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The Current Situation of Insurance Brokers Systems in Selected Countries

KOZUKA Souichirou* SAKAKI Motohiro** NAITO Kazumi***

Abstract

In Japan, sales channels for insurance products have traditionally been insurance agents entrusted with solicitation by insurance companies. Under such circumstances and based on the idea that there was a need for intermediaries who would act for the benefit of policyholders, the Insurance Business Act was revised in 1995 to introduce a new system for insurance brokers to act as intermediaries for insurance products, similar to the system of insurance brokers in the EU and U.S. insurance markets.

Although around 30 years have passed since the introduction of the insurance brokers system, their use has not increased, as indicated by their market share of just 0.9% on the basis of the value of insurance premiums. The promotion of more active use of insurance brokers remains a challenge. In order to obtain implications for Japan's insurance brokers system from regulations and theoretical research on overseas markets where insurance brokers are active, this study examines legal systems related to insurance brokers in selected countries, with due attention to the role of insurance brokers in their respective markets. Specifically, we studied the following three countries: the United States, where the market is a pioneer in terms of reforming the insurance brokers system, the United Kingdom, which has highly developed insurance brokers in its market, and Germany, which has greatly influenced Japan's insurance regulatory system and is under the EU's insurance regulatory framework.

Keywords: insurance, insurance brokers, the Insurance Business Act, and regulation on distribution of insurance products.

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1. Issues Addressed in this Study: Main Considerations for the Comparison of Insurance Brokers System

1.1 Overview of the Insurance Broker System

Insurance brokers were introduced as new intermediaries that solicit insurance products, by the amendment of the Insurance Business Act in 1995. In Japan, sales channels for insurance products have traditionally been insurance agents entrusted with solicitation by insurance companies. Under such circumstances and based on the idea that there was a need for intermediaries who would act for the benefit of policyholders,¹ the scheme of insurance brokers similar to the system of insurance brokers in the EU and U.S. insurance markets was introduced.

The Insurance Business Act regards that insurance brokers are equivalent to brokers defined in Article 543 and subsequent articles of the Commercial Code (see Article 293 of the Insurance Business Act). This structure seems to be in line with the German law, which had a great impact on the Japanese Insurance Act and Insurance Business Act, as both Japan and Germany belong to the legal system classified as the continental law. Brokers defined by the Commercial Code are completely neutral to both parties (i.e., insurance companies and customers) and are obliged to seek their interests equitably.² On the other hand, insurance brokers are expected to conduct intermediation on behalf of policyholders, so they are not completely neutral in the first place. The reason why insurance brokers have been classified as brokers is because they act as intermediary without being granted the authority to act as agents by insurance companies or policyholders (in UK and U.S. law, brokers may be referred to as “policyholders’ agents” but the term “agent” does not mean an agent with the authority to act as an agent in the sense of the common law system),³ but their economic interests are different from those of the standard brokers defined in the Commercial Code. This has been pointed out since the system was first introduced, and also the need for discipline that addresses such a difference.⁴

Meanwhile, it is also understood that commissions cannot be charged to policyholders under Japan’s Insurance Business Act (section V-4-4 of “Comprehensive Guidelines for Supervision of Insurance Companies”), given that the remuneration of insurance brokers is usually paid by insurers as commissions in other countries.⁵ In the Commercial Code, since brokers are regarded as having neutral standing as intermediary, unless there is a special agreement specifying otherwise, a broker’s remuneration is borne equally by the parties (Article 550, paragraph 2 of the Commercial Code). Insurance broker are also different from brokers stipulated in the Commercial Code in this respect. This difference creates an impression that there is a “twist” in terms of economic incentives because, while brokers are in the position to act for the interests of policyholders, they receive remuneration from the insurer.

Today, 30 years after the introduction of the insurance brokers system, the number of registered

¹ Ochiai (1992), p.226.

² Egashira (2022), p.242.

³ Ochiai (1992), p.228. Yamashita (1996), p.20.

⁴ Yamashita (1996), p.24. Sakaguchi (1999), p.202.

⁵ Ochiai (1992), p.228.

insurance brokers is 67 institutions, and the market share is only 0.9 percent in terms of percentage of premiums.⁶ If the current situation is insufficient compared to what was originally intended, it may be due in part to insufficient theoretical study of the characteristics of insurance brokers. With this in mind, this research studies insurance brokers systems abroad and conducts theoretical analysis of insurance brokers, to clarify issues for the development of brokers in Japan.

1.2 Functions of Insurance Brokers

In Japan, as described in Section 2 below, there is a concern that the market for the intermediation of insurance products is not functioning sufficiently. Based on this recognition, there is a need to increase the entry of insurance brokers to the market for insurance product intermediation and to further promote competition. Turning to overseas markets where insurance brokers have traditionally been active, similarly, to promote competition, the United States and some European countries have tightened regulation on insurance brokers when an insurance broker engaged in bid-rigging and receiving kickbacks from insurers became problem in the United States in the mid-2000s.⁷ This led to advancing research that analyzes incentives of insurance brokers by applying economic theory to the market for insurance intermediation.

1.2.1 Production of information on insurance purchasers

To begin with, what functions do insurance brokers perform? Cummins and Doherty (2006) consider that insurance intermediaries produce information about the insured.⁸ There are various types of entities among the insured, such as the size of risks they incur, large or small, and their risk preference. However, the underwriting information available to insurers is inevitably somewhat incomplete, creating a problem of adverse selection. The equilibrium through “self-selection” by policyholder would result in full coverage to the high risks at a price that is actuarially fair for the high risks and offering reduced coverage to the low risks at a price that is actuarially fair for this group.

In such a situation, when insurance brokers provide information on the insured, insurers can distinguish high and low risks, and can offer actuarially fair policies to both groups. Commissions for the provision of information by intermediaries are passed on to policyholders in the premium, but as long as they are not too high, the benefit would be greater for the low-risk group because they can buy insurance products with sufficient coverage, even if the cost is incurred as part of the premium.⁹

Cummins and Doherty (2006) argue that to give an incentive to intermediaries to provide accurate information, it would be more effective for the insurer to pay commission relative to the profits of the insurer after policy terms have ended, rather than to pay it as a percentage of insurance premium at the time the policy is purchased. This is because premium-based commissions would provide no incentive for

⁶ According to data of the General Insurance Association of Japan (2023).

⁷ Cummins and Doherty (2006), 360; Focht et al. (2013), 330.

⁸ Cummins and Doherty (2006), 380 ff.

⁹ Cummins and Doherty (2006), p.388.

the intermediary to reveal the information about policyholder risk types because it receives the commission when the policy is issued rather than after losses are realized. The intermediary does not suffer any disadvantage because it receives the same commission whether the information provided to the insurer is accurate or not. In reality, however, intermediaries would face the loss of relationship with the insurers since their relationships keep going.¹⁰

1.2.2 Preference of insurance buyers and matching of products

If one of the functions of an insurance broker is to produce information about the insurance buyer, it seems natural for the insurer to pay commissions to the broker. However, in the United States, brokers also receive fees from clients.¹¹ If we assume that an insurance broker is the “agent” of the policyholder, the source of brokers’ revenue should be fees paid by insurance buyers (policyholders). So, Focht, Richter and Schiller (2013) proposed a model in which the broker’s role in collecting and providing information for the insurer is of minor importance (truthful information disclosure can be enforced by means of contractual provisions) and they are mainly concerned with matching consumers with appropriate insurance products.¹²

The model assumes that some policyholders are not informed about their preference profile. Therefore, a mismatch would occur in the absence of an insurance broker, resulting in disutility. With their expertise, insurance brokers grasp the risk preference profile of the insurance buyers and offer matching insurance products to the risk profile. The decrease in mismatching increases the utility of insurance buyers and increases social welfare. Insurance buyers who are uninformed of their profile would therefore pay a commission to purchase the advice service of an insurance broker.¹³ Meanwhile, market intermediation by a broker reduces the insurers’ profits. This is because increased transparency of insurance products intensifies price competition in the insurance market.¹⁴

Information about the policyholder’s risk preference represents a rent—that is, an exclusive interest derived from information advantage—and the model shows that this rent is the source of bargaining power for the insurance broker. Thus, commissions paid by an insurer to an insurance broker do not alter the level of service provided by the insurance broker. In this case, the insurance company discriminates between informed insurance buyers who directly buy coverage from the insurance company without intermediation of a broker, and insurance buyers, who are initially uninformed and buy coverage via the broker with advice (thus incurring fees to the insurer). The extent of an increase in social welfare is the same as if the insurance buyer paid a commission. This is because a buyer uses insurance brokers to obtain advice to the extent that is in their interest in light of the premium it pays for the advice.

If we assume an insurance broker that acts strategically, such a broker may have an incentive to take fees from insurance buyers and also deal with the insurer to obtain side payments (contingent

¹⁰ Cummins and Doherty (2006), p.389.

¹¹ Cummins and Doherty (2006), p.376.

¹² Focht, Richter and Schiller (2013).

¹³ Focht, Richter and Schiller (2013), p.337.

¹⁴ Focht, Richter and Schiller (2013), p.339.

commissions), and if such commissions are paid they would match uninformed buyers (i.e., who do not know their risk preference) to that insurer. Focht (2013) et al. argue that, even in such a case, as long as all insurance companies pay contingent commissions, uninformed consumers will be perfectly matched, and so the outcome is unchanged.¹⁵ Although the distribution of profits between insurance companies and insurance brokers is different as insurance brokers receive side payments from insurance companies in addition to fees from insurance buyers, neither the level of advice nor social welfare changes at the equilibrium. Rather, a ban of commission payments to brokers would result in commissions to be paid illegally, inducing brokers to collect certain payments from a limited number of insurance companies. In that case, social welfare may decrease, as mismatching could take place in reality.¹⁶

1.3 Structure of this paper

This report compiles findings from the survey of foreign legal systems relating to insurance brokers. The survey covered three countries: the United States, Germany and the United Kingdom. As described in section 1.2 above, the United States is a frontrunner in reforming the system as problems have been pointed out concerning commissions and business practices of insurance brokers. Therefore, it is meaningful to conduct a survey of the current system in recognition of such past developments. Germany has had a significant impact on Japan's insurance supervision system (the Insurance Business Act), and in addition, it is under the insurance supervision framework of the EU, so valuable findings are obtained from the survey. As for the UK, it has a highly developed market for insurance brokers, so we can study implications for Japan's broker system from the UK regulation.

As we discussed above, insurance brokers are legally more independent compared to brokers stipulated in the commercial code, and also in terms of economics theory, they have roles beyond that of mere "spokespersons for the interest of policyholders." Therefore, when comparing the broker systems in each country, we should not simply parallel the systems related to institutions referred to as insurance brokers but consider the roles played by insurance intermediaries in each market, and make comparisons focusing on the arrangements that can affect intermediaries' incentives.

In this paper, therefore, we first examine (i) the registration system of insurance brokers and (ii) the definition and powers of insurance brokers in each country's system. This is to identify the insurance intermediaries that we focus in our discussion. We then look into (iii) the system to ensure liabilities of insurance brokers (e.g., deposit funds, liability insurance); (iv) arrangements related to fees such as who pay them and on what basis; and (v) regulation on joint conduct of business by brokers and insurance agents. We consider these points are important mechanisms that govern brokers' behavior in the insurance market and provide incentive. In addition, these points correspond with issues and recommendations made by stakeholders in Japan in the ongoing discussion of the revision of Japan's insurance broker system.

¹⁵ Focht, Richter and Schiller (2013), p.345.

¹⁶ Focht, Richter and Schiller (2013), pp.345-346.

2. Current Discussion in Japan on Insurance Broker System

2.1 Discussion at regulatory authorities

2.1.1 Report of the expert committee on structural issues and competition in the non-life insurance sector

The “expert panel on structural issues and competition in the non-life insurance sector” had meetings at the FSA from March to June 2024. Incidents of misconduct were found in the non-life insurance industry led to holding these meetings. For example, a large-scale insurance agent that operates automobile repair service made fraudulent claims of insurance payments, and in another case four major non-life insurance companies made price adjustments before a bid for a commercial co-insurance (combination policy) for a corporate group. In light of these incidents, the expert panel discussed “necessary measures for achieving customer-oriented business conduct and a sound competitive environment, thereby realizing sound development of Japan’s insurance market.” The panel issued a report on June 25, 2024.¹⁷

Of the incidents that led to discussions at the meetings, the case regarding fraudulent claims concerned car insurance, and raised issues on the intermediation of large-volume, standardized insurance policies for general consumers (so-called “mass insurance”). On the other hand, the case of price adjustment concerned corporate insurance for which each insurance contract is unique, with coverage and conditions not standardized (“non-mass insurance”). For the latter, the panel’s report pointed out that the presence of in-house agents that belong to client companies’ corporate group could be a factor increasing the risk of antitrust violations. According to the report, an in-house agent has dual features that while it is in a position to be overseen by the non-life insurance company as its agent, it has human and capital resource relationships with the client company. As a result, non-life insurers are unable to oversee agents sufficiently, and there are many in-house agents in the corporate insurance market who have not improved their operational capabilities as insurance agents. This has prevented insurance brokers and other insurance agents from entering the market, and a level playing field in the commercial insurance market has not been achieved.¹⁸

Based on such recognition, the report points out the need for in-house agents to improve their operational capabilities, and recommends that “discussion should continue regarding measures for promoting the use of insurance brokers so as to support further development of the commercial insurance market.”¹⁹ In-house agents are considered to represent the interests of client companies in insurance transactions. However, the more the insurance companies strengthen oversight of in-house agents, the more the contradiction to the structure that insurance agents represent the interests of client companies becomes apparent. Since such customer interests should, by their nature, be represented by insurance brokers, the report concluded that it would be desirable for insurance brokers to actively participate in the market for corporate insurance (non-mass insurance). However, the report does not go into detail on the specifics of

¹⁷ The expert panel on structural issues and competition in the non-life insurance sector (2024). (available in Japanese)

¹⁸ The expert panel on structural issues and competition in the non-life insurance sector (2024), pp.17-18.

¹⁹ The expert panel on structural issues and competition in the non-life insurance sector (2024), p.19.

the measures, with only a footnote mentioning a possible revision to the supervisory guidance that stipulates insurance brokers shall receive commissions only from insurers.

2.1.2 Report of the "working group on systems for non-life insurance business, etc."

In response to the report of the expert panel, the Minister of State for Financial Services made an inquiry to the Chairman of the Financial System Council on August 26, 2024, on "Consideration of measures to ensure confidence and sound development of insurance markets." The Financial System Council established a working group on regulatory system especially for non-life insurance business (hereinafter referred to as the "Working Group") and conducted deliberations, and the Working Group's report was compiled on December 25, 2018.²⁰

In its discussion on "achieving a sound competitive environment" in the commercial insurance market, the Working Group's report proposes promoting the use of insurance brokers. To this end, the report sets four measures.²¹

First is to relax the supervisory guidance that prohibits insurance brokers from charging their customers commissions. For the time being, this guidance should be loosened for corporate insurance only, enabling brokers to receive fees from corporate clients. In doing so, from the standpoint of customer interests, it would be appropriate to explain to customers entities that receive the fees and also disclose to customers the amount of commission (or the percentage of premiums) brokers receive from the insurers.

Second, it proposes to lower the minimum amount of security deposit that insurance brokers are required to make (Article 291, paragraph 2 of the Insurance Business Act and Article 41 of the Enforcement Order of the Insurance Business Act) from the current 20 million yen to 10 million yen. This is the minimum amount of security deposit, and if the amount of fees received in the past three years exceeds this amount, the broker must deposit that amount (which may be substituted by concluding a liability insurance contract; the proviso of Article 41 of the enforcement order). As for the appropriateness of basing "fees received in the past three years" as the amount of security deposit, the report says "it would be appropriate to examine the amount after assessing changes in insurance brokers' activities following the series of these measures."

Third, the Working Group addressed the issue that collaboration (joint conduct of business) by insurance brokers and insurance agents/companies (i.e., joint handling of the same insurance policies) is not permitted under the current supervisory guidance. There may be cases where multiple companies invest in the same project and one of them uses an insurance broker while others buy insurance through an insurance agent. The report proposes to admit collaboration on the premise that appropriate explanations are provided to customers to prevent their misunderstanding.

And fourth, it was proposed that insurance brokers should be able to engage in transactions of insurance contracts with foreign insurers who are not licensed to conduct insurance business in Japan (so-

²⁰ Working Group on Regulatory System Especially for Non-Life Insurance Business (2024).

²¹ Working Group on Regulatory System Especially for Non-Life Insurance Business (2024), pp.12-15.

called “insurance by unlicensed foreign insurers”). To this end, it was recommended that insurance policies that can be intermediated by brokers should include insurance contracts with foreign insurers where such contracts are admitted as “insurance by unlicensed foreign insurers” upon individual reviews of contracts. It was also recommended that insurance brokers should be able to carry out a survey to check whether insurance contracts with foreign insurers meet the requirements for permission.

2.2 The Significance of Institutional Comparison to Japan's Discussions

We will apply issues we have explored in studying foreign legal systems to the analysis of broker's functions and to the discussion on Japan's reform of the broker system. As the analysis of economic theory shows, insurance brokers' incentive is likely to be influenced by, above all, the structure of remuneration. One of the issues addressed in this report, specifically issue (iv) listed in section 1.3 above, considers this point. However, when comparing the legal systems of the United States, the United Kingdom, and Germany with Japan's current system, differences in the countries' circumstances should be noted. If we emphasize the point that insurance brokers are agent of insurance buyers, this can lead to a naive argument that insurance brokers should not be paid by the insurer in the first place. Indeed, the European Insurance Distribution Directive (IDD) allows countries to introduce their own strict regulation on the remuneration of insurance intermediaries; Denmark, Finland, Norway and Slovakia in fact prohibit insurance brokers from receiving commissions from insurers.²² Economic modelling analysis, on the other hand, suggests that there are cases where social well-being is improved by having in place commissions by insurers.

In Japan by contrast, even now it is deemed that insurance companies should pay commissions to brokers, and in fact, the question that whether it is appropriate to keep prohibiting the payment of commissions by customers is on the table. This could be because the market practice implemented prior to the institutional reforms in mid-2000s in Europe and the United States still exists in Japan, and so its debate is somewhat behind that of other countries. This said, if it turns out that commissions from insurance companies and fees from customers can be both paid to brokers, the optimal condition based on economic theory may be realized.

Next, issue (ii) regarding the definition and authority of insurance brokers and issue (v) on whether insurance brokers can also operate insurance agent business are matters related to the unique standing of insurance brokers that has been pointed out since 1995. It is an issue that has not been addressed ever since insurance brokers have been introduced into Japan's insurance supervision legislation. However, we should be careful about the implication that the consideration of the issue has in relation to the background of the problem. That is, while the current Insurance Business Act and related rules under the Act and supervisory guidance assume that an insurance broker is the same as a broker stipulated by the Commercial Code, the conventional theories pointing out the uniqueness of insurance brokers have argued that insurance brokers should be viewed as intermediary on the side of customers rather than as neutral

²² OECD (2020), p.38.

intermediary (in terms of the interpretation of their “duty of care” towards a counterparty insurer, for example).²³ In contrast, the report by the Working Group’s recommendation to lift the ban on conducting business jointly by brokers and agents actually means allowing insurance brokers to be on the same ground as insurance agents representing insurers, which are considered as “commercial agents” under the Commercial Code.

In the analysis of brokers based on economic theory, the function of insurance brokers and insurance agents are considered collectively as insurance intermediary. This indicates that the idea of distinguishing intermediaries who facilitate the conclusion of insurance transactions as those “representing the insurer” and “representing the policyholder” may not suit the actual situation of insurance transactions. Although it is necessary to avoid conflicts of interest and inappropriate incentive, the legal system should be designed according to the actual situation, not just simply classifying intermediaries systemically. This point is also relevant to issue (i) about the definition of insurance brokers.

The remaining point is issue (iii), which concerns an arrangement to ensure liabilities of insurance brokers (e.g., security deposits, liability insurance). From the viewpoint of encouraging the entry of insurance brokers to the market so as to revitalize the insurance intermediation market, such an arrangement works as a barrier to their entry. Again, however, it seems necessary to consider first how likely it is in reality for brokers to become liable to customers. In theory and concept, the relationship where a customer entrusts intermediation of an insurance product to an insurance broker is an agency agreement, and the insurance broker (the agency) has “a duty of care of a prudent manager” (Article 644 of the Civil Code). In addition, Article 299 of the Insurance Business Act requires that an insurance broker must act in good faith for the benefit of the customer in acting as an intermediary for the conclusion of an insurance contract. Since its enactment, however, questions have been raised as to whether such a duty of good faith should be understood as having civil law responsibilities.²⁴ As such, based on the recognition that cases where insurance brokers are taken liable against customers are extremely limited, we should consider whether the arrangement in place for such rare cases has not become a barrier to the entry of brokers.

3. United States

With regard to the subject “the current situation of the U.S. insurance broker system,” it is difficult to discuss and relate Japan’s insurance brokers (as distinguished from agents) to brokers in the United States. This is because in most states in the United States, the concept of insurance brokers has already disappeared, and brokers are, together with insurance agents, subject to a uniform regulation as “insurance producer” and governed by their functions. Many states rely on a model law of the National Association of Insurance Commissioners (NAIC), namely the Producer Licensing Model Act,²⁵ with 40 states effectively adopting

²³ Yamashita (1996), p.24.

²⁴ Yamashita (1996), p.25.

²⁵ <https://content.naic.org/sites/default/files/model-law-218.pdf>,
<https://content.naic.org/sites/default/files/model-law-state-page-218.pdf>

the Model Act for the regulation of insurance producers. Traditional regulations including that of New York State have become marginal. Therefore, we do not believe that it is appropriate for the purpose of this survey to advance discussion based on the laws of New York or California, which retain the concept of brokers in their state laws. We therefore discuss U.S. laws in the following structure.

In section 3.1, we examine the Gramm-Leach-Bliley Act of 1999 (GLB Act),²⁶ a federal law enacted in 1999, to provide the background information for understanding federal regulation. Section 3.2 presents the structure of the NAIC Model Law, which was devised based on the GLB Act, and Section 3.3 outlines the states' adoption of the NAIC Model Law. Section 3.4 discusses the content of the NAIC Model Law, and Section 3.5 describes the content of the state law of Connecticut as an example. Section 3.6 is a supplementary discussion expressing our view that when studying U.S. laws, it would be meaningful by first recognizing what kind of regulatory system (the structure of regulation) Japan aims for. This point relates to the same fundamental problem explained in section 2.2 on the economic analysis of brokers, and we consider it extremely important to first clarify the starting point of this study.

3.1 Overview of the GLB Act

The GLB Act is a federal law enacted by the 106th Congress in 1999 that repealed part of the Glass-Steagall Act of 1933 enacted in 1933. The GLB Act allowed commercial banks, investment banks, securities firms, and insurance companies to consolidate, removing barriers that prohibited banking companies, securities companies, and insurance companies from acting as any combination of an investment bank, a commercial bank, and an insurance company. We do not go into the details of the act.

The GLB Act has a section titled "Title III - Insurance," and it provides that insurance activities shall be functionally regulated by the States, subject to section 104.²⁷ Subtitle A is "State Regulation of Insurance," Subtitle B is "Redomestication of Mutual Insurers," Subtitle C is "the National Association of Registered Agents and Brokers," and Subtitle D is "Rental Car Agency Insurance Activities." This paper concerns Subtitle C.

The GLB Act provides the definition of "insurance producer" in Section 336 (3). The term "insurance producer" is understood as entities that cover agents, brokers, surplus lines brokers, insurance consultants and insurance sales entities who engage in any of the activities listed in the section, such as soliciting or negotiating insurance policies or offering advice. The section reads as below:

(3) INSURANCE PRODUCER.—The term "insurance producer" means any insurance agent or broker, surplus lines broker, insurance consultant, limited insurance representative, and any other person that solicits, negotiates, effects, procures, delivers, renews, continues or binds policies of insurance or offers advice, counsel, opinions or services related to insurance.

²⁶ Gramm-Leach-Bliley act, Pub. L. No. 106-102

<https://www.ftc.gov/business-guidance/privacy-security/gramm-leach-bliley-act>

²⁷ Gramm-Leach-Bliley Act, Section 301.

3.2 Structure of the NAIC Model Law

Given that the GLB Act does not distinguish insurance agents and insurance brokers, and requires regulation by their functions collectively as insurance producer, the NAIC also modified its Model Act in response to this. NAIC developed the Producer Licensing Model Act. This Model Act simplifies and organizes some statutory language to improve efficiency, permits the use of new technology and reduces costs associated with issuing and renewing insurance licenses.²⁸ In general, it does not apply to excess and surplus lines agents and brokers. The Act defines insurance producer as “a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance,” and is structured with provisions on the following matters.²⁹ Purpose and Scope (Section 1); Definitions (Section 2); License Required (Section 3); Exceptions to Licensing (Section 4); Application for Examination (Section 5); Application for License (Section 6); License (Section 7); Nonresident Licensing (Section 8); Exemption From Examination (Section 9); Assumed Names (Section 10); Temporary Licensing (Section 11); License Denial, Non-Renewal or Revocation (Section 12); Commissions (Section 13); Appointments (Section 14, optional); Notification to Insurance Commissioner of Termination (Section 15); Reciprocity (Section 16); Reporting of Actions (Section 17); Compensation Disclosure (Section 18); Regulations (Section 19); Severability (Section 20); Effective Date (Section 21).

As described above, the GLB Act—the federal law—implemented a reform of the financial regulatory system, and in the context of insurance solicitation, it has shifted to regulation based on functions from regulation based on the type of entities by classifying agents and brokers, which is a statutory system close to those of continental legal systems. Though its adoption is up to each state, the NAIC model act also reflected this change. So, we move on to examine the adoption of the model act by states.

3.3 Adoption of the NAIC Model Law

What is the situation in states’ adoption of the NAIC’s Producer Licensing Model Act after changes to accommodate the GBL Act?

The status of adoption is posted on the NAIC website. We can access the latest version of the Model Act on the NAIC website by going to the following pages:

Resource Center > Model Laws > Agents/Brokers/Producers

MO-218 file listed here is the most recent Model Act, and the ST-218 file shows the adoption of the Model Law by each state. Here, for the file dated 2020 on the website as of June 14, 2025, states’ adoption are classified into three status: MODEL ADOPTION (meaning states adopted the most recent version of the NAIC model in a substantially similar manner); PREVIOUS VERSION (meaning states enacted an older version of the model but have not adopted the most recent version of the NAIC model), and RELATED ACTIVITY (meaning states not adopted the most recent version of the NAIC model in a substantially similar manner and showing states’ statutes, regulations addressing the same subject matter or, other

²⁸ Producer Licensing Model Act, Section 1.

²⁹ Producer Licensing Model Act, Section 2D.

administrative guidance). In relation to our discussion in this paper, it can be judged that states listed in the MODEL ADOPTION or PREVIOUS VERSION no longer distinguish between agents and brokers, since they have adopted the Producer Licensing Model Act enacted after the GLB Act in a substantially similar manner, and for the other states, the situation of each state can be grasped by looking at the contents individually.

In 2005, the majority of states have adopted provisions of the NAIC's model law in a substantially similar manner, and there were ten states that had very different provisions, namely California, Georgia, Maryland, Montana, New Mexico, New York, Texas, Utah, Virginia, and Wisconsin. As of 2020, it was the same states that have adopted the previous version of the NAIC model, with New Mexico having changed to adopting the most recent version (though partially).

Looking at state laws of states that have adopted the NAIC Model Act, the majority of states do not distinguish between agents and brokers except for some types of insurance (the Title Insurance Agent Model Act and the Insurance Intermediaries Model Act are the exceptions in the NAIC Model Laws).

As for states that have not adopted the NAIC Model Act, state laws of New York and California, which are often referred to in Japan, define "agent" and "broker" and still distinguish them, but other states have essentially abandoned distinguishing them for basic insurance products. The state law of Utah defines "producer for the insured" when receiving compensation from a policyholder or an insured, and referring it as "broker," but other states do not have a definition of "broker" except for some type of insurance such as reinsurance.

States that have distinct legislation are the following. California, which still maintains a broker system based on information disclosure. New Mexico, which replaced the concepts of agents, solicitors, and brokers with insurance producers in 2016. Utah, which introduced the concept that a broker is equivalent of "producer for the insured" in cases where commissions are paid only by policyholders and the insured. Texas and Virginia, which allow brokers only for reinsurance.

In studying the broker systems in the United States for the purpose of this research, we think it would not be necessary to survey all 50 states in the same manner, nor appropriate to focus on the systems of New York and California, which are often referred to, if they are different from the national trend.³⁰

³⁰ Regarding the study on U.S. broker system, past studies often focused on the insurance law of New York State, and this resulted in not grasping developments in the federal law as well as NAIC Model Law and state laws reflecting the federal law, so authors consider such studies deviated from the purpose of surveying the U.S. legislation. Therefore, for the purpose of exploring the direction of regulations in Japan, we set our priority to showing the direction of U.S. regulation today, and examined the NAIC Model Law adopted by 40 states and the laws of Connecticut State as an example of states that have laws consistent with the NAIC Model Law. Except for the Connecticut laws, we did not look at laws of individual states, and we believed that pursuing our study based on survey of laws of New York State does not suffice its purpose. This is a problem commonly observed in studying U.S. insurance laws, that when laws of major states with sufficient regulatory resources like New York or California differ from those of other states, the treatment of these large states is always a challenge. With regard to issues addressed in our research, for the issue concerning compensation and disclosure, taking up the laws of New York State as an example has a point given that it had experienced problems. However, given that this study is part of the larger study with an objective to explore the desirable regulation of both large-scale shared insurance agents and insurance brokers, we placed priority on depicting U.S. laws from a wider perspective, because we felt there is lack of reports in Japanese that explain changes in the regulatory system under the GLB Act where regulations on agents and brokers have been abolished.

3.4 Content of the NAIC Model Law

In this section, we describe the unique features of the NAIC Model Law, as we make a comparison of the Model Law with the relevant laws in other countries in this report.

The following points are considered: (i) registration, etc.; (ii) definitions and the authority of insurance brokers; (iii) obligation to make security deposits and buy liability insurance; (iv) commissions (obligation to disclose entities paying the commission and the amount); and (v) regulation on brokers in doing business jointly with agents.

Regarding point (i), a license system based on review by the Insurance Commissioner of each state (commissioners of insurance authorities).

Regarding point (ii), conventional agents and insurance brokers are positioned as “insurance producer,” so insurance brokers are not defined in the Model Law. Since no definition exists, there are no provisions regulating their powers in terms of what they can do.

Regarding point (iii), there are no provisions in the NAIC Model Law. Besides the law of Louisiana State, no state laws are found to have provisions requiring professional liability coverage, by searching the database of state laws.³¹

Regarding point (iv), there are multiple provisions in the Model Law. Section 13 provides that a person can accept a commission for soliciting insurance only if that person is licensed, and Section 18 provides for compensation disclosure.

Regarding point (v), since insurance agents and insurance brokers are not distinguished, there are no provisions equivalent to rules governing joint business by agents and brokers. Considering the legal perspectives of the UK and the United States, since they take an approach that certain obligations are imposed for certain positions, the governing principles would be to regulate activities rather than regulating conduct of business jointly.

Point (iv) concerns an important aspect in terms of laws and regulations. We examine this in more detail.

The content of Section 13 is as follows. Subsection A provides that an insurance company or insurance producer shall not pay a commission, service fee, brokerage or other valuable consideration to a person for selling, soliciting or negotiating insurance in this state if that person is required to be licensed under this Act and is not so licensed. The following subsection B provides that a person shall not accept a commission, service fee, brokerage or other valuable consideration for selling, soliciting or negotiating insurance in this state if that person is required to be licensed under this Act and is not so licensed. Then, subsection C provides that renewal or other deferred commissions may be paid to a person for selling, soliciting or negotiating insurance in this state if the person was required to be licensed under this Act at the time of the sale, solicitation or negotiation and was so licensed at that time. Subsection D provides that

³¹ LA Rev Stat § 22:1570.1.

an insurer or insurance producer may pay or assign commissions, service fees, brokerages or other valuable consideration to an insurance agency or to persons who do not sell, solicit or negotiate insurance in this state, unless the payment would violate, for example anti-rebating statute.

Section 18 is about compensation disclosure and is as follows.

In subsection A, paragraph (1) sets out the obligation of an insurance producer to disclose to the customer about accepting compensation from an insurer or other third party and obtain customer's acknowledgement of such receipt received from an insurer or other third party. Specifically, where any insurance producer or any affiliate of the producer receives any compensation from the customer for the placement of insurance or represents the customer with respect to that placement, neither that producer nor the affiliate shall accept or receive any compensation from an insurer or other third party for that placement of insurance unless the producer has, prior to the customer's purchase of insurance: (a) obtained the customer's documented acknowledgement that such compensation will be received by the producer or affiliate ("affiliate" means as a person that controls, is controlled by, or is under common control with the producer as defined in Section 18 D(1)); and (b) disclosed the amount of compensation from the insurer or other third party for that placement. If the amount of compensation is not known at the time of disclosure, the producer shall disclose the specific method for calculating the compensation and, if possible, a reasonable estimate of the amount. Subsection (2) provides that paragraph (1) does not apply to an insurance producer who (a) does not receive compensation from the customer for the placement of insurance; (b) in connection with that placement of insurance represents an insurer that has appointed the producer; and (c) discloses to the customer prior to the purchase of insurance that (i) the insurance producer will receive compensation from an insurer in connection with that placement or (ii) in connection with that placement of insurance the insurance producer represents the insurer and that the producer may provide services to the customer for the insurer.

Subsection B provides for exemptions to a "customer" for obtaining acknowledgement and making disclosure. A person shall not be considered a "customer" for purposes of this section if the person is merely (1) a participant or beneficiary of an employee benefit plan, or (2) covered by a group or blanket insurance policy or group annuity contract sold, solicited or negotiated by the insurance producer or affiliate.

Subsection C provides for the exemption of Section 18. It shall not apply to (1) a person licensed as an insurance producer who acts only as an intermediary between an insurer and the customer's producer, for example a managing general agent, a sales manager, or wholesale broker; or (2) a reinsurance intermediary.

Subsection D gives definitions. (1) "Affiliate" means a person that controls, is controlled by, or is under common control with the producer. (2) "Compensation from an insurer or other third party" means payments, commissions, fees, awards, overrides, bonuses, contingent commissions, loans, stock options, gifts, prizes or any other form of valuable consideration, whether or not payable pursuant to a written agreement. (3) "Compensation from the customer" shall not include any fee or similar expense as provided in the relevant state law or any fee or amount collected by or paid to the producer that does not exceed an

amount established by the commissioner. (4) “Documented acknowledgement” means the customer’s written consent obtained prior to the customer’s purchase of insurance. In the case of a purchase over the telephone or by electronic means for which written consent cannot reasonably be obtained, consent documented by the producer shall be acceptable.³²

In addition, the appointment of agents is optional in the model law. An insurance producer can act as an agent of an insurer by appointment and becomes an appointed agent of that insurer. Section 14, which is optional, reads as follows. Subsection A provides that an insurance producer shall not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer. Subsection B provides that to appoint a producer as its agent, the appointing insurer shall file, in a format approved by the insurance commissioner, a notice of appointment within fifteen (15) days from the date the agency contract is executed or the first insurance application is submitted. Subsection C is an optional provision that reads upon receipt of the notice of appointment, the insurance commissioner shall verify within a reasonable time not to exceed thirty (30) days that the insurance producer is eligible for appointment. If the insurance producer is determined to be ineligible for appointment, the insurance commissioner shall notify the insurer within five (5) days of its determination. Subsection D provides that an insurer shall pay an appointment fee, in the amount and method of payment set forth in the state law or regulation, for each insurance producer appointed by the insurer. Subsection E is an optional provision saying an insurer shall remit, in a manner prescribed by the insurance commissioner, a renewal appointment fee in the amount set forth in the state law or regulation.

In summary, the NAIC Model Law does not distinguish between insurance agents and insurance brokers by their license but collectively defines them as insurance producers. On this basis, where an insurance producer receives commission from the insurer, it requires prior disclosure of compensation and documented acknowledgement by customers. It is up to each state to decide how to regulate the receipt of such remuneration from the insurer, either on an individual basis or by registration as appointed agents.

Consequently, the standard of regulation lies on whether an insurance producer receives remuneration from the insurer, and not based on license, and so regulation of an insurance producer is applied on the basis of its action. Registration of appointed agents is optional, and this can be understood that it is left to each state to decide whether to regulate insurance producers who act for insurers by the category of entities through registration or by individual action.

In terms of issues that are of great concern to the FSA, the key point is remuneration. In contrast to the continental legal system, the NAIC Model Law not only requires disclosure required, but also acknowledgement of customers, dealing rigorously to avoid conflicts of interest in financial terms, but in other aspects, insurance agents and insurance brokers are not distinguished.

³² State laws that should be referred to are compiled in “Related Charts” on the website of NAIC, but authors have not accessed the charts because they need to be purchased unless one has purchased the model laws.

3.5 Example of State Laws

We examine the law of the State of Connecticut as an example of state laws that accepted the NAIC Model Law described in the previous section.

Under the Connecticut law, insurance is provided in Title 38a. Insurance producers are governed in Chapter 710a in “Insurance Producers, Agents and Third-Party Administrators.” In the context of this paper, Part I “Insurance Producers and Agents” from Section 702 onward is important.

Section 702a provides definitions. In the context of this paper, following definitions are important. Paragraph (1) reads “agent” or “insurance agent” means an insurance producer appointed by an insurer to act on the insurer’s behalf pursuant to section 38a-702m. Paragraph (6) reads, “insurance producer” or “producer” means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance. Paragraph (13) defines the term “negotiate,” paragraph (15) defines “sell,” and paragraph (16) defines “solicit.” The coverage of “insurance producers” is broad, and “agents” are those that represent (i.e., act on behalf of) insurers. That is, persons engaged in selling insurance are generally regarded as “insurance producers,” and when they act as “insurance agents” acting on behalf of the insurer, they are also subject to regulation of “insurance agents.” Here, the arrangement is to provide one type of license for insurance producers, not separate licenses for agents and brokers, and regulation is applied individually when an insurance producer acts on behalf of an insurer.

Section 702l governs producer commissions, and Section 702m lays down agent appointments and fees. Section 707 provides that producer service fees and commissions are limited. Sections 707a and 707b provide for disclosure on producer compensation. Section 702l is almost identical to Section 13 of the Model Law, and section 702m is almost the same as Section 14 of the Model Law.³³

3.6 Supplement

The most important insight we have gained from comparative analysis of U.S. laws is that the approach of examining foreign laws in order to explore the desirable way to regulate insurance brokers in Japan is by no means clearcut. Rather, we should question whether it is appropriate to maintain the classification of agent and broker in considering desirable regulation of brokers in Japan. In the United States, in the federal law and many state laws, the direction of regulation is that agents and brokers are no longer distinguished, and regulation is conducted not in the context of license of insurance producers but based on their act.

³³ In the U.S. legal system, where an insurance producer operates both as agent and broker, it distinguishes the role depending on the type of risks it underwrites (Takeda, A., 2011, “Disclosure rules on U.S. insurance intermediaries: continuing discussion on contingent commissions” *Sompo-soken Report (Non-life Research Institute Report)*. Vol. 94. [in Japanese]). Independent insurance agents (i.e., those that do not belong to any insurer) provide standard insurance (typically life insurance) to individual customers and relatively small businesses choosing products that meet the needs customers. Insurance brokers service insurance for larger businesses according to their request, procuring insurance products specific to them from insurers, also designing coverage of insurance and pricing products (Cummins and Doherty, 2006. 361-361). Many of the small and medium-sized insurance producers use different insurers depending on the situation so that they can respond flexibly to customers’ needs. They have agency agreements with the insurance company they routinely deal with to cover standard risks for individual customers, but they also enter into insurance brokerage agreements with other insurance companies (see Takeda, 2011, p.30).

Therefore, unless the Financial Services Agency, the Japanese regulatory authority, is acutely aware of its standing on the question of whether to maintain or abolish the distinction between agents and brokers, the analysis of U.S. law would have limited significance going forward.

If Japan should continue to maintain the traditional distinction, it would be meaningful to take up as the subject of analysis state laws of New York and California, which still distinguish agents and brokers against the trend. In doing so, however, the direction of the research should not merely be the study of the laws, but first look into why these two states still remain the classification despite the trend otherwise. It was not possible to do such research with limited time and resources.

3.7 Column: Relaxation of rules for industrial insured and ECP in the US

In the United States, in the industrial insurance field, large-scale insured that meet certain requirements are called “industrial insured,” and there is a system called surplus lines regulation in which the states’ insurance regulation is eased when insurance is arranged for industrial insured.

Surplus lines regulation in each state requires transactions to be conducted only with surplus lines brokers that are specially licensed brokers. Before making insurance contracts, surplus lines brokers must (i) make “diligent search” of the regular insurance marketplace to establish that there is no licensed insurer available to offer the required coverage, and be informed that some number of licensed insurers declined to offer coverage, so as to establish that there is no licensed insurer available to offer the required coverage, or confirm that the classes of insurance are on the “export list” that lists risks that licensed insurers are generally decline to underwrite and are thus exempt from the rules on obtaining necessary number of declines; and (ii) assess the solvency of the particular non-admitted insurer chosen before taking any risks.”

Surplus lines brokers can procure insurance from non-admitted insurers if they satisfy the “diligent search requirements,” which require coverage to be refused or declined by insurers a specified number of times (usually, three to five) surplus lines brokers can obtain insurance from non-admitted insurers, but when arranging insurance for industrial insured exemptions to the decline rules based on these requirements are applied.

The definition of an industrial insured is provided in Section 527 of the Non-admitted and Reinsurance Reform Act (NRRA), which came into effect on July 21, 2011, as “Exempt Commercial Purchaser” (ECP). According to the provision, ECP is any person purchasing commercial insurance that, at the time of placement, employs or retains a qualified risk manager, has paid aggregate nationwide commercial property and casualty insurance premiums in excess of \$100,000 in the immediately preceding 12 months, and meets at least one of five criteria related to net worth, annual revenues, or the number of employees.

NRRA also provides a detailed definition of qualified risk manager. Specifically, all three requirements need to be met. First, the person is an employee of, or third-party consultant retained by, the commercial policyholder. Second, the person provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and purchase of insurance. And third, the person has a bachelor’s

degree or higher from an accredited college or university in fields such as risk management, business administration, or finance, and has 3 years of experience in risk management or purchasing commercial lines of insurance.

In the United States, as of January 2023, exemptions to surplus lines regulation are admitted for non-admitted insurer in 20 states for insurance offered to industrial insured. In addition, there are also 12 states where exemptions related to industrial insured may be granted, though limited, to captive insurers and workers' compensation insurance.

4. Germany and the EU

4.1 Relationship between Germany's Regulations on Insurance Supervision and EU Insurance Regulations

4.1.1 Germany's legal framework for the supervision of insurance intermediaries

In Germany, the primary legal regulations governing insurance intermediaries (insurance agents and brokers) include the German Industrial Code (Gewerbeordnung: GewO), the German Insurance Supervision Act (Versicherungsaufsichtsgesetz: VAG), the German Insurance Contract Act (Versicherungsvertragsgesetz: VVG), the German Regulation on Insurance Mediation (Versicherungsvermittlungsverordnung: VersVermV),³⁴ and the German Regulation on Information Obligations for Insurance Contracts (VVG-Informationspflichtenverordnung: VVG-InfoV).³⁵

The GewO is the law that sets out the licensing requirements and matters related to registration for insurance intermediaries conducting their business, supplemented by the VersVermV. The VersVermV details the licensing procedures for insurance intermediaries, the register, the professional examination system, continuing education, professional liability insurance, and information provision to policyholders. The VVG defines insurance intermediaries, sets out their information and advisory obligations, and specifies their liability to policyholders. The VVG-InfoV provides detailed rules on the information obligations stipulated in section 7 of the VVG.³⁶ The VAG sets out licensing requirements for insurance intermediaries regarding their cooperation with insurance companies.

The GewO is jointly administered by the Federal Ministry for Economic Affairs and Climate Action, the Federal Ministry of Justice and Consumer Protection, the Federal Ministry of Finance, and the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht: BaFin). The VVG is jointly administered by the Federal Ministry of Justice and Consumer Protection and BaFin. Furthermore, the VAG falls under the jurisdiction of BaFin.³⁷

BaFin does not directly supervise insurance intermediaries. However, as mentioned above, it

³⁴ Verordnung über die Versicherungsvermittlung und -beratung

³⁵ Verordnung über Informationspflichten bei Versicherungsverträgen

³⁶ Section 7 (2) of VVG stipulates that the provision of comprehensive information to policyholders is specified by an order.

³⁷ The General Insurance Institute of Japan. 2024. *The regulation of insurance agents and brokers and solicitation of commercial insurance in major countries*, pp80-81. (available in Japanese)

exercises indirect supervision³⁸ based on provisions such as those in VAG that set requirements for insurance intermediaries working with insurance companies.³⁹

4.1.2 Relationship with EU insurance regulation

In the EU, the Insurance Mediation Directive (IMD) came into effect in January 2003. The IMD was adopted to ensure the free movement of insurance intermediaries within the EU. It stipulated requirements for the competence of insurance intermediaries, registration obligations, and obligations to provide information to customers.⁴⁰ In Germany, the “Act Amending the Insurance Intermediaries Act” (Gesetz zur Neuregelung des Versicherungsvermittlerrechts) was published in the Federal Gazette in December 2006, and the VersVermV came into force on May 22, 2007. Since then, obtaining a license or registration has been required to commence insurance intermediary activities in Germany.⁴¹

Subsequently, the EU amended the IMD, and the successor directive, the Insurance Distribution Directive (IDD), came into effect in February 2016. Under this directive, EU member states were required to implement it into national law by 2018.⁴² The German legislature passed the “Act Implementing Directive (EU) 2016/97 of the European Parliament and of the Council of January 20, 2016 on Insurance Distribution and Amending Other Acts” (Gesetz zur Umsetzung der Richtlinie (EU) 2016/97 des Europäischen Parlaments und des Rates vom 20. Januar 2016 über Versicherungsvertrieb und zur Änderung weiterer Gesetze) and published it in the Federal Gazette in July 2017. Consequently, the VAG, the VVG, and the GewO were amended based on the IDD and came into effect on February 23, 2018.⁴³ This domestic implementation of the IDD introduced important regulations, including provisions regarding the disclosure of remuneration for insurance intermediaries (for details on the disclosure of remuneration for insurance intermediaries, see Section 4.5.2 on Fee Disclosure).

4.2 Registration of Insurance Brokers

To operate as an insurance intermediary,⁴⁴ one must obtain permission (Erlaubnis) from the competent Chambers of Industry and Commerce (Industrie- und Handelskammer: IHK) (section 34d (1) sentence 1 of the GewO). Furthermore, the permission as an insurance intermediary must explicitly state whether it is granted to an insurance agent or an insurance broker (section 34d (1) sentence 5 of the GewO). The GewO

³⁸ BaFin (2025), Aufsicht über den Versicherungsvertrieb.

³⁹ Section 48 (1) 1 stipulates requirements of insurance intermediaries that insurers can work with as those that have obtained permission pursuant to GewO, permission is exempted, or those that do not need to obtain permission.

⁴⁰ Kim, N. (2017). “Remunerations of insurance brokers in Europe,” *Sompo-oken Report*. Vol. 118. p.37. (available in Japanese)

⁴¹ IHK, Versicherungsvermittler: Erlaubnis- und Registrierungspflicht (d Registrierungspflicht (<https://www.ihk.de/aachen/zielgruppen/unternehmen/branchen/versicherungsgewerbe/versicherungsvermittler-erlaubnis-und-registrierungspflicht-598342>; abgerufen am 14.6.2025)

⁴² For details of IID, see the General Insurance Institute of Japan, p.57 (footnote 37).

⁴³ BaFin (2017), Jahresbericht 2017 der Bundesanstalt für Finanzdienstleistungsaufsicht, S.98. VerVermV was replaced by a new order with the same title, which came into effect in December 2018.

⁴⁴ Insurance intermediaries include entities whose main service is not insurance intermediation, but provide such services as affiliated business of their main products or services (product affiliated insurance intermediaries). Such intermediaries do not need permission upon request, if they meet the necessary requirements (GewO Section 34d (6)).

defines an insurance broker as “a person who undertakes to distribute or conclude insurance contracts for clients without being commissioned by an insurance company or insurance agency.” A person who gives the appearance to the policyholder that they are providing services as an insurance broker is also considered an insurance broker (section 34d (1) sentence 2 no. 2 and sentence 3 of the GewO).

Insurance intermediaries receive a permission certificate (Erlaubnisurkunde) upon passing the IHK examination and obtaining authorization.⁴⁵ Subsequently, insurance intermediaries are registered and publicly listed in the register established at each IHK (Section 11a of the GewO). The register records information such as the insurance intermediary’s name and date of birth, as well as whether they hold authorization as an insurance intermediary (Section 8 of the VersVermV). According to BaFin’s non-binding guideline for insurance companies, “Circular 11/2018 on Cooperation with Insurance Intermediaries and Risk Management in Distribution,”⁴⁶ insurance companies are permitted to cooperate with licensed insurance intermediaries only. Therefore, insurance companies need to check the register regularly not only before but also after commencing cooperation with an insurance intermediary.

To obtain permission from IHK, insurance intermediaries must satisfy four main requirements. These are: sufficient credibility to conduct business;⁴⁷ stable financial asset position;⁴⁸ purchase of professional liability insurance or proof of equivalent guarantees; and proof of having necessary expertise for insurance mediation and advice by passing IHK examination.⁴⁹ Failure to meet all these requirements results in the refusal of a license (Section 34d (5) of the GewO). The professional liability insurance requirement, one of the licensing conditions, is discussed in detail in Section 4.4.

4.3 Definition and Authority of Insurance Brokers

4.3.1 Definition

An insurance broker is defined in Section 59(3) of the VVG. According to this provision, an insurance broker is “anyone who distributes or concludes insurance contracts for a client on a commercial basis without having been contracted to do so by an insurer or insurance agent. Insurance brokers operate exclusively in the interests of their clients.” In other words, the work of an insurance broker is to connect insurance companies with policyholders upon the policyholder’s commission.⁵⁰ Furthermore, unlike insurance agents, insurance brokers must protect the interests of the policyholder, not those of the insurance company. They are thus the guardian of the policyholder’s interests (Interessenwahrer) and their

⁴⁵ BaFin, a.a.O.(Rn.39).

⁴⁶ Rundschreiben 11/2018 zur Zusammenarbeit mit Versicherungsvermittlern sowie zum Risikomanagement im Vertrieb

⁴⁷ In general, one is considered not credible if the person is found guilty for a crime, theft, embezzlement, extortion, fraud, breach of trust, money laundering, document forgery, receipt of stolen property, and bankruptcy-related crimes within five years of application.

⁴⁸ When bankruptcy procedures have been commenced against an applicant’s assets, or if an applicant is on the list managed by bankruptcy court or execution court, it is considered that the applicant has not met the asset requirement.

⁴⁹ The professional examination test implemented by IHK comprises written exam and practical skills test. The examination not only tests expert knowledge, but also applicability of knowledge to practice (VersVermV Section 2, Section 4).

⁵⁰ Armbrüster, C., Privatversicherungsrecht, 2.Aufl., Tübingen 2019, S.233.

representative (Sachwalter).⁵¹

Insurance brokers are typically commercially active and qualify as commercial brokers (Handelsmakler) as defined in section 93 of the German Commercial Code (Handelsgesetzbuch: HGB).⁵² Insurance brokers may be either natural persons or legal entities.⁵³

In practice, the role of insurance brokers is primarily exercised in the field of corporate risk insurance, where they are referred to as corporate brokers (Industriemakler).⁵⁴ In Germany, there also exist in-house brokers who enter into insurance brokerage agreements with specific client companies and provide risk consulting services, including centralized insurance management, for those client companies.⁵⁵

4.3.2 Authority

The authority of insurance brokers is not explicitly defined under the VVG. However, a type of legal obligation (gesetzliches Schuldverhältnis) is recognized between insurance brokers and insurance companies. In practice, contracts specifying the content of this legal relationship may be concluded implicitly or explicitly between insurance brokers and insurance companies. In such cases, the insurance broker may undertake certain duties for the insurer regarding the commencement and subsequent administration of the insurance contract, pursuant to a so-called broker clause (Maklerklausel) in the contract. These duties include issuing and sending the insurance policy, agreeing on provisional compensation, managing the receipt of premiums, receiving and transmitting declarations and notifications, and processing insurance claims.⁵⁶

However, since insurance brokers are legally obligated to act solely in the policyholder's interest, even if they possess rights such as premium collection or the right to receive disclosures and notifications as described above, such authority is considered to derive from the relationship between the insurance broker and the policyholder who enters a brokerage contract (Maklervertrag) with them.⁵⁷

Furthermore, the Federal Supreme Court ruling dated January 14, 2016 (BGH, Urteil vom 14.1.2016) determined that insurance brokers handling insurance claims on behalf of insurance companies violate the Legal Services Act (Rechtsdienstleistungsgesetz: RDG). Specifically, the court held that insurance brokers' handling of insurance claims on behalf of insurance companies is not permitted under section 5(1) of the RDG because claim processing constitutes a legal service within the meaning of the RDG and so it is neither part of the insurance broker's professional or operational profile nor an ancillary activity.⁵⁸ The court judged that it may also conflict with section 4 of the RDG, which aims to avoid

⁵¹ Dörner, H., in: Prölss/Martin, Kommentar zum Versicherungsvertragsgesetz, 32. Aufl., München 2024, §59 Rn.65.

⁵² Armbrüster, a.a.O.(Rn.50), S.234; Dörner, a.a.O.(Rn.51), §59 Rn.65.

⁵³ Dörner, a.a.O.(Rn.51), §59 Rn.66.

⁵⁴ Armbrüster, a.a.O.(Rn.50), S.233.

⁵⁵ The General Insurance Institute of Japan, p.100 (footnote 37).

⁵⁶ Armbrüster, a.a.O.(Rn.50), S.239-240.

⁵⁷ Based on the response from Professor Armbrüster to questions sent by e-mail.

⁵⁸ Section 5(1) of RDG stipulates that legal services related to other business are permitted if they are provided as ancillary services related to the professional or operational profile.

conflicts of interest in the provision of legal services, and is thus impermissible.⁵⁹ Therefore, if an insurance broker wishes to continue handling insurance claim processing for an insurance company, they must either change their status to become an insurance agent, establish a separate independent service company to handle claims processing, or engage in claims processing solely in an advisory capacity upon the instruction of their client, the policyholder.⁶⁰ Consequently, some insurance companies have revised their cooperation methods with insurance brokers and are utilizing Managing General Agent (MGA),⁶¹ which can also handle claim processing, as one alternative to services where insurance brokers handle claim processing.⁶²

4.4 Obligation to Deposit Security Funds and Obtain Liability Insurance

To obtain permission from IHK, insurance brokers must either take part in professional liability insurance (Berufshaftpflichtversicherung) or provide proof of equivalent security (Section 34d (5) sentence 1 no. 3 of the GewO).

German legislators require insurance brokers to obtain professional liability insurance under GewO to cover the risk of liability for financial loss (Vermögensschäden) arising from their insurance brokerage and advisory services. This clarifies that professional liability insurance for insurance brokers is a type of financial loss liability insurance (Vermögensschadenshaftpflichtversicherung)⁶³ and constitutes liability insurance covering so-called “pure” financial loss.⁶⁴

The conditions that professional liability insurance must meet as part of requirements for the authorization of insurance brokers are stipulated in the VersVermV. Specifically, insurance must cover the entire EU and European Economic Area (EEA) (Section 11), it must be provided by an insurance company licensed to operate in Germany (Section 12(1)),⁶⁵ have a minimum payment limit, which is subject to customization and presently is EUR 1,564,610 per insured event and EUR 2,315,610⁶⁶ for all insured events per year (Section 12(2)), cover liability risks arising from commercial activities such as the

⁵⁹ BaFin (2016), Jahresbericht 2016 der Bundesanstalt für Finanzdienstleistungsaufsicht, S.141.

⁶⁰ Grote, J., in: Dreher, M., Kommentar zum Versicherungsaufsichtsgesetz, 14. Aufl., München 2024, §48 Rn.28.

⁶¹ An MGA is an agent that is entrusted with certain authority to perform wide range of functions that insurance companies have done traditionally, such as selection of insurance agents, designing insurance coverage and pricing of premiums for insurance policies, underwriting, claims payment.

⁶² The General Insurance Institute of Japan, p.107 (footnote 37).

⁶³ IHK, Berufshaftpflichtversicherung (<https://www.ihk.de/ulm/recht-und-steuern/vermittler/versicherungsvermittlerq/allgemeine-information/berufshaftpflichtversicherung-1637540>; abgerufen am 14.6.2025). Professional liability insurance does not cover liabilities stemming from physical damage due to damage or destruction of customers' property while insurance brokers are making contact for solicitation.

⁶⁴ According to Professor Armbrüster, “pure” financial loss refers to monetary damage not arising from personal injury or property damage. A typical example is damage caused by an insurance broker's erroneous advice.

⁶⁵ According to Professor Armbrüster, while there are insurance companies from EU member states that have registered to offer this type of insurance in Germany under the EU directive on the freedom to provide services, in practice, most insurers have their headquarters in Germany. If they belong to a foreign group such as the Italian Generali, the Swiss Zurich or the French AXA they found subsidiaries in Germany and thus make use of the freedom of establishment.

⁶⁶ The minimum payment limit as of October 6, 2025 (IHK, a.a.O. (Rn.63)). The amount of value is revised by the Federal Ministry for Economic Affairs and Climate Action every five years, and adjusted where necessary (the General Insurance Institute of Japan, p.86 (footnote 37)). This is in response to the fact that insurance claims for professional indemnity insurance pursuant to EU's IDD is revised every five years taking into account fluctuations in the region's consumer price index (IDD Section 10(7)).

distribution of primary insurance contracts or reinsurance contracts or advice concerning these insurance contracts, with respect to financial loss⁶⁷ (Section 12(3)), provide insurance coverage for individual breaches of duty that could give rise to civil law claims for damages against the insured party (section 12(4)), and liability for claims arising from intentional breaches of duty may be excluded,⁶⁸ but other exclusions are permitted only to the extent they are market practice and do not conflict with the purpose of professional liability insurance (Section 12(5)).

The German Insurance Brokers Association (Bundesverband Deutscher Versicherungsmakler e.V.: BDVM) requires its member insurance brokers, under its membership regulations, to provide proof of professional liability insurance with a payment limit twice the statutory standard.⁶⁹ Furthermore, insurance brokers must submit proof of professional liability insurance to IHK.⁷⁰ For this purpose, IHK provides an appropriate template containing all necessary information. However, in most cases, submitting a copy of the insurance policy, the latest addendum to the insurance certificate, or a confirmation letter issued by the insurance company is considered sufficient.⁷¹

No legal obligation is stipulated about contribution of security deposit by insurance brokers.

4.5 Fees

4.5.1 Types of Fees

The remuneration (Vergütung) of an insurance broker includes the intermediary fee (Vermittlerhonorar), brokerage commission (Courtage), and advisory fee (Beraterhonorar). The intermediary fee is the remuneration paid directly by the policyholder to the insurance broker for the broker's distribution and intermediary activities in arranging the insurance contract, based on an agreement with the broker. In this case, the insurance contracts brokered by the insurance intermediary are typically so-called net products (Nettoprodukte), which do not include the insurance company's intermediary costs. The intermediary fee model is primarily seen in the fields of life insurance, corporate pensions, and industrial insurance, but it is

⁶⁷ If any person assisting performance or operation has no mandatory obligation to buy professional indemnity insurance themselves, the insurance contract must cover any financial liability that the persons who must be insured to buy the insurance bear pursuant to sections 278 and 831 of the civil code (Bürgerliches Gesetzbuch: BGB). Section 278 of BGB provides for the liability of the debtor to third parties, and the debtor shall be the legal representative of liability for the negligence of the person in charge and the person using the same to perform the obligation must be as high as the person's own negligence. Section 831 of the BGB provides for liability to a person assisting in the performance of a task, and provides that when a person designates another person to perform the task, he is liable to compensate for any damage unlawfully inflicted on a third party by such other person in the performance of his or her duties.

⁶⁸ According to Professor Armbrüster, in practice, claims for damages arising from intentional breaches of duty by insurance brokers are excluded, and there is no insurance protection for the affected policyholders. However, since the Criminal Code imposes severe penalties and the broker faces a high risk of losing their license, cases of intentional breaches of duty are considered rare.

⁶⁹ BDVM, Satzung (<https://bdvm.de/bdvm/satzung/>; abgerufen am 14.6.2025)

⁷⁰ IHK, Versicherungsmakler und ungebundener Versicherungsvertreter (<https://www.ihk.de/aachen/zielgruppen/unternehmen/branchen/versicherungsgewerbe/versicherungsmakler-598330>; abgerufen am 14.6.2025)

⁷¹ According to Professor Armbrüster, the German Insurance Association (Gesamtverband der deutschen Versicherungswirtschaft) has created and published non-binding model terms and conditions for professional liability insurance covering financial loss for professionals (Allgemeine Versicherungsbedingungen für die Betriebs- und Berufshaftpflichtversicherung: AVB BHV). The latest version is the June 2025 edition. (<https://www.gdv.de/gdv/neu-strukturierte-haftpflichtbedingungen-ab-2014--5962>; abgerufen am 14.6.2025)

not mainstream at present.⁷²

The brokerage commission is the remuneration received by the insurance broker from the insurance company, and the insurance company charges the policyholder a premium that includes this remuneration to the broker. Such insurance contracts are called gross contracts (Bruttopolice).⁷³ The level of the brokerage commission is determined through negotiation with the insurance company, based on the extent of services provided by the insurance broker.⁷⁴ The commission fee model is predominant in Germany and aligns with customer expectations as a long-standing practice.⁷⁵ However, there is a debate about the legal basis of insurance brokers receiving remuneration from insurers rather than policyholders, when brokers act as representatives of policyholders. It is sometimes grounded in customary law or commercial practice, while others point to the freedom of contract between the parties.⁷⁶ According to the BDVM website,⁷⁷ insurance brokers prioritize the policyholder's interests when making proposals based on the Transparency Guidelines (Transparenzleitlinien) set forth in their code of conduct. Therefore, inclusion of their remuneration to insurance premium as brokerage commission does not compromise the independence of insurance brokers.

Advisory fees are compensation received by insurance brokers based on agreement with clients when providing unique consulting services regarding insurance protection. There are no legal standards for advisory fees; for instance, fees for complex consulting work may be determined on an hourly basis.⁷⁸

In practice, fee-based intermediary remuneration and commission-based brokerage fees can be combined according to client requests, and a significant number of cases involve a combination of both depending on the insurance product and the insurance broker's services.⁷⁹

4.5.2 Disclosure of Fees

Section 15(1) of the VersVermV governs the disclosure of remuneration received by insurance intermediaries, including insurance brokers. This provision requires that matters concerning remuneration be included among the items insurance intermediaries must notify policyholders during the initial business contact. Specifically, these include: the type of remuneration received for the intermediation (no. 5); whether the remuneration is received directly from the customer or is included in the premium as commission or other remuneration (no. 6); whether other benefits (Zuwendungen) are received as remuneration (no. 7); and whether the remuneration is a combination of the remuneration referred to in no. 6 and no.7 (no. 8). However, this provision concerns the type and payment method of remuneration and does not impose an obligation to disclose the amount.⁸⁰

⁷² Dörner, a.a.O.(Rn.51), §59 Rn.84.

⁷³ Dörner, a.a.O.(Rn.51), §59 Rn.90.

⁷⁴ The General Insurance Institute of Japan, p.93 (footnote 37).

⁷⁵ Armbrüster, a.a.O.(Rn.50), S.234.

⁷⁶ Armbrüster, a.a.O.(Rn.50), S.234 und Dörner, a.a.O.(Rn.51), §59 Rn.90.

⁷⁷ BDVM, Vergütung (<https://bdvm.de/makler-kunden/verguetung/>; abgerufen am 14.6.2025)

⁷⁸ Dörner, a.a.O.(Rn.51), §59 Rn.99-100.

⁷⁹ The General Insurance Institute of Japan, op. cit. p.93 (footnote 37).

⁸⁰ Dörner, a.a.O.(Rn.51), §59 Rn.92.

On the other hand, regarding investment-linked insurance products as defined in Section 2(17) of the IDD, there exists an obligation to provide information. This requires that, at an appropriate time prior to the conclusion of the insurance contract, the policyholder be provided with adequate information concerning the sale of the insurance product and all costs (Kosten) and fees (Gebühren). This information on all costs and fees must be provided in summary form and, upon request by the policyholder, a detailed breakdown of costs and fees must also be provided (Section 7b (1), (2) of the VVG). This provision corresponds to Section 29 (1) of the IDD, which governs customer information. Furthermore, for life insurance, based on the information disclosure obligations imposed on insurers by section 7 of the VVG, information must be disclosed to policyholders regarding the amount of costs included in the premium. Such information includes total amount for new contract costs; percentage of annual premium for costs other than new contract costs; and, among costs other than new contract costs, the percentage of annual premium for administrative costs must be disclosed separately (Section 2 (1) no. 1 of the VVG-InfoV).

Furthermore, when an insurance intermediary agrees on remuneration with an insurance policyholder, the intermediary is obligated to conclude a contract specifying the exact amount.⁸¹

According to the Transparency Guidelines included in the BDVM Code of Conduct, in line with Guideline 1 stating that insurance brokers shall act based on the customer's interests rather than their own economic interests, brokerage commission—the typical remuneration for insurance brokers—and their amounts need not be disclosed unless requested by the customer (Guideline 2). However, if an insurance broker has alternative sources of remuneration, such as receiving compensation directly from the policyholder, disclosure of such alternative sources is required (Guideline 3). Bonuses or special performance-based compensation are not recommended as they conflict with Guideline 1 (Guideline 4).⁸²

4.6 Other Issues

4.6.1 Restrictions on Collaboration with Agencies

There are no regulations limiting joint business operations by insurance brokers and insurance agents. However, regarding the concurrent operation of insurance brokerage and agency activities, the Competition Guidelines of the Insurance Industry (Wettbewerbsrichtlinien der Versicherungswirtschaft), an industry self-regulatory measure, prohibit insurance brokers from entering into agency agreements (Section 11). This prohibition is based on the risks of conflicts of interest and potential misunderstandings by policyholders. As stated in Section 4.2, Section 34d (1) sentence 5 of the GewO stipulates that authorization as an insurance intermediary is only permitted in the capacity of either an insurance agent or an insurance broker. Furthermore, Section 59 of the VVG clearly defines and distinguishes between insurance agents and insurance brokers as insurance intermediaries. Therefore, the roles of insurance brokers and insurance agents are clearly differentiated, and dual operation is not permitted.

⁸¹ The General Insurance Institute of Japan, op. cit. p.95 (footnote 37).

⁸² BDVM, Transparenzleitlinien (<https://bdvm.de/versicherungsmakler/code-of-conduct/bdvm-code-of-conduct-transparenzleitlinien/>; abgerufen am 14.6.2025)

4.6.2 Obligations Specific to Insurance Brokers

An insurance broker owes duties to policyholders based on the legal relationship arising from the brokerage agreement concluded with policyholders. One of the duties specific to an insurance broker is the duty to provide information to the policyholder.

The duty of information provision requires insurance brokers to disclose the basis of their advice (i.e., on what ground information they provide is based on) to policyholders. Insurance brokers must strive to distribute the most suitable insurance contracts to meet policyholders' needs and "have a duty to provide advice based on information about a sufficient number of insurance contracts and insurance companies available on the market" (Section 60 (1) sentence 1 of the VVG). Furthermore, if an insurance broker provides advice based on a limited selection of insurance contracts or insurance companies, he or she must explicitly draw the policyholder's attention to this fact before the policyholder expresses their intent to enter into contract (Section 60 (1) sentence 2 of the VVG). This explicit drawing of attention must be accompanied by a report on the market and information used as the basis for the proposal, as well as the name of the insurance company used as the basis for the proposal (Section 60 (2) sentence 1 of the VVG).

Insurance brokers are generally expected to provide advice based on the broad range of insurance products available on the market. Therefore, unless the policyholder waives the provision of information regarding the basis for advice pursuant to Section 60(3) of the VVG, the insurance broker is required to disclose that the advice is based on a limited selection of options.⁸³ There is a dispute in doctrine about whether this obligation includes a situation in which the insurance broker doesn't include online insurers, from whom he or she cannot expect a remuneration. While some authors claim that an average customer should be aware of the fact that those offers are not included others doubt this and emphasize that in any case a disclosure increases transparency.

5. UK

5.1 UK Insurance Act and Insurance Intermediaries Regulation

In the UK, insurance intermediaries, including insurance brokers, are governed by the Financial Services and Markets Act 2000. The regulatory authority of the Act is the Financial Conduct Authority (FCA), and under powers given to it by the Act, it devised rules and published them as "FCA Handbook." The Handbook include "rules" that are binding on financial operators, "evidential provisions" that are not binding in their own right, and they always relate to some other binding rule – they are only binding in relation to the rule to which they relate, and "guidance" that describes the explanation and interpretation of the rules.⁸⁴

The provisions of the Financial Services and Markets Act 2000 were made to implement domestically the EU insurance regulations (specifically, IDD 2016, see Section 4.1.2) that took effect

⁸³ Armbrüster, a.a.O. (Rn.50), S.237-238.

⁸⁴ FCA, Reader's Guide: An introduction to the Handbook (January 2019), p.11.

before the Brexit and continued to have effect in the UK even after the Brexit. In the past, there was the Insurance Brokers (Registration) Act 1977, which governed insurance brokers, but was repealed by the Financial Services Act 1986, which was then replaced by the Financial Services and Markets Act 2000.⁸⁵ Subsequently, the Financial Services and Markets Act 2023 revoked the effect of IDD in the UK and was replaced by rules set by the FCA.⁸⁶

In examining UK law, we should note that where an insurance broker is regarded as agent to any party to an insurance contract, the law of agency under the common law applies. The legal theory of agency in common law is, as described, “the resultant of a conflict at every point between logic and good sense,”⁸⁷ which is very different from the “agency law” in continental law. Germany’s agency law, which had greatly influenced the Japanese law, has developed upon the theoretical classification of the internal relationship between the agent and the principal and the external relationship by the presence of authority to the third party. It is fundamentally different from the agency law in the UK, which has adjusted the outline of the law developed over time by common sense. Therefore, we should not understand the term “agency” in UK law by analogy with the concept of agency in the Japanese civil law.

In the UK, the term “insurance broker” is used for Lloyd’s brokers (intermediaries through which Lloyd’s underwriters underwrite insurance), as well as for intermediaries through which general customers purchase insurance products (the equivalent of insurance brokers in Japan). Although the current regulation does not distinguish between the two, the purpose of this paper is to draw implications for the Japanese law, so the discussion below focuses exclusively on the latter.

5.2 Authorization of Insurance Brokers

The Financial Services and Markets Act of 2000 stipulates that no person may carry on a regulated activity in the United Kingdom unless he is an authorized person or an exempt person (Section 19).⁸⁸ The regulated activities are set out in the Treasury Regulations “The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001,” and its application is described in the FCA Handbook’s “Perimeter Guidance Manual” (PERG).⁸⁹ The handling of insurance products may fall under the following “regulated activities” as a result of rules that have been interpreted in the light of IDD.⁹⁰

(i) Dealing in investments as agent (article 21 of the Order)

This is the most typical case of dealing in contracts of insurance as agent on behalf of the insurer or of a prospective policyholder.⁹¹

(ii) Arranging (bringing about) deals in investments agent (article 25(1) of the Order)

Examples of this type of activity would include negotiating the terms of the contract of insurance on

⁸⁵ Birds and Richards (2022), p.228.

⁸⁶ Sec 1(1) & Schedule 1, Part 3 (w), Financial Markets and Services Act 2023.

⁸⁷ Holmes (1891) p.346.

⁸⁸ See Goto (2020) for the framework of the Financial Services and Markets Act of 2000.

⁸⁹ The treatment of insurance products is described in Part 5 (PERG 5).

⁹⁰ PERG, 5.2.8.

⁹¹ PERG, 5.5.1.

behalf of the customer with the insurer and vice versa, or assisting in the completion of a proposal form and sending it to the insurer. Other examples include where an intermediary enters into a contract of insurance as agent.⁹²

(iii) Making arrangements with a view to transactions in investments agent (article 25(2) of the Order)

This includes activities of people who help potential policyholders fill in or check application forms in the context of ongoing arrangements between these persons and insurance undertakings. It also includes activities of persons introducing customers to an intermediary.

(iv) Assisting in the administration and performance of a contract of insurance (article 39A of the Order)

To fall within this activity, a person assists in both the “administration” and “performance” of a contract of insurance. Where a person assists a claimant in filling in a claims form, this amounts to assisting in the “administration” of a contract of insurance only. However, this may also amount to assisting in the “performance” of a contract of insurance, when a person fills in the whole or a significant part of a claims form on behalf of a claimant. This is because, by helping complete a claims form, a person may be assisting the policyholder to perform his contractual obligation to notify the insurance undertaking in the event of a claim, and falls under activity specified in (iv).⁹³

(v) Advising on investments (article 53(1) of the Order)

It must relate to a particular contract of insurance, and must be advice, not just information, to fall within advice specified in (v).⁹⁴

(vi) Agreeing to carry on any of the above regulated activities (article 64 of the Order)

5.3 Definition and Authority of Insurance Brokers

As we looked in Section 5.2, it is clear that there is no definition of “insurance broker” in the UK law. In fact, the Insurance Brokers Registration Act of 1977 did not define “insurance broker.” In that sense, it was “a statutory scheme for the registration of persons calling themselves insurance brokers.”⁹⁵ The current Financial Services and Markets Act of 2000 is designed as regulation of conduct rather than of entity, and therefore the definition of insurance broker becomes unnecessary.

Activity that is generally considered as that of an “insurance broker” includes the following.⁹⁶

- Obtaining cover in respect of one particular risk (relates to (i) or (ii) in Section 5.2 above)
- Advising the client on cover needed for a number of risks (relates to (v) in Section 5.2 above)
- Carrying out a review of the client’s insurance needs to identify any gaps or weaknesses in the cover currently in place and offering full risk management services to clients (relates to (ii) or (v) in Section 5.2 above);

It is desirable that the authority of the agent is specified by agreement. Hence, “terms of business

⁹² PERG, 5.6.2.

⁹³ PERG, 5.7.2.

⁹⁴ PERG, 5.8.2. For typical recommendations that are regulated as advice, see PERG, 5.8.5

⁹⁵ Birds and Richards (2022), 228.

⁹⁶ International Bar Association Insurance Committee (2015), p.353.

agreements” (TOBA) are prepared where the insurance intermediary is acting on behalf of the insured.⁹⁷ The insurance broker continue to act for his client in relation to the policy even after the conclusion of an insurance contract, including collection and payment to insurers of premium and acting for his client in claims negotiation and collection.⁹⁸

5.4 Ensuring Fulfillment of Insurance Broker Responsibilities

The UK’s regulation to ensure the fulfillment of insurance brokers’ liability for damages lies within the prudential regulation of insurance intermediaries. In the past, this was addressed to implement the EU’s IDD, but now it is covered by the FCA Handbook’s Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU). The Prudential Regulation Authority (PRA) is in charge of its enforcement. According to the FCA Handbook, a firm carrying on insurance distribution activity other than an insurer is referred to as “insurance intermediary” (see the FCA Handbook’s Glossary),⁹⁹ and an insurance intermediary must make a contract of professional indemnity insurance that incorporate terms which make provision for covering in respect of claims for which a firm may be liable as a result of the conduct of itself, its employees and its appointed representative.¹⁰⁰ The minimum limits of indemnity per year are: for a single claim, €1,300,380; and in aggregate, the higher of (a) €1,924,560 and (b) an amount equivalent to 10% of annual income (this amount being subject to a maximum of £30 million).¹⁰¹ The unit is in euro in the FCA Handbook January 2025 issue. Apart from this, appropriate cover in respect of legal defence costs must be provided for in the contract of professional indemnity insurance.¹⁰²

The British Insurance Brokers’ Association (BIBA) offers its members help with finding insurance brokers who specialize in professional indemnity insurance for those who need assistance to arrange such insurance on their own.¹⁰³

5.5 Remuneration of Insurance Brokers

With regard to the remuneration of insurance brokers, while there are no provisions on who bears remuneration, UK law does require the disclosure of remuneration as a conduct regulation. Insurance brokers often deduct remuneration from insurance premiums paid by policyholders as “commission” or “broker fees,” according to practitioners.¹⁰⁴ Formally, however, it is regarded that remuneration is paid by the insurer. The amount of remuneration is provided for in either the agency contract with the customer (policyholder) or decided by an agreement with the insurer.

The FCA has established a code of conduct in its Handbook, entitled “ICOBS Insurance:

⁹⁷ International Bar Association Insurance Committee (2015), p.351.

⁹⁸ International Bar Association Insurance Committee (2015), p.353.

⁹⁹ Glossary, 119.

¹⁰⁰ MIPRU, 3.2.4 (1).

¹⁰¹ MIPRU, 3.2.7.

¹⁰² MIPRU, 3.2.4 (4).

¹⁰³ British Insurance Brokers’ Association (2025), p.38.

¹⁰⁴ International Bar Association Insurance Committee (2015), p.353.

Conduct of Business sourcebook (ICBS).” Detail provisions on the disclosure of remuneration are given in it, stipulating that in good time before the conclusion of the initial contract of insurance and, an insurance intermediary must provide the customer with information on the nature and the type of the remuneration received in relation to the contract of insurance.¹⁰⁵ Regarding the type of remuneration, an intermediary must provide, in relation to the contract, information whether it works on the basis of: (a) a fee, that is remuneration paid directly by the customer; or (b) a commission of any kind, that is the remuneration included in the premium; or (c) any other type of remuneration, including an economic benefit of any kind offered or given in connection with the contract; or (d) on the basis of a combination of any type of remuneration set out above in (a), (b) and (c). Information should include remuneration provided indirectly by the insurer or another firm within the distribution chain or by way of a bonus (whether financial or non-financial) paid to the firm by the insurer.¹⁰⁶ In addition, where the policy holder is a commercial (business), an insurance intermediary must, on a commercial customer’s request, promptly disclose the commission that it and any associate receives in connection with a policy.¹⁰⁷ This includes arrangements for sharing profits, for payments relating to the volume of sales, and for payments from premium finance companies in connection with arranging finance.¹⁰⁸

5.6 Collaboration between Insurance Brokers and Insurance Agents

In the UK, insurance regulations are not applied by the type of entity, such as insurance brokers and insurance agents, so there are no regulations that govern joint conduct of business by insurance brokers and agents either. Consequently, there is no rigid thinking that insurance intermediaries are, by all means, considered agents of policyholders or the insured. A survey of UK practices also reports cases where an insurance broker acts as Managing General Agent (MGA) who is vested with underwriting authority from an insurer.¹⁰⁹

The question of what authority an insurance intermediary has over which party is understood by the general agency principles under the civil law. Indeed, in general, only the agent under the direct employment or control of the insurer is the agent of the insurer, and other intermediaries would be the agent of an insured. However, in the decisions of the court in UK, when an insurance broker speaks decisively to the customer regarding the insurance coverage or when the insured instructs the insurance broker about insurance, the insurance broker is deemed as the agent of the insurer in terms of the effects of the actions. Therefore, there are cases where the insurer is bound by the actions of the insurance broker.¹¹⁰ Based on this thinking, the question of conduct of business jointly by the insurer and the agent of the insurer would not arise in the first place.

¹⁰⁵ ICOBS, 4.3.-7.

¹⁰⁶ ICOBS, 4.3.-3.

¹⁰⁷ ICOBS, 4.4.1.

¹⁰⁸ ICOBS, 4.4.2.

¹⁰⁹ The General Insurance Institute of Japan (2024), pp.164.

¹¹⁰ Birds and Richards (2022), 230-231.

However, as the general code of conduct under the Financial Services and Markets Act, insurance brokers must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client. This is set out in the FCA’s Handbook of Principles for Businesses (PRIN).¹¹¹ Further, as the code of conduct set forth in ICBS, insurance brokers must disclose in good time before the conclusion of an contract of insurance whether it is representing the customer¹¹² or is acting for and on behalf of the insurer.¹¹³ Due to the discipline for conflicts of interest and through disclosure, collaboration between insurance brokers and insurer’s agents is constrained.

6. Analysis and Discussion

6.1 System and Scope of Regulation

This paper only compares the regulation of insurance brokers in the selected countries—the United States, the UK and Germany—but the comparison of the three countries alone reveals important points to note. In this section, we discuss “registration system” and “definitions and authority” among issues we have examined for comparison. These issues concern the regulatory system and the scope of regulation within the system.

First, all three countries are shifting from a system that applies specific regulations to insurance brokers to a system that regulates insurance intermediaries as a whole. However, the extent of the shift differs from country to country.

In the United States, the GLB Act of 1999, which significantly eased financial regulation (conventionally, regulation was based on the type of sector) at the federal level, abolishing the distinction between insurance agents and insurance brokers and introducing the idea of insurance producers. In response to this, the NAIC, which drafts model laws for state insurance regulations, prepared the “Insurance Producer Model Law,” which does not distinguish between insurance agents and insurance brokers and defines them as “insurance producers.” Most states have adopted the model law, except for the states of New York and California, which maintain their regulatory systems; they are minority in this regard.

In Europe, the concept of “insurance intermediaries” that covers insurance agents, insurance brokers, etc., was introduced in the Insurance Distribution Directive (IDD) and its predecessor, the Insurance Mediation Directive (IMD) of 2002, and so the current regulatory system is based on this concept. In the past, the idea of “insurance broker” did exist in the Europe’s regulatory system. For example, in the 1976 Directive on the freedom of establishment and of provision of services by insurance agents and insurance brokers,¹¹⁴ it listed each member country’s legal concept of “insurance broker” (the type of business that matches consumers and suppliers of insurance products without having a relationship with a

¹¹¹ PRIN, Principle 8.

¹¹² The term “representing the customer” is used instead of “agent,” which indicates the legal representation.

¹¹³ ICOBS, 4.1.2 (2)(d).

¹¹⁴ Council Directive of 13 December 1976 on measures to facilitate the effective exercise of freedom of establishment and freedom to provide services in respect of the activities of insurance agents and brokers (ex ISIC Group 630) and, in particular, transitional measures in respect of those activities (77/92/EEC), OJEC L26/14 (31.1.1977).

specific insurer).¹¹⁵ From the IMD onward, the term “broker” has appeared only in the preamble, and in the IDD, brokers have only been listed as one of the “various types of persons or institutions that can distribute insurance products.”¹¹⁶ These developments suggest the presence of a regulatory philosophy that new channels for distributing insurance products, including direct sales of insurance products, should be treated in the same manner as traditional insurance agents or insurance brokers.¹¹⁷

The discipline based on the IDD has been adopted in the UK unchanged, abolishing regulations specific to “insurance brokers.” Within Europe, however, difference exists; Germany differs from the UK. In Germany, the term intermediary (Versicherungsvermittler) encompasses both brokers (Versicherungsmakler) and agents (Versicherungsvertreter). Among the supervisory laws regulating brokers, the Contracts Act (VVG) and the Business Act (GewO) provide both a common definition of intermediaries and a specific definition of brokers, with the definition of brokers in the Contracts Act (Article 59 (3) of VVG). Germany therefore appears to maintain regulation specific to insurance brokers within the framework regulating insurance intermediaries as a whole. On the other hand, under the Insurance Supervision Act (VAG), insurance brokers are no longer regarded as regulated entities on their own. The reason for this is, of course, that the German insurance supervisory legislation is bound by the EU supervisory legislation (specifically the IDD).

Under this regulatory system, persons who are broadly engaged in “distribution of insurance products” are subject to the licensing system regardless of the type and nature of the entity. Upon licensing, conduct regulations such as rules on conflicts of interest between intermediaries and customers and disclosure of remuneration are applied.

6.2 Conduct Regulation

6.2.1 Form and disclosure of remuneration to insurance brokers

When we compare the legal systems of the three countries (the United States, the UK, and Germany) on conduct regulation, we focus on the rules concerning remuneration. Japan’s current law provides that insurance brokers should receive compensation only from insurers (revision in progress as of June 2025), and this is quite unique compared to other countries. In Europe and the United States, compensation payment to intermediaries is made by both insurers and policyholders, and depending on the type of transactions different forms of payment are used, or combining both payments. In some European countries, payment of remuneration by insurers has been prohibited based on the thinking that insurance intermediaries represent policyholders, but this has not become the mainstream.

Given such practice of remuneration, national regulations require insurance brokers to disclose to customers the remuneration they receive. The NAIC Model Law of the United States requires insurance producers to disclose to customers the amount of compensation they receive from the insurers and how it

¹¹⁵ Council Directive 77/92/EEC, Art.2 (2)(a).

¹¹⁶ IDD, Preamble para 5.

¹¹⁷ IDD, Preamble para 7.

is calculated, except when it is clear that they are “intermediary on the insurer’s side,” such as when they do not receive any compensation from the customer or when they represent the insurer regarding the insurance contract. German and UK law generally require disclosure what remuneration is received from which party under the European IDD.

6.2.2 Relationship between insurance brokers and insurance agents

Different countries have different views on the relationship between insurance brokers and agents. The most rigorous position is taken by German regulation, which does not permit a person to operate both as broker and agent based on the thinking that insurance brokers are intermediary representing policyholders and insurance agents representing insurers. However, it seems there is not any regulation that prohibits brokers and agents from doing business jointly. Section 19 (1)(c) of the IDD requires insurance intermediaries to disclose to customers, when proposing insurance products, that it gives advice on the basis of a fair and personal analysis, it is under a contractual obligation to conduct insurance distribution business exclusively with one or more insurance undertakings, or it is not under a contractual obligation to conduct insurance distribution business exclusively with one or more insurance undertakings and does not give advice on the basis of a fair and personal analysis, but this would not be a major problem for Germany since a person cannot operate both as broker and agent.

In the UK, insurance intermediaries’ behavior of acting for insurers in some cases (acting as “insurance agents” in the context of Japan’s system) and for policyholders in other cases (acting as “insurance brokers” in Japan’s system) is not regarded as a problem. So, it is important to disclose on which side an insurance intermediary is for a particular transaction, in addition to fulfilling the general discipline of conflicts of interest. This disclosure requirement was introduced in response to the requirements set out in IDD, but today, this is considered as a provision simply demanding the disclosure of the status of intermediaries.

The NAIC Model Law in the US has gone further ahead in not distinguishing broker or agent and does not even require disclosure of the “status” of the insurance producers. We assume that the disclosure of the remuneration of the insurance producer would provide sufficient information to the policyholder in making decision on the transaction.

6.2.3 Insurance brokers' liability coverage

Insurance intermediaries and insurance producers may be taken responsible for professional liability if they fail to solicit insurance products that are suitable to the interests of customers. In particular, insurance intermediaries other than insurance agents acting on behalf of insurers, such as insurance brokers under the Japanese law, are likely to be held liable for such liability. In practice, therefore, it is common for insurance intermediaries to obtain professional indemnity insurance.

Whether obtaining professional indemnity insurance is a legal obligation vary from country to country, depending on national policy. In Europe, the IDD requires intermediaries to hold professional

indemnity cover for a certain amount of liability. Therefore, in Germany and the UK, professional indemnity insurance is a legal obligation. In contrast, the NAIC Model Law in the United States does not have such a requirement, and in fact, most states do not require insurance producers to purchase such professional indemnity coverage.

Obligation on professional indemnity insurance functions to discipline insurance intermediaries, besides it being a system for the protection of customers' interests. This would be so especially when professional liability insurance is an obligation on insurance producers, unlike Japan's deposit scheme, because premiums would reflect intermediaries' prior cases found liable and their risk management arrangements, and this would give them an incentive to act in the interests of customers.

6.3 Recommendation based on Foreign Law Analysis

This paper has provided a brief comparison of U.S., UK and German regulations, premised on a theoretical analysis of the functioning of insurance intermediaries. Based on this analysis, we evaluate the system of insurance brokers in Japan and consider possible future directions for the system.

To begin with, we think that the current Japanese law is based on a somewhat simplified understanding of the nature of insurance brokers. This is a consequence of introducing insurance brokers as "entities different from insurance agents" in the situation where solicitation of insurance products has been entrusted exclusively to insurance agents, for whom there were "insurers they belong" and such insurers were responsible for the act of their agents. If we closely look at the standing of "brokers," there are two points that seem to be not compatible. On the one hand, brokers are legally positioned as a neutral intermediary by applying the definition of "broker" under the Commercial Code. On the other hand, it was expected that insurance brokers perform the role of a "representative of the policyholder," as distinct from insurance agents.

Turning to the United States and Europe, regulatory reforms of insurance intermediaries, including insurance brokers, have been made due to bid-rigging and kickback problems occurred in the early 2000s. In addition, in Europe, the integration of the European Union has led to the need for a system that encompasses the diverse transaction practices of each country. Against this background, the regulatory system has undergone a major shift from one that focuses on the type of entity "insurance brokers" to a function-based system that comprehensively regulates insurance intermediaries with the implementation of necessary conduct regulation.

Given these developments abroad, Japan should not regard insurance agents and insurance brokers simply as contrasting functions, but rather, it would be desirable to explore a regulatory approach allowing various forms of insurance intermediaries, including agents and brokers, and implementing appropriate conduct regulation. Such a shift may seem premature when the market share of insurance brokers remains limited despite the introduction of the insurance broker system in 1995. However, regulation of intermediaries based on their functions and not on the rigorous classification of the type of entity may encourage the development of business practices different from the traditional one.

The key to that is to have appropriate arrangements to induce insurance intermediaries to provide insurance products that are optimal for the insurance market as a whole. Looking again at three countries' legal systems, the most important point for this seems to be the way remuneration is made for intermediaries. The issue concerning remuneration will become important once the ongoing revision of supervisory guidance takes effect in Japan and opens up the possibility for intermediaries to receive remuneration from both insurers and the insured.

It should be noted that the analysis using economic theory does not support a simple scheme such as "remuneration of the intermediary should be paid only by the customer." Theoretically, one of the functions an insurance intermediary has is the production of information about the risks and risk preference of the insured. With regard to this function, there is a unique distribution channel of in-house agents (agents within business corporates) in Japan, which is expected to provide easy access to information about the insured, so the question will be where to find the advantage of insurance brokers. Whether in-house agents are making information about the insured efficiently in reality is another question. The other possibility in theory for the functions of insurance intermediaries is the matching of optimal insurance products. It is likely that insurance brokers that can choose insurers freely would have an advantage in this function, given that in-house insurance agents also have affiliated insurance companies as insurance agents under the Japanese system. In this case, it would be desirable to design the remuneration scheme so that the incentives of insurance brokers are not distorted.

As for other points on conduct regulation, the discipline on conflicts of interest is important. Rather than considering the powers of insurance brokers and agents in a uniform and systematic manner, it would be appropriate to allow for some flexibility and have arrangements that avoid conflicts of interest with respect to the entire business of the intermediary. Avoiding conflicts of interest includes not only the avoidance of certain actions but also the disclosure of potential conflicts of interest to interested parties.

7. Recommendations

To summarize the main point of this paper, we can conclude as below.

First, Japan's regulation on insurance broker appears to be too preoccupied with the characterization of insurance brokers as "agents of the policyholder" as a result of aiming to establish a new distribution channel for insurance products that can match that of insurance agents. It would be appropriate to take an approach that the core of regulation is the two main principles of avoiding conflicts of interest and making disclosure, and to not implement excessive regulation on brokers' conduct of business jointly with agents, allowing flexible business practices.

Second, if such an approach is taken, in the future, at least in terms of the ideal form of supervisory legislation, we could consider shifting to conduct regulation that is designed to induce appropriate conduct, and not distinguishing between insurance brokers and insurance agents but defining them collectively as "insurance intermediaries." The core of such conduct regulation is the regulation of remuneration and/or disclosure.

Third, in designing the appropriate design of regulation to induce appropriate conduct, we must consider what kind of behavior of insurance intermediaries should be induced, that is, what are their functions in the market? We should design the regulatory framework by making theoretical and empirical analysis of the functions of insurance intermediaries, considering the impact that the source and form of remuneration would have on the behavior of insurance intermediaries. Who bears and on what basis the cost of remuneration is incurred is up to the parties to a transaction to decide primarily, so it would be desirable for the regulatory system to accommodate various arrangements, and when cases that distort intermediaries' incentive for appropriate conduct are observed at home and abroad, prohibition or disclosure of the situation should be taken.

The regulatory framework discussed above is, when viewed from the perspective of insurance product buyers, it is indeed the realization of an insurance market in which buyers can efficiently choose their desired insurance products regardless of the characteristics of insurance intermediaries. For this framework to be realized, insurance buyers, especially those firms that hold extensive risk (non-mass risk) need to be sensitive to risk management and its costs. This is because the regulation of insurance brokers, or insurance intermediaries more broadly, would be of a passive nature where measures to correct are taken if there are factors that hinder market efficiency, so if the market whose participants are not sensitive to the substance or prices of products, the efficiency of the market cannot be achieved by the regulation of intermediaries alone.

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