Insurance Comparative Guide

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Indonesian Legal Consultants

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1.Legal framework

1. 1. Which legislative and regulatory provisions govern the insurance sector in your jurisdiction?

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The main legislation governing the insurance sector in Indonesia is the Insurance Law (40/2014). The Indonesian government has issued numerous implementing regulations related to insurance, including:

- Government Regulation 14/2018 regarding Foreign Ownership in Insurance Companies, as amended;
- Financial Services Authority (OJK) Regulation 23/POJK.05/2015 of 2015 regarding Insurance Products and Insurance Products Marketing (‘POJK 23/2015’);
- OJK Regulation 27/POJK.03/2016 regarding Fit and Proper Test for Main Party in Financial Services Companies (‘POJK 27/2016’);
- OJK Regulation 67/POJK.05/2016 regarding Business Licensing and Organisation of Insurance Companies, *Sharia* Insurance Companies, Reinsurance Companies and Sharia Reinsurance Companies, as partially revoked (‘POJK 67/2016’);
- OJK Regulation 68/POJK.05/2016 regarding Business Licensing and Organisation of Insurance Brokerage Companies, Reinsurance Brokerage Companies and Insurance Loss Appraiser Companies, as partially revoked (‘POJK 68/2016’);
- OJK Regulation 69/POJK.05/2016 regarding Business Implementation of Insurance Companies, *Sharia* Insurance Companies, Reinsurance Companies and *Sharia* Insurance Companies, as amended and partially revoked by OJK Regulation 38/POJK.05/2020 of 2020 (‘POJK 69/2016’);
- OJK Regulation 70/POJK.05/2016 regarding Business Implementation of Insurance Brokerage Companies, Reinsurance Brokerage Companies and Insurance Loss Appraiser Companies (‘POJK 70/2016’);
- OJK Regulation 71/POJK.05/2016 regarding Financial Soundness of Insurance and Reinsurance Companies, as amended and as partially revoked (‘POJK 71/2016’);
- OJK Regulation 72/POJK.05/2016 regarding Financial Soundness of Insurance and Reinsurance Companies with *Sharia* Principles, as amended (‘POJK 72/2016’);
- OJK Regulation 73/POJK.05/2016 regarding Good Corporate Governance for Insurance Companies, as amended and as partially revoked (‘POJK 73/2016’);
- OJK Regulation 12/POJK.01/2017 regarding the Implementation of Anti-Money Laundering and Prevention of Terrorism Funding Programmes in the Financial Services Sector, as amended (‘POJK 12/2017’);
- OJK Regulation 55/POJK.05/2017 regarding Periodic Reporting by Insurance Companies, as partially revoked (‘POJK 55/2017’);
- OJK Regulation 4/POJK.05/2021 regarding Implementation of Risk Management in the Use of Information Technology by Non-Bank Financial Service Institutions (‘POJK 4/2021’);
- OJK Circular Letter 9/SEOJK.05/2018 regarding Application for Licensing, Approval, and Reporting via Electronic Means for Insurance Brokerage Companies, Reinsurance Brokerage Companies, and Insurance Loss Appraisal Companies (‘SE OJK 9/2018’);
- OJK Circular Letter 10/SEOJK.05/2018 regarding Application for Licensing, Approvals, and Reporting for Insurance Companies, Sharia Insurance Companies, Reinsurance Companies, and *Sharia*

Reinsurance Companies via Electronic Means (‘SE OJK 10/2018’);
- OJK Circular Letter 19/SEOJK.05/2020 regarding Marketing Channels for Insurance Products (‘SE OJK 19/2020’); and
- OJK Circular Letter 5/SEOJK.05/2022 regarding Investment-Linked Insurance Products (‘SE OJK 5/2022’).

1. 2. Which bilateral and multilateral instruments on insurance have effect in your jurisdiction?

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To the best of our knowledge, no international instruments on insurance have been ratified by, and thus have effect in, Indonesia.

1. 3. Which bodies are responsible for enforcing the applicable laws and regulations? What powers do they have?

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The OJK is the main body responsible for overseeing the compliance of insurance companies with the applicable laws and regulations in Indonesia. Pursuant to the Insurance Law, the OJK carries out regulatory and supervisory functions for the insurance sector. Among other things, the OJK is authorised to:

- establish laws and regulations in the insurance sector;
- approve or reject applications for insurance business licences;
- revoke the business licences of insurance companies;
- require the submission of periodical reports by insurance companies;
- examine insurance companies and other parties which are or were affiliated parties of or provided services to insurance companies;
- determine the controllers of insurance/reinsurance companies;
- approve or revoke approval for the controllers of insurance/reinsurance companies;
- conduct fit and proper tests for prospective actuaries, internal auditors, controllers, members of the boards of directors and commissioners, and members of the *Sharia* supervisory board of insurance companies;
- suspend members of the boards of directors and commissioners and/or the *Sharia* supervisory board and stipulate statutory managers of insurance companies;
- issue written orders to insurance companies to, among other things,:
  - take or not take certain actions for the purpose of compliance with the laws and regulations in the insurance sector; and
  - stop marketing certain insurance products;
- sanction insurance companies, shareholders, members of the boards of directors and commissioners, members of the *Sharia* supervisory board, company actuaries and/or internal auditors; and
- exercise other authorities under the laws and regulations in the insurance sector.

1. 4. What is the regulators' general approach in regulating the insurance sector?

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The OJK's general approach in regulating the insurance sector is based on the mandate of the applicable laws and regulations and/or the need to develop the sector, taking into account consumer protection.

As part of its supervisory duties, the OJK is entitled to receive periodical reports from insurance companies (see question 8.2). The OJK uses these reports to assess:

- the effectiveness of the regulations;
- the financial soundness of companies; and
- their compliance with the prevailing insurance laws and regulations.

Any violation of the Insurance Law by insurance business actors is subject to the following sanctions:

- written warning;
- restriction on part or all of the company's business activities;
- prohibition on marketing insurance products or *Sharia* insurance products for certain lines of business;
- revocation of a business licence;
- cancellation of a statement of registration for brokerage companies or agents;
- cancellation of a statement of registration for actuarial consultants, public accountants, appraisers or other parties that provide services to insurance companies;
- cancellation of approval for mediation agencies or associations;
- administrative fines; and/or
- prohibition on holding certain positions in insurance companies.

The OJK is also generally open to discussions with companies in the insurance sector regarding any difficulties they may be having in complying with any of the provisions under the laws and regulations in the insurance sector. Practically speaking, if there is any violation of the laws and regulations, the OJK will usually summon the management of the company in question for an explanation. If the violation continues, the OJK will first issue one to three warning letters, with adequate time between each letter to correct the violation – typically one month – before imposing further sanctions.

2.Insurance contracts

2. 1. What are the main types of insurance available in your jurisdiction?

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The Insurance Law acknowledges two types of insurance: life insurance and general insurance. Both types can be either conventional or *Sharia* based.

The most common types of life insurance are:

- term life insurance;
- whole life insurance;
- endowment insurance; and

- unit-linked insurance.

The most common types of general insurance are:

- all-risk insurance; and
- total loss only insurance.

2. 2. Are all insurance contracts regulated? What terms do they typically include?

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All insurance contracts in Indonesia are regulated under:

- the Insurance Law and its implementing regulations;
- the Civil Code; and
- the Commercial Code.

POJK 23/2015 governs the minimum terms of an insurance contract/policy as follows:

- the effective period of the coverage;
- a description of the benefits agreed;
- the premium or contribution payment method;
- the grace period for the premium or contribution payment;
- the exchange rate used for insurance policies in a foreign currency if the premium or contribution payments and benefits are associated with the Indonesian rupiah;
- the recognised time period for receipt of premium or contribution payment;
- the company's policy if the premium or contribution payment is made after the agreed grace period;
- the period when the company is unable to review the validity of the insurance contract (incontestable period) on a long-term insurance product;
- a cash value table, for insurance products marketed by life insurance companies containing cash value;
- a dividend calculation of the insurance policy or similar benefits, for insurance products marketed by life insurance companies guaranteeing a dividend or similar benefits;
- a coverage termination clause, allowing either the insured or the insurance company to terminate the policy, including the terms and causes of termination;
- claim filing terms and procedures, including supporting evidence that is relevant and necessary to file a claim;
- claim settlement and payment procedures;
- a dispute resolution clause that, among other things, includes:
  - an in-court or out-of-court settlement mechanism; and
  - selection of the dispute resolution jurisdiction; and
- the governing language in the event of a dispute or dissenting opinion if the insurance policy is written in two or more languages.

POJK 23/2015 provides the following additional minimum terms for *Sharia*-based insurance contracts/policies:

- the type of contract (*akad*);

- the rights, obligations and authorities of each party based on the agreed *akad*;
- the amount of contribution allocated to the *tabarru'* fund, *ujrah* and investment fund;
- the amount, time and payment method of investment revenue sharing if the insurance product uses a *mudharabah* or *mudharabah musytarakah akad*;
- the allocation of underwriting surplus for the *tabarru'* fund, the participant fund and/or the insurance company's fund; and
- the granting of *qardh* by the insurance company if the *tabarru'* fund is insufficient to pay the insurance benefits.

2. 3. What are the formal and documentary requirements for conclusion of an insurance contract?

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Insurance contracts must fulfil the minimum terms requirements as discussed in question 2.2.

Normally, insurance companies will also require the prospective insured to submit supporting documents, which may vary depending on the policies of the insurance company, for risk analysis and underwriting purposes before concluding the insurance contract.

2. 4. What are the procedural requirements for conclusion of an insurance contract?

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The prevailing laws and regulations are silent on any strict procedural requirements to be complied with for the purpose of concluding an insurance contract. Practically speaking, the prospective insured – with the assistance of the insurance company or its agents or insurance brokerage company – will first determine the type of insurance deemed compatible with the needs of the prospective insured. Once determined, the prospective insured will be required to submit an application along with the required documents. The insurance company will then conduct the risk analysis and underwriting process before deciding whether to approve or reject the application. Once approved, the insurance policy will be signed between the insurance company and the policyholder. The policyholder will then be required to proceed with the payment of premiums.

2. 5. What are the respective obligations and liabilities of insurer and insured, both on concluding an insurance contract and during its term? What are the consequences of any breach?

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The obligations and liabilities may vary depending on the terms and conditions set forth under the insurance policy, and the consequences of a breach will refer to these terms and conditions. Generally, the insurer is required under POJK 69/2016 to administer claims in a fast, simple, easily accessible and fair manner, in accordance with generally accepted practices in the insurance sector, in exchange for accepting premiums or contributions from the insured. Further, the insurer is clearly obliged:

- to explain the insurance products to the insured; and
- to comply with applicable consumer protection provisions (see question 11).

The insured must also be transparent and honest in submitting his or her personal information.

3.Making a claim

3. 1. What are the formal and documentary requirements for making a claim?

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There are no definite requirements prescribed by the laws and regulations. In practice, the formal and documentary requirements for making a claim are set out in the insurance policy, and therefore may vary according to each insurance policy and the internal policy of each insurance company.

For instance, the documentary requirements for filing a life insurance claim should include:

- the claim submission form;
- a doctor's statement; and
- supporting documents for the doctor's diagnosis.

The specific documents needed may vary for each type of claim (eg, death, terminal illness, accident). General insurance claims may require, among other things:

- a claim submission form;
- evidence of the insured event; and
- supporting documents for the insured event, such as photographs.

The specific documents required may vary for each type of claim (eg, claim of fire, claim of flooding).

Each insurer may request different documents that must be submitted by the insured when making an insurance claim. Further, the claim must be made within the time limit stipulated in the insurance policy.

3. 2. What are the procedural requirements for making a claim?

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On the occurrence of an insured event (eg, the death of an insured party, loss or fire), the insured or his or her beneficiary is entitled to notify the insured and claim payment by providing relevant evidence of the insured event, such as:

- photographs;
- doctor's statements; or
- a death certificate from the relevant institution.

They can be assisted by an insurance broker or insurance agent in settling these claims.

In practice, the notification requirements are set out in the insurance policy and therefore vary according to each policy. These requirements set out the time limit to submit a claim and the documents, information and evidence that must be provided.

Insurance companies should require policyholders to submit a claim immediately to avoid any evidence being lost or damaged and to avoid any reason for the loss/damage being unidentified.

3. 3. On what grounds can the claim be denied? How can the insured challenge the denial of claim?

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As discussed in question 2.2, an insurance policy must contain a description of the agreed benefits, which includes the scope of coverage or insured events under the policy. In practice, an insurance policy may also contain a clause which requires a certain amount of losses to be borne by the insured, while any amount in excess of that agreed amount will be covered by the insurer. This is normally known as ‘self-insured retention’. Consequently, the insurer is entitled to deny the claim if the event that occurred does not fall within the scope of insured events stipulated within the insurance policy or the amount of the claim falls within the scope of self-insured retention.

Further, the active status of the policy is also important to be considered in submitting a claim. Insurance claims also can be denied if:

- the submitted documents are not in accordance with the required documents;
- there is a discrepancy between the submitted data and the initial data provided by the insured at the time the insurance policy was taken out;
- the period for submitting an insurance claim has lapsed; or
- the policyholder has failed to pay the premiums.

Generally, the insured may challenge the denial of a claim by enforcing the dispute resolution clause provided in the insurance policy.

3. 4. How can third parties make a claim?

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Under the Insurance Law and its implementing regulations, insurance products may cover legal liabilities against third parties for any event suffered by the insured or policyholders. That said, third parties can make a claim under an insurance policy provided that the policy specifically states their right to receive the insurance benefit or names such third parties as beneficiaries under the policy (eg, the right of the insured party’s spouse to claim the insurance benefit on the insured’s death). The insurance policy can also include a banker’s clause under which the bank of the insured is entitled to receive the insurance benefit on the occurrence of an insured event.

4.Form and structure of insurers

4. 1. What types of insurance companies are typically found in your jurisdiction?

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The Insurance Law requires insurance companies to take one of the following forms:

- limited liability company;
- cooperative; or
- mutual business, for insurance companies established before the enactment of the Insurance Law.

In terms of market practice, insurance companies in Indonesia usually take the form of a limited liability company. The Investment Law (25/2007), as amended, further requires foreign investment companies – including those in the insurance sector – to be established in the form of a limited liability company.

4. 2. How are these insurance companies typically structured and funded?

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Insurance companies in the form of a limited liability company must be structured in accordance with the Law on Limited Liability Companies (40/2007), as amended. Some key provisions to be noted with respect to the establishment of a limited liability company are as follows:

- The company must be established by two or more founders by virtue of a notarial deed of establishment made in the Indonesian language;
- Each founder of the company must subscribe to a portion of the shares at the time of establishment;
- The company obtains its legal entity status on the date of issuance of a decree of the minister of law and human rights validating the legal entity status of the company;
- The minimum issued and paid-up capital must:
  - comply with the minimum amount provided under prevailing laws and regulations (if any); and
  - be at least 25% of the authorised capital; and
- The shareholding of the company must comply with any foreign ownership restrictions.

Insurance companies in the form of a limited liability company are principally funded from the issued and paid-up capital injected by the shareholders.

Insurance companies in the form of a cooperative must be structured in accordance with the Law on Cooperatives (25/1992), as amended. Some key provisions with respect to the establishment of a cooperative are as follows:

- A cooperative must be established by at least nine individuals (for a cooperative consisting of individuals) or at least three cooperatives (for a cooperative consisting of cooperatives) by virtue of a notarial deed of establishment made in the Indonesian language;
- The cooperative obtains its legal entity status on the date of issuance of a decree of the minister of law and human rights validating the legal entity status of the cooperative; and
- The minimum capital must comply with the minimum amount provided under prevailing laws and

regulations (if any).

The capital of a cooperative may be funded from:

- basic savings or compulsory savings from the cooperative members;
- reserved funds;
- grants; or
- borrowed capital from the members, other cooperatives (and/or its members), banks or other financial institutions, through the issuance of bonds or other securities and other legal sources.

4. 3. Are there any restrictions on foreign ownership of insurance companies?

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Under the Insurance Law, insurance companies can only be owned by:

- Indonesian individuals and/or Indonesian legal entities that are directly or indirectly wholly owned by Indonesian individuals; or
- Indonesian individuals and/or Indonesian legal entities together with foreign individuals or legal entities that are engaged in the same insurance business or a holding company with one subsidiary engaged in the same insurance business.

Based on Government Regulation 14/2018, foreign individuals can only hold shares in an insurance company through a transaction on the stock exchange. Foreign legal entities can hold shares in Indonesian insurance companies through:

- direct participation in the insurance company;
- transactions on the stock exchange; or
- participation in an Indonesian legal entity that owns shares in an insurance company through direct participation or transactions on the stock exchange.

In addition to having engaged in the same insurance business or having a subsidiary engaged in the same insurance business, the foreign legal entity must:

- own equity of at least five times its direct participation in the insurance company; and
- fulfil other requirements set by the Financial Services Authority, such as an A rating or its equivalent from an internationally acknowledged rating agency.

The requirements are waived for foreign legal entities owning insurance companies through transactions on the stock exchange or participation in an Indonesian legal entity that owns shares in an insurance company through the stock exchange.

Government Regulation 14/2018 further restricts foreign ownership of insurance companies to a maximum of 80% of the paid-up capital of the insurance companies. Foreign ownership is calculated cumulatively for any means of ownership (direct and indirect), including any foreign shareholding in an Indonesian legal entity that holds shares in the Indonesian insurance company. Such foreign ownership limitation does not apply for publicly listed insurance companies.

Based on the Insurance Law and POJK 67/2016, a party may only be the controlling shareholder in:

- one life insurance company;
- one general insurance company;
- one reinsurance company;
- one *Sharia* life insurance company;
- one *Sharia* general insurance company; and
- one *Sharia* reinsurance company.

The party cannot be a controlling shareholder in two or more companies in the same category.

5.Authorisation

5. 1. What authorisations are required to provide insurance services in your jurisdiction? What activities do they cover?

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Under the Insurance Law, insurance and reinsurance companies, brokerage companies and insurance loss appraisers doing business in Indonesia must be licensed by the Financial Services Authority (OJK).

A life insurance company can only engage in life insurance business, which includes annuity, health and self-accident insurance. A general insurance company can only engage in general insurance business, which includes health insurance, self-accident insurance and reinsurance business. Reinsurance companies can only engage in reinsurance activities.

However, POJK 69/2016 allows life and general insurance companies to expand their business activities as follows:

- General insurance companies can expand their business to:
    - investment-related insurance products (unit-linked);
    - fee-based activities (ie, administrative services in relation to employee benefits and the marketing of non-insurance and reinsurance products from financial services institutions licensed by the OJK);
    - credit insurance and suretyship; and
    - other activities assigned by the government.
- *Sharia* general insurance companies can expand their business to:
    - investment-related insurance products;
    - fee-based activities; and
    - other activities assigned by the government;
- Life insurance companies and *Sharia* life insurance companies can only expand their business to include fee-based activities.

Insurance brokerage companies, reinsurance brokerage companies and insurance loss appraiser companies can only engage in the insurance brokerage, reinsurance brokerage and insurance loss appraiser business, respectively.

5. 2. What requirements must be satisfied to obtain authorisation?

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Insurance and reinsurance providers: The details of the licensing of insurance and reinsurance companies are regulated in POJK 67/2016. The application for a business licence is submitted by the director of the company to OJK and must be supported with the following documents:

- a copy of the company's deed of establishment, with the minister of law and human rights' approval;
- its organisational structure;
- evidence of payment of paid-in capital;
- an initial report of a guarantee fund and evidence of placement of a guarantee fund;
- a list of ownership;
- shareholder data;
- information on the controlling party;
- evidence that the company has employed experts, an actuary and internal auditor;
- the business plan for the next three years;
- risk management guidelines;
- details of insurance products;
- a copy of any agreements with any other party;
- details of the data processing administration and infrastructure system;
- evidence of licensing fee payment;
- evidence of operational readiness;
- the initial/opening financial statement;
- a human resources plan;
- anti-money laundering and prevention of terrorism funding guidelines;
- good corporate governance guidelines;
- investment governance guidelines;
- a shareholders' or joint venture agreement between the Indonesian and foreign shareholders;
- an automatic reinsurance support plan; and
- a retrocession support plan (for reinsurance companies).

During the business licence application process, the board of directors, board of commissioners, controlling shareholder, controller, *Sharia* supervisory board, internal auditor and actuary are subject to fit and proper tests. The application for fit and proper tests must be submitted together with the business licence application.

Insurance and reinsurance intermediaries: The details of the licensing of insurance and reinsurance brokerage companies are regulated in POJK 68/2016.

The application for a business licence is submitted by the director of the company to the OJK and must be supported with the following documents:

- a copy of the company's deed of establishment and the minister of law and human rights' approval;
- its organisational structure;
- evidence of the payment of paid-in capital;
- a list of ownership;

- shareholder data;
- information on the controlling party;
- evidence that the company has employed experts;
- a business plan for the next three years;
- risk management guidelines;
- a copy of any agreements with any other party;
- details of its data processing administration and infrastructure system;
- confirmation from the supervisory body in the country of origin of the foreign shareholder;
- evidence of licensing fee payment;
- evidence of operational readiness;
- an initial/opening financial statement;
- a human resources plan;
- anti-money laundering and prevention of terrorism funding guidelines;
- good corporate governance guidelines;
- investment governance guidelines; and
- a shareholders' or joint venture agreement between the Indonesian and foreign shareholders.

The business licence application is submitted together with the fit and proper test application (see above).

An insurance agent (ie, a person working individually or working in a legal entity acting on behalf of an insurance company to market insurance products) must:

- possess an agency certificate;
- be registered with the OJK; and
- have a written agreement with the insurance company.

Other providers of insurance and reinsurance-related activities: An insurance loss appraiser company must also follow the licensing procedures stipulated in POJK 68/2016 (see above).

The OJK provides an online system to apply for an insurance service providers business licence, as regulated under SE OJK 9/2018 and SE OJK 10/2018. The online OJK system – through which insurance service provider companies apply for licences and provide the necessary information and documents – also provides for the submission of self-assessment forms with all the background information on the company that must be submitted together with the licence application and other documents.

5. 3. What is the procedure for obtaining authorisation? How long does this typically take?

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The business licence application must be submitted to the OJK along with supporting documents as discussed in question 5.2. Theoretically, the OJK will approve the application, request any missing documents or reject the application within 20 working days of receipt of the application. However, in practice, it may take up to two to three months from receipt of a complete application for the OJK to issue the licence.

6.Regulatory capital and liquidity

6. 1. What minimum capital requirements apply to insurance companies in your jurisdiction?

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POJK 67/2016 and POJK 68/2016 specify minimum paid-up capital requirements for insurance companies as follows:

- Conventional life/general insurance company: IDR 150 billion
- *Sharia* life/general insurance company: IDR 100 billion
- Conventional reinsurance company: IDR 300 billion
- *Sharia* reinsurance company: IDR 175 billion
- Insurance broker company: IDR 3 billion
- Reinsurance broker company: IDR 5 billion
- Insurance loss appraiser company: IDR 500 million

6. 2. What liquidity requirements apply to insurance companies in your jurisdiction?

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Under POJK 71/2016, conventional insurance/reinsurance companies must fulfil the following financial soundness requirements:

- solvency level at a minimum of 100% of the risk-based minimum capital;
- technical reserves;
- investment adequacy – that is, permitted assets in the form of investment and non-investment of the company must be at least in an amount of self-retention technical reserve in addition to payment liabilities of self-retention claims and other liabilities to policyholders or insured;
- equity of:

  - no less than IDR 100 billion for insurance companies; and
  - no less than IDR 200 billion for reinsurance companies;

- a guarantee fund at a minimum of 20% of the required minimum equity; and
- other provisions on financial soundness.

Under POJK 72/2016, *Sharia* insurance/reinsurance companies must fulfil the following financial soundness requirements:

- solvency level of the *tabarru*' fund and the *tanahud* fund at a minimum of 100% of the risk-based minimum *tabarru*' fund and *tanahud* fund;
- solvency level of the company fund at a minimum of 100% of the risk-based minimum capital;
- technical reserves;
- investment adequacy – that is, permitted assets in the form of investment and non-investment of the company must be at least in an amount of own retention of the *tabarru*' fund and *tanahud* fund

technical reserve in addition to payment liabilities of own retention claims and other liabilities to policyholders or insured;

- equity of:
  - no less than IDR 50 billion for *Sharia* insurance companies;
  - no less than IDR 100 billion for *Sharia* reinsurance companies;
  - no less than IDR 25 billion for *Sharia* units in insurance companies; and
  - no less than IDR 50 billion for *Sharia* unit in reinsurance companies;
- a guarantee fund in a minimum of 20% of the required minimum equity; and
- other provisions on financial soundness.

7.Supervision of insurance groups

7. 1. What requirements apply with regard to the supervision of insurance groups in your jurisdiction?

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All insurance business in Indonesia, including that of insurance groups, falls under the supervision of the Financial Services Authority (OJK).

In terms of marketing group insurance, POJK 23/2015 provides that insurance companies must issue a master insurance policy listing:

- the names of the insured or participants; and
- the coverage period for the respective insured or participants.

They must also issue evidence of membership to each of the insured or participant.

8.Reporting, governance and risk management

8. 1. What key disclosure requirements apply to insurance companies in your jurisdiction?

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Please see question 8.2.

8. 2. What key reporting requirements apply to insurance companies in your jurisdiction?

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POJK 55/2017 obliges insurance or reinsurance companies to prepare and submit the following periodical reports to the Financial Services Authority:

- monthly reports;
- quarterly reports;

- annual reports, consisting of financial and management reports; and
- other reports, such as:
  - reports covering corporate and business plans;
  - reports on reinsurance programme/automatic retrocession;
  - reports on the implementation of financial literacy education for consumers and/or the public;
  - reports on consumer complaints, follow-up customer service and settlement;
  - assessment reports on the implementation of integrated governance;
  - annual reports on the implementation of integrated governance;
  - integrated risk profile reports;
  - integrated capital adequacy reports;
  - reports on data updating activity plans and reports on the realisation of data updating.

Insurance or reinsurance brokerage companies must prepare and submit semester reports and annual reports. Insurance loss appraiser companies must prepare and submit annual reports.

8. 3. What key governance requirements apply to insurance companies in your jurisdiction?

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POJK 73/2016 obliges insurance companies to implement the following good corporate governance principles:

- transparency in the decision-making process and in the disclosure and provision of relevant information on the company, with such information easily accessible by stakeholders in accordance with the provisions of law and regulations in the insurance sector, as well as the standards, principles and practices of sound insurance business;
- accountability – that is, clarity of functions and the implementation of the responsibilities of the organs of the company so that the company can perform in a transparent, fair, effective and efficient manner;
- responsibility – that is, the conformity of the company's management with the provisions of laws and regulations in the insurance sector and ethical values and standards, principles and practices of the implementation of sound insurance business;
- independence – that is, the condition in which the insurance company is managed independently and professionally, free from conflict of interest and the influence or pressure from any party that is not in accordance with the provisions of laws and regulations in the insurance sector and ethical values, standards and principles, and the implementation of sound insurance business practices; and
- fairness – that is, equality, equity and justice in fulfilling the rights of stakeholders arising under the agreement, the provisions of laws and regulations in the insurance sector, ethical values, standards and principles, and the implementation of sound insurance business practices.

8. 4. What key risk management requirements apply to insurance companies in your jurisdiction?

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POJK 73/2016 obliges insurance companies to implement risk management in accordance with the purpose, business policy, size and complexity of their business, as well as their capabilities. Insurance companies must have in place risk management functions for supervising the implementation of such risk management. The implementation of risk management must also include internal control systems and the implementation of information technology governance.

Internal control systems must at least include the following:

- a disciplined and structured internal control environment;
- assessment and management of business risks;
- controlling activities;
- an information and communication system;
- monitoring procedures; and
- a reporting mechanism in the event of any deviation in the quality of the internal control systems, including the internal audit function.

The implementation of risk management for the use of information technology in the insurance sector is regulated under POJK 4/2021. Such implementation of risk management must at least include the following:

- active supervision by the board of directors and board of commissioners;
- adequate policies and procedures for the use of information technology;
- adequate risk identification, measurement, control and monitoring processes in the use of information technology; and
- internal control system for the use of information technology.

9.Senior management

9. 1. What requirements apply with regard to the management structure of insurance companies in your jurisdiction?

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The requirements and restrictions with respect to the management structure in an insurance company are provided under POJK 73/2016.

Insurance/reinsurance companies must have at least three members on the board of directors, while insurance/reinsurance brokerage companies must have at least two board of directors members. All directors must be knowledgeable about the business line of the company as relevant to their position. In addition, insurance/reinsurance companies must have a compliance director, who is prohibited from serving any other function.

POJK 73/2016 provides certain restrictions with respect to the board of directors of insurance companies, including the following:

- The board of directors of foreign-owned insurance companies must consist wholly of Indonesian individuals or a combination of Indonesian and foreign individuals;
- Members of the board of directors are prohibited from holding any position in any other company,

except as a member of the board of commissioners of another insurance company with a different business line;

- Directors, except for president directors responsible for supervising investment in the insurance company's subsidiary, may serve on the board of commissioners of such subsidiary, provided that such double position does not result in the negligence of his or her duties and authorities as a director; and
- The president director is prohibited from holding a double position as a member of the board of commissioners of the subsidiary of the insurance company for which he or she serves as president director.

Insurance/reinsurance companies must have at least three members on their board of commissioners, half of whom must be independent commissioners; while insurance/reinsurance brokerage companies must have at least two board of commissioners members. At least half the members of the board of commissioners must be domiciled in Indonesia. Members of the board of commissioners are prohibited from serving on the board of commissioners, the board of directors or the *Sharia* supervisory board of any other insurance company with a similar business line.

Sharia-based insurance companies must have a *Sharia* supervisory board consisting of one or more *Sharia* experts. At least half of the members of the *Sharia* supervisory board must be domiciled in Indonesia. The members of the *Sharia* supervisory board are prohibited from serving on the board of directors or board of commissioners of the same insurance company. *Sharia* supervisory board members may serve on the board of directors, board of commissioners or *Sharia* supervisory board of a maximum of four other financial service institutions.

Under POJK 67/2016, insurance/reinsurance companies must also:

- designate at least one controller;
- employ at least one expert (for general or life insurance companies);
- appoint one actuary as the appointed actuary and employ a sufficient number of actuaries in accordance with the type, line and complexity of business; and
- have an internal audit unit chaired by an internal auditor.

All the above parties are subject to a fit and proper test administered by the Financial Services Authority (OJK) under POJK 27/2016.

9. 2. How are directors and senior executives appointed and removed? What selection criteria apply in this regard?

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In accordance with the Company Law, members of the board of directors or board of commissioners shall be appointed and removed by the general meeting of shareholders.

POJK 73/2016 regulates the criteria applicable for the management of insurance companies.

Members of the board of directors must meet the following criteria:

- have obtained approval from the OJK;

- be domiciled in Indonesia;
- be able to act in good faith, honestly and in a professional manner;
- be able to act on behalf of the insurance company and policyholders, the insured, participants, and/or parties entitled to benefits;
- prioritise the interests of the insurance company and policyholders, the insured, participants and/or parties entitled to benefits over personal interests;
- be able to make decisions based on independent and objective assessments for the interest of the insurance company and policyholders, the insured, participants, and/or parties entitled to benefits; and
- be able to avoid abuse of authority to gain undue personal benefit or cause loss to the insurance company.

Members of the board of commissioners must meet the following criteria:

- have obtained approval from the OJK;
- have knowledge in accordance with the business line of the company which is relevant to his or her position;
- be able to act in good faith, honestly and in a professional manner;
- be able to act on behalf of the insurance company and policyholders, the insured, participants and/or parties entitled to benefits;
- prioritise the interests of the insurance company and policyholders, the insured, participants and/or parties entitled to benefits over personal interests;
- be able to make decisions based on independent and objective assessments for the interest of the insurance company and policyholders, the insured, participants and/or parties entitled to benefits; and
- be able to avoid abuse of authority to gain undue personal benefit or cause loss to the insurance company.

Members of the *Sharia* supervisory board are appointed by the general meeting of shareholders based on a recommendation from the National *Sharia* Board of the Indonesian Ulema Council. Members of the *Sharia* supervisory board must meet the following criteria:

- have obtained approval from the OJK;
- be able to act in good faith, honestly and a professional manner;
- be able to act on behalf of the *Sharia* insurance company and policyholders, the insured, participants and/or parties entitled to benefits;
- prioritise the interests of the *Sharia* insurance company and policyholders, the insured, participants and/or parties entitled to benefits over personal interests;
- be able to make decisions based on independent and objective assessments for the interest of the *Sharia* insurance company and policyholders, the insured, participants, and/or parties entitled to benefits; and
- be able to avoid abuse of authority to gain undue personal benefit or cause loss to the *Sharia* insurance company.

9. 3. What are the legal duties of directors and senior executives of insurance companies?

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Generally, the main duty of the board of directors under the Company Law is to carry out the management of the company for the interest of the company in accordance with the purpose and objective of the company. The main duty of the board of commissioners under the Company Law is to supervise the management policies and general management performance of the board of directors, and to provide advice to the board of directors.

The duties of the management positions of insurance companies are specifically governed under POJK 73/2016.

The board of directors of insurance companies must:

- ensure effective, prompt and quick decision making;
- be able to act independently;
- have no interests which may interfere with its ability to perform its duties independently;
- possess critical thinking;
- comply with the provisions of laws and regulations, and the articles of association and other internal regulations of the insurance company in performing its duties;
- manage the insurance company in accordance with its authorities and responsibilities;
- ensure the execution and implementation of good corporate governance;
- be responsible for the performance of its duties to the general meeting of shareholders;
- ensure the insurance company acknowledges the interests of all parties, especially those of policyholders, the insured, participants and/or parties entitled to benefits;
- ensure that the information regarding the insurance company is given to the board of commissioners and the *Sharia* supervisory board (if applicable) in a timely and complete manner; and
- if applicable, assist in meeting the needs of the *Sharia* supervisory board in engaging the members of the investment committees, the company's employees and professional experts whose organisational structure is under the board of directors.

The board of commissioners of insurance companies must:

- ensure effective, prompt and quick decision making;
- be able to act independently;
- have no interests which may interfere with its ability to perform its duties independently;
- possess critical thinking;
- carry out supervisory duties and provide advice to the board of directors;
- supervise the board of directors in balancing the interests of all parties, particularly the interests of policyholders, the insured, participants, and/or parties entitled to benefits;
- prepare a report on the activities of the board of commissioners that will be included in the report on the implementation of good corporate governance;
- monitor the effectiveness of the implementation of good corporate governance; and
- if applicable, assist in meeting the needs of the *Sharia* supervisory board in engaging committee members whose organisational structure is under the board of commissioners.

The *Sharia* supervisory board must:

- ensure effective, prompt and quick decision making;
- be able to act independently;
- have no interest which may interfere with its ability to perform its duties independently;

- possess critical thinking; and
- perform supervision duties and provide advice to the board of directors so that the company's business activities are in accordance with *Sharia* principles.

9. 4. How is executive compensation regulated in your jurisdiction?

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Compensation or remuneration for members of the board of directors, the board of commissioners and/or the *Sharia* supervisory board will be determined by virtue of a general meeting of shareholders' resolution.

POJK 73/2016 provides that insurance companies must implement a remuneration policy which encourages prudent behaviour in line with the company's long-term interests and fair treatment of policyholders, the insured and/or parties entitled to benefits, which at least must consider the following:

- the financial performance and obligations of the insurance company as regulated under provisions of applicable laws and regulations;
- individual work performance;
- fairness with peer group; and
- consideration of the company's long-term goals and strategies.

10.Change of control and transfers of insurance companies

10. 1. How are the assets and liabilities of insurance companies typically transferred in your jurisdiction?

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Generally, the assets and liabilities of an insurance company may be transferred by means of a merger, acquisition, consolidation or spin-off. A merger or consolidation may only be carried out between or among insurance or reinsurance companies that are in the same form of legal entity and have similar business lines. In addition, insurance or reinsurance companies with *Sharia* units are obliged by the Insurance Law and POJK 67/2016 to be spun off by no later than 17 October 2024.

10. 2. What requirements must be met in the event of a change of control?

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Any change of control of an insurance company (ie, by virtue of acquisition) must be approved by the Financial Services Authority (OJK). POJK 67/2016 provides that an application for approval must be submitted to the OJK along with the following supporting documents:

- a list of planned ownership;
- data on prospective shareholders, in any event of new shareholders;
- a draft deed of minutes of general meeting of shareholders;

- a draft deed of transfer of shares;
- photocopies of tax returns for the past two years and other documents showing the financial capability and funding sources of prospective individual shareholders;
- photocopies of financial statements audited by public accountants prior to the addition of the paid-up capital, in the event that the change in ownership is caused by the addition of paid-up capital and will be conducted by the transfer of retained earnings, transfer of loans, and/or shares dividends; and
- a photocopy of the cooperation agreement between foreign entity shareholders and any Indonesian shareholders, in any event of new foreign entity shareholders.

Theoretically, the OJK will approve the application, request any missing documents or reject the application within 20 business days from the receipt of the application. However, in practice, it may take up to one to two months from the receipt of a complete application for the OJK to issue its approval.

Upon receipt of OJK approval, the insurance company must report the execution of the change of control to the OJK within 15 business days as of the issuance of the approval and/or acknowledgement from the minister of law and human rights.

11.Consumer protection

11. 1. What requirements must insurance companies comply with to protect consumers in your jurisdiction?

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Consumer protection provisions are generally governed under the Consumer Protection Law (8/1999). The Consumer Protection Law provides, among other things, for:

- the right of consumers to receive correct, clear and honest information on goods and services;
- the right to have their opinions and complaints listened to; and
- the right to the appropriate settlement of consumer protection disputes.

The Financial Services Authority (OJK) has issued several regulations specifically dealing with consumer protection in the financial services sector, including insurance companies. These regulations are:

- OJK Regulation 6/POJK.07/2022 of 2022 regarding Consumer Protection in the Financial Services Sector ('POJK 6/2022');
- OJK Regulation 18/POJK.07/2018 of 2018 regarding Consumer Complaint Service in the Financial Services Sector; and
- OJK Regulation 31/POJK.07/2020 of 2020 regarding the Organisation of Consumer and Public Services in the Financial Service Sector by the OJK.

Pursuant to POJK 6/2022, insurance companies must, among other things:

- provide accurate, truthful, clear and non-misleading information regarding insurance products;
- use simple, easy-to-understand terms, phrases and sentences in the Indonesian language (which may be used in conjunction with another language as necessary) in all documents that:
  - set out the rights and obligations of consumers;
  - may be used by consumers to make a decision; and

    - may legally bind consumers;
- provide an explanation of any terms, phrases, sentences, symbols, diagrams and signs that are not understood by the consumer;
- provide a summary of its products in writing and set out the benefits, risks, main features, conditions and procedures under which the products are offered;
- provide documents containing the terms and conditions of the products during the marketing and before the consumer enters into an agreement to purchase such products;
- inform consumers of any change in the conditions of products; and
- include the company's name and/or logo on any offering of its products, together with a statement that the company is registered and supervised by the OJK.

POJK 23/2015 provides the following requirements in relation to customer protection:

- Insurance companies must provide accurate, clear, correct and non-misleading information on insurance products to prospective policyholders, insured or participants;
- Insurance companies marketing unit-linked insurance must implement customer risk profile assessments;
- Insurance companies must settle any complaints related to insurance products; and
- Insurance companies must provide insurance policies to policyholders, insured or participants in hardcopy or digital/electronic form.

POJK 69/2016 provides the following requirements in relation to the advertising of insurance products:

- Insurance companies must ensure that the information provided in marketing materials or advertisements is accurate, clear and non-misleading, and must withdraw any advertisement that does not fulfil those criteria; and
- Information provided in marketing materials or advertisements in the form of brochures or leaflets must fulfil the following criteria:
    - be easy to understand;
    - set out the benefits of the offered products;
    - set out the payment process for a claim;
    - set out the exceptions that will affect the process of claim approval and payment;
    - not conceal, reduce or eliminate important information; and
    - set out the applicable terms and conditions.

11. 2. What other measures has the state implemented to protect consumers in the insurance sector?

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In practice, there have been issues around investment-related insurance products, known as unit-linked insurance products, in Indonesia, with many customers suffering losses as a result of misleading information or misunderstanding over these types of insurance products. To mitigate the risk, OJK issued SE OJK 5/2022, which specifically governs the marketing of unit-linked insurance products.

In the marketing of unit-linked insurance products, insurance companies must ensure:

- conformity of unit-linked insurance products and sub-funds with the needs, abilities, and risk profiles of prospective policyholders, insured parties or participants;
- the understanding of prospective policyholders, insured parties or participants regarding the unit-linked insurance products being marketed; and
- the adequacy of data, information and documents required for the underwriting process.

Explanations by insurance companies regarding the benefits, costs and risks of the offered unit-linked insurance products, and any additional features, along with the statement of understanding of the prospective policyholder, must be properly documented in the form of video and/or audio recordings.

Any statement, data and information provided in advertisements for the marketing of unit-linked insurance products must be accurate, honest, clear and non-misleading. Such advertisements must include a warning statement related to the investment component of the insurance products.

Unit-linked insurance products must be reported to the OJK.

12.Data security and cybersecurity

12. 1. What is the applicable data protection regime in your jurisdiction and what specific implications does this have for insurance companies?

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As of the time of writing, Indonesia does not have a single comprehensive law governing personal data protection. The existing provisions on data protection in Indonesia are spread across various laws and regulations (collectively, the ‘PDP Regulations’) – namely:

- the Law on Electronic Information and Transactions (11/2008), as amended;
- Government Regulation (71/2019) regarding the Provision of Electronic Systems and Transactions;
- Minister of Communication and Informatics Regulation 20/2016 regarding the Protection of Personal Data in Electronic Systems; and
- Minister of Communication and Informatics Regulation 5/2020 regarding Private Electronic Systems Providers, as amended,

The key implication of the PDP Regulations for insurance companies is that any use of the data of policyholders, insured or participants must accord with the intended purpose and take place as consented to by the data owner. The Indonesian Parliament is currently discussing the Personal Data Protection Bill (‘PDP Bill’). While the PDP Regulations principally apply to all personal data in an electronic system, the latest publicly available draft of the PDP Bill indicates that it will affect personal data irrespective of whether it is processed by electronic or non-electronic means. If enacted, it is widely expected that the PDP Bill may amend or revoke certain provisions under the PDP Regulations. However, there is no certainty as yet as to when the PDP Bill will be enacted into law.

Specifically in the financial services sector, the Financial Services Authority (OJK) has issued OJK Circular Letter 14/SEOJK.07/2014 regarding Confidentiality and Security of Consumer Data and/or Personal Information (‘SE OJK 14/2014’). SE OJK 14/2014 principally prohibits any financial service providers, including insurance companies, from providing data and/or personal information about their consumers by any means to any third parties, except with the consent of the consumers or as required by applicable laws and regulations.

POJK 4/2021 requires insurance companies, in implementing information technology, to ensure the following:

- The obtainment, processing, utilisation, storage, renewal and/or disclosure of consumers' personal data are carried out based on the consent of the consumer concerned, unless stipulated otherwise by the provisions of laws and regulations; and
- The utilisation or disclosure of consumers' personal data accords with the purposes communicated to consumers at the time of the data collection.

POJK 4/2021 also requires insurance companies with total assets of between IDR 500 billion and IDR 1 trillion or more than IDR 1 trillion to set up their own data centre in Indonesia. (The use of an overseas data centre is allowed only for certain purposes and is subject to OJK approval.) Insurance companies with total assets of up to IDR 500 billion might also be asked to set up a data centre if there is a need to improve the implementation of risk management during the use of information technology.

12. 2. What is the applicable cybersecurity regime in your jurisdiction and what specific implications does this have for insurance companies?

Indonesia
SSEK Indonesian Legal Consultants

As of the time of writing, Indonesia does not have a comprehensive law on cybersecurity. The Indonesian Parliament is working on a Cyber Security and Resilience Bill, but there is no estimate on when this might be enacted into law.

Under POJK 4/2021, insurance companies must ensure that information security is effectively implemented by taking into account the following:

- information security aimed at effectively and efficiently maintaining the confidentiality, integrity and availability of managed information with due observance of the provisions of laws and regulations;
- maintenance of information security in the use of information technology for human resources, technology and other processes;
- information security based on the risk assessment of the information; and
- availability of incident handling management in information security.

Insurance companies must report to the OJK any critical incidents, abuses or crimes related to their information technology operations that may or have resulted in significant financial loss and/or disruptions to the smooth operation of the insurance companies.

13.Financial crime

13. 1. What provisions govern money laundering and other forms of financial crime in your jurisdiction and what specific implications do these have for insurance companies?

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Generally, provisions on money laundering are found in the Law regarding the Prevention and Eradication of the Crime of Money Laundering (8/2010). Any violation of this law may subject insurance companies to the sanctions set out in the law, including:

- imprisonment;
- fines;
- suspension of business; and
- revocation of a business licence.

The Financial Services Authority has issued POJK 12/2017, which specifically governs the implementation of anti-money laundering and prevention of terrorism funding programmes in the financial services sector. The obligations of insurance companies under POJK 12/2017 include the following:

- Identify, assess and understand the risk of money laundering and/or terrorism financing in relation to their customers, country or geographical area, products, services, transactions and delivery channels;
- Have in place a policy and procedures, including supervision of their implementation, for the management and mitigation of money-laundering and terrorism funding risks;
- Implement anti-money laundering and prevention of terrorism funding programmes;
- Categorise prospective customers and customers based on money laundering and/or terrorism financing risk levels; and
- conduct customer due diligence and/or enhanced due diligence in accordance with the provisions under laws and regulations.

14.Competition

14. 1. What specific challenges or concerns does the insurance sector present from a competition perspective? Are there any pro-competition measures that are targeted specifically at insurance companies?

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We do not see any specific concerns pertaining to the insurance sector from the perspective of competition law, at least as of the time of writing. This may be because of the large number of market players in the insurance sector; and because it is a highly regulated sector under the supervision of the Financial Services Authority. While there are no specific competition measures for the insurance sector, the insurance business in Indonesia must be carried out in compliance with the Law on the Prohibition of Monopolistic Practices and Unfair Business Competition (5/1999), as amended, as the primary law governing business competition in Indonesia.

15.Restructuring and insolvency

15. 1. What provisions govern insolvency in your jurisdiction and what specific implications do these have for insurance companies?

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The Insurance Law provides that any petition for the declaration of bankruptcy of an insurance company may only be filed by the Financial Services Authority (OJK). Creditors may submit an application to the OJK asking it to file a petition to the commercial court. The OJK will theoretically approve or reject the application within 30 days of receipt of a complete application. The OJK will refer to the procedures and requirements under the Law on Bankruptcy and Suspension of Payment (37/2004), as partially revoked, in filing the petition.

If the insurance company is declared bankrupt, the policyholders, insured and participants will have preferred rights over any other parties for the distribution of bankruptcy assets. Insurance funds will be prioritised for the fulfilment of obligations to policyholders, insured or other parties entitled to the insurance benefits. *Tabarru'* funds and investment funds in *Sharia*-based insurance companies may not be used to fulfil the obligations to any other parties except the participants.

16.Trends and predictions

16. 1. How would you describe the current insurance landscape and prevailing trends in your jurisdiction? Are any new developments anticipated in the next 12 months, including any proposed legislative reforms?

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The prevailing trend in the Indonesian insurance market is the growth in life insurance supported by the development of digital-based insurance products, known as insurance technology or 'insurtech'. Insurtech basically utilises technology to innovate and increase efficiency and cost savings in the insurance industry. The current legal framework for insurtech is found in Financial Services Authority (OJK) Regulation 13/POJK.022/2018 regarding Digital Finance Innovation in the Financial Services Sector. The development of insurtech is expected to promote the use of insurance products by allowing companies to provide simple and integrated micro-insurance products through e-commerce platforms that will enable more consumers to access them.

There are various kinds of insurtech business, depending on the products and services offered. For instance:

- insurance companies may market their products through insurtech aggregators serving as the platform/marketplace; and
- licensed brokerage companies might sell insurtech products electronically (insurtech intermediaries).

Some insurance companies have established their own digital platforms for the marketing, sales, risk analysis, closing and claims of insurtech products.

The OJK recorded a total of IDR 6 trillion of insurance premiums distributed digitally in 2021 as of July 2021. It is reasonable to assume that we will continue to see the growing utilisation of technology to conduct business, particularly insurtech.

Another development we are seeing, and expect to continue to see in the coming years, is the spin-off of *Sharia* units from conventional insurance companies. While it is not a new policy, the Insurance Law and POJK 67/2016 mandate that *Sharia* units be spun off by no later than 17 October 2024.

17.Tips and traps

17. 1. What are your top tips for insurance companies operating in your jurisdiction and what potential sticking points would you highlight?

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Noting the rapid development of technology, and considering the growth in insurtech business as discussed in question 16.1, insurance companies are advised to make themselves aware of the growth of the insurtech sector. Insurance companies should consider utilising the benefits of technology by either:

- marketing their products through existing digital marketplaces; or
- establishing their own digital platforms for comprehensive control of their business.

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