

# Insurance reforms not investor-friendly

**R**eaders might recall reports of policyholders being defrauded by unscrupulous insurance agents. The good news is that policyholders are now being given more protection. The bad news is that restrictions on foreign ownership, which were rejected amid controversy with respect to the Foreign Business Act, were nonetheless incorporated into the new Life Insurance Act.

The amendments to the Life Insurance Act, which became effective in February 2008, impose significant changes. The industry will now be regulated by the new, independent Office of the Insurance Commissioner (OIC), established in 2007 to take over the responsibilities of the Department of Insurance.

Life Insurance Funds will be established, to which companies are required to contribute for the protection of policyholders in the event that an insurance company goes bankrupt or its licence is revoked. Companies are also required to maintain risk-based capital — a fixed level of liquid assets as determined by its assets and contingent liabilities, to ensure liquidity.

Life insurers are also made more strictly liable for the misconduct of their agents. In the past, insurance agents were treated as independent contractors. Pursuant to Supreme Court Judgment No. 599/2537, an insurance agent was not deemed to be a true agent. Life insurance companies would not be jointly liable for the acts of their agents as would typically be the case in a principal-agent relationship under Civil & Commercial Code Section 427. The new rules have effectively reversed this interpretation making a life insurer vicariously liable for its agents.

New advertising rules also impose greater responsibility on companies to

oversee all advertised wording or images and solicitation documents — all printed images and solicitation documents will be automatically deemed part of the insurance policy. If any wording or advertised image has a meaning contrary to that written in the policy, such discrepancy will be resolved in favour of the insured or beneficiary.

As a result, the law shifts from the policyholder to the insurer the burden to check that all printed materials delivered to potential customers comply with policy terms. This rule is intended to ensure that potential clients are not misled or induced by exaggerated or misrepresented benefits appearing on advertised materials and solicitation documents.

Another new addition is the imposition of an affirmative duty on life insurance companies through their agents to disclose all information that is deemed necessary for the information of the policyholder. Presently, there are no guidelines as to what the OIC would consider necessary to be informed. The OIC has already advised that they will issue a notification to address the scope of information that should be informed for compliance with the law.

Lastly, the amendments impose requirements that when persuading or inducing consumers to take out insurance, agents must identify themselves by showing their licence; and when receiving premiums, agents must show their licence while brokers have to show their power of attorney and must also issue documents of the insurance company evidencing receipt

of payment.

Regarding corporate structure, all life insurance companies are required to be transformed into public companies under the Public Limited Companies Act B.E. 2535 (A.D. 1992) within five years time, or by February, 2013. This will require companies to comply with stricter corporate governance and transparency rules, seen as a mechanism in achieving higher protection for policyholders.

However, coupled with the above is a new corporate structure requirement that obliges that any holding entity that is a shareholder of the life insurance company must itself have at least the majority of its voting shares held by Thai natural persons or Thai partnerships consisting exclusively of Thai natural persons. Not only do these new requirements make ownership rules applicable to voting shares (an issue heavily debated and ultimately tabled in proposed changes to the Alien Business Act last year), but they also require that the majority of shares in any holding company must be transferred to Thai natural persons. The intent here is to prevent foreign investors from taking controlling interests in Thai life insurance companies.

Accepting for the moment the potential negative impact on foreign investment, which may result from this new rule when it becomes effective in five years, there is also the practical matter of mandating that a large equity share of public life insurance companies be held by Thai individuals. Where would these multi-billion-baht public insurance

companies find the Thai individuals to purchase these shares? In five years, wealthy Thai individuals could potentially find in this new mandate a fire-sale opportunity to buy into these companies, which are forced to sell their shares per the new law within the deadline.

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