No. 225/KMK017/1993*. These provisions outline claims settlement including the appointment of an intermediary in assisting in the process of resolving claims. In addition, it further enlists circumstances, which may constitute what is categorized as "hampering claims settlement and claims payment" as stipulated in Article 23 as a guide in the claims management and handling process.

There are no specific provisions on Alternative Dispute Resolutions in Vietnam and Cambodia.



c. Enforcement of Laws & Limitation Period

Enforcement of Laws (Jurisdiction, Reciprocity)

In view of the reciprocal enforcement of the *Commonwealth Judgement Act* between Commonwealth countries, judgements awarded by Superior Courts³⁷ in Malaysia would be enforceable in any of the Commonwealth countries including Singapore and vice-versa provided the same is registered at the respective Superior Courts. However, at present, all claims in Malaysia involving death or bodily injury come within the jurisdiction of the Session Courts, which is a Subordinate Court. This is likewise in Singapore where they are heard in a similar way by the District Courts.³⁸

Brunei's legal system is generally based on the English model with a combination of common law, statutes and principles of equity. Complementing this is the Royal decree issued by the Sultanate. Muslim law also applies in parallel and takes precedence over specific areas concerning Muslims. In Brunei, claims arising from death or bodily injuries to third parties are filed and heard in Subordinate and Intermediate Courts (a tier equivalent to the Session Courts in Malaysia and District Courts in Singapore) and the

³⁷ Superior Court judgments are defined as judgments of the High Court and above.

³⁸ The lower courts are not Court of Records; therefore, judgments obtained in lower courts cannot be registered in another Commonwealth country.



High Court. Given this, judgments of the Subordinate and Intermediate Courts obtained in respect of these claims are not enforceable by reason of reciprocity.

In The Philippines, court judgements awarded by other countries are not enforceable. Only judgements awarded by the courts of The Philippines are acceptable in the Philippine jurisdiction.

In Indonesia, court judgments awarded by other countries are not enforceable. Moreover, Indonesia, like The Philippines is not a signatory to the reciprocal arrangement for the purposes of enforcing judgments. The scenario in Indonesia in terms of the enforcement of laws, unlike in Malaysia or Singapore, is fundamentally non-existent. With the absence of any statutory obligation, compulsory insurance and even a Road Traffic Act, the public is not compelled to purchase any form of motor insurance cover, be it for their vehicles or even for third party bodily injury. However, after the reform era in 1997, many improvements have been made in law enforcement. Chapter 32 Law No.14 Year 1992 dealing with Road Traffic and Transport provided that each public transport shall be insured: either the vehicle itself or for any loss suffered by third party caused by the vehicle's operation.

Notwithstanding this, P.T. Jasa Raharja, a state-owned company administers two main insurance programs: (a) Insurance for public transport passengers in the event of traffic accidents under the Law No. 33 Year 1964 on the Mandatory Insurance Fund for Passenger Accidents; and (b) Third party legal liability insurance against motor vehicle accidents under the Law No.34 Year 1964 on



the Fund for Road Traffic Accidents. The benefits under the said laws are provided in the form of reimbursements for medical treatment and compensation for invalidity and death. Hence, the laws do provide for a personal accident cover scheme for vehicle drivers and their passengers within the cost of the annual driving license and, similarly, this is extended to cover passengers of public transport wherein the cost is incorporated into their tickets. Whilst claims are administered and settled by this state-owned company, the public largely remains unaware of their basic legal rights.

The Indonesian legal system has evolved over the years through a system introduced during their period of colonization by the Dutch together with a mixture of unwritten indigenous and Islamic laws respectively. Whilst, interestingly, the concept of negligence is accepted, strictly liability and punitive damages to date remain unrecognized and the enforcement of court judgments awarded by other countries, unlike that which is seen between Malaysia and Singapore, is neither recognized nor enforceable.

Singaporean accident victims may lodge their claims against Malaysian insurers. The General Insurance Association of Malaysia may render assistance should there be any difficulty in respect of such claims. Similarly, claims against Singaporean insurers can be lodged by Malaysian accident victims and the General Insurance Association of Singapore will assist claimants by liaising with the General Insurance Association of Malaysia.



In Vietnam, Thailand and Cambodia, the legislation provides that only decisions made by the courts in their respective countries are recognised.

Limitation Period

There are statutory rules limiting the time within which civil actions must be brought in respect for claims arising from death or personal injury. However, it is apparent that periods stipulated vary based on the types of claim and applicable jurisdiction.

In West Malaysia, the limitation period for an action founded on tort is governed by the *Limitation Act 1953* (Act 254). The provisions therein provide an aggrieved party to institute legal proceedings within 6 years from the date of accrual of cause of action. Whereas in East Malaysia, the *Limitation Ordinance* provides a period of 3 years for the same cause of action. Additionally, the *Civil Law Act 1956* (Act 67) has further classified death claims into two categories with differing limitation periods:

- Claims filed by dependants of deceased third party³⁹ – 3 years from the date of accrual of cause of action.
- Claims filed by the estate (non dependants) of deceased third party⁴⁰ – 6 years from the date of accrual of cause of action.

³⁹ Section 7 of the *Civil Law Act 1956* (Act 67)

⁴⁰ Section 8 *Civil Law Act 1956* (Act 67)



In Singapore, the *Limitation Act (Chapter 163)* provides that an action shall not be brought after the expiration of 3 years for such claims. The position in Brunei appears to be the same as in Singapore, bearing in mind that both their respective legislations governing the limitation period is based on the United Kingdom model.

In Brunei, the limitation period is akin to that of the United Kingdom: three years in the case of a claim for personal injury and six years for property damage claims.

In The Philippines, claims relating to bodily injuries must be made within six months from the date of the accident; otherwise the claim will be deemed waived. The Insurance Code also provides provisions for action on suit for recovery of damage due to injury to be brought with the Insurance Commissioner or the Courts. However, this action must be filed within one year from the denial of the claim.⁴¹

In Indonesia, originally civil cases were deemed time barred after 30 years from the date of an occurrence, which appears to be an exceptionally long period compared to other ASEAN countries. There are, however, a few known exceptions to this rule; for instance, commercial cases have a limitation period of 5 years. However, the qualification and applicability of this and other limitation periods, if any, is not known. Recent developments have indicated a

⁴¹ Sec 384 of the Insurance Code



move towards setting a one year limitation period for claims relating to bodily injuries.

In Vietnam, vehicle owners must make their claims within one year from the date of the accident. *Decision 23/2003/QB-BTC* also provides that the statute of limitation for initiating lawsuits regarding insurance compensation is 3 years from the date the insurance enterprise pays or refuses to pay the indemnity.

In Thailand, victims are required to submit their application for preliminary compensation within 180 days from the date the injury occurs and the insurers have to make the payment within 7 days of receiving the application. The legislation, however, does not stipulate any limitation period in respect of claims for sums above the preliminary compensation.

In Cambodia, the Insurance law states that the statute of limitation must be stated in the insurance policy but shall not exceed 3 years from the date of the occurrence of the risk.



IV. Licensing, Management & Operations

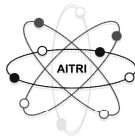
a. Licensing requirements

In all Asian economies, the establishment of insurance companies is subject to the license granted by the insurance supervisory/regulatory authority. Additionally, there are further requirements such as minimum capital and the submission of business plan from the said companies for the first three years.

Both the Malaysian and Singapore Acts have ascertained the modes of conducting the insurance business in the respective countries.

In Malaysia, section 9(1) provides that a person can carry on the insurance business, insurance broking business or adjusting business only if the person is licensed under the Insurance Act 1996.

The Singapore Insurance Act similarly provides that a person can only carry on any class of insurance business in Singapore if he is registered by The Monetary Authority of Singapore (MAS) under this Act in respect of that class of business i.e., he is a registered insurer in accordance with section 3(1).



In Brunei, licensing requirements are satisfied by way of the issuance of a Letter of Approval from the Ministry of Finance.

In The Philippines, a certificate of authority from the Insurance Commission is required before an insurance company can transact any insurance business in the Philippines.⁴² Under section 184 of the Insurance Code, the term “insurer” or “insurance company” includes all individuals, partnerships, associations or corporations including government owned or controlled business but exclude mutual benefit associations. The Code further provides that a person, partnership or association of persons can only transact an insurance business as an agent of a person or corporations authorized to do the business of insurance in The Philippines unless in possession of the capital and assets required of an insurance corporation and invested likewise. In the alternative the Commissioner had granted a certificate of authority for that purpose.⁴³

In Indonesia, any person or legal entity that wishes to carry out insurance business activity must obtain a license from the Minister of Finance⁴⁴. Prior to obtaining such a license, it is imperative to comply with the requirements stipulated in Article 9(2) of *Law No. 2 Year 1992*. This requirement also applies to any

⁴² Section 187 of the Insurance Code.

⁴³ Section 186 of the Insurance Code.

⁴⁴ Chapter VIII Article 9 Law No.2 Year 1992



company which has foreign ownership.⁴⁵ Any insurance broker company is prohibited from placing insurance coverage with an insurance company which does not have a license⁴⁶. It is to be noted that companies which carry out social insurance programs are not subjected to these provisions (*Law No.2 of Year 1992*).

In Thailand, the shares of the company for both life and non-life must have a par value of not more than 100 baht. The amount of shares held by Thai nationals must not be less than $\frac{3}{4}$ of the total number of shares sold and the number of directors must not be less than $\frac{3}{4}$ of the total number of directors. The Articles of Associations must not have any restrictions regarding the transfer of shares.

In Vietnam,⁴⁷ the licensing conditions shall include

1. Having sufficient amount of paid- up chartered capital ;
2. Having application documents duly prepared in accordance with the law ;
3. The proposed corporate form and charter being in conformity with relevant laws ;
4. Managers and executives having managerial capacity and professional skill on insurance.

In Cambodia⁴⁸, every insurance company must be registered in the commercial register and be subject to the supervision and

⁴⁵ Chapter VIII Article 9(3) Law No.2 Year 1992

⁴⁶ Chapter IX Article 12 Law No.2 Year 1992

⁴⁷ Article 63 of Law No. 24/2000/QH 10

⁴⁸ Article 43 of Royal Kram No. NS/RKM/0700/02



control of the Ministry of Economy and Finance and be licensed⁴⁹ by either the Royal government for state owned or controlled companies or the Ministry of Economy and Finance for private insurance companies.

(b) Licensing Procedures

Only Singapore and Indonesia explain the details of their licensing procedures. In Singapore, a certain procedure is required before the submission of formal application by a new applicant i.e., (i) submission of its business plan for the Authority's assessment and (ii) meeting the Authority to discuss the proposed insurance operation. Thereafter, the applicant would formally be able to apply to the Authority using the prescribed application form and a reply will be obtained within one month from the date on which a complete application has been received. A letter of in-principle approval specifies the condition that the applicant must accept before it can carry on insurance business in Singapore. The applicant has to complete the following registration requirements within 6 months: (i) registration under the Companies Act, (ii) lodgment of statutory deposits (or bank covenant) of SG\$ 500,000 for each class of business except for captives, and (iii) payment of the annual fee. Once this process is completed, final approval can be given within a week.⁵⁰

⁴⁹ Article 46 of Sub Decree on Insurance

⁵⁰ OECD Proceedings, 1999 on Insurance Regulation and Supervision in Asia, p 49



As there is no insurance legislation in force in Brunei, the analysis for this portion of the study will be reserved.

The licensing application procedures for insurance companies in Indonesia are divided into two stages, namely, principal approval and business approval. The application for principal approval shall be submitted to the Minister together with the following documents: -

- Article of incorporation which has been made and signed by Notary Public ;
- Structured of organization plan ;
- Company's plan on the expert employment ;
- Company's general working plan ;
- In cases of a joint venture company, a draft joint venture agreement ;
- Insurance program to be released into the market together with its reinsurance plan ;
- Copy of time deposit placements as stated in Article 7(1).

Principal approval was valid for a period of one year. However amendments have been made in this regard based on Government Regulation No.63 Year 1999, whereby the licensing application procedures for insurance companies have been simplified by omitting the above said principal approval stage.



The application for business license, which is also submitted to the Minister of Finance, shall be incorporated with the following documents⁵¹: -

- Article of incorporation of company, which has been legalized by competent authority;
- Organizational structure of the established company;
- Evidence of fulfillment of paid up capital;
- Evidence of expert employed by the company;
- Company workings program including the list of any preparations which have been made;
- For joint venture companies, a joint venture agreement signed by the respective party;
- Model of policy and insurance program to be released into the market including premium formula and reinsurance back up;
- Retrocession agreement;
- Agency contract by and between the insurance agent and insurance company.

Chapter III Part Two Article 10 provides that, if within the period of 3 months after the date of business license, the company



concerned has not commenced its business activities, the Minister of Finance reserves the right to revoke the business license. The granting or rejection of the license application must be given not later than 30 days after complete application is received. However, in the case of rejection, it must be intimated in writing.

Details in relation to the compliance requirements above are enumerated in the Decree of the Minister of Finance of The Republic of Indonesia *No: 426/KMK.06/2003*. A further Decree of the Minister of Finance of The Republic of Indonesia *No: 425/KMK.06/2003* stipulates the licensing requirements for insurance supporting business companies and their general conduct.

In Thailand, after having registered as a limited or limited public company and placing a security deposit as required by the Insurance Commissioner and establishing a capital fund of not less than 10 % of the net premium received but not less than 30 million baht for non life and 50 million for life insurance business, the company will then have to apply for a license to engage in insurance business within 6 months of the registration.

In Vietnam⁵², application documents shall include:

- Application form for license for establishment and operation ;
- A draft charter ;
- A business plan for the first 5 years ;
- List of curriculum vitae and documents evidencing the qualifications and skills of executives and managers;

⁵¹ Chapter III Part Two Article 9(5) Law No. 73 Year 1992



- Amount and mode of capital contributions together with list of shareholders owning more than 10%;
- Terms and conditions, premium rates and commission rates of insurance products proposed to be carried out.

Additionally, *Point 1 of Circular No. 71/2001/TT-BTC* further states:

“1.1. Application documents for a license of an insurance enterprise shall be made in accordance with article 64 of the Law on Insurance Business. Application documents for a license of an insurance brokerage enterprise shall be made in accordance with clauses 1, 2, 3 and 4 of Article 64 of the Law on Insurance Business.

1.2. The application documents for a licence of insurance enterprise and insurance brokerage enterprise shall be made in 3 (three) sets including 1 (one) original and 2 (two) duplicate copies. Application documents for a licence of a foreign-invested insurance enterprise and/or an insurance brokerage enterprise shall be made in 3 sets including 1 (one) original and 2 (two) duplicate copies; each set of application documents includes a Vietnamese version and an English version. Organisations and individuals applying for a licence (hereinafter referred to as *investor(s)*) shall be responsible for the accuracy of the application documents.

1.3. An application must be prepared in accordance with the standard form provided in Appendix 1 (attached to this Circular) and must be signed by a legal representative or an authorised person of the investor.

⁵² Article 64 of Law No. 24/2000/QH 10



1.4. In addition to documents stipulated above in point 1.1., the application documents must, depending on the specific corporate form of the proposed enterprise also include the following *[supplemental-y]* documents:

1.4.1. For state-owned insurance enterprises and state-owned insurance brokerage enterprises:

- a) A written approval by the body deciding the applicant's establishment allowing the enterprise to conduct insurance business and insurance brokerage business;
- b) Justification of the sources of capital to be applied for the establishment of the insurance enterprise/insurance brokerage enterprise as certified by competent agencies.

1.4.2. For joint stock insurance companies, joint stock insurance brokerage companies, limited liability insurance brokerage companies private insurance brokerage companies, and insurance brokerage partnerships:

- a) Minutes of investors' meetings on the establishment of joint stock insurance companies, joint stock insurance brokerage companies, limited liability insurance brokerage companies, private insurance brokerage companies, and insurance brokerage partnerships;



- b) Verification by competent agencies of the legitimacy of the company's establishment capital.

1.4.3. For foreign-invested insurance enterprises and insurance brokerage enterprises:

- a) Charter of the foreign partner to joint ventures or charter of the foreign investor (in case of wholly foreign-owned insurance enterprise and insurance brokerage enterprise);
- b) Operation licence of the foreign partner to joint ventures or of the foreign investors (in case of wholly foreign-owned insurance enterprise and insurance brokerage enterprise);
- c) Written certification of competent authorities in foreign countries allowing the foreign partner to contribute capital to set up a joint venture or allowing the investor to establish a wholly foreign-owned insurance enterprise and insurance brokerage enterprise in Vietnam. If the laws of the country where the foreign partner or investor is headquartered do not require such a written approval, a proof of the absence of such a statutory requirement must be given;
- d) Joint-venture insurance, enterprise or joint venture insurance



brokerage enterprise must present a written permission by a competent authority in Vietnam for the Vietnamese partner to participate in the joint venture;

- e) Justification of the source of capital to be contributed by Vietnamese partner as certified by a competent authority.”

Further, all companies have 12 months to complete all necessary procedures to commence business from the date the license is issued and make an announcement in 5 consecutive issues of daily newspapers circulated nationwide and in the localities of its head office within 30 days of the issuance of license⁵³.

In Cambodia⁵⁴, every company has to submit its application form to the Ministry of Economy and Finance to obtain a license. The application needs to be submitted together with the following documents:

1. Application form in writing indicating the business class, registered capital, and business scope of the insurance company to be established;
2. Statute of the insurance company to be operated;
3. Economic and financial reports of first three accounting periods;
4. List of shareholders' names and table of each shareholder's share;

⁵³ Article 8 of Decree 42/2001/ND-CP

⁵⁴ Article 47 of Sub Decree on insurance



5. Curriculum vitae of key officers and managers to be appointed and criminal records of such officers and managers;
6. Principles and operation project;
7. Information of locations determined by the company to do the business;
8. Samples of the insurance policy, extra-contract, and printed letters used for distribution to the general public or for advertisement relating to each operation; and
9. Other necessary documents according to each insurance business class, required by the Ministry of Economy and Finance.

Article 48 of the sub decree further states:

“Every application for license of any foreign insurance company shall be attached therein with other documents in addition to the documents specified in point 1-9 of the preceding Article. Such documents include:

1. Balance sheet and profit and loss account of last three accounting periods;
2. Letter of appointment of legal entity or natural person qualified to be a proxy;
3. Information of place where the foreign company requested to locate its branch office in the Kingdom of Cambodia;
4. Translation of a certificate issued by competent authorities



that the company has legally operated in the home country.”

All insurance companies have to register with the commercial register within 6 months from the date of receiving the license. Failure to do so without valid reasons will result in withdrawal of the license.⁵⁵

c. Licensing/ Registration Authority

There is a variation in terms of authorities that are delegated powers in this respect. In Malaysia, this authority to issue licenses is vested in two different authorities whilst in Singapore it rests solely with a single authority.

The Minister (charged with the responsibility for finance) is designated as the licensing authority that is responsible for the issue of licenses to carry out insurance businesses in Malaysia according to section 13(1) of the Insurance Act 1996. Bank Negara, on the other hand, has been authorized under section 13(2) of the same Act to issue licenses to carry on insurance broking business or adjusting business.

In Singapore, MAS has the absolute authority to register an applicant as direct insurer, reinsurer or captive insurer according to section 8(3) of the Insurance Act. The Insurance Intermediaries Act 1999, which came into effect on 31 December 1999, also requires any person wishing to carry on business as an insurance broker in

⁵⁵ Article 65 of Sub Decree on insurance



Singapore to be registered with MAS. The Insurance Intermediaries Act was recently repealed on October 1, 2003 when the Financial Advisors Act (Cap.110) came into effect. The new act deals with life insurance intermediaries, while requirements for general intermediaries have been absorbed into the Insurance Act (s.35M to s.35ZO).

Unlike in Malaysia, the insurance business in Brunei can be carried out through a private limited or a public company as defined in the Companies Act, Chapter 39.

In The Philippines, the Insurance Commissioner has the absolute authority for the issuance or renewal of certificates of authority (to insurance companies,⁵⁶ servicing insurance companies⁵⁷ and professional reinsurers⁵⁸), licenses (to agents, brokers, reinsurance brokers and adjusters)⁵⁹ and to provide for the licensing of persons selling variable contracts.⁶⁰ In addition, the Insurance Commissioner also has the power to issue certificates of registration for resident agents appointed by foreign insurers or brokers not authorized to do business in The Philippines.⁶¹ The Commissioner also issues licenses to rating organizations⁶², certificates of registration to act as actuaries in any life insurance company or in any mutual benefits associations authorized to do

⁵⁶ Section 187 of the Insurance Code

⁵⁷ Section 417(1) of the Insurance Code

⁵⁸ Section 280 of the Insurance Code

⁵⁹ Section 299, Section 311, Section 326 of the Insurance Code

⁶⁰ Section 414 of the Insurance Code

⁶¹ Section 314 and 315 of the Insurance Code

⁶² Section 341 of the Insurance Code



business in The Philippines⁶³. The Commissioner also has the authority to register non-life company underwriters.⁶⁴

In Indonesia, the Ministry of Finance is the sole authority that is responsible for the issuing of licenses to insurance companies operating within the said country.

In Thailand, the Minister of Commerce is the sole authority for issuing the license to insurance companies and the Insurance Commissioner is responsible for issuing the licenses to insurance brokers and agents.

In Vietnam, the Ministry of Finance is the sole authority to issue establishment and operation licenses to Insurance Enterprises and Insurance Brokerage Enterprises.

In Cambodia, the authority that is responsible for licensing Insurance Companies, Insurance Agents, Insurance Brokers and Insurance Risk Inspection companies is the Ministry of Economy and Finance.

d. Legal Form Requirements

ASEAN countries have commonly some form of provisions in the respective legislations that establish the criteria to conduct the insurance business.

⁶³ Section 336 of the Insurance Code



In Malaysia, section 14 of the Act has provided that only a public company is eligible to apply for license to carry on the insurance business or insurance broking or adjusting business. License to carry out business as a professional reinsurer will be issued only if it is a body corporate. Section 22 imposes another requirement, which is, the licensee must be a member of an association of life insurers, general insurers or adjusters. Additional conditions of license may be imposed or amended by the Minister or Bank Negara in accordance with section 23.

In Singapore, the requirements before registration has been established under section 9(1): the applicant has to be a company as defined in the *Companies Act (Cap.50)* or a company incorporated outside of Singapore which has an established place of business in Singapore or is a society registered under the *Co-operative Societies Act (Cap.62)*. MAS may also impose additional conditions or vary the conditions of registration at any time in accordance with section 10(1) of the said Act.

In The Philippines, Sec 185 of the *Insurance Code* has provided that “insurance corporations” are corporations formed or organized to render any persons or other corporations harmless from loss, damage or liability arising from any unknown or future contingent event, or to indemnify or to compensate or to guarantee the performance of or compliance with contractual obligations or the payment of debts of others. The provisions of the corporation law

⁶⁴ Section 318 of the Insurance Code



are applicable to all insurance corporations engaged in the insurance business in the said country.

No person, partnership or association of persons shall transact any insurance business in The Philippines unless:⁶⁵

- (a) The company has similar capital and assets required of an insurance corporation doing the same kind of business in The Philippines and invested in the same manner;
- (b) The commissioner has granted him or them a certificate of authority to transact insurance business in The Philippines, having complied with all the provisions with the law or the relevant relating to doing insurance business;
- (c) The company concerned has fully paid all the fees prescribed;
- (d) Specific documents are filed with the Commissioner before engaging in insurance in the Philippines. These documents consist of certified copies of the latest audited financial statements showing the condition and affairs of the company; a copy of the Articles of Incorporation and by-laws and any amendments thereto; and for companies

⁶⁵ Section 186, Section 187 of the Insurance Code



incorporated under any laws other than those of the Philippine laws, these must be duly registered in the mercantile registry by the Securities and Exchange Commission.⁶⁶

There are two types of presence that are allowed in The Philippines. They are:

- (a) Domestic insurance companies – life, non-life, mutual; and
- (b) Foreign insurance companies – life, non-life.

In Indonesia, the insurance business may only be carried out by legal entities and each of which shall be in the form of state-owned company, cooperative, limited liability company and mutual company. However, the actuarial consultant business and insurance agent business may be carried out by any sole-proprietor firm:
Chapter VI, Article 7 of Law No.2 Year 1992

In Thailand, Section 6 of the *Non Life Insurance Act* and Section 7 of the *Life Insurance Act* stipulate that the insurance business can only be undertaken by a limited company under the provisions of the *Civil and Commercial Code* or a limited public company under the law of Limited Public Company.

⁶⁶ Section 189 of the Insurance Code



In Vietnam, Article 59 of *Law No. 24/2000/QH 10* states that insurance enterprises will be in corporate form.

In Cambodia, Article 45 of the *Insurance Law* states that “all insurance companies whether state owned, private company or joint venture shall be allowed to operate in the Kingdom of Cambodia only in the form of public liability company”.

e. Forms of License issued

In Malaysia, the following forms of license are issued upon application in writing according to section 15 of the *Insurance Act 1996*:

- (a) License for insurers as per section 16 of the same Act;
- (b) License for insurance broker, section 17 (1) of the same Act;
- (c) License for an adjuster, section 17 (1) of the same Act.
- (d) License for a professional reinsurer, s.14(c) of the same Act.

In Singapore, the licenses administered upon application in writing⁶⁷ under the *Insurance Act* and the *Insurance Intermediaries Act* respectively are as follows:

1. Direct Insurer's License;

⁶⁷ Section 8, Insurance Act of Singapore



2. Reinsurers License;
3. Captive Insurer's License;
4. Insurance Broker's License.

In addition, a foreign insurer scheme has been introduced but this does not come within the purview of section 8 i.e. not a 'registered insurer' as per section 8. This scheme permits foreign insurers to operate within the Singapore insurance market.

In The Philippines, the following types of licenses, certificates of authority and certificates of registration are issued according to the relevant sections of the Insurance Code:

1. Licenses to agents;⁶⁸
2. Licenses to brokers;⁶⁹
3. Licenses to adjusters⁷⁰
4. Licenses to persons selling variable contracts;⁷¹
5. Licenses to rating organizations;⁷²
6. Certificates of Authority to Insurance Companies and Professional Reinsurers;
7. Certificates of Registration for Resident Agents⁷³, Actuaries⁷⁴ & Non-life Company Underwriters.⁷⁵

In Indonesia, the types of licenses issued by the Ministry of Finance are:

⁶⁸ Section 299 of the Insurance Code

⁶⁹ Sec 311 of the Insurance Code

⁷⁰ Sec 326 of the Insurance Code

⁷¹ Sec 414 of the Insurance Code

⁷² Sec 341 of the Insurance Code

⁷³ Sec 315 of the Insurance Code

⁷⁴ Sec 336 of the Insurance Code



1. Non Life Insurance Company;
2. Life Insurance Company;
3. Reinsurance Company;
4. Insurance Broker Company;
5. Reinsurance Broker Company;
6. Loss Adjuster Company;
7. Actuary Consultant Company;
8. Insurance Agent Company.

In Thailand, the licenses administered upon application under the *Non Life Insurance Act* and the *Life Insurance Act* are as follows:

1. Non Life Insurer ;
2. Non Life Insurance Broker ;
3. Non Life Insurance Agent ;
4. Life Insurance Company ;
5. Life Insurance Broker ;
6. Life Insurance Agent.

In Vietnam⁷⁶, the forms of insurance enterprises are:

1. State Owned insurance enterprise ;
2. Joint Stock Insurance Company ;
3. Mutual insurance organization ;
4. Joint Venture Insurance enterprise ;
5. Wholly foreign owned insurance enterprise.

In Cambodia, the types of licenses issued by the Ministry of Economy and Finance are:

⁷⁵ Sec 318 of the Insurance Code



1. Insurance Company ;
2. Insurance Brokerage ;
3. Insurance Agent ;
4. Insurance Risk Inspection Company.

f. Annual Fees

In Malaysia, Singapore and The Philippines, an imposition of annual fees is made in accordance with the respective Insurance Acts.

In Malaysia, section 21 of the *Insurance Act, 1996* requires the payment of license fees by every licensee to the Bank on or before 31st January every year at an amount prescribed by the Bank.

In Singapore, section 11 of the Insurance Act imposes the payment of annual fees on every registered insurer to MAS as may be prescribed. The amount imposed varies in accordance with the different classes of insurance businesses [section 11(2)].

In Brunei, no licensing fee is required in the absence of the Insurance Act.

⁷⁶ Article 58 of Law no. 24/2000/QH 10



In The Philippines, payment for the issuance or renewal of certificates of authority, licenses and certificates of registration is made to the Insurance Commissioner under Sec 417(1) of the *Insurance Code* as may be prescribed. Such certificate of authority expires on the last day of June each year and shall be renewed annually if the company is continuing to comply with the provisions of the said Code and other related laws as well as to the jurisdiction and supervision of the commissioner.

In Indonesia, no licensing fees or annual fees are imposed on companies by the Ministry of Finance for engaging in the insurance business.

In Thailand, apart from fees to engage in the non-life and life business, the company must pay an annual fee for the undertaking of insurance business in each year except for the year the license is issued S.14 *Non-Life Insurance Act* and S.14 *Life Insurance Act*.

In Vietnam, Article 66 requires a licensing fee to be paid. The current fee as stipulated in Article 7 of *Decree 42/2001* is 0.1% of the legal capital of the applicant.

In Cambodia⁷⁷, the licensing fee will be decided by a Prakas (Order) of the Ministry of Economy and Finance.

⁷⁷ Article 52 of the Sub Decree on Insurance



g. Cancellation, Appeal and Effects of Cancellation of License

Both in Malaysia and Singapore, revocation of licenses or cancellation of registration may occur by the relevant authorities⁷⁸ under prescribed conditions set out in section 31 of the Malaysian *Insurance Act* and section 12 of the Singapore *Insurance Act* respectively. The Insurance Code of The Philippines also has provisions whereby the Commissioner has powers to suspend or revoke certificates of authority granted to insurance companies, their officers and agents.⁷⁹ Sec 299 of the *Insurance Code* additionally provides that the Commissioner has to satisfy himself as to the competence and trustworthiness of the license applicant and shall have the right to suspend and revoke any license at his discretion.

Written notice specifying the proposed revocation and the grounds of revocation are to be provided under both the Malaysian

⁷⁸ Under the Malaysian Act, section 31(1) provides that revocation of the license of the licensed insurer may be done by the Minister at the recommendation of Bank Negara OR alternatively by the Bank Negara in the case of the licensed insurance broker or licensed adjuster

⁷⁹ Sec 247 of the Insurance Code



Insurance Act as well as the Singapore *Insurance Act*. Under the Malaysian Act, after the written notice is provided under section 31(3), the licensee will be given an opportunity to make a written representation to the Bank within 14 days of service of notice in accordance with section 31(3). Similarly, the Singapore Act provides that MAS shall, after giving the insurer notice of its intention to cancel the registration, call upon the insurer to show cause to the Authority why its registration should not be cancelled.⁸⁰ Through this mechanism, the insurer is provided with an opportunity to persuade the Authority **before** the decision for cancellation is made. The Philippines Insurance Code, however, does not seem to have express provisions that require the Insurance Commissioner to provide written notice of the proposed revocation and the grounds for revocation.

The Malaysian *Insurance Act* provides another avenue whereby an appeal to the Court may be made against a revocation of license within 14 days of the date of the written notice of the decision of the Minister in accordance with section 32. The Singapore *Insurance Act*, however, is silent on the matter of appeal mechanisms via the Courts. Similarly, the Philippine *Insurance Code* does not expressly provide for appeal mechanisms against revocation of license via the Courts.

The effect of cancellation is the same under both Acts: section 33 of the Malaysian Act has established that when the revocation of license has taken effect, the insurer, insurance broker or adjuster

⁸⁰ Section 12(3)(b) Insurance Act (Chapter 142)



shall immediately cease to carry on business. Under the Singapore Insurance Act, section 13 provides that the insurer shall cease to carry on in Singapore the said insurance business from the date of cancellation. Under Section 247 of The Philippine *Insurance Code*, the effect of the revocation of the certificate of authority is such that no new business can thereafter be conducted by such company or for such company by its agents in The Philippines until and unless its authority to do business is restored by the Insurance Commissioner.

In Thailand, the Minister has the power under section 59 *Non-Life Insurance Act B.E.2535* (1992) to revoke a license to engage in non-life insurance business on the following grounds: The company

1. has liabilities in excess of its assets or is in an unstable financial condition which may cause damage to the insured or the public;
2. violates the conditions of this Act or Ministerial regulation;
3. stops engaging in the non-life business without any reason;
4. delays payment of a claim or delays return of premium to be paid or returned without any reason or pays or returns in bad faith;



5. continuing in the non-life business may cause damages to the insured or public.

There appears no appeal mechanism once the license is revoked as section 60 provides that the company shall be dissolved as from the date of revocation of the license and shall be liquidated.

The power to revoke a non-life insurance agent's license or broker's license and a life insurance agent's license or broker's license is with the Insurance Commissioner under section 76 *Non-Life Insurance Act B.E.2535* (1992) and section 81 *Life Insurance Act B.E.2535* (1992) respectively where it appears that the agent or broker:

1. Violated the provisions of the act;
2. Is unqualified;
3. Operates business which causes or may cause damage to an insured, beneficiary or the public.

Unlike insurance companies, an agent or broker may appeal against the decision to the Minister. The decision of the Minister is final [section 77 *Non Life Insurance Act B.E. 2535* (1992) and section 82 *Life Insurance Act B.E. 2535* (1992)].

In Vietnam, Article 51 of *Decree 42/2001* states that The Ministry of Finance can impose the following sanctions:

- a. Warning;
- b. Temporary suspension of operation;



- c. Restriction of the contents, scope and geographical area of operation;
- d. Withdrawal of license.

The decision to deal with the breaches must be made in writing to the violators and relevant bodies and shall be made public. Article 126 of the *Law of Insurance Business* provides for appeals to the Ministry of Finance or to the courts.

In Cambodia, Article 71 of the *Sub Decree* requires that any decision to withdraw or suspend the license shall be made in writing to the company with the reasons for the decision. The decision shall also be published in the Royal Journal. Article 72 of the *Sub Decree* further states that the revocation of the license will lead to legal dissolution of the company. There are no provisions in respect of appeals.

h. Management of Licensee

There are various provisions in both the acts that relate to the management of a licensee.

A licensee incorporated in Malaysia may, by notice in writing, require any of its members to disclose their beneficial interests in



terms of voting shares in the licensee.⁸¹ In Singapore, the Authority may direct a registered insurer to obtain and transmit information it requires from any shareholder as to beneficial interests (voting shares) in the shares of the insurer.⁸²

In Malaysia, no one, either alone or with any associate, is allowed to acquire or dispose off to a person an aggregate interest in shares **exceeding five percent** without obtaining the prior written approval of the Minister of Finance.⁸³ Likewise in Singapore, no person may become the substantial shareholder (who holds **5% or more** of the voting shares) of that insurer without first obtaining the approval of the Authority.⁸⁴

In the Philippine *Insurance Code*, the issue of control is defined under Section 282 pertaining to a holding company as *any person who directly or indirectly owns, controls or holds with the power to vote forty percent or more of the voting securities of another person*.⁸⁵ It would seem that the Commissioner would determine whether a person directly or indirectly controls any authorized insurer and monitors such a person in accordance with public interest or the interests of policyholders or stockholders by requiring the said person to register with the Commissioner within the specified time period provided in the Code.⁸⁶ The Commissioner has another

⁸¹ Section 66 (1) Insurance Act 1996

⁸² Section 30(1) Insurance Act (Chapter 142)

⁸³ Section 67 (1) Insurance Act 1996

⁸⁴ Section 29(1) Insurance Act (Chapter 142)

⁸⁵ Section 283 and Section 284 of the Insurance Code

⁸⁶ Section 286 of the Insurance Code



mechanism to control and manage the insurance company – by holding the securities, deposited as per requirement of the Commissioner for the benefit and security of all the policyholders of the company.⁸⁷

The appointment by the licensee or the controller of licensees of a person as a director, chief executive officer, auditor or actuary is subject to the control of Bank Negara Malaysia – prior written approval has to be obtained for the said appointment.⁸⁸ Similarly, in Singapore, the appointment of principal officers or directors by the registered insurer is subject to the approval of the Authority. The minimum criteria applied for the said appointment in both Malaysia and Singapore is “fit and proper person”⁸⁹ as determined by the relevant authority.

In the Philippines, the Insurance Commissioner prescribes the qualification of the executive officers and other key officials of insurance companies in order to maintain the quality of management and afford better protection to policyholders and the public in general. Thus, the provisions emphasize that only persons of good moral character, unquestioned integrity and recognized competence may be elected or appointed director or officer of insurance companies. No person can concurrently be a Director and/or Officer of an insurance company and an adjustment company.⁹⁰

⁸⁷ Section 192 of the Insurance Code

⁸⁸ Section 70(1), Section 74 and Section 83 Insurance Act 1996

⁸⁹ Section 70(2)(b) Insurance Act 1996; section 31(1) Insurance Act (Chapter 142)

⁹⁰ Section 187 of the Insurance Code



In Indonesia, the *Decree of Ministry of Finance of the Republic of Indonesia No.421/KMK.06/2003* on Fit and Proper Test states that all members of the board of directors as well as the board of commissioners shall have to fulfill the fit and proper requirement at any time. The fulfillment of requirements for the organizational structure within insurance companies or reinsurance companies, particularly in relation to the appointment of the members of the board of directors as well as the executive officers will, include the satisfaction of the following criteria:

- Executive officers to have knowledge of and experience in the insurance industry for at least 5 years;⁹¹
- Members of the board of directors must have been in charge or have experience in the field of risk management for at least 5 years.⁹²

The Malaysian Act has ascertained various criteria for the disqualification of a director or employee⁹³: adjudged to be a bankrupt, has suspended payments, compounded his creditors, charged for a criminal offence, etc. There are no similar provisions in the Singapore Act. The Singapore Act merely provides that the Authority may direct the registered insurer to remove the director, principal officer or actuary of a registered insurer for failure to perform his functions.⁹⁴ The effect of disqualification is similar under both acts—the person concerned immediately ceases to hold office

⁹¹ Article 4(2) Decree of Minister of Finance of the Republic of Indonesia No.223/KMK.017/1993

⁹² Article 4(3) Decree of Minister of Finance of the Republic of Indonesia No.223/KMK.017/1993

⁹³ Section 71 Insurance Act 1996

⁹⁴ Section 31(4) Insurance Act (Chapter 142)



and the licensee shall immediately terminate his appointment⁹⁵ as per the Malaysian act or the removal of the director, principal officer, director or actuary as per the Singapore act.⁹⁶ In the Philippine *Insurance Code*, the criterion for the disqualification of director or employee is very much dependent on the discretion of the Insurance Commissioner in accordance with the safety of the interests of policyholders and the public.⁹⁷

In Thailand⁹⁸, no company shall appoint or allow any person to be a director, manager, officer or to have management authority or act as adviser who

- 1) Has been a bankrupt ;
- 2) Has been imprisoned for an offence related to property committed with dishonest intent;
- 3) Had been a director, manager, officer or management authority of an insurance company that had its license withdrawn;
- 4) Is currently a director, manager or having management authority of a licensed Non Life or life insurance company respectively, unless an exemption has been granted by the minister;
- 5) Has been removed from the position of director, manager or person having management authority of a company under Section 54 of the *Life Insurance Act* or Section 53 of the *Non Life Insurance Act* ;
- 6) Is a government official in political service ;

⁹⁵ Section 72 Insurance Act 1996

⁹⁶ Section 31(4C) Insurance Act (Chapter 142)

⁹⁷ Section 187 of the Insurance Code

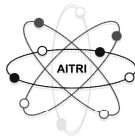


- 7) Is a government official with duties of supervision, unless the company is a government enterprise or the appointment is made with the approval of the Minister for the purpose of assisting the operation of the company or the person is appointed under section 54 of the *Life Insurance Act* or section 53 of the *Non Life Insurance Act* .

In Vietnam, the appointment of the Chairman of the Board and General Director must be approved by the Ministry of Finance. Article 14 of *Decree 42/2001* states that the relevant persons must be of high reputation and professional ethics and must have experience in the insurance business. For the position of General Director, the person must also have at least 3 years experience in Corporate Governance or State supervision of the insurance business.

In Cambodia⁹⁹ , no person convicted of crimes such as fraud, theft, etc or convicted of conspiracy or abetting such crimes or having been imprisoned for any crime for at least a year will be allowed to hold any management position in an insurance company.

⁹⁸ Section 34 Non Life Insurance Act B.E 2535 and Section 35 Life Insurance Act B.E. 2535



i. Minimum paid up Share Capital or Deposits

For the insurance sector, the aim is to build an efficient, effective and stable industry which will be resilient to the challenges of a more competitive and liberalized market.

Both in Malaysia and Singapore, certain criteria have been established in relation to the *value of the business or its capital or assets* in order to carry out the insurance business in the respective countries.

In Malaysia, these requirements are varied between local licensed insurers, foreign licensed insurers and licensed insurance brokers or adjusters through the provisions of section 18 of the *Insurance Act 1996*. A local licensed insurer has to maintain a *prescribed minimum paid-up share capital* [section 18(1)] while the foreign insurer has to maintain in Malaysia at all times a *prescribed minimum amount of surplus over liabilities* [section 18(2)]. Similarly, the licensed insurance broker or adjuster is required to maintain at all times a *minimum paid up capital unimpaired by losses* [section 18(3)]. With the implementation of the Financial Sector Master Plan (FSMP), the immediate focus is to further advance the capacity and

⁹⁹ Article 44 Royal Kram No. NS/RKM/0700/02



capability building initiatives which will form the foundation for the development of the domestic insurance industry. An important measure towards this goal has been the implementation of the higher minimum capitalization requirement of RM100 million for direct insurers with effect from 30 September 2001. The higher capital requirement has served as a catalyst to further advance the consolidation of the industry as several insurers chose the merger route to comply with the new requirement. Since 1999, eight mergers and acquisitions (M & As) involving 16 insurers have been completed while another seven proposals involving 13 insurers are now at various stages of implementation.¹⁰⁰

In Singapore, one of the pre-requisites for the registration of an applicant as per section 9(1) (b) is the making of a deposit under section 14 of the *Insurance Act*. The latter section provides that a *non-returnable deposit of a value not less than S\$500,000* has to be placed with MAS at all times. Section 15(1) provides that a licensed bank may also covenant to deposit with the Authority, a specified sum in cash on account of the insurer's deposit. In addition, a minimum paid up capital in the sum of S\$25 million is required for direct insurers and reinsurers, whereas the sum of S\$400,000 is required for captive insurers.

In Brunei, non-life insurers incorporated domestically are required to have a minimum paid-up capital of BRD1million pursuant to the *Administrative Measure of 1995*. Where it relates to the motor

¹⁰⁰ Bank Negara Malaysia 11 March 2002; Insurance Regulations 1996, Regulation 4



insurance business, the insurer, in addition to the above, is further required to deposit a sum of BRD 1million¹⁰¹.

Domestic (life and non-life) direct writing insurance companies and professional reinsurers already doing business in The Philippines since March 1992 should each have a minimum paid-up capital equal to 50 million pesos and 75 million pesos respectively. The Code provides that an amount equal in value to 25% of the minimum capital is to be invested in securities satisfactory to the Commissioner, consisting of bonds or other evidences of debt of the Government of The Philippines or its owned or controlled corporations and entities and such shall be deposited with and held by the Commissioner.¹⁰² On the other hand, foreign insurance companies and professional reinsurers are required to deposit securities with a market value of not less than the minimum paid-up capital required of a domestic insurance company or professional reinsurer. Such deposit is to be made with the Insurance Commission.

With the issuance of *Dept. Order, 27-92* issued on 17 March 1992, new insurance companies are allowed to enter the market with a 40% cap on foreign equity. In October 1994, full liberalization of the insurance industry took effect with the issuance of *Dept Order 100-94* with the following capital requirements:

¹⁰¹ Motor Vehicle Insurance (Third Party Risks) Act 1950 (revised in 1984)



For an insurance company:

- (a) 250 million pesos and contributed surplus fund of 50 million, where foreign equity is 60% or more;
- (b) 150 million pesos and contributed surplus of 50 million pesos, where foreign equity is more than 40% but less than 60%;
- (c) 75 million pesos and contributed surplus fund of 25 million pesos, where foreign equity is 40% or less.

For a reinsurance company:

- (c) 500 million pesos, where foreign equity is 60% or more;
- (d) 300 million pesos where foreign equity is more than 40% but less than 60%;

In Indonesia, Article 9(2) (c) VIII *Law No 2, Year 1992* states that capital is a requirement for the issuance of a license to carry out the insurance business. The minimum paid up capital requirements are stated in *Regulation No 63 Year 1999*:-

- For a direct insurance company – Rp100,000,000,000 (billion);
- For a reinsurance company – Rp200,000,000,000 (billion);
- In cases involving a foreign party, the direct investment of the foreign party shall not exceed 80%. However, legislation introduced in 1999 provides greater flexibility in the event of ownership provided the paid up capital of the Indonesian shareholders is maintained;

¹⁰² Section 188 of the Insurance Code



- Any change in ownership of the insurance company shall be reported to the Minister.

In Thailand, section 27 of the *Non Life Insurance Act* requires a minimum capital fund of not less than 10% of the net premium received but not lower than 30 million baht. Section 27 of the *Life Insurance Act* requires a minimum capital fund of not less than 2% of all reserves but not lower than 50 million baht. New requirements have been imposed on companies after 2002 wherein minimum capital fund for non-life insurers is 20% of the net premium received but not lower than 300 million baht. For life insurers, the minimum capital fund required is not less than 4% of all reserves but not lower than 500 million baht.

Article 4 of *Decree 43/2001* in Vietnam prescribes that the required legal capital for the Non Life Insurance business is US\$ 5 million, for the life insurance business it is US\$ 10 million and for the insurance brokerage business the required capital is US\$ 300,000. Article 6 of the decree requires 5% of the legal capital to be deposited in a commercial bank in Vietnam within 60 days of the issuance of the license.

In Cambodia,¹⁰³ the minimum capital required is 5 million SDR for the life insurance business, 5 million SDR for the general insurance business and 10 million SDR for life and general business. 10 per cent of the registered capital must be deposited with the National Treasury.

¹⁰³ Article 46 Royal Kram No. NS/RKM/0700/02



j. Register of Policies and Claims

Both the Singapore¹⁰⁴ and Malaysian¹⁰⁵ *Insurance Act* requires the licensed insurer to establish and maintain separate registers for its local and foreign/offshore policies respectively at its principal place of business. No policy entered into any register may be removed so long as the insurer is under any liability in respect of that policy.

The Malaysian Act has additionally required the establishment and maintenance of a separate register of claims under its Malaysian policies and for claims under its foreign policies at its principal place of business in accordance with its section 47(1) (b).

The Philippines has provided for a register to be maintained in respect of risks accepted as well as claims lodged with the insurer concerned as per section 319 of the Insurance Code.

In Thailand, an insurance company is required to keep registers and account books concerning its business and the particulars concerning the business which are required to be entered must be done within 7 days from the occurrence of the event and shall keep such registers and account books shall be kept for 10

¹⁰⁴ Sections 16(1) & (2) Insurance Act (Chapter 142).

¹⁰⁵ Sections 47(1) & (2) Insurance Act 1996



years from the date of last entry or from the date the company is released from liability of the last entry, whichever is longer.¹⁰⁶

In Vietnam and Cambodia there are no specific requirements to establish or maintain a register of policies or claims.

k. Establishment of Specific Funds by Insurers and Allocation of Surplus

There are provisions under both the Malaysian and the Singapore Insurance Acts for the establishment of Insurance funds.

Under section 38 of the Malaysian Act, a licensed life insurer, a licensed general insurer and a licensed foreign professional reinsurer is required to establish and maintain separate insurance funds for its Malaysian policies and for its foreign policies respectively. This requirement has to be met by the insurer *so long as it is under liability in respect of any policy or insurance claim relating to that fund*.¹⁰⁷

Under section 17 of the Singapore Act, every registered insurer is required to establish and maintain a separate insurance fund for each class of insurance business in relation to its Singapore policies and offshore policies respectively.

¹⁰⁶ Sections 44&45 Non Life Insurance Act and Section 40&41 Life Insurance Act

¹⁰⁷ Section 38(4) Insurance Act 1996.



Both the Acts are similar in their requirement for the establishment of insurance funds. The use of the term “off-shore policy”¹⁰⁸ in the Singapore Act is equivalent to the term “foreign policy”¹⁰⁹ under the Malaysian Act since both terms refer to policies other than local policies.

The Malaysian and Singapore Acts have similar provisions that allow the Bank Negara¹¹⁰ or the Monetary Authority of Singapore¹¹¹ to direct a licensed insurer to establish and maintain a separate insurance fund for any category of insurance business in addition to the insurance funds referred to in the preceding sections.

Both in Malaysia and Singapore, there are similar provisions which require a licensed insurer to pay into the insurance fund all moneys or income received by it in relation to a particular insurance fund.¹¹² The assets comprised in the fund can only be applied to meet the liabilities and expenses properly attributable to that insurance fund.¹¹³

The security funds set up in accordance with the Insurance Code of The Philippines consists of all payments made to the fund by insurance companies authorized to do business in the Philippines. Payments made by life insurance companies (Life Account) shall be

¹⁰⁸ Offshore policies is defined in section 2(2) of the First Schedule (Cap.142) as *any policy other than a Singapore policy, issued in the course of the insurer's business in Singapore.*

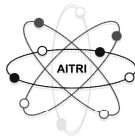
¹⁰⁹ Foreign policy has been defined in section 2 of the Insurance Act 1996 as a policy, which is issued by a licensed insurer and is not a Malaysian policy.

¹¹⁰ Section 38(5)(b) Insurance Act 1996

¹¹¹ Section 17(3) of the Insurance Act (Chapter 142).

¹¹² Section 40 (1), (2) Insurance Act 1996; section 17(4) Insurance Act (Chapter 142)

¹¹³ Section 41(2) Insurance Act 1996; section 17(4) Insurance Act (Chapter 142)



treated separately from those made by non-life insurance companies (Non-Life Account) and shall be held and administered by the Commissioner. The Life Account shall be utilized exclusively for disbursements of life insurance companies while the Non-Life Account shall be utilized for the disbursements of non-life insurance companies.¹¹⁴

In Thailand, Section 79 of the *Non Life Insurance Act* provides for the setting up of the “Fund for Development of the Non Life Insurance Business. The fund shall consist of¹¹⁵

1. Money received under Section 120;
2. Money received under Section 58;
3. Surcharge received under Section 80;
4. Money and assets given by people;
5. Interest of the Fund.

Section 84 of the *Life Insurance Act* provides for the setting up of the “Fund for Development of the Life Insurance Business. The fund shall consist of¹¹⁶

1. Money received under Section 126;
2. Money received under Section 52;
3. Surcharge received under Section 85;
4. Money and assets given by people;
5. Interest of the Fund.

¹¹⁴ Section 366 of the Insurance Code

¹¹⁵ Section 81 of the Non Life Insurance Act

¹¹⁶ Section 86 of the Life Insurance Act



The withdrawal and payment of money, keeping of money and management of the Fund shall be as prescribed by the Minister with the approval of the Minister of Finance¹¹⁷

In Vietnam¹¹⁸, all insurance enterprises and insurance brokerage enterprises shall establish a compulsory reserve fund to be added to the charter capital and to ensure solvency to be derived annually at a rate of 5% of after tax profits. The enterprises are free to establish any additional voluntary reserve funds from their after-tax profits.

In Cambodia, the only reserve fund is the same as the minimum solvency requirements in Article 56 of the Sub Decree on Insurance.

I. Investment of Assets

The assets of the insurance fund of a registered insurer must be invested in such a manner and maintained in such places as may be prescribed by the relevant authority. This has been provided for under section 19(a) of the Singapore Act, section 45 (1) of the Malaysian Act and Sections 198, 200 and 201 respectively.

In accordance with Section 211 of the *Insurance Code* of The Philippines, an insurance company may invest in equities of other financial institutions and engage in the buying and selling of 'short

¹¹⁷ Section 83 of the Non Life Insurance Act and Section 88 of the Life Insurance Act



time debt' instruments provided that any or all of such investments shall be with the prior approval of the Commissioner. Generally, provisions governing the investments of insurance companies are found in sections 198 to 209. The nature of the investments and the restrictions imposed thereto vary in accordance with the nature of the business undertaken i.e., life insurance and non-life insurance.

Provisions in relation to the investments of an insurance company in Indonesia are found in Chapter III of the *Decree of Ministry of Finance of the Republic of Indonesia No.424/KMK.06/2003* on Fit and Proper Test on Financial Soundness of Insurance and Reinsurance Company.

Chapter III deals with the types of admitted assets. Admitted assets are assets owned and recognized in computing solvency margin. The types of admitted assets are categorized under Article 5 as investment and non-investment assets. Part 2 deals with the valuation of admitted assets – Article 6. Part 3, Article 7 enumerates the limitation on admitted assets in the form of investment. Regulations regarding the investment assets including reserve take the form of:

- a. time deposits or certificates of deposits – not more than 20% in each bank;
- b. investment in the stocks listed on the Indonesian stock exchange should not exceed 20% in each stock;
- c. bonds listed on the Indonesian stock exchange shall not exceed 20% in each bond issuer

¹¹⁸ Article 97 of Law no.24/2000/QH 10



- d. stocks listed on overseas stock exchanges investment in each stock issuer shall not exceed 10% of total investment
- e. bonds listed on the overseas stock exchange shall not exceed 10% of total investment;
- f. funds participation shall not exceed 20% of total investment;
- g. investment in the form of direct participation shall not exceed 10% of total investment;
- h. real estate shall not exceed 20% of total investment;
- i. mortgage loan shall not exceed 20% of investment;
- j. policy loan shall not exceed 80% of the cash value of each policy.

Investment placed in any one company shall not exceed 25% of the total investment except placement on marketable securities issue or guaranteed by the Indonesian government or Certificate of Bank of Indonesia – Article 8 & 9.

Part 4 prescribes some limitations in relation to admitted assets in the form of non-investment, which is found in Articles 10 & 11 whereas Part 5 relates to overseas investments [Article 12]. Part 6 informs on Non-Admitted assets [Article 13].

In Thailand, there are no specific provisions for investment other than that they must be in the form prescribed by the Minister.



Article 98 of *Law No. 24/2000/QH 10* in Vietnam states that investment by insurance enterprises shall be safe, effective and capable of meeting the demands for regular payments under the insurance contracts. It further states that insurance enterprises can only invest their idle capital in Vietnam in the following portfolios:

- a) Trading in Government Bonds;
- b) Trading in shares and corporate bonds;
- c) Real estate development;
- d) Making capital contributions to other enterprises;
- e) Providing loans under the Law on Credit Institutions;
- f) Depositing at credit institutions.

Article 11 of *Decree No. 43/2001/ND-CP* states that the sources of capital for investments of insurance enterprise shall be:

1. Chartered capital;
2. Statutory reserve;
3. Voluntary reserves;
4. Accumulated retained earnings and funds established from retained earnings for purpose of investments;
5. Idle capital from technical reserves.

The type of investments of idle capital from technical reserves, of insurance enterprise shall be only made within the territory of Vietnam in the following portfolios¹¹⁹:

a) For non-life insurance enterprise:

- Government bonds, secured corporate bonds, deposits in credit institutions: no restriction;

¹¹⁹ Article 13 Decree No.43/2001/ND-CP



- Unsecured corporate bonds and corporate shares, capital contributions to other enterprise: maximum is 35% idle capital from technical reserves;
- Real estate business, lending, authorised investments through financial-credit institutions: maximum is 20% idle capital from technical reserves;

b) For life insurance enterprise:

- Government bonds, secured corporate bonds, deposits with credit institutions: no restriction;
- Unsecured corporate bonds and corporate shares, capital contributions to other enterprise: maximum is 50% idle capital from technical reserves;
- Real estate business, lending, authorised investments through financial-credit institutions: maximum is 40% idle capital from technical reserves;

In Cambodia¹²⁰, all insurance companies are required to employ at least 75% of their reserve fund for reinvestment in Cambodia.

¹²⁰ Article 66 of Sub Decree on Insurance



V. Solvency Requirements & Supervision

a. Minimum solvency requirements

In Asian economies such as Malaysia, The Philippines and Thailand; and Singapore for non-life business only, the solvency margin has to reach at least a certain fixed amount which is applied in case the result of stipulated calculation does not exceed such an amount.¹²¹ The solvency margin is determined (in Brunei, Indonesia, The Philippines and Thailand for non-life business only) based on premium income only, typically as a certain percentage of a net premium income for the previous year (20% in Brunei, 10% in The Philippines and Thailand).

Section 46 of the Malaysian Act and section 18 of the Singapore Act respectively have provided that a licensed insurer is required to maintain a margin of solvency and a fund margin of solvency for each class of insurance business in respect of:

- (a) assets held outside the insurance fund;
- (b) assets deemed to be assets of the insurance funds.

According to section 46(1) of the Malaysian Act, the margin of solvency will be maintained for such an amount and in such a manner as may be prescribed by the Bank.

¹²¹ OECD proceeding 1999, Insurance Regulation and Supervision in Asia, p.40



Section 18(2) of the Singapore Act provides that the Authority (MAS) will prescribe different margins of solvency for the different classes of insurance business. In Singapore, insurers are required to establish and maintain a separate fund for (i) each class of insurance business related to Singapore policies and referred to as the Singapore Insurance Fund (SIF); and (ii) for each class of insurance fund related to offshore policies and known as the Offshore Insurance Fund (OIF). Insurers are required to maintain a Solvency Margin for each insurance fund as well as the Company Solvency Margin. The Company Solvency Margin is stipulated as a fixed amount, which is determined by the type of insurers (life or non-life only, composite or captive).¹²² For the life business, the SIF solvency margin is determined based on liabilities and sum insured at risk. OIF has to maintain assets not less than the liabilities of the fund. For the non-life business, SIF solvency margin and OIF solvency margin are determined based on net premiums or loss reserves. The minimum amount is stipulated.

For the life business in Malaysia, the solvency margin is determined based on actuarial valuation liability, sums at risk, etc., wherein the minimum amount is stipulated. For the non-life business, the solvency margin is determined based on premium income or incurred claims. The minimum amount is stipulated.

In Malaysia and Singapore, the solvency margin has to reach at least a certain fixed amount, which is applied in case the result of stipulated calculation does not exceed such an amount.

¹²² OECD Proceedings (1999) on Insurance Regulation and Supervision in Asia, p 53



In Brunei, by virtue of the *Administrative Measures of 1995*, once the capital of BRD 1 million is admitted, a non-life insurer must maintain a solvency margin of 20% based on net premium income of all classes of insurance written in the previous year (less reinsurance).

In The Philippines, insurance companies must always maintain a margin of solvency in an excess of the value of their admitted assets excluding their paid-up capital in Philippines (for domestic insurers) or security deposits (for foreign insurers) over the amount of its liabilities, unearned premiums and reinsurance reserves in The Philippines by at least:

- (a) for life insurance companies – two per mille of the total amount of their insurance in force as of the preceding calendar year (with the exception of term insurance).
- (b) for other insurance companies – 10 percent of the total amount of their net premium written during the preceding calendar year.¹²³

It is also further required for insurance companies operating in The Philippines to maintain a margin of solvency of not less than Php500,000 as per section 194 of the *Insurance Code*.

In Indonesia, Chapter III A Article 11 of *Government Regulation No: 63 year 1999* on amendment to *Government Regulation No: 73 year 1992* has provisions that admitted assets,

¹²³ Sec 194 of the Insurance Code



liabilities and loss risks arising out of possible deviations in managing assets and liabilities will be stipulated by virtue of a ministerial decree. Insurance companies have to maintain a solvency margin of at least 120% of the total loss risk which is likely to occur resulting from deviation of management of the assets and liabilities. The term “deviation of management of the assets and liabilities” is defined in article 2 (2).¹²⁴ Article 2 (3) provides that the computation of loss risk will be determined by a decision of the director general of financial institutions.

As of year 2000, a revised risk-based capital (RBC) method was introduced to be adopted over a period of 5 years progressively so as to attain 120% by the year 2004.¹²⁵ The same solvency margin is applicable in the case of reinsurers. Pursuant to article 4 (1) of the decree, insurance companies are required to submit quarterly reports of computation of their respective solvency margins to the MOF. Article 4 (2) states that in the event the solvency margin is not achieved, the company will be expected to provide monthly reports on its solvency margin computation. Article 4 (3) states that if a company's solvency margin falls below 100% of the total loss risk, then the company shall be sanctioned. When a comparison is made between articles 4 (2) and 4 (3), it appears that there are grave consequences of companies falling short of the solvency margin.

¹²⁴ Article 2 (1) decree of MOF decree no: 481/kmk.017/1999.

¹²⁵ Article 4 decree of MOF decree no: 481/kmk.017/1999



In Indonesia, provisions for retention are found in Article 34 and 35 *Decree of Ministry of Finance of the Republic of Indonesia No.424/KMK.06/2003* on Financial Soundness of Insurance and Reinsurance Company. Article 34 stipulates that an Insurance and reinsurance company shall have its own retention for every risk and that are determined based on risk profile. The amount of own retention for every risk shall be based on current shareholders' equity. This legislation has also introduced a limit on net retention up to a maximum of 300%.

In Thailand, section 19 of the *Non Life Insurance Act* and Section 20 of the *Life Insurance Act* require Insurance companies to place a security deposit in the value prescribed by the Insurance Commissioner. Section 27 of the *Non Life Insurance Act* further stipulates that a company shall maintain the capital fund during the course of its business in the amount that is not less than 10% of the net premiums received for the last calendar year but subject to a minimum of 30 million baht. New requirements have been introduced in 2002 which require companies to maintain an amount of not less than 20% of the net premiums received for the last calendar year but subject to a minimum of 300 million baht.

Section 27 of the *Life Insurance Act* stipulates that a company shall maintain the capital fund during the course of its business in the amount that is not less than 2% of all the reserve but subject to a minimum of 50 million baht. The new requirements introduced in 2002 stipulates that life insurance companies must maintain an



amount that is not less than 4% of all the reserves but subject to a minimum of 500 million baht.

In Vietnam, Article 15 of *Decree 43/2001* states that for non life insurance companies, the minimum solvency margin shall be equal to 20% of retained premiums at the time of determining the solvency margin. As for life insurance companies, the minimum solvency margins for insurance contracts with a term of 10 years or less should be 4% technical reserves plus 0.1% of the net amount at risk and for contracts for terms over 10 years, the margins should be 4% technical reserves plus 0.3% of net amount at risk.

In Cambodia,¹²⁶ the minimum solvency required is:

- a) 50% of the Registered capital for the 1st year;
- b) 13,300 million Riels when premiums are up to 66,500 million Riels;
- c) 20% of previous year's premiums if the premiums were between 66,500 million Riels and 332,500 million Riels;
- d) 66,500 million Riels + 10% of surplus for premiums above 332,500 million Riels;
- e) All composite insurers are subject however to a minimum of 26,600 Riels.

¹²⁶ Article 56 of Sub Decree on Insurance



b. Insurance Accounting Principles

The majority of Asian economies i.e. Indonesia, The Philippines, Brunei, Vietnam, Thailand, Singapore and Malaysia have adopted specific insurance accounting principles. In Indonesia, generally accepted accounting principles are applied for taxation purposes, whereas statutory accounting principles are applied for the solvency margin analysis purposes.

In Singapore, specific insurance accounting principles are laid out in the Insurance Regulations, especially with regard to the valuation of assets. In Malaysia, accounting bodies, together with Bank Negara, have formulated the accounting standards for the insurance business. These accounting standards, which were formulated to ensure consistency in the presentation of financial statements, cover investments, premiums, acquisition costs, claims and reinsurance.¹²⁷ In The Philippines, two accounting principles, namely, the Generally Accepted Accounting Principles (GAAP) and Statutory Accounting Principles (SAP) were adopted for the above-mentioned reasons.¹²⁸

¹²⁷ OECD Proceedings (1999) on Insurance Regulation and Supervision in Asia, p.51

¹²⁸ OECD Proceedings (1999) on Insurance Regulation and Supervision in Asia, p.51



In Thailand, the insurance accounting principles are set out in the *Non-Life Insurance Act* and *Life Insurance Act* as detailed below:

1. Events concerning business shall be entered into registers and accounts books within 7 days of the event. (S.44NLIA/S.40LIA).
2. The registers and account books are to be maintained for a period of 10 years from the date of last entry. (S.45NLIA/S.41LIA)
3. Insurance companies are to submit their annual reports within 5 months of the last calendar year. (S.47NLIA/S.43LIA)
4. Insurance companies are to publish reports within 15 days of submission of annual reports in at least one daily newspaper for at least 3 days and post such notice in an open place at the head and branch office of the insurance companies for one month. (S.50NLIA/S.46IIA)

Insurance enterprises and insurance brokerage enterprises in Vietnam¹²⁹ are required to adopt accounting systems applicable to the insurance business in accordance with accounting laws and regulations.

¹²⁹ Article 101 of Law No.24/2000/QH 10



In Cambodia¹³⁰, while there are no specific accounting standards stated, all insurance companies, agents, brokers and insurance risk inspection companies are required to prepare business statistics which include:

- a) Number of insurance policies issued by class of insurance;
- b) Effective date of each policy;
- c) Expiry date of each policy lapsed;
- d) Total Sum Insured;
- e) Insurance Premium rate;
- f) Discount rate;
- g) Number of policies with claims;
- h) Types of claims and amount paid for settled claims;
- i) Types of claims and estimated loss of unsettled claims.

c. Reporting

Both in Singapore as well as in Malaysia, insurance companies are required to submit periodically their financial documents to the insurance supervisory authority.

In Malaysia, the licensee shall have an investigation made by its appointed actuary into the financial condition of its business at the end of each financial year [section 85(1)] wherein its liabilities of the life insurance business will be valued. Additionally, the licensee has

¹³⁰ Article 96 & 97 of Sub decree on Insurance



to submit annual accounts to Bank Negara 90 days after the end of each financial year [section 87(1)]. Quarterly returns are also required under the Malaysian provisions in respect of its operations [section 89]. Actuarial reports on incurred claims are also required in relation to its general insurance business [section 91]. A licensed foreign insurer is also required to submit annual accounts and the actuary's report in relation to its Malaysian policies.

As for Singapore, the registered insurer has to submit audited accounts for each accounting period to the Authority as per sections 36(1) and 36(3). All insurers, whether incorporated inside or outside of Singapore, are required to undergo an actuarial investigation at the end of each accounting period. Life insurers are investigated for the financial condition of their business [section 37(1)] but if incorporated outside Singapore, actuarial investigation is conducted only in relation to the business pertaining to the Singapore operations [section 36(9)]. General insurers are investigated for their insurance liabilities which consist of unearned premium liabilities plus claim liabilities.

In Brunei, there is no statutory requirement which provides for reporting. However, administratively, the reports both quarterly and annually are forwarded to the Financial Institutions Division (FID), Ministry of Finance (including reports from the General Insurance Association of Negara Brunei Darussalam (GIAB)) within such time as prescribed by MOF.



In The Philippines, insurance companies must terminate their fiscal period on 31st December annually. It must submit its financial report with a sworn statement by the chief officer of the insurance company indicating the exact condition of its affairs on the preceding year to the Insurance Commissioner before 30th April of the next year.¹³¹ Within thirty days after receipt of the annual statement approved by the Commissioner, every insurance company doing business in the Philippines shall publish in two newspapers of general circulation, one publish in English and one in Filipino, a full synopsis of its annual financial statement showing fully the conditions of its business, and setting forth its resources and liabilities. (section 225)

Article 16 Decree of Ministry of Finance of the Republic of Indonesia No.424/KMK.06/2003 on Financial Soundness of Insurance and Reinsurance Company imposes obligations for insurance and reinsurance companies to submit the respective reports including financial statements together with investment and operational reports. Insurance companies are required to publish their financial statements for their early activities which end at December 31, not later than May 31 in the following year in a widely circulated daily newspaper [Article 17 *Decree of the Minister of Finance Decree No.225/KMK.017/1993*]. In connection with these provisions, the Directorate is vested with powers to conduct examination on Insurance companies either periodically or at any time deemed necessary for the sake of public interest protection and in order to detect any fraud which may occur at the earliest possible

¹³¹ Section 223 of the Insurance Code



time. Such examination is intended to make direct observation of the accuracy of the reports submitted either regarding their financial soundness or to the compliance of their business activities with the existing regulations: Article 15, Law No.2 of 1992 read in conjunction with Articles 19 to 24 *Decree of the Minister of Finance Decree No.225/KMK.017/1993*.

In Thailand¹³², the Insurance Commissioner is empowered to order insurance companies to periodically submit reports or other documents. An Insurance company has to submit its annual report within 5 months of the last calendar year¹³³. An Insurance company further needs to publish the report within 15 days of submission of the annual report in at least one daily newspaper for at least 3 days and post such notice in an open place at the head and branch offices of the insurance company for one month¹³⁴.

In Vietnam¹³⁵, the fiscal year of insurance enterprises and insurance brokerage enterprises shall commence on 1st January and end on 31st December and for the first year of operations, it will commence from the date of the issue of the license and end on 31st December of the same year.

Article 32 of *Decree No.43/2001/ND-CP* requires insurance enterprises to submit all the required regular and ad hoc financial statements, statistical reports and operational reports in accordance

¹³² Section 47 of Non Life Insurance Act & Section 43 of The Life Insurance Act

¹³³ Section 50 of Non Life Insurance Act & Section 46 of The Life Insurance Act

¹³⁴ Article 31 Decree No.43/2001/ND-CP

¹³⁵ Article 31 Decree No.43/2001/ND-CP



with the provisions of the laws and guidance of the Ministry of Finance. It also requires the annual financial statements to be audited and certified by a legally operated independent auditing company in Vietnam before submission to the Ministry of Finance.

Article 33 of *Decree No.43/2001/ND-CP* requires that insurance enterprises make public their financial statements within 120 days of the end of the fiscal year.

In Cambodia¹³⁶, all insurance companies, agents, brokers and risk inspection companies must submit to the Ministry of Economy and Finance, within 3 months from the end of each accounting period, the resolution of the extraordinary general meeting, the report of the executive body, auditor and board of directors, the financial statements and other necessary documents.

In addition¹³⁷, all companies are required to submit at the beginning of each month, the business statistics for the previous month.

¹³⁶ Article 95 of the Sub Decree on Insurance

¹³⁷ Article 96 of the Sub Decree on Insurance



d. Inspections and Investigations

In Malaysia, Singapore and The Philippines, the relevant authorities have the power to look into the affairs of the licensee or registered insurer by examining the documents relevant to the business in question.

The periodicity of on-site inspection in Malaysia is once in every one to three years, depending on the financial condition of the insurer whereas in Singapore it is at least once in five to seven years. However, the periodicity is more frequent for insurers whose financial or operational concerns are alerted by the “Early Warning System”, market feedback, or complaints against those insurers.¹³⁸ In The Philippines, the periodicity is at least “once a year and whenever it is necessary”.¹³⁹

In Malaysia, an examiner authorized in writing by the Bank will examine, without any prior notice, the documents of the licensee, or its agent, in or outside Malaysia [section 99(a)]. The examiner can also examine the documents of a licensee in liquidation or whose license has been revoked or has not been reissued [section 99(b)]. The examiner may also examine a person other than the licensee, such as the director/employee of the licensee or its agent, or the

¹³⁸ OECD Proceedings (1999) on Insurance Regulation and Supervision in Asia, p.52

¹³⁹ Section 246 of the Insurance Code



policy owner or any person acquainted with the facts and circumstances of a particular case (auditor, appointed actuary) [section 101(1)]. The person under examination has the duty to provide access to the documents, facilities as well as information relating to the business in question [section 100(1)].

Similarly, the Authority in Singapore may, for the purpose of performing its functions, inspect the books, accounts and other documents of any registered insurer [section 40(1)(a)]. The Authority may also institute an investigation into the whole or any part of the business carried out in Singapore [section 40(1)(b)]. It also has the powers to enter any premises of the insurer at all reasonable times [section 40(1)(c)]. Recently, the Monetary Authority of Singapore moved towards a risk -based supervision as opposed to a rule-based supervision. The frequency of supervision is determined by the size and the risk underwritten by the insurer.

In The Philippines, the Commissioner shall require every insurance company doing business therein to keep its books, records, accounts and vouchers in such manner that he or his authorized representatives may readily verify its annual statements and ascertain whether the company is solvent.¹⁴⁰

The Malaysian legislation provides for the appointment of an investigating officer who is given various powers [section 104] to perform his duties , including the power to enter into the premises for the search and seizure of relevant documents [section 104(1)(a)]. In

¹⁴⁰ Section 245 of the Insurance Code



comparison, the Singapore Act, via its section 40 A, provides general powers to the Authority to carry out its functions. There are no specific powers provided for the entry into the premises specifically for the purposes of search and seizure. Section 104 of the Malaysian Act seems to accord wider powers of investigation than its Singapore counterpart.

In Thailand , Section 51 of the *Non Life Insurance Act* and Section 48 of the *Life Insurance Act* provides that the Insurance Commissioner and competent officer shall have the power to examine the business activities and financial condition of the company and, for the purpose of examination, the Insurance Commissioner and competent officer shall have the power :

- 1) to enter into the office of the company during working hours to obtain information and in so doing they shall have the power to call for documents or other evidences from directors, managers, consultants, officers, or employees of the company and to question the said persons.
- 2) to enter into the business place of the company or any premises where there is a suspect to seal or keep accounts books, documents or any other documents concerning the company's business, properties or debts during working hours or between sunrise and sunset to inspect or evaluate the property of the company;



- 3) to order the company or persons concerned with the company's business to deliver documents or other evidences;
- 4) to summon the person mentioned in (1) or (3) to give statements or to order the said person to submit statement of fact as required.

In Vietnam¹⁴¹, financial inspection for insurance enterprises may be conducted no more than once a year and extraordinary inspections are only permitted when there are signs of violation of the laws by insurance enterprises.

In Cambodia, Article 92 of the Sub decree on Insurance provides that all companies are subject to the surveillance of insurance controlling officials and these insurance controlling officials may conduct on - site inspections at any time.

e. Investment Regulations

Indonesia, Singapore, The Philippines, Thailand and Malaysia all have insurance legislations concerning the evaluation method of investments. However, Brunei and Vietnam report the non existence of such insurance regulations. In The Philippines and Thailand, market valuation is used in principle with some exceptions in relation to “securities subject to amortization” (in The Philippines), and land and building (in Thailand). Malaysia and Singapore apply in principle *the lower of cost or market value*, with some exception related to

¹⁴¹ Article 122 of Law No.24/2000/QH 10



“immovable property”, “Malaysian Government Security or other Bonds” (in Malaysia) , and “land and buildings” (in Singapore).

In all Asian economies except Brunei, there are legal provisions concerning investments by insurance companies, which basically stipulate a set of maximum limits on certain categories of investments in most cases, together with admissible (and/or non admissible investments). In Singapore and Malaysia, the investment regulations belong to a category where there exists a set of maximum limits with the solvency assessment purpose. In The Philippines, insurers are required to invest at least the amount corresponding to 25% of the minimum paid-up capital in bonds or evidences of debt issued by the government or governmental institutions. Indonesia reports the existence of certain percentages which are imposed on the fund to be invested in stocks, bonds, other commercial papers, mortgage loans, direct placement and time deposits. In Indonesia, the following investments are restricted: any investment abroad except placement in insurance companies; futures trading and any other more speculative trading such as warrants; and direct placement in intermediaries.

In Singapore, there are investment requirements for the insurance funds established by the insurer under the Insurance Act. The regulations set maximum limits on respective categories of investment. Insurers may invest beyond the prescribed limits, but assets in excess of the maximum limits are non-admitted for the purpose of determining fund solvency margin. The regulations also limit investments in related companies and restrict the amount of



unsecured loans to directors and employees. There are no specific investment requirements for the offshore business but investors are expected to exercise prudence in their investments.¹⁴²

In Malaysia, Bank Negara Malaysia sets the types of assets and their limits, which are admissible for supporting the solvency margin and liabilities. Assets in excess of the maximum limits are not allowed for the purpose of supporting the liabilities and the margin of solvency of an insurer. Therefore, insurers without sufficient admitted assets have to bring in new admitted assets or replace non-admitted assets with admitted assets. There also provisions which prohibit insurers from granting unsecured credit facilities, granting credit facilities to related parties, acting as guarantors or entering into transactions where a material gain can accrue to its directors.

By contrast, in Brunei, there is no specific legislation which lays down investment requirements. However, the insurance companies in Brunei did exercise prudent approach in their investment.

In Thailand, there are no specific provisions found in the Acts in relation to investments.

¹⁴² OECD Proceedings (1999) on Insurance Regulation and Supervision in Asia, p. 55.



In Vietnam¹⁴³, a minimum of 25% of technical reserves for non life insurers and a minimum of 5% of technical reserves for life insurers must be deposited with credit institutions operating in Vietnam.

In Cambodia, insurance companies are required to invest 75% of their reserve funds in Cambodia.

¹⁴³ Article 12 Decree 43/2001/ND-CP



VI. Insurance Companies in Financial Difficulties

It is pertinent to determine the existent measures taken by a particular insurance supervisory authority in order to deal with insurance companies in financial difficulties before they go bankrupt or after they have gone bankrupt.

(a) Non-compliance of Solvency Margins

Both Malaysia and Singapore refer to the solvency margin in order to find out insurance companies in financial difficulties. Both have in place “an early warning system”.

In Malaysia, solvency compliance is an important criterion in assessing the financial condition of an insurer. Whenever the available assets of the licensed insurer is merely adequate or less than adequate to meet its margin of solvency, the Board of Directors has to notify the Bank within 90 days it became aware of the fact and submit a business plan to improve its financial condition ; otherwise, a penalty will be imposed.¹⁴⁴ The Bank also has the power to issue an order in writing as well as institute an action against the licensed insurer or its director or officer if it is satisfied that the business is conducted in a manner detrimental to the public or the insurer or policy owners. The Bank may also assume control of or carry on the whole of the licensed insurer’s property and businesses or, in the alternative, appoint an appointed person to do so on behalf of the

¹⁴⁴ Section 58 (1) Insurance Act 1996 (Act 553)



Bank.¹⁴⁵ This includes the appointment or removal of the insurer's employees or directors. Financial ratios and the industry benchmark are also reported as important tools in developing an early warning indicator of potential problematic insurers.¹⁴⁶

In Singapore, in general, besides the solvency requirements which provide a layer of protection to policyholders' interests, the Authority also has the power to direct insurers to take any remedial action to protect policyholders' interests. The exact measures to be taken will depend on the circumstances of each case. Where the authority is satisfied that the affairs of the insurer are likely to be detrimental to the public interest or to the interests of policy owners or to be prejudicial to the interests of the insurer, the Authority has the power to issue directions¹⁴⁷ that require the insurer:

- To take such action or recruit management personnel so that the business is conducted in accordance with sound insurance principles;
- To remove any of its directors or any person whom the Authority considers unfit;
- To take action as to the disposition or recovery of its assets;
- To take steps for the recovery by the insurer of sums to have been illegally or improperly paid;
- To stop renewing or issuing policies of the class of business to which the direction relates;

¹⁴⁵ Section 59(4) *supra*

¹⁴⁶ OECD (1999) Proceedings on Insurance Regulation and Supervision in Asia, p. 98.

¹⁴⁷ Section 41(1) Insurance Act (Chapter 142)



- To make such arrangements with respect to reinsurance as the Authority specifies;
- To take action to make good any default relating to the register of policies, establishment of insurance funds and allocation of surplus, margins of solvency, investments and assets.

Furthermore, the Act makes it incumbent upon auditors to provide reports to the Monetary Authority of Singapore in the event the solvency margin falls below prescribed levels.

In The Philippines, the margin of solvency serves as an “early warning sign” of the financial health of an insurer. Whenever the margin is found to be less than the minimum amount required, the Insurance Commissioner shall forthwith direct the company to make good any such deficiency by cash within 15 days from receipt of the order.¹⁴⁸ The Insurance Commissioner may also, if deemed necessary:

- (a) conduct an on-site examination into the affairs, financial condition and method of business of every insurance company authorized to transact business in The Philippines ;
- (b) conduct on-site examination into the firm or corporation managing the affairs and/or property of the insurance company¹⁴⁹ ;

¹⁴⁸ Section 194 of the Insurance Code

¹⁴⁹ Section 246 of the Insurance Code



- (c) suspend or revoke all certificates of authority granted to an insurance company, its officers and agents¹⁵⁰ ;
- (d) appoint a conservator to take charge of the assets, liabilities and the management of an ailing insurance company, collect all moneys and debts due by the said company and exercise all powers necessary to preserve the assets of the said company, reorganize the management thereof, revoke the actions of the previous management and board of directors of the said company and restore its viability.¹⁵¹

Article 16 of *Law No: 2 Year 1992* of Indonesia stipulates the obligations of companies within the insurance industry to submit the necessary accounting documents to the MOF for their perusal. Failure to comply with the necessary laws and to implement regulations draws sanctions from the MOF. These sanctions include warnings, restriction on company business activities and revocation of a company's license [Article 17 *Law No: 2 Year 1992*]. Under Article 17 (4), the MOF may, prior to revoking its license, requisition the company to prepare a plan to overcome the shortcomings of the company's business which gives rise to the restrictions imposed upon it. Article 18 *Law 2 Year 1992* stipulates that in the event that the plan mentioned in Article 17(4) is not successful in remedying the shortcomings of the company, the MOF shall revoke the company's license. Article 19 – pursuant to Article 17(4) states that, in the event of a successful plan, the company's restrictions will be lifted.

¹⁵⁰ Section 247 of the Insurance Code

¹⁵¹ Section 248 of the Insurance Code



In Thailand,¹⁵² where there is evidence appearing to the Insurance Commissioner that any company is in the condition or operates its business in a condition which shall cause damages to the insured or the public, the Insurance Commissioner, with the consent of the Minister, shall have the power to order the particular company to improve its conditions or operations within the time specified by the Insurance Commissioner. In such a case, the Insurance Commissioner may order the company to Increase or reduce its capital, or may order the company to temporarily discontinue its non-life Insurance business,

In the case where any company fails to increase or reduce its capital within the period of time prescribed by the Insurance Commissioner under the first paragraph, the Insurance Commissioner's order shall be deemed to be a resolution of the shareholders' meeting from the end of the prescribed period,

Where there is an urgent need for a company to increase or reduce its capital in order to survive and carry on business, the Insurance Commissioner, with the consent of the Minister, may order the company to Increase or reduce its capital immediately. Such an order is deemed to be a resolution of the shareholders' meeting.

¹⁵² Section 52 Non Life Insurance Act & Section 53 Life Insurance Act



Additionally,¹⁵³ where there is evidence appearing to the Insurance Commissioner that the condition or operation of any company is such that damage may be caused to the Insured and the public, or where the directors, managers or persons responsible for the operation of any company fail to comply with the order of the Insurance Commissioner under the preceding section, the Insurance Commissioner shall have the power to order such company to remove its directors, managers or persons responsible for its operation who have caused such condition or operation of the company.

If the Insurance Commissioner orders such removal of any person, the company shall, with the Insurance Commissioner's consent, appoint other persons to replace the persons so removed, within one (1) month from the date of the removal.

Where a company fails to remove such persons under the law or removes but fails to appoint other persons in their place, the Insurance Commissioner, with the consent of the Minister, shall have the power to issue the order of removal of such persons or appoint any person or person (s) to replace the person so removed for a period not longer than three (3) years.

Further, in the case where a company has been ordered to discontinue its insurance business temporarily under the Act, it must report in writing to the Insurance Commissioner, the company's

¹⁵³ Section 53 Non Life Insurance Act & Section 54 Life Insurance Act



creditors and debtors within the period prescribed by the Insurance Commissioner.¹⁵⁴

In Vietnam, Article 18 of *Decree No. 43/2001/ND-CP* states:

- “1. In the case of being in danger of insolvency, the insurance enterprise shall immediately report to the Ministry of Finance on its current state of financial conditions, causes of being in danger of insolvency and remedies thereto, with the following solvency recovery measures:
 - a) Increase of owner's equity;
 - b) Reinsurance cession; curtailment of scope and coverage of activities;
 - c) Streamlining of the organisational structure and solutions for changing the Chairman of the Board of Management, the (General) Director of the enterprise;
 - d) Transfers of insurance contracts;
 - e) Other measures.
2. Within the period of 15 days from the date of receiving the report of the insurance enterprise the Ministry of Finance shall have decision on the implementation of measures to recover the solvency.
3. If, during the period of 90 days from the date of the decision of the Ministry of Finance, the insurance enterprise is unable to recover its solvency as provided, the insurance enterprise shall be put into being under the special

¹⁵⁴ Section 54 Non Life Insurance Act



supervision, the Ministry of Finance shall establish a Board of solvency control to take necessary measures provided for in Article 80 of the Law on Insurance Business.”

The Board of Solvency Control has the following powers:¹⁵⁵

- a) Instructing and monitoring the implementation of solvency remedies in accordance with the approved plan.
- b) Notifying relevant State bodies on the introduction of solvency remedies for joint implementation.
- c) Limiting the scope and area of business activities by the insurance enterprise concerned.
- d) Suspending activities that may cause insolvency to the insurance enterprise.
- e) Requesting the insurance enterprise to transfer its insurance contracts relating to one or more classes of insurance to other insurance enterprise.
- f) Requesting the insurance enterprise to temporarily suspend the managing and executive authorities, replace its Board of Management members, General Director (Director), Deputy General Director (Vice Director) if necessary.
- g) Requesting the Board of Management, General Director (Director) to remove from office or dismiss any staff who are in breaches of the laws or fail to carry out the approved solvency recovery plan.

¹⁵⁵ Article 80 of the Law No. 24/2000/Qh 10 Law on Insurance Business



- h) Making recommendations to the Ministry of Finance on the continuation or discontinuation of the measures aimed at recovering the solvency of the insurance enterprise.
- i) Making reports to the Ministry of Finance on the implementation of solvency recovery measures and its results.

In Cambodia, Article 53 (1)(b) states that an insurance company shall increase or pay up to the required amount once the limit of solvency has dropped below the official limit within 30 days of receiving an absolute instruction from the Ministry of Economy and Finance or face a penalty¹⁵⁶ of between 10 million Riels to 50 million Riels and have the license revoked.

b. Winding Up & Liquidation Procedures

The provisions of the Companies Acts and the Insurance Acts of the respective countries are applied together for the winding up of a licensed insurer.

Bank Negara Malaysia as per section 112(1) and the Singapore Monetary Authority as per section 42(1) & (2) may petition for the winding up of an insurer. Apart from Bank Negara Malaysia, any other person may also present the petition provided a copy of the petition is delivered to the Bank [section 112(2)].

¹⁵⁶ Article 53 of Royal Kram No. NS/RKM/0700/02



Section 111(1) of the Malaysian act prohibits the (voluntary) winding up of insurers/business unless it has transferred the whole of its business to another insurer under section 128. The Bank must be notified in cases of voluntary winding up [section 111(2)]. In winding up the affairs of the insurer, the value of its assets and liabilities, including liabilities in respect of policies will be determined by the Bank as per section 120.

The Singapore Act allows for voluntary winding up as per section 42(9) but the basis to be adopted as regards matters not fixed by the rules may be approved by the Authority instead of the Court. In the winding up of the affairs of an insurer registered under the Act, the liabilities in respect of policies will be assessed in accordance with any prescribed rules and, as regards matters not fixed by the rules, on a basis approved by the Court. The bankruptcy rules of the *Companies Act* shall not apply in this regard [section 42(8)]. There are provisions for limited winding up as per section 43(2) if the court is satisfied that the insurer will be able to pay its debts in full within 12 months. The court may in these circumstances order the insurer to be wound up only as regards the insurance fund maintained for the class of insurance business.

Singapore also has a preferential status for policyholders in the liquidation procedure of bankrupt insurance companies. Policyholders have priority claims over all the unsecured liabilities of the insurer other than certain preferential debts specified in the Companies Act, such as corporate taxes and wages of employees.



In Malaysia, the liquidator carries out its functions under the direction and supervision of Bank Negara. Bank Negara closely monitors and scrutinizes the liquidation process, and the liquidator is supposed to submit a status report on the progress of claims payment.

It would appear that in the absence of specific legislation to regulate the insurance business in Brunei, insurance companies would be subject to the provisions of the *Companies Act Chapter 39* so far as they relate to insolvency laws.

In The Philippines, the Insurance Commissioner, by virtue of powers vested in him under section 248 of the *Insurance Code*, is enabled to appoint a conservator who may include another insurance company doing business in The Philippines. The conservator reports findings with regard to the ability of the company to continue its business operations independently. The conservatorship will be terminated should the Commissioner be so satisfied. Otherwise, the Commissioner will designate a competent and qualified person as a liquidator.

In Indonesia, Article 20(1) of *Law No.2 year 1992* provides that, upon the revocation of the company's license by virtue of Article 18, the MOF shall have the option of initiating liquidation proceedings against the company for the sake of public interest. Article 20 (2) states that a policyholder will have a priority right with regard to the distribution of the assets of an insurance company which is wound up. Unlike the Malaysian *Insurance Act*, there are no specific



provisions in the legislation for the insolvency of an insurance company in Indonesia save for the provisions relating to the events which may give rise to the liquidation of an insurance company.

In Thailand, the dissolution and bankruptcy of companies is governed by Section 26 of the *Non- Life Insurance Act* and Section 26 of the *Life Insurance Act*. In both instances, a creditor having the right to receive payment of debts has a preferential right over any other creditors. The right to receive payment not only arises over the company's assets but also from assets placed as a security deposit with the Insurance Commissioner and from reserves set aside by the company to cater for exceptional losses and claims.

In Vietnam, Article 82 of *Law No.24/2000/ QH 10* provides that an insurance enterprise shall be dissolved in the following circumstances:

- a) The insurance enterprise applies for a voluntary dissolution and is capable of repaying all outstanding debts;
- b) The license expires without extension;
- c) The license is withdrawn for breach of the Act;
- d) Other case as might be stipulated.

Additionally, Article 83 of *Law No. 24/2000/ QH 10* further states that where an insurance enterprise is unable to pay its debts even after the introduction of solvency remedies, the bankruptcy



proceedings shall be in accordance with the business bankruptcy laws of Vietnam.

In Cambodia, Article 70 of the *Sub Decree on Insurance* provides that if a life insurance company has been dissolved and declared bankrupt in accordance with the laws, the life insurance contracts and reserve funds under its possession shall be transferred to other life insurance companies and if the company is unable to make the transfer, the Ministry of Finance will point out the names of the insurance companies that will accept such policies.

c. Policyholders' Protection Fund

The Insurance Guarantee Scheme Fund (IGSF) is a separate fund which is established and maintained for the general and life businesses in so far as the businesses relate to Malaysian Policies.¹⁵⁷ The utilization of monies under the fund may, amongst others, be applied to meet the liabilities of an insolvent insurer to a policy owner or a person entitled through him. Monies paid to the policy owner or the person through him, from an insurance guarantee scheme fund together with any moneys receivable by him from any other source or from the liquidator, shall not exceed 90% of the lawful amount of moneys due to him. The fund is established by way of the imposition of levies on a licensed insurer based on premium received although currently contributions are only sought from general insurers.

¹⁵⁷ Section 173 of the Insurance Act



Similarly, in the Singapore Act has provisions which enable MAS to establish a Policy Owners' Protection Fund for the purposes of indemnifying in whole or in part, or otherwise assisting or protecting policy owners and others who have been or may be prejudiced in consequence of the inability of registered insurers to meet their liabilities under life policies and compulsory insurance policies issued by them.¹⁵⁸ In practice, however, MAS is not necessarily responsible for the collection and disbursement of monies from the Policy Owners' Protection Fund. MAS merely ensures through indirect means (e.g. a separate administrator for the Fund) the collection of monies from the insurers and its disbursement to the insured as soon as reasonably practicable.¹⁵⁹

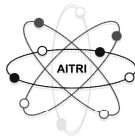
As there is no insurance legislation in force in Brunei, the analysis for this portion of the study will be reserved. However, generally, in Brunei, motor policyholders may be compensated by the utilization of the deposits required under the *Motor Vehicle Insurance (Third Party Risks) Act, Chapter 90*.

Likewise, there are provisions in the Philippine *Insurance Code* for the establishment of security funds which shall be used in the payment of allowed claims against an insurance company authorized to transact business in The Philippines.¹⁶⁰ The said fund may also be used to reinsure the policy of the insolvent insurer in any solvent insurer authorized to do the said business in The Philippines. Furthermore, in the event of national emergency or calamity, the fund

¹⁵⁸ Section 46(1) of Insurance Act (Chapter 142)

¹⁵⁹ Section 46(2) of Insurance Act (Chapter 142)

¹⁶⁰ Section 366 of the Insurance Code



may also be used to pay insured claims which otherwise would not be compensable under the provisions of the policy.¹⁶¹

In Indonesia, Article 7 (1) of *Government Regulation No: 73 Year 1992* concerning insurance business conduct states that it is mandatory for an insurance or reinsurance company to deposit 20% of its paid-up capital in a non-affiliated bank in the form of automatically roll over time deposits. Article 7(3) states that the deposit shall be under the name of the Minister and not in the name of the company concerned and by virtue of Article 17(4) shall be adjusted from time to time in accordance with the increase in the Company's business.

Article 7(2) states unequivocally that the time deposit is for the ultimate guarantee in protecting the interest of policyholders. Article 17(8) describes the utilization of the time deposits and it is clear that the same can only be requested by the liquidator or where a company's license has been revoked, by the company itself provided that all the company's obligations have been discharged. Nevertheless, both requests, not surprisingly, are subject to the approval of the Minister of Finance.

In Thailand, Vietnam and Cambodia, there are no provisions for any separate fund to be used for the protection of policyholders.

¹⁶¹ Section 365 of the Insurance Code



VII. Related Issues

a. Tariff Ratings

In Malaysia, motor, and fire insurance tariffs are still applicable whereas the workmen's compensation tariff has been removed. Tariffs were withdrawn in Indonesia in 1989. Notwithstanding this, old tariffs are generally adopted as guides in these jurisdictions. The Insurance Council, DAI through the tariff bureau (Biro Tarip) guides members on property ratings. In Brunei, motor tariffs have only been introduced in June 2002. Thailand has tariff ratings for motor insurance as well as fire insurance whilst Vietnam still maintains its motor tariffs. Meanwhile, Singapore and Cambodia have done away with the motor tariffs.

b. Insurance Industry Associations : Self Regulatory Functions

There exist insurance industry associations in all Asian economies (except Laos, Vietnam & Cambodia), which play a self-regulatory function in respect of the following areas:¹⁶²

- Setting up of codes of practice: In Malaysia, Singapore, and The Philippines, insurance industry associations perform this self regulatory function;

¹⁶² OECD Proceedings (1999). Insurance Regulation and Supervision in Asia, pp 66-67



- Insurance Intermediaries: In Singapore and Malaysia, the self regulatory function of insurance industry associations in respect of insurance intermediaries is important;
- Policy conditions and premium rates: In Indonesia and Malaysia, insurance associations play a significant role in the setting of standard policy forms and adequate premium rates for motor and fire insurance. In The Philippines, the Philippine Insurance Rating Association, a licensed rating organization for non-life insurance, sets policy conditions and premium rates in non-life insurance.
- Platforms: Both in Malaysia and Singapore, insurance industry associations serve as platforms through which the relevant supervisory/regulatory authorities discuss various issues of regulatory concerns with the industry.

The industry associations in Malaysia are the Life Insurance Association of Malaysia, the General Insurance Association of Malaysia, the Insurance Brokers Association of Malaysia and the Association of Malaysian Loss Adjusters.

In Singapore, the existing industry associations are the Life Insurance Association, the General Insurance Association, the Singapore Reinsurer's Association, and the Singapore Insurance Brokers Association.



In Brunei, the General Insurance Association of Negara Brunei Darussalam (GIAB) represents the members of the non-life insurance of the industry.

The insurance industry associations currently in existence in The Philippines are the Philippines Life Insurance Association, Insurance & Surety Association of the Philippines, Philippines Insurance Rating Association, Philippine Insurers Club, Association of Insurance Accountants of the Philippines, Philippine Association of Surety Underwriters, Marine Underwriters Association of The Philippines, Association of Philippine Adjustment Companies, Credit Association of Surety and Insurance Companies, Reinsurance Exchange Club of The Philippines, General Insurance Agents' Association of The Philippines, Association of Insurance Claimsmen and Philippine Insurance Institute.

In Indonesia, the Insurance Council of Indonesia, *Dewan Assuransi Indonesia* (DAI) represents the interests of life and non-life insurance companies and acts as the industry's representative in their dealings with the government and the public. It also acts in partnership with the insurance directorate in its day to day supervision of the insurance market. Its function also includes the drafting of market wordings for particular classes of business and it has also been instrumental in developing a rating data base for the property business. Membership of insurance companies in *Dewan Assuransi Indonesia* is by way of a one-off membership fee to DAI and an annual levy which is based on written premiums.



The industry associations in Thailand are The General insurance Association of Thailand, The Thai Life Assurance Association, Underwriters Association of Thailand and the Association of Insurance Brokers.

In Vietnam, the Vietnam Insurance Association is responsible for providing training to insurance agents and has gradually been performing the function of linking insurance companies with government insurance administration, each other and international-related organizations and will host the 29th Annual Meeting of ASEAN Insurance Council.



Summary of Findings

This study examines the current insurance laws, regulations and practices governing the insurance industry in the ASEAN region. A general analysis of the provisions and practices of the respective countries reveal that the general framework of the industry is not dissimilar.

However, a detailed analysis of the key areas shows that there exist variations in matters concerning the structure, management, control, conduct and supervision of the respective markets.

A summary of the key findings of the analysis is as follows:

- (a) *Structure of Insurance Markets*: The market structure in these jurisdictions varies and appears to have been influenced and determined largely by the socio-economic and political climate. By and large, there are similarities where it relates to classifications of the insurance business i.e. life and non-life (general) and the types of licensed business carried out in each of these countries.

- (b) *Organizational Structure of Insurance Regulatory & Supervisory Authorities*: Each country has in place some form of regulatory and supervisory authority although the extent and scope of its role and powers vary. Many of



these regulatory authorities are associated with the Ministry of Finance;

- (c) *Laws & Adjudication*: There are specific legislations governing the insurance industry in all the countries except Brunei Darussalam where a proposed Insurance Act is under study. Apart from mainframe legislation, the industry is also regulated, supervised and monitored through subsidiary legislations in the form of rules, regulations, decrees and directives which are more often than not issued by the respective regulatory authorities.

In all of these jurisdictions, whilst there are traditional mechanisms such as the courts, many offer an alternative forum for dispute resolution, namely, arbitration and mediation bureaus.

The limitation period prescribed in the respective jurisdictions ranges from one year to thirty years, a disparity which may have an impact on insurance claims handling, management and litigation. In addition, this may pose a problem to reinsurers.

- (d) *Licensing, Management & Operations* : All insurance - related businesses including agents, brokers, loss adjusters, reinsurers and actuarial consultants throughout the region of study require some form of license before commencement. However, the criteria for obtaining license



such as the minimum capital requirement, qualifications, submission of business plans and organizational structure differ from country to country.

- (e) *Solvency Requirements & Supervision:* A requirement for the maintenance of a minimum solvency margin in each country is observed from this analysis. The margins of solvency however vary across these jurisdictions. To enhance prudent financial management and transparency, insurers are compelled to make reports to the relevant authorities periodically.

- (f) *Insurance Companies in Financial Difficulties:* Provisions to deal with insurers who are in financial distress are found in the respective legislations. The insolvency laws governing the liquidation process of these companies are found either in the insurance legislations or Companies Acts of the respective countries with powers amongst others for Insurance Regulators to initiate winding-up proceedings. Some form of protective or guarantee fund has been established in most countries to protect the interests of policyholders of insolvent insurers undergoing the process of liquidation.



(g) Related Issues:

- i. **Tariff Ratings:** Tariffs are still maintained in most jurisdictions except in Singapore, Indonesia and Cambodia. The trend is towards the gradual removal of tariffs in view of market liberalization.
- ii. **Insurance Industry Associations:** These associations are entrusted by the authorities with powers of self-regulation, and provide guidelines to members in relation to policies, premiums and claims. It is also a venue for their members to express concerns and grievances.



Conclusion

The purpose of this preliminary analysis is to ascertain the general framework of the prevailing legislation, market structure and practices of the insurance industry in selected countries in the ASEAN region.

This exercise has in fact revealed that the insurance markets within this region are at varying stages of development and maturity in line with their respective socio-economic and political indicators which reciprocates with their national aspirations and policies as opposed to global financial trends. This study also points out the weaknesses of the existing market structure, which may render it vulnerable to emerging market forces.

In view of globalization and market liberalization, it is essential for regulators as well as the industry to review and reformulate a structure consonant with strong fundamentals through the development of a reliable and prudent supervision system of the insurance sector to establish stable business entities, which are able to meet new challenges and withstand any financial crisis. Though some of the more mature markets within the region have taken various steps to secure prudent management of the insurance sector by embarking on a series of merger exercises, the extent of their preparation to meet the global challenges seems to vary.



There is a growing awareness within the industry of the need for self-governance, establishing a more effective risk management system, developing adequate tools for measuring capital adequacy and adopting best international practices for closer integration with global financial markets.

With a view to achieving these objectives, perhaps it is timely to consider harmonizing the laws and practices governing the insurance industry to reinforce the fundamentals and establish a common framework applicable for all countries so as to promote economic stability in general and the insurance industry in particular, within the ASEAN region.



Recommendations

In order for harmonization to take place, there is a need for the establishment of a common insurance market i.e., a single market where insurance enterprises, persons, activities and capital are free to cross national borders without interfering with the domestic laws of the member states whilst ensuring competition within the member states are not distorted. The purpose is to create conditions within the member states which make it resemble one large insurance market.

Prior to the establishment of a common insurance market there are certain **pre requisites** governing the liberalization of trade – the so called “economic freedoms” – that need to be met such as freedom of establishment, freedom of services, free movement of capital and free movement of workers within the ASEAN region.

To commence the process of harmonization various **obstacles** need to be overcome such as the extent of individual government controls of insurance companies and markets, existence of state-owned insurance companies, varying legal processes and reciprocity as well as differing levels of market maturity amongst the member states within the ASEAN region.

The study therefore recommends the following to overcome the obstacles of integration and to initiate the process of harmonization:-



1. The involvement of institutions and/or bodies to facilitate the integration such as:
 - (a) A body (equivalent to a Commission of the European Communities) consisting of representatives of all member states be set up under the auspices of the ASEAN secretariat imbued with the powers to issue and enforce directives, regulations, as well as provide recommendations;
 - (b) The control authorities responsible for administering insurance legislation and regulating the operations of their insurance industry that need to meet regularly and collaborate closely with the body described in (a);
 - (c) A central representative body consisting of national insurance associations from member countries to exchange information (including new regulatory guides/circulars) for the better understanding of insurance operations in ASEAN countries.
 - (d) A national body to obtain feedback from representatives of insurance consumer interests.



2. The method to facilitate the integration: The liberalization of insurance laws should be undertaken by **the abolition of discriminatory laws** against member states and henceforth facilitate the approximation of laws i.e. by means of adapting national laws in such a way that the national markets in the insurance sector can become one viable common market. This would inevitably involve real changes in national laws applicable to both the foreign and local insurers.

3. The period in which the integration should take place: This should be carried out in accordance to a “**General Program**” towards integration wherein progress in key areas i.e. reinsurance, non-life insurance, life assurance, insurance intermediaries, is to be attained in **time-tabled stages**.

This study recognizes that the realization of a common insurance market is dependant on the good will and consensus of the member countries. The mechanics and logistics involved in the implementation of the said recommendations should be the subject matter of further research which should also take into account external factors which may arise in the period after this study.



MATRICES

Insurance Laws and Regulations of selected ASEAN countries: A Comparative Analysis

A Comparative Analysis of Insurance Laws and Regulations of Selected ASEAN Countries

| | Areas of Study | Malaysia | Singapore | Philippines | Brunei | Indonesia | Thailand | Vietnam | Cambodia |
|----|---|---|--|--|---|--|---|--|---|
| 1. | Structure of Insurance Market | | | | | | | | |
| | a.) Size & nature • Total no. of authorized insurers | a) 43 direct insurers, 10 reinsurers 4 takaful operators, 35 brokers and 40 adjusters | a) 57 direct insurers, 33 reinsurers, 51 captives and 57 general brokers | a) 4 composite, 131 direct insurers, and 3 reinsurers. | a) More than 100 registered but only 14 general insurers, 1 captive insurer, 3 life insurers and 3 Takaful insurers are active. | a) 107 registered insurance companies consisting of 3 state owned insurers, 80 domestic insurers and 24 joint venture foreign insurance companies. | a) 101 direct insurers, 2 reinsurers | a) 147 direct insurers, 1 reinsurers and 3 brokers including 4 State owned enterprises, 4 joint stock companies, 7 JVs, 6 wholly foreign owned enterprises | a) Only 4 insurer, no agent, no broker, no adjuster & 1 reinsurers |
| | b. Types of Legal Form • Insurers, Intermediaries, Loss adjusters, • Reinsurers | b) Insurers, Reinsurers, Agent (not licensed under the Insurance Act) & Broker, & Loss Adjusters. | b) Insurers, Reinsurers, Captives, Agent & Broker, & Loss Adjusters. | b) Insurance, Reinsurance & Loss Adjusters | b) Life, non-life and Takaful insurance business, Agent, Broker & Loss Adjusters. | b) Life and non-life business and intermediaries, loss adjuster and reinsurers to conduct insurance supporting business. | b) Insurance Company, Agent & Broker, & Loss Adjusters. | b) Insurers, Reinsurers, Agent & Broker. | b) Insurance Company, Agent & Broker, Insurance risk Inspection (Loss Adjuster) |

A Comparative Analysis of Insurance Laws and Regulations of Selected ASEAN Countries

| | Areas of Study | Malaysia | Singapore | Philippines | Brunei | Indonesia | Thailand | Vietnam | Cambodia |
|----|--|---------------------------|--------------------------------------|---|--|--|--|--|--|
| 2. | Types (normative or material) & Structure of Supervision | | | | | | | | |
| | a) Regulatory & Supervision Authority | Bank Negara Malaysia, BNM | Monetary Authority of Singapore, MAS | Insurance Commission, Department of Finance | Financial Institutions Division, Ministry of Finance | Insurance Directorate, Ministry of Finance | a) Department of Insurance, Ministry of Commerce | a) Insurance Department, Ministry of Finance | a) Financial Industry Department of Ministry of Economy & Finance. |
| | b) Powers of Authority – scope of powers | | | | | | | b) 1. Promulgating and providing guidance on the implementation of legal documents governing insurance business; formulating strategies, master plans, plans and policies on development of Vietnam's insurance market. | b) Can impose fines suspend & revoke license, examine accounting books and other related document. |

A Comparative Analysis of Insurance Laws and Regulations of Selected ASEAN Countries

| | Areas of Study | Malaysia | Singapore | Philippines | Brunei | Indonesia | Thailand | Vietnam | Cambodia |
|--|----------------|----------|-----------|-------------|--------|-----------|----------|---|----------|
| | | | | | | | | <p>2. Granting and withdrawing licenses of insurance enterprise, insurance brokerage enterprise and license for the establishment of representative offices of foreign insurance enterprise and foreign insurance brokerage enterprise in Vietnam;</p> <p>3. Issuing approving and providing guidance on the implementation of terms and conditions, tariffs and insurance commissions;</p> | |

A Comparative Analysis of Insurance Laws and Regulations of Selected ASEAN Countries

| | Areas of Study | Malaysia | Singapore | Philippines | Brunei | Indonesia | Thailand | Vietnam | Cambodia |
|--|----------------|----------|-----------|-------------|--------|-----------|----------|---|----------|
| | | | | | | | | <p>4. Taking necessary measures to ensure that insurance enterprises meet the statutory financial requirements and fulfill their commitments to the insurance buyer.</p> <p>5. Organizing the information works and giving forecast of the insurance market in Vietnam;</p> <p>6. Undertaking international co-operation in insurance business;</p> | |

A Comparative Analysis of Insurance Laws and Regulations of Selected ASEAN Countries

| | Areas of Study | Malaysia | Singapore | Philippines | Brunei | Indonesia | Thailand | Vietnam | Cambodia |
|--|----------------|----------|-----------|-------------|--------|-----------|----------|--|----------|
| | | | | | | | | <p>7. Approving overseas activities by insurance enterprise and/or insurance brokerage enterprise;</p> <p>8. Administering the operations of representative offices of foreign insurance enterprise and foreign insurance brokerage enterprise;</p> <p>9. Organizing the training of and building up managerial and technical staffs for insurance enterprise, insurance agents and insurance brokers; and</p> | |

A Comparative Analysis of Insurance Laws and Regulations of Selected ASEAN Countries

| | Areas of Study | Malaysia | Singapore | Philippines | Brunei | Indonesia | Thailand | Vietnam | Cambodia |
|--|----------------|----------|-----------|-------------|--------|-----------|----------|--|----------|
| | | | | | | | | 10. Inspecting, monitoring and supervising insurance business operations; dealing with complains, claims and breaches of insurance business laws. (Article 122 of the Law on Insurance Business) | |

A Comparative Analysis of Insurance Laws and Regulations of Selected ASEAN Countries

| | Areas of Study | Malaysia | Singapore | Philippines | Brunei | Indonesia | Thailand | Vietnam | Cambodia |
|----|------------------------------------|---|--|--|--|--|--|---|--|
| 3. | Adjudication | | | | | | | | |
| | a) Laws governing claimant insurer | a) Insurance Act 1996 (Act 553), Insurance Regulations 1996, Insurance (Exemption) Order 1999, Insurance (Amendment) Regulations 1999, Insurance (Amendment) Regulations 2000, Insurance (Amendment) Regulations 2001, Insurance (Amendment) (No.2) Regulations 2001, Insurance Exemption Order 2001, Insurance (Exemption) (No.2) Order 2001, Insurance (Financial Guarantee | a) Insurance Act (Cap.142), Financial Advisors Act, Insurance (Amendment) Act 2001, Insurance (Exemption) Regulation s 2002, Insurance (Exemption and Provisions Applicable for Direct Life Insurers) Regulation s 2002, Insurance (Protection and Indemnity Clubs) Regulation s 2002, Insurance (Amendment) Act | a) Insurance Code 1978 (Presidential Decree No. 1460 which superseded Presidential Decree No. 612), Special laws and provisions of the Civil Code, Property Insurance Law (Republic Act No. 656 as amended by Pres. Decree No. 245). | a) Companies Act, Cap. 39, Motor Vehicle Insurance (Third Party Risks) Act, Cap. 90, Workmens' Compensation Act, Cap. 74, Administrative Measure of 1995, International Insurance and Takaful Order & Regulations 2002 | a) Law No.2, Year 1992 on Insurance Business, Government Regulations No. 73, Year 1992 on Insurance Business Conduct, Government Regulation No.63, Year 1999 concerning amendment Government Regulation No.73, Decree of Minister of Finance No. 223/KMK.01 7/1993 on Licensing of Insurance and Reinsurance Companies, Decree of the Minister of Finance No. 481/KMK.01 7/1999 on | a) Non Life Insurance Act B.E 2535 (1992), The Protection for Motor Vehicle Accident Victims Act B.E. 2535 (1992), Life Insurance Act B.E 2535 (1992). | a) Law No 24/2000/QH 10, Decree No 42/2001/ND-CP, Decree No 43/2001/ND-CP, Circular No 71/2001/TT-BTC, Circular No 72/2001/TT-BTC, Decree No.118/2003/N D-CP. | a) Royal Kram No. NS/RKM/07 00/02 Date 25/7/00 and Sub-Decree No. 106 ANKr. BK. Date 22/10/2001 b) –Inter ministerial Prakas on Compulsory insurance for Contractor's General Liability. No. 655 PRK. SHV-DNS-MPH Date 16/10/02 -Inter ministerial Prakas on Compulsory Insurance of Passenger Transports No 654 PRK. SHV. |

A Comparative Analysis of Insurance Laws and Regulations of Selected ASEAN Countries

| | Areas of Study | Malaysia | Singapore | Philippines | Brunei | Indonesia | Thailand | Vietnam | Cambodia |
|--|----------------|---|--|-------------|--------|--|----------|---------|---|
| | | Guarantee Insurance) Regulations 2001, Insurance (Amendments) (No.3) Regulations 2001, Insurance (Amendment) (No 4) Regulations 2001, Insurance (Exemption) Order 2002, Insurance Guarantee Scheme (General Insurance Business) Fund Regulations 1990*. Insurance (Assumption of Control and Winding Up) (Mercantile Insurance Sdn. Bhd.) Order 1991*. Insurance (Winding Up) (Mercantile | (Commencement) (No. 2) Notification 2002.* *amendment of laws in January 2004 | | | Financial Soundness of Insurance and Reinsurance companies, Decree of the Minister of Finance No. 225/KMK.01 7/1993 on business conduct of Insurance and Reinsurance companies, Decree of Minister of Finance No. 226/KMK.01 7/93 on Licensing of Business Conduct of Insurance supporting companies and Decree No. 303/KMK.01 7/2000 & Decision No. 5314/LK/1999. | | | SK. MPH Date 16/10/02 -Inter ministerial Prakas on Compulsory Motor vehicle or third party Liability insurance. No.653 PRK.SHV. SK.MPH Date 16/10/02 c) Instruction Circular on Issuance of Temporary Insurance License No. 009 shv Date 09/12/02 |

A Comparative Analysis of Insurance Laws and Regulations of Selected ASEAN Countries

| | Areas of Study | Malaysia | Singapore | Philippines | Brunei | Indonesia | Thailand | Vietnam | Cambodia |
|--|----------------|---|-----------|-------------|--------|-----------|----------|---------|----------|
| | | <p>Insurance Sdn. Bhd) Order 1994*</p> <p>Insurance Guarantee Scheme (General Insurance Business) Fund (Amendment) Regulations 1994*.</p> <p>Insurance Guarantee Scheme Fund (General Insurance Business) (Restriction On Payment) Regulations 1994*.</p> <p>* These regulations were saved when the Insurance Act 1963 was repealed.</p> | | | | | | | |

A Comparative Analysis of Insurance Laws and Regulations of Selected ASEAN Countries

| | Areas of Study | Malaysia | Singapore | Philippines | Brunei | Indonesia | Thailand | Vietnam | Cambodia |
|--|---|---|--|---|--|--|---|---|---|
| | <p>b) Enforcement of laws</p> <ul style="list-style-type: none"> ◆ jurisdiction, ◆ reciprocity ◆ Limitation period | <p>b)</p> <ul style="list-style-type: none"> ◆ Malaysia only, ◆ Commonwealth countries, ◆ 6 years (west) 3 years (east) | <p>b)</p> <ul style="list-style-type: none"> ◆ Singapore only, ◆ Commonwealth countries, ◆ 3 years. | <p>b)</p> <ul style="list-style-type: none"> ◆ Philippines only, ◆ No reciprocity ◆ 1 year from Denial of claim. | <p>b)</p> <ul style="list-style-type: none"> ◆ Brunei only, ◆ No reciprocity ◆ 6 years for property damage, 3 years for personal injury | <p>b)</p> <ul style="list-style-type: none"> ◆ Indonesia only, ◆ No ◆ 1 year. | <p>b)</p> <ul style="list-style-type: none"> ◆ Thailand only, ◆ No Reciprocity ◆ 2 years (Non-life Insurance) 10 years (Life Insurance) | <p>b)</p> <ul style="list-style-type: none"> ◆ Vietnam only, ◆ No Reciprocity ◆ 3 years. | <p>c)</p> <ul style="list-style-type: none"> ◆ Cambodian Courts ◆ No Reciprocity ◆ 3 years |
| | <p>c) ADRS</p> | <p>c) Arbitration, Insurance Mediation Bureau.</p> | <p>b) Insurance Dispute Resolution Organization</p> | <p>c) Arbitration.</p> | <p>c) Arbitration.</p> | <p>c) Arbitration, Badan Arbitrasi Nasional</p> | <p>c) Arbitration</p> | <p>c) Insurance disputes may be brought to Economic Arbitration Centres or Vietnam International Arbitration Centre or the courts of justice.</p> | <p>d) If parties cannot agree on claim, the claims must be put before arbitrators before commencing action in court.</p> |

A Comparative Analysis of Insurance Laws and Regulations of Selected ASEAN Countries

| | Areas of Study | Malaysia | Singapore | Philippines | Brunei | Indonesia | Thailand | Vietnam | Cambodia |
|----|--|--|---|---|---|--|---|--|---|
| 4. | Licensing (Insurers) a) Requirements & Procedures | a) Must be licensed under Insurance Act except agents. | a) Must be registered under Insurance Act. | a) Must have certificate of authority from Insurance Commission | a) Must obtain letter of approval from Ministry of Finance. | a) Must obtain a license from Ministry of Finance. | a) Must be registered company and obtain license from Ministry of Commerce. | a) Must be licensed by Ministry of Finance except for Insurance Agents and Loss Adjustors. | a) Must be registered in commercial registry and licensed by Ministry of Economy and Finance. |
| | b) Minimum Capital | b) RM100 million (direct insurer and local professional general reinsurers). RM50 million (local professional life reinsurer) & RM20 million (foreign professional reinsurer) | b) S\$25 million (direct insurer and reinsurer) & S\$400,000 (captive insurance). | b) 50 million pesos (USD911, 493.93) for direct and 75 million pesos (USD136,72 4.09) for reinsurers. | b) BRD1 million. (USD568, 990.04) | b) Rp100,000,0 00,000 (billion) for direct insurers and Rp200,000,0 00,000 (billion) for reinsurers. | b) 300 million Baht(USD7, 173,601) for non life and 500 million Baht (USD 11,956,002) for life insurance. | b) US\$5 million for non life, US\$10 million for life and US\$300,000 for brokers. | b) 5 million ¹ SDR for life or general and 10 million SDR for composite. |

¹ The SDR is not a currency, nor is it a claim on the IMF. Instead, it is potentially a claim on the freely usable currencies of IMF members, as holders of SDRs can exchange their SDRs for these currencies. The SDR's value as a reserve asset derives from the commitment of members to hold and accept SDRs, and to honor various obligations connected with the operation of the SDR system. The IMF ensures that the SDR's claim on freely usable currencies is being honored in two ways: through the arrangement of voluntary exchanges between participating members in a managed market, and by designating IMF members with a strong external position to purchase SDRs from members with weak external positions. As at the date of preparation SDRs=US\$1.39197.

A Comparative Analysis of Insurance Laws and Regulations of Selected ASEAN Countries

| | Areas of Study | Malaysia | Singapore | Philippines | Brunei | Indonesia | Thailand | Vietnam | Cambodia |
|--|----------------------------------|--|---|---|---|--|--|--|--|
| | c) Minimum-Solvency Requirements | <p>c) The prescribed margin of solvency required to be maintained by licensed insurers for each class of insurance business are as follows:-</p> <ul style="list-style-type: none"> For life Insurance business, the aggregate of a specified percentage of the actuarial valuation liabilities, sums at risk and net premiums on all life policy extensions determined at the end of the financial year; and | c) Different requirements for different categories. | c) 0.2% of insurance in force for life and 10% of net premiums for general. | c) 20% of net premium income of the preceding year. | c) 120% of total risk likely to occur. | c) 2% of reserves but not less than 50 million Baht for life insurance company and 10% of net written premium of the previous year but not less than 30 million Baht for non-life insurance company. | c) 20% of retained premiums for non life and 4% of technical reserves plus 0.1% of net amount at risk for life | c) 50% of Registered capital for 1 st year, 13,300 million Riels (USD3.47M) when net premiums up to 66,500 million Riels,(USD1 7.34M) 20% of previous years premium if net premium is between 66,500 million Riels (USD17.34M) and 332,500 million Riels (USD 86.68)and 66,500 million Riels ,(USD17.34 M) +10% of premium surplus of 332,500 million Riels (USD86.68 M)subject to a minimum of 26,600 |

A Comparative Analysis of Insurance Laws and Regulations of Selected ASEAN Countries

| | Areas of Study | Malaysia | Singapore | Philippines | Brunei | Indonesia | Thailand | Vietnam | Cambodia |
|--|----------------|---|-------------------------|---|--|--|---|---|--|
| | | <ul style="list-style-type: none"> For general insurance business, the aggregate of a specified percentage of claims or net premiums, determined at the end of the financial year. | | | | | | | million Riels (USD 6.93M) for composite insurer. |
| | d) Investments | c) Although BNM is empowered under the Act to prescribe investment requirement, no specific requirements have been prescribed. However, assets supporting the margin of solvency must be in the form of admitted assets specified by BNM. | d) As prescribed by MAS | d) Must be approved by the Insurance commissioner and governed by Insurance code. | d) No statutory provisions for investment. | d) Governed by Chapter III of Decree No.481/KMK. 017/1999 and Article 13 Law No 73 of 1992 | d) As prescribed by the Minister of Commerce. | d) Governed by Article 98 of Law No. 24/2000/QH 10 and Decree No. 43/2001/ND-CP | d) 75% of reserves must be invested in Cambodia. |

A Comparative Analysis of Insurance Laws and Regulations of Selected ASEAN Countries

| | Areas of Study | Malaysia | Singapore | Philippines | Brunei | Indonesia | Thailand | Vietnam | Cambodia |
|--|----------------------------|---|--|--|--|--|--|--|--|
| | e) Fit & Proper Management | e) Directors and Chief Executive Officers must be approved by BNM and minimum qualifications are prescribed by BNM. | e) Must be approved by MAS and minimum qualifications is prescribed by them. | e) Must be approved by Insurance Commissioner and minimum qualifications is prescribed by Insurance Commissioner . | e) Must be approved by Ministry of Finance and minimum qualifications is prescribed by them. | e) Must be approved by Ministry of Finance and minimum criteria specified in Law No 2 1992. | e) Excluded classes of persons stipulated in the Act and those who are appointed are subject to the approval of Minister of Commerce. | e) Chairman and General Director must be approved by Ministry of Finance subject to minimum criteria stipulated in Decree No.42/2001 | e) Excluded classes of persons stipulated in the Act and those who are appointed are subject to the approval of Minister of Economy and Finance. |
| | f) Deposit Requirements | f) None | f) Deposit of S\$500,000 (USD284,495.02) | g) 25% of minimum capital in government securities to be deposited with commissioner. | h) BRD 1 million. (USD568,990.04) | f) 20% of paid up capital must be deposited with a bank under the joint names of the Minister and the Insurer. | f) Life 20 million Baht Non-life Fire 3.5 million Baht Marine&Transportation 3.5 million Baht Automobile 3.5 million Baht Miscellaneous 3.5 million Baht | f) 5% of legal capital to be deposited with an authorized commercial bank in Vietnam | f) 10% of capital must be deposited with National Treasury |

A Comparative Analysis of Insurance Laws and Regulations of Selected ASEAN Countries

| | Areas of Study | Malaysia | Singapore | Philippines | Brunei | Indonesia | Thailand | Vietnam | Cambodia |
|----|------------------------------------|---|--|--|---|--|---|--|--|
| 5. | Solvency Supervision | | | | | | | | |
| | a) Insurance Accounting Principles | a) Specific standards have been formulated | a) Specific principles laid out in Insurance Regulations | a) Two principles that is GAAP and SAP are adopted. | a) Two principles that is GAPP and SAP are adopted. | a) No specific provisions provided in the Act. | a) SAP is used for supervisory purpose while GAAP is used for general purpose. | a) Accounting systems applicable to insurance business in accordance with accounting laws and standards as provided in the Law. | a) No legislative requirements but follows prevailing accounting standards; business statistics required is laid down in the sub decree. |
| | b) Reporting | b) Monthly/quarterly reports as well as annual accounts must be submitted within such time as prescribed by BNM. BNM by notice in writing may also require licensees to submit additional documents or information within such time as prescribed by BNM. | b) Quarterly reports as well as annual accounts must be submitted within such time as prescribed by MAS. | b) Fiscal year statutorily set to end on 31 December. Financial reports must be submitted by 30 th April. Insurance Commissioner must publish in newspapers within 30 days. | b) Quarterly reports (including reports from General Insurance Association of Negara Brunei Darussalam) as well as annual accounts must be submitted within such time as prescribed by MOF. - | b) Fiscal year statutorily set to end on 31 December. Financial reports must be submitted to Ministry of Finance and publish in newspaper by 31 st May. | b) Apart from periodical reports, annual report needs to be submitted within 5 months from the last day of the calendar year. Summary of assets and liabilities in the form prescribed by the | b) Apart from quarterly reports, fiscal year statutorily set to end on 31 December. Financial reports must be submitted to Ministry of Finance and made public within 120 days of the end of fiscal year | b) Apart from submitting monthly business statistics, financial reports must be submitted within 3 months of the end of fiscal year. |

A Comparative Analysis of Insurance Laws and Regulations of Selected ASEAN Countries

| | Areas of Study | Malaysia | Singapore | Philippines | Brunei | Indonesia | Thailand | Vietnam | Cambodia |
|--|------------------------|--|--|--|----------------------|------------------------|---|---|------------------------|
| | c) On-Site Supervision | time as may be specified. c) Risk based supervision approach. On average, an Insurer is inspected once in every 1 to 3 years depending on the financial condition of the insurer. | c) Risk based supervision requirements. Frequency of inspections is determined by size of company and level of riskiness of insurer. | c) At least once a year and whenever necessary | c) not at the moment | c) Whenever necessary. | Commissioner also need to be published in the newspapers within 15 days after annual report submission. c) Whenever necessary. | c) No more than once a year except where there are signs of violations of the laws. | c) Whenever necessary. |

A Comparative Analysis of Insurance Laws and Regulations of Selected ASEAN Countries

| | Areas of Study | Malaysia | Singapore | Philippines | Brunei | Indonesia | Thailand | Vietnam | Cambodia |
|----|---|---|--|---|---|--|---|---|--|
| 6. | Insurance companies in Financial Difficulties | | | | | | | | |
| | a) Early Warning Systems & Guidelines on Measures to be taken | a) Insurers must notify BNM within 90 days of becoming aware of failure or potential failure to meet margin of solvency and submit business plan to improve financial condition. A local insurer is restricted from paying dividend on its shares if the payment of dividend would impair its margin of solvency. An auditor of an insurer must immediately report to BNM if there has been a | a) Insurers must immediately notify MAS if it is or is likely to be unable to maintain the margin of solvency; if any of its directors or executives is involved or believed to be involved in any unethical conduct or practices prejudicial to the Company's interests or its policyholder ; or there are significant changes in the corporate and financial structure, or | a) Insurance Commissioner has the power to direct insurers to make good any shortfall in the solvency margins within 15 days. Failing which he can suspend or revoke certificates of authority and also appoint a conservator to take over the company and reorganize it and preserve assets. | a) No statutory provisions in the absence of Insurance Act. However, Ministry of Finance can require the Insurer to submit plans to overcome shortcomings and can also restrict or revoke the approval. | a) Ministry of Finance can require the Insurer to submit plans to overcome shortcomings and can also restrict or revoke the license. | a) The Insurance Commissioner with the consent of the Minister of Commerce can order the insurers to improve its condition within a specified time, increase or reduce its capital, remove and appoint its directors and officers, and revoke the license of the insurers respectively. | a) Insurer must immediately report to Ministry of Finance and submit plans for recovery. If after 90 days the Insurer fails to recover its solvency the Minister can appoint a Board of Solvency Control to take over the running of the company. | a) Insurer must pay up the required amount of shortfall within 30 days or face a penalty and have license revoked. |

A Comparative Analysis of Insurance Laws and Regulations of Selected ASEAN Countries

| | Areas of Study | Malaysia | Singapore | Philippines | Brunei | Indonesia | Thailand | Vietnam | Cambodia |
|--|----------------|---|--|-------------|--------|-----------|----------|---------|----------|
| | | <p>contravention of the Act or an offence involving fraud or dishonesty committed by an insurer or its employee; any serious irregularity which jeopardizes the interests of policy owners/creditors has occurred; or an insurer has not complied with or may not be able to comply with the margin of solvency requirement.</p> <p>For life business, an appointed actuary is required to report annually to the board of directors and BNM on the financial</p> | <p>in the operations of the Company.</p> <p>b) Auditors must immediately report to MAS if he is satisfied that serious irregularities have occurred including irregularities that jeopardize the policyholder s' interests, or if locally-incorporated insurer is unable to meet its obligations or if any transaction or dispute has taken place which will have a material effect on the insurance</p> | | | | | | |

A Comparative Analysis of Insurance Laws and Regulations of Selected ASEAN Countries

| | Areas of Study | Malaysia | Singapore | Philippines | Brunei | Indonesia | Thailand | Vietnam | Cambodia |
|--|----------------|--|---|-------------|--------|-----------|----------|---------|----------|
| | | condition of an insurer including risks faced by the insurer. BNM may do, or direct a defaulting insurer to do, any act in relation to its business, including removing an employee or director from employment or office, appointing a person to advise the insurer in relation to proper conduct of business, terminating any contract agreement or arrangement entered into by the insurer and assuming control of the insurer's property business and affairs. | fund solvency of the insurer. c) Whenever affairs of insurer deemed detrimental to public, MAS has power to issue directions such as taking action to recover assets, stop issuing or renewing policies, recruit personnel or remove directors, recover illegally paid monies. | | | | | | |

A Comparative Analysis of Insurance Laws and Regulations of Selected ASEAN Countries

| | Areas of Study | Malaysia | Singapore | Philippines | Brunei | Indonesia | Thailand | Vietnam | Cambodia |
|--|----------------|----------|--|-------------|--------|-----------|----------|---------|----------|
| | | | <p>d) Life Insurance: The actuary shall report to the insurer any matter which in the opinion of the actuary has any material adverse effect on the financial condition of the insurer in respect to its life insurance business; and requires rectification by the insurer.</p> | | | | | | |

A Comparative Analysis of Insurance Laws and Regulations of Selected ASEAN Countries

| | Areas of Study | Malaysia | Singapore | Philippines | Brunei | Indonesia | Thailand | Vietnam | Cambodia |
|--|-----------------------------------|--|---|---|--|---|---|---|---|
| | b) Policy holders Protection Fund | c) Separate Insurance Guarantee Scheme Funds have been established for general and life business relating to Malaysian insurance policies. Currently, contribution of levies to the fund (% of gross direct premiums) is prescribed only for general insurance business. | e) While the Act provides for the establishment of Policy Owners Protection Fund to compensate policyholders for the inability of registered insurers in meeting their policy liability such a fund has yet to be set up. | b) Security fund to pay for claims and reinsure policies of insolvent insurers. Also the fund may pay claims in the event of emergency or calamity where the claim would not be paid by the policy. | b) No statutory provisions for policy-holder protection funds. | b) 20% of paid up capital must be deposited with a bank under the joint names of the Minister and the Insurer and can only be utilized by the liquidator. | b) No statutory provisions for policyholder protection funds. | c) No statutory provisions for policyholder protection funds. | b) No statutory provisions for policyholder protection funds. |

A Comparative Analysis of Insurance Laws and Regulations of Selected ASEAN Countries

| | Areas of Study | Malaysia | Singapore | Philippines | Brunei | Indonesia | Thailand | Vietnam | Cambodia |
|--|----------------|---|--|---|--|--|--|---|--|
| | c) Winding up | c) BNM or any other persons may petition for the winding up of insurer. Voluntary winding up is only permitted after the transfer of business to another insurer is completed. | c) MAS or any other persons may petition for the winding up of insurer. Voluntary winding up is permitted subject to approval of MAS. | c) Insurance Commission will appoint a conservator under Section 248. | c) Provisions under Companies Act, Cap. 39 | c) Ministry of Finance will initiate liquidation under Article 20(1) Law No.2 1992 | c) Revocation of licenses to engage in the insurance business is stated in Chapter III of both the Life and Non-Life Insurance Acts. | d) Dissolution of insurance is governed by Article 82 of Law No.24/2000/QH 10 i) Voluntary winding is allowed if the company is capable of repaying all outstanding debts. | Dissolution of life insurance is governed by the Ministry of Economy and Finance under Article 70 sub decree on Insurance, Dissolution general insurance is governed by the instruction Circular on issuance of Temporary Insurance License No.009 SHV Date 09/12/02 |

A Comparative Analysis of Insurance Laws and Regulations of Selected ASEAN Countries

| | Areas of Study | Malaysia | Singapore | Philippines | Brunei | Indonesia | Thailand | Vietnam | Cambodia |
|----|-----------------------------------|--|---|---|--|---|--|--|--|
| 7. | Insurance Business | Insurance (including reinsurance), insurance broking and loss adjusting. | Financial Advisors, Direct insurance, reinsurance, captive and insurance broking. | Insurance, reinsurance and adjusting. | Direct insurance, reinsurance, insurance broking and captive. | Loss insurance, life insurance, reinsurance, insurance brokerage, reinsurance brokerage, loss adjuster, actuarial consultant and insurance agent. | Life Insurance, non life insurance, life insurance agents, life insurance brokers, non life insurance agents and non life insurance brokers. | Insurance, reinsurance, insurance broking and insurance agents. | Insurance, insurance brokerage, insurance agents and Insurance Risk Adjusters. |
| | a) Types of Insurance Business | | | | | | | | |
| | b) Admitted/Non Admitted Policy | Admitted policies only for property and liability. | Admitted policies for motor and workmen compensation. | Admitted policies only for motor | Admitted policies for motor and workmen compensation only | Admitted policies only | Admitted policies only | Admitted policies only | Admitted policies only |
| | c) Rights in terms of Subrogation | No specific provisions provided in the legislation but included through standard insurance policy / specific contractual terms | No specific provisions provided in the legislation but included through: 1. standard insurance policy / specific contractual terms | Principle of subrogation provided in the Insurance Code | In Brunei, rights of subrogation is also an entrenched principle in recovery, but is seldom resorted to. | Rights of subrogation is entrenched in Indonesian law although its practice is seldom resorted to. | Provided for in the Civil and Commercial Code. | Compensation can only be obtained by instituting action against the owner of the uninsured vehicle | Provided to insurers in Article 28 of Insurance Law Act 2000 for property |

A Comparative Analysis of Insurance Laws and Regulations of Selected ASEAN Countries

| | Areas of Study | Malaysia | Singapore | Philippines | Brunei | Indonesia | Thailand | Vietnam | Cambodia |
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| 8. | Other Related Issues a) Tariffs | a) Motor & Fire tariff. | a) No Tariffs | a) Motor Tariff | a) Motor Tariff | a) Guides on property ratings | a) Motor & Fire Tariff | a) Motor Tariff | a) No Tariffs but premium rates required for all policies must be approved by Ministry of Economy and Finance |