

International Association for Insurance Law (AIDA)
Distribution of Insurance Products Working Group

QUESTIONNAIRE

A) STATUS OF (RE)INSURANCE BROKER

1. Does a (re)insurance broker need to have a license in order to perform intermediation activities in your country?
2. Is a registration of the (re)insurance broker with a special registry required in your country for the performance of intermediation activities?
3. Which formal requirements does somebody have to fulfil in order to become a (re)insurance broker according to the laws of your country? Please, describe the requirements as to financial resources, professional experience and education.
4. Does the (re)insurance broker have to work on an exclusive basis, i.e. to provide insurance brokerage services exclusively and not to be involved in any other activities?
5. Does the (re)insurance broker have to be legally and/or financially independent of insurance undertakings or insurance agents or reinsurance SPVs (hereafter: insurance entities)?
5.1 Is it legally possible for a (re)insurance broker to be a subsidiary of an insurance entity?
5.1.1 If yes, is there any limit to insurance entity's share participation amount in (re)insurance broker set by the law?
5.1.2. Does the fact that the (re)insurance broker is a subsidiary of insurance entity limit or extend (re)insurance broker's liability for his acts and omissions vis-à-vis clients?

<p>5.2 Is it legally possible for an insurance entity to be a subsidiary of a (re)insurance broker?</p>
<p>5.2.1. If yes, is there any limit to (re)insurance broker's share participation amount in insurance entity set by the law?</p>
<p>5.2.2. Does the fact that the insurance entity is a subsidiary of the (re)insurance broker limit or extend (re)insurance broker's liability for his acts and omissions vis-à-vis clients?</p>
<p>5.3 Is a (re)insurance broker obliged to disclose to its clients its dependency (legal, financial, administrative) on such entities?</p>
<p>5.4 Does the legal, financial or administrative dependency of (re)insurance broker on such entities have impact on establishing the liability of a (re)insurance broker?</p>
<p>6. If a insurance agent illegally performs activities of insurance broker, although he is not entitled to conduct activities of a insurance broker, does this affect the liability of the insurance broker (pseudo-broker)? If yes, to what extent?</p>

B) ACTIVITIES OF (RE)INSURANCE BROKER

<p>1.What is the content of (re)insurance broker's work and activities set by the law?</p>
<p>2. Do the laws of your country require a written form for the brokerage agreement?</p>
<p>2.1 If not, do (re)insurance brokers in your country tend to provide intermediation services on the basis of a written brokerage agreement?</p>
<p>Do (re)insurance brokers in your country tend to use pre-formulated contract terms within the process of distribution of insurance products to their clients (or within the process of intermediation in insurance; or within the insurance intermediation process)?</p>

3. Is it illegal if a (re)insurance broker distributes insurance products at the same time when providing consulting services regarding the evaluation of risks and similar works? In case it is illegal to some extent, please specify.	
	3.1 If not and the (re)insurance broker may perform both activities simultaneously, does the (re)insurance broker have the same civil liability for both of these activities?
	3.1.2 In case that the legal regime of (re)insurance broker's liability provides for an increased duty of care in connection to the best placement of the risk, does such regime (of the increased duty of care) apply to consulting services for/ regarding the same matters as well?
4 Is it possible for the insurance broker in your country to be paid directly by the insurer?	
	4.1 If yes, is the insurance broker obliged to disclose to its client the amount of commission he will receive for its services?
	4.1.2 If yes and insurance broker fails to fulfill this obligation, is there a reason to increase insurance broker's liability?
5 What are the duties and liabilities of (re)insurance broker towards insureds and insurers when the insured event occurs?	
	5.1 What are the duties and liabilities of (re)insurance broker towards insureds when the insured event occurs and no written brokerage agreement exists (or the existing brokerage agreement with the insured contains no relevant provisions)?
	5.2 What are the duties and liabilities of the (re)insurance broker towards insurers when the insured event occurs and there is no any agreement with the insurer?

C) CIVIL LIABILITY OF (RE)INSURANCE BROKER

1. What is the legal content of the concept of error and omission of the (re)insurance broker according to the laws of your country? Please, give examples.
1.1 Is according to the laws of your country a (re)insurance broker obliged to act with the highest level of attention or a reasonable average attention only?
1.2 Who bears the burden of proof in cases under point 1.1 above?
1.3 On what circumstances can a (re)insurance broker be released from liability? Please, give examples.
2. What is the civil liability extent of a (re)insurance broker in cases when he fails to cover one of the risks he has been asked to by the client? Is he liable to the same extent as the insurer who would have covered this risk or is he liable only to the extent of a reasonable indemnity ?
3. Is a (re)insurance broker liable for having placed the risk with an insurance undertaking, which legally worked at the time of placement in your country, but afterwards it entered insolvency and could not therefore fully satisfy the insured?
4. Is a (re)insurance broker obliged to examine the financial situation (solvency/insolvency) of the (re)insurance company with which he places the risk of the client? Does the fact that insurers operate under a state supervision regime exonerate insurance intermediaries from such liability?
5. Are the insurance intermediaries in your country allowed to act as representatives of both the insured and the insurer at the same time? How does this apply with respect to reinsurance (insurance and reinsurance broker simultaneously and for the same risk)?
5.1 If yes, is the above situation regarded according to the laws of your country as a sign of broker's lack of independence, which increases his liability?
5.2 Is the above situation regarded as conflict of interest?

6. Is there any limit to the extent of the amount of indemnity for which (re)insurance broker is liable?
7. Is an insurance broker liable for performance of intermediary services regarding insurance that does not include risk element? If yes, to what extent?
8. Are there any specific regulations affecting liability of insurance brokers who provide their services from distance (distance selling)?
9. What exactly does the information duty of the (re)insurance broker include?
9.1 What is the liability for breach of this obligation? (extent of liability and indemnity to be paid)
10. Is (re)insurance broker obliged to provide information on (re)insurance coverage?
11. If an insurance broker deals with a client who has the status of “consumer”, does this somehow affect his civil liability?
11.1 If yes, to what extent?
12. Is the insurance broker allowed to mediate in “reinsurance finance”?
13. What level of professional qualification do the laws of your country require for “tied insurance intermediaries” and their employees?
14. Is it possible to exclude or reduce in any way the liability of (re)insurance brokers? If yes, please, indicate how such exclusion or reduction is performed in practice.
15. What are the (re)insurance broker’s liabilities in the following cases:

- a) (Re)insurance broker fails to provide (re)insurance cover in time.
- b) (Re)insurance broker fails to renew (re)insurance.
- c) (Re)insurance broker fails to carry out client's instructions.
- d) (Re)insurance broker provides insufficient or faulty advice.
- e) Insurance broker fails to provide adequate information regarding his intermediation services.
- f) Insurance broker fails to place the risk with a reliable and creditworthy insurance.

16. What are the legal consequences for both the (re)insurer and the (re)insured in case that the (re)insurance broker fails to forward to the (re)insurer the premiums he has collected?

17. Does the failure of the (re)insurance broker to disclose or communicate to the (re)insurer certain details regarding the (re)insured risk have an impact on the (re)insurance broker only or on the (re)insured as well? What if only the (re)insurance broker is aware of certain details of the (re)insured risk which the (re)insured ignores?

18. Do "retail brokers" who negotiate insurance contracts directly with consumers, and "wholesale brokers" who negotiate insurance contracts with retail brokers and agents but not directly with consumers, exist and operate in your country?

18.1 If yes, please briefly describe:

- a) the activities of "retail brokers" and activities of "wholesale brokers" performed within the process of intermediation; and
- b) the extent of liability of a "retail broker" and a "wholesale broker" respectively vis-à-vis the client.

18.2	If yes, please briefly describe the correlation between a "retail broker" and a "wholesale broker". Is this a relation between a main contractor ("wholesale broker") and a sub-contractor ("retail broker")?
18.2.1	If yes, what is the extent of liability of a "retail broker" vis-à-vis a "wholesale broker" and vice versa? What responsibility does each of them respectively have vis-à-vis the (re)insurer?
18.3	Does the concept of "retail broker" in your country include rights, obligations and activities similar/equal to those of a "sub-agent"?
19.	What are the features of the relationship between (re)insurance broker (main contractor) and (re)insurance broker appointed by the main contractor to perform intermediary services for the client (sub-contractor)? (cases of cross-border (re)insurance intermediation)?
20.	What is the negative prescription (limitation) period for broker's liability?

D) ALTERNATIVE DISTRIBUTION OF INSURANCE PRODUCTS

1.	Does the legislation in your country recognize " <i>intermediation</i> " and " <i>distribution</i> " of insurance products as two different concepts and forms of forwarding of insurance products to the public?
2.	Does the term " <i>intermediation</i> " of insurance products cover all forms of forwarding of insurance products to the public, or are there any other forms of forwarding insurance products that are not specifically regulated as well?
2.1	If there are other forms of forwarding of insurance products than " <i>intermediation</i> ", which is the borderline between regulated intermediation of insurance products and non-regulated distribution of insurance products that does not include the consulting element?
2.2	If there are other forms of forwarding of insurance products than " <i>intermediation</i> " and the (re)insurance broker performed activity

<p>within the scope of simple distribution of insurance products only (i.e. distribution that does not include any elements of intermediation/consultancy), does he have the same professional liability as though he had provided services of “sophisticated” intermediation of insurance products?</p>
<p>2.3 If there are other forms of forwarding of insurance products than “<i>intermediation</i>”, do the laws of your country require any specific and particular qualifications for entities/persons performing non-sophisticated sale of insurance products (non-regulated distribution that does not include any elements of intermediation / consultancy)?</p>
<p>3. Does your legal system set any specific provisions for the distribution of insurance products by a retailer who sells insurance coverage exclusively for the products/services he is providing? (concept of “tied insurance intermediary”)</p>
<p>If yes:</p> <p>3.1 Please, briefly specify the concept of “tied insurance intermediary” according to the laws of your country.</p>
<p>3.2 Does the “tied insurance intermediary” share the same civil liability status as the ordinary insurance intermediaries? Is there an obligation to obtain professional liability insurance?</p>
<p>3.3 Are “tied insurance intermediaries” obliged to register and, if yes, which are the registration conditions? (What kind of qualification is required for the registration?)</p>
<p>3.4 Provide some characteristic examples of “tied insurance intermediaries” operating in your country. Is the liability level of the banks acting as “tied insurance intermediaries” different from the respective liability level of other retailers acting as “tied insurance intermediaries” according to the laws of your country?</p>
<p>4. Is any kind of entering into an insurance contract for the benefit of a third party recognized as intermediation of insurance products according to the laws of your country?</p>
<p>4.1 If yes, is the policyholder subject to qualifications prescribed by the</p>

law on intermediaries or any other qualifications?
<p>5. Is the granting of a credit facility by a financial institution to a client who on the basis of a clause in the credit contract enters into an insurance contract with an insurance undertaking designated by the bank/financial institution in order to secure repayment of the credit, qualified as intermediation according to the laws of your country? (The bank/financial institution in this case are not policyholders).</p>
<p>5.1 In the above case, are there any special conditions (special licenses information duties etc.) that banks/financial institutions have to fulfill in order to provide lawfully the services specified under point 5. above?</p>
<p>6. Is the case, when a bank, as the policyholder, concludes a group insurance for the benefit of its clients who use bank credit cards and are thus insured qualified as an insurance intermediation? The premium for the insurance coverage is included in the total price of acquiring the credit card, however the client is not particularly informed of the price of coverage, which is one of the elements that constitute the total price of acquiring the credit card (i.e. the insurance connected to the credit card is not gratis).</p>
<p>6.1 If yes, does this establish further obligations for the bank, i.e. information duty vis-à-vis the client, etc.? If yes, please specify.</p>
<p>6.2 Does the fact that the bank is a policyholder suffice to avoid the classification of the bank as an intermediary of insurance products?</p>
<p>7. Are banks, investment firms, stock brokers, administrators of mutual funds and the like, entitled to distribute investment insurance products (such as unit linked insurance products)? Is there any specific legislation (other than legislation on insurance intermediaries) applicable on the above legal entities distributing insurance products?</p>
<p>8. Is distribution of insurance packages as financial products regarded as distribution of insurance in your country? Do the laws of your country require any specific qualification of the persons forwarding these products to the public (i.e. bank employees, other)?</p>

9. Is, according to the laws of your country, any natural person and/or employee of an insurance broker who presents the insurance products to an applicant and carries out other related activities leading to the conclusion of insurance contract, obliged to have special qualification and be registered with a registry?
9.1 If yes, is it possible for the insurance broker to outsource the presentation of insurance products and other activities as described above? If yes, on what conditions?
10. In the event that a client enters into a credit contract with a bank, i.e. the client purchases a banking product that includes a risk element that is assigned to the insurance undertaking on the basis of a contract between the bank and the undertaking while the client is not aware of the existence of such assignment, do the laws of your country prescribe any special qualification (education, training, working experience, etc.) for the bank employees distributing such banking products?

E) BANKASSURANCE OPERATORS AND OTHERS

1. What is the meaning of bankassurance according to the laws of your country?
2. Do the laws of your country allow the banks and other financial institutions to act as insurance intermediaries? If yes, under what conditions?
3. Do the laws of your country allow mail service operators to act as insurance intermediaries? If yes, on what conditions?
4. If these kinds of intermediaries are allowed to operate as insurance intermediaries, do the laws of your country require that their legal representative, their officers or other personnel involved in the distribution of insurance products, possess specific professional qualification in the field of insurance?
5. Are these kinds of intermediaries authorized to promote every kind of insurance products or only certain types of policies with highly standardized contractual conditions?
6. What is the liability of these kinds of intermediaries when selling insurance products?

7. What regulation applies to life insurance? Is there any difference if life insurance is qualified as financial product also?
8. Which is the supervisory authority when banks and other financial institutions sell insurance products?

F) DEFINITIONS AND DISCIPLINE OF THE (RE)INSURANCE BROKER

1. Do the laws of your country contain a general definition of the (re)insurance broker and a description of the scope of his duties towards the insureds and the insurance companies?
2. According to the laws of your country, does the intermediary regularly collect all the money due to the (re)insurer and, at the same time, pay all the money due to the (re)insured?

G) REGISTRY AND CATEGORIES OF INTERMEDIARIES

1. Do the laws of your country provide for:	
	1.1 a unified register for all the categories of intermediaries?
	1.2 a unified register with different sections?
2. If there are different sections, what are the categories provided for by the relevant statute?	
3. Is it possible for an intermediary to be registered with more than one sections of the registry at the same time?	

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H) PAYMENTS TO THE INTERMEDIARIES

1. Do the laws of your country provide that the payment made to the insurance broker is deemed to be received by the insurance undertaking? Does this effect apply to every kind of insurance broker or only to those who have entered into an agreement with the insurer on the collection of premiums?
2. Do the laws of your country require that the money collected by the insurance broker on behalf of the insurer as well as the money he has to transfer to the insured, should be put into a escrow account which is treated as a segregated asset of the insurance broker's patrimonium? (within the meaning that the creditors of the insurance broker cannot attack such separate asset).

I) INFORMATIVE DUTIES TOWARDS THE CLIENTS

1. Do the laws of your country specify in detail the scope of insurance brokers' pre-contractual information duty towards their clients? If yes, what are these requirements?
2. If an insurance broker has entered into an agreement with the (re)insurer on the amount of brokerage commissions, would the laws of your country consider such insurance broker to act in the interest of the market or in the interest of one or more (re)insurers?
3. Do the laws of your country set certain criteria for deciding if the "best advice" towards clients has been satisfied? If yes, which are these criteria?

J) ALTERNATIVE DISPUTE RESOLUTION PROCEEDINGS

Do the laws of your country provide for Alternative Dispute Resolution proceedings in the field of (re)insurance contracts for the decision of disputes among clients and (re)insurers and/or insurance brokers?
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