AIDA Questionnaire on the Corporate Governance of Insurers
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I. General

Note: In Japan, there is a system of mutual aid associations, named *Kyosai,* which, in terms of its economic substance, stands close to the insurance system. It is a major presence in most families' household budgets. The various mutual aid associations are set up and managed on the basis of their founding charters. Because they are associative organizations, corporate governance is an important issue for mutual aid associations as well as for other types of firms. However, mutual aid associations are structured very differently from companies, so they are not covered in this questionnaire.

Also, in Japan, the Insurance Business Act includes a form of business called "small amounts and short-term insurance providers." These are bodies which were run in a mutual-aid manner in the past, but which have been placed under official supervision on the basis of the Insurance Business Act. In most cases, "small amounts and short-term insurance providers" are smaller in scale than insurance companies, leading to differences in their framework of corporate governance as compared to insurance firms. Where this is the case, these providers have thus also been excluded from the discussion in this questionnaire.

In Japan, two types of company are recognized as insurance firms under the Insurance Business Act. These are joint-stock companies and mutual companies. The mutual company is a type of company specific to the insurance industry, and its form is stipulated in the Insurance Business Act. The policyholder becomes a member of the company (i.e., becomes a direct stakeholder in the company). The annual general meeting is attended by the policyholders' representatives, and it corresponds to a joint-stock company's General Meeting of shareholders. It functions as the mutual company's highest decision-making body, in the same way as a shareholders' General Meeting, in determining important company decisions. At the mutual company's General Meeting, the company's executives such as the Directors also undertake company management tasks. A firm can adopt the form of a mutual company regardless of the particular type of insurance it handles. In the past, there were even nonlife insurance firms which configured themselves as mutual companies, but currently there are no nonlife insurance firms operating in this form. Traditionally, the mutual company was the dominant form in the life insurance sector, but the number of joint-stock companies has been increasing. It is also possible for a firm to switch its form from a mutual company to a joint-stock company, and some firms have in fact made the transition. The nature of governance is an important issue for mutual companies also; however, they have a different framework for corporate governance, and so these companies have also been excluded from the answers to this questionnaire, in order to avoid overcomplicating the discussion.

As outlined above, we will answer this questionnaire on the understanding that the discussion will mainly cover insurance firms as defined in the Insurance Business Act, which operate in the form of joint-stock companies. We thank you for your understanding in this matter.

1. In your jurisdiction, what corporate governance models are available to insurance companies? In case multiple models are available, describe the main differences and the allocation of management and monitoring powers among the relevant bodies/committees and which model is generally or ideally adopted by insurance companies.

The Companies Act applies to joint-stock companies. The Companies Act stipulates two kinds of corporate governance. The conventional form is a company with a Board of Directors (company with auditors); the other is a company with a committee governance structure.

Given the regulations on minimum capital in the Insurance Business Act, Japan's insurance firms are classified as large companies in the Companies Act, and so the Companies Act's regulations on large companies apply to them.

In a conventional company with a Board of Directors, directors and auditors are appointed at the shareholders' General Meeting, which is the firm's highest decision-making body, with the directors organized into the Board of Directors and the auditors into the Board of Company Auditors. The company's major business affairs are decided by the Board of Directors. A Company President is chosen from the Board of Directors in line with the management decision taken by the Board of Directors, in order to fulfill the President's duties and to represent the company in interactions with other parties. As members of the Board of Directors, the directors participate in deciding the company's major business affairs, and also supervise the company officers responsible for carrying out the company's business. In particular, directors who are not employees of the company (i.e., outside directors) are expected to fulfill a checking function on the company's affairs from an external perspective. Large companies need to have outside directors in place, and in cases where they do not, the reason for this must be explained at the shareholders' General Meeting.

Auditors are responsible for handling the inspection of company operations and accounts, and also take part in the Board of Directors. As well as being individually responsible for a range of monitoring functions, the auditors also collectively constitute the Board of Company Auditors.

Furthermore, since the term "auditor" is used here in the context of a system that does not exist in Britain or the United States, there is no direct English translation of the Japanese term *kansa-yaku*. Regardless of the form of corporate governance, large companies require inspection by a certified public accountant (auditor or external auditor) separate from the company's own auditors.

The governance structure of a company with committees is drawn from the American style of top management; there is a nominating committee, an audit committee and a remunerations committee, with supervision separated from execution. The authority of the Board of Directors is limited to taking basic business decisions, selecting and supervising committee members, and selecting and supervising company officers. The company officers carry out the operation of the company's business, and the company president acts as the company's representative in its interactions with outside parties. Operational decision-making is largely left up to the company's officers. Companies with a committee governance structure etc. are legally and without exception required to have outside directors in place.

2. What are the main sources of regulation addressing corporate governance of companies (and in particular of insurance companies)? *e.g.*, statutes, regulations, other

rules/recommendations issued by national and supranational supervisors/regulators, self-regulation, codes of best practice, codes of ethics.

In the case of joint-stock companies, legal regulation stems from the Companies Act (from the Insurance Business Act in the case of mutual companies).

Listed joint-stock companies are required to bolster their corporate governance in accordance with the listing regulations of the stock exchange. The stock exchange posts a code of corporate governance, and requires company management to be undertaken on such terms.

Corporate governance is an important issue for the insurance industry, and for this reason the industry is regulated by a wide range of methods of supervision. Under the Insurance Business Act, insurance firms are placed under the supervision of the Prime Minister (whose authority is delegated in turn to the Financial Services Agency). Documentation such as the Financial Services Agency's guidelines on supervision details initiatives which should be carried out in order to strengthen systems for corporate governance and risk management etc., and this information is made publicly available. Also, the Financial Services Agency inspects the situation in regard to insurance companies' management and operations, carrying out on-site inspections of insurance firms and related companies etc. The Agency has compiled the issues and inspection items involved in out on-site inspections into an inspection manual, and this manual has also been made available to the public. The Agency's supervisory policy and inspection manual can be characterized as "soft law," and so they do not have legally binding effect. Nevertheless, they play an important role in insurance firms' management of their operations.

Furthermore, industrial organization on insurance companies have also established various codes of conduct and policies, which they require member companies to observe. Insurance companies themselves have issued and made public various codes of conduct as well.

In Japan, a wide variety of initiatives is thus in place with the aim of strengthening corporate governance, ranging from laws and regulations to codes of conduct and voluntary declarations.

3. In your jurisdiction, are you aware of any insolvency or distress of an insurer directly attributable to poor corporate governance standards or practices or failure to adequately implement and apply such principles? If so, please identify the main triggers of the insolvency.

No insurance firms went bankrupt in Japan between the end of World War II and the 1990s. There have been bankruptcies in both the life insurance and nonlife insurance sectors since the liberalization of business regulation in the nineties. While the causes of bankruptcy have varied depending on the company, none of them have been directly linked to violations of corporate governance standards or regulations, etc. These company failures took place against a background of changes in the business environment and the occurrence of major disasters. They could have been avoided if there had been appropriate monitoring of the firms' management and adequate risk management.

4. In your jurisdiction, is corporate governance regulation applied according to the nature, scale and complexity of an insurer's business? If yes, please describe any significant differences and rationale for the differences.

There are differences in the framework and methodology of corporate governance depending on the type of company (joint-stock or mutual), whether or not it is listed, the company's scale, and the laws and systems which apply to it.

In addition, in regard to scale, as mentioned in the note at the beginning of the questionnaire, Japan has a number of management styles such as the association and the company (joint-stock company or mutual company) and the small-scale "small amounts and short-term insurance providers." Given the differences in the nature of their business, stakeholders and scale etc., differences also arise between firms in the structure of their corporate governance per se.

5. Please provide specific examples of corporate governance structures and practices that are better implemented through self-regulation rather than through legal or supervisory requirements.

This would depend on what specifically is meant by the phrase "corporate governance structures and practices." We can, however, say that the detailed contents of the systems required to strengthen corporate governance vary as a matter of course depending on the scale of the company, its scope of business (whether it is a subsidiary of a company outside the insurance industry, whether it is part of a group of companies), the scope of its activities (only domestic or with overseas operations), and so forth. We would also say that it is inappropriate for laws and regulations to micromanage the operations of such companies' management. However, regarding the construction of governance and other frameworks, and whether or not such frameworks are in fact functioning, there is a need to achieve heightened transparency through public announcements and other means.

6. In case your jurisdiction was recently requested to implement domestically certain corporate governance principles set forth by supranational regulations, describe the main obstacles and problems (if any) that resulted from such process.

Foreign laws and regulations do not require the principles of corporate governance to be implemented in Japan. The approach to be taken to corporate governance is not an issue to be legally enforced from outside Japan. However, there are cases in which overseas shareholders require Japanese insurance firms to strengthen their corporate governance etc.

In 2004, the Tokyo Stock Exchange formulated a set of principles on corporate governance for listed companies, and it issued a code of corporate governance in 2015, acting in concert with the Financial Services Agency. Listed companies are required to either comply with the code of governance or state their reasons for not doing so. This code of governance has been formulated with reference to international frameworks of corporate governance principles, such as those of the OECD, among others. Given this, it cannot be said that the frameworks and initiatives involved in the strengthening of corporate governance in Japan are entirely unrelated to developments overseas.

7. Are there any significant differences between general corporate governance rules and the specific rules governing insurance companies?

The answer depends on what the phrase "corporate governance rules" specifically means. In the case of insurance firms, the regulations of the Companies Act apply to those firms which are joint-stock companies as they would to any other firm. In addition to this legislative control, insurance firms are also overseen by the relevant regulatory authorities.

Furthermore, as outlined in the note, mutual companies and associations differ from joint-stock companies in their organizational structure per se, and so there are as a matter of course differences in the regulations in the Companies Act which cover them.

II. Fitness and Propriety of Board Directors

1. Are there any laws or regulations already adopted or any proposals in your jurisdiction, relating to the qualification and composition of board directors in an insurance company? If so, please explain.

A fixed set of regulations in the Insurance Business Act covers the executives of insurance firms.

Directors engaged in the management of insurance firms (or executive officers in the case of companies with a committee governance structure) are not permitted to engage in the management of other companies without the permission of the Prime Minister. In addition, directors (executive officers) must have the knowledge and experience required to manage the operation of an insurance firm in an efficient and professional manner, and to have the requisite good standing in society to carry out the task. Another restriction bars people who have commenced bankruptcy proceedings from taking positions as directors, executive officers, or auditors at insurance firms.

Also, firms classified as large companies or listed companies under the Companies Act are required to appoint outside directors.

2. In your opinion, what factors, conditions, or incentives might weaken the independence of the board of directors or individual members of the board?

De-facto decision-making authority in relation to personnel and remuneration.

Under the law, decisions on personnel and remuneration are taken at the shareholders' General Meeting and by the Board of Directors; while there are constraints which are exercised by the auditors and relevant committees, decision-making on the ground in regard to such matters is undertaken by the company officers in charge of managing operations, and in the final event by the Company President, etc.

While it is legally possible for shareholders to make specific proposals on candidates for directorships and on remuneration, and for them to gather the votes required to secure such resolutions at shareholders General Meetings, in reality this is practically impossible given that insurance firms are classified as large companies (and the above point also holds true for mutual companies).

3. How does an insurance company ensure that individual board members and the board collectively have enough knowledge to monitor and oversee the activities of the insurer appropriately, particularly where specific expertise is needed?

The operations that insurance firms are involved in are wide-ranging, complex and high level. It is practically impossible for any individual director to achieve a deep understanding of the entire range of the company's affairs. So, insurance firms divide their operations into various managerial areas, the management and running of which is supervised by bodies and personnel such as the Board of Directors, the auditors and the Board of Company Auditors. Supervision is enhanced by having major issues reported to the Board of Directors for decision.

While insurance firms select individuals with highly specialized expertise as directors, they also emphasize the importance of achieving broad perspectives in the decision-making process, and so they also proactively recruit individuals from outside the field of insurance as directors.

Furthermore, directors in the first place need to be capable of handling the specialized work of running an insurance firm (and this competence is also required under the Insurance Business Act), so insurance firms select such highly skilled human resources as directors.

4. Are there significant differences in terms of requirements and duties between executive and non-executive members of the board of directors of an insurer?

The answer would depend on the definition of "Executive." If we look at the conventional Board of Directors company structure in Japan, we find directors who are in charge of managing operations and directors who are not. If we take the former as executive members, the difference between the two is whether or not they manage operations. There are also differences between executive directors in that some but not all of them are given the authority to represent the firm. In the case of companies with a committee governance structure, the executive officers are in charge of managing operations.

5. In your jurisdiction are there any black letter rules or general principles that enable directors to rely upon external opinions when addressing issues or aspects where specific expertise in needed?

When determining the liability of company officers in judicial cases, the principle of "managerial judgement" is recognized by courts. On the basis of this principle, decision-making requires the inclusion of expert opinion, and this is particularly so for specialized areas.

6. Describe the extent and scope of supervisors'/regulators' intervention with reference to the qualifications and to the activities of the board of an insurer.

Under the Insurance Business Act, the regulatory authority (the Financial Services Agency) has the authority to order insurance firms to change their company officers. Also, if there are problems regarding corporate governance, it can also order improvements to be made. The Agency also has the power to suspend a firm's operations or revoke its license.

7. Are there any special rules and regimes applicable to the governance of subsidiaries belonging to an insurance group, also in terms of information flows?

While the Insurance Business Act does not include regulations of the form of governance of subsidiaries, insurance firms are required by the Insurance Business Act to manage their subsidiaries appropriately. A full range of management controls by insurance firms over their subsidiaries are also written into the supervisory policies and inspection manuals governing such subsidiaries. The authorities also monitor the situation of insurance firms' governance of their subsidiaries, which is subject to inspection.

III. Risk Management

1. In your opinion, what is the biggest risk challenge (e.g. regulation, capital standard, pricing, interest rate, cyber, terrorism, etc.) facing the insurance industry today in your jurisdiction?

The greatest dangers facing each of the insurance firms differ depending on the risks which they carry. In general, the main risks they face are of a nature which may inflict major adverse impacts on their business; these include large-scale natural disasters, epidemics, terrorism, system outages in insurance firms caused by cyber-attacks, slumps in Japanese government bonds and slumps in their share values.

Other developments such as regulatory changes and modified restrictions on capital may also, depending on their nature, have the potential to pose serious problems that change the assumptions on which the business model is based.

In addition, given the need to assume a wide range of major risks, it is generally considered inappropriate to debate which of them in particular is the "biggest."

2. What specific laws or regulations, actual or pending in your jurisdiction, will present significant implementation risk challenge toward the insurance industry?

Changes to regulations on insurance firms' assets, scope of operations and business practices etc. will have a major impact on the business.

IV. Ethics and Corporate Social Responsibility

1. Please provide any concrete examples where business ethical standards and/or corporate social responsibility standards have been applied and have changed the behaviors of the insurance company.

In the early 2000s, failures on the part of insurance firms to make insurance payouts and incidental insurance payouts became a social issue. This social problem took many forms. One kind of case that happened particularly many times was that while the insurance payout in a policy's main part, such as the damages for the victims of the automobile accident, went through, the insurance company did not pay the additional expenses, such as the hotel expenses incurred by the policyholder the after the accident, that were included in the policy, because the claimant did not ask payment for it. Not paying out against insurance claims that have not been made is no breach of the law. However, the insured party is not necessarily aware of what claims is available; so, working from the perspective of safeguarding such less than fully informed parties, the Financial Services Agency decreed administrative measures against certain insurance firms. In response, the insurance firms concerned undertook a range of measures to prevent failure to make payouts. These included giving explanation to the insured party about feasible claims after accidents, and putting in place an IT system so that these measures could be properly carried out. In characterizing this case, we can say although the insurance firms were not legally obliged to do so, the government ordered them to improve their operations against a background of public opinion demanding the insurance firms to act in a socially responsible manner.

2. In your jurisdiction, are there any specific laws or regulations already adopted or any proposals, or any arrangements in place in the governance system, relating to the protection of policyholders' and/or financial consumers' interests?

The protection of policyholders and financial consumers is exceptionally important, and is variously stipulated in a range of laws such as the Insurance Business Act, the Financial Instruments and Exchange Law, the Act on Sales, etc. of Financial Instruments, and the Consumer Contract Act. This legislation includes requirements on the governance of insurance firms, obliging them to develop their management systems. For example, from the perspective of strengthening protections for consumers etc., the Insurance Business Act stipulates a variety of stringent regulations for insurance soliciting; it also stipulates insurance firms' corporate obligations to set in place a framework for securing appropriate business operations and solicitation of customers.

3. In your jurisdiction, is an insurance company required to produce an annual Corporate Social Responsibility (CSR) report or a Global Sustainability Initiative (GSI) report? If so, what context needed to be disclosed in these reports?

Firstly, in Japan, insurance firms are legally obliged under the Insurance Business Act to annually issue disclosure materials and make them available for public inspection. The points to be covered in such disclosure materials are also stipulated, and they include entries on CSR and GSI.

Additionally, for listed companies, detailed disclosures are required in their securities report, whose content must include entries on the firms' situation with governance etc.

Apart from the disclosures above, companies also issue materials such as CSR reports on their own initiative.

V. Disclosure

1. In your opinion, what mechanisms shall be in place or considered in an insurance company to ensure the transparency of its governance structure? (e.g., the articles of association, the organization chart, any existing committees, the major shareholders, the ethical standard, corporate social responsibility, etc.)

The appropriate mechanisms will depend on the scale of the company, the nature of its business and other factors. At any rate, there is a need to heighten transparency through a combination of many various approaches.

2. Are there any governance practices that, in your opinion, can best be achieved through disclosure rather than through specific supervisory requirements? Which governance practices should be mandatory for an insurance company?

I do not understand what the phrase "governance practices" in the question refers to, and so I am unable to answer the question.

3. What is the interplay between market abuse regulations and other disclosure/transparency rules applicable to listed insurers and industry specific rules applicable only to insurance companies?

I don't understand the question, and so I cannot give an answer. Various laws have been passed for the purpose, and so these various laws contain sections which relate to each other, and also sections which do not. There are also some cases where these laws interact to produce synergistic effects.

VI. Outlook

In respect of the corporate governance of insurers, please describe your criticisms on the system in your jurisdiction, any recommendations for the future, and/or the main challenges which insurance undertakings encountered.

A wide range of regulations have been put in place by law, soft law and other means for the purpose of further strengthening governance, and the regulations themselves are becoming increasingly sophisticated and detailed. While insurance firms have put a wide range of frameworks in place in order to deal with this development of the regulatory system, these frameworks have become even more complex as they develop, making them a considerable administrative burden. Also, management may be less willing to take on new business challenges to avoid risk.

Governance is not a question of achieving some set shape or format; rather, the important issue is how, and how much, it functions. We need to keep constantly looking at the various regulations and checking that they are effective.

In corporate governance, we consider the flow of information a particularly important issue. Once a framework for governance has been put in place, its disclosure only serves to heighten the transparency of the framework itself. However, unless the information that matters in the governance framework is shared with the directors and auditors, we cannot say that governance is functioning effectively, even if the framework for governance is transparent. Access to important information such as the direction of company strategy, the progress of major projects and the obstacles they face, occurring problems, management issues and so forth should not be limited to executive managers such as the President. Rather, there is a need to report these matters to the Board of Directors at the appropriate time. It is important to have in place a system for conveying to management the information that has a significant impact on business operations, and it is also important that this system actually functions in practice.