

Insurance laws changing with the times

Published: 1/05/2015 at 03:30 AM

Newspaper section: [Business](#)

To promote and develop Thailand's growing insurance industry and prepare for greater market activity under the Asean Economic Community, the government recently amended the laws governing the country's life and non-life insurance industries for the third time. Formally known as the Life Insurance Act No.3 of 2015 and the Non-Life Insurance Act No.3 of 2015, the amendments took effect on March 6, seven years after the previous amendments were made. The changes can be divided into three main parts as follows:

Shareholding structure: The amendments have revised the Thai shareholding requirement. Previously, the Acts stipulated that no less than 75% of the voting shares of an insurance company be held by either:

- (i) Thai individuals or Thai non-registered partnerships, in which all partners are Thai nationals; or
- (ii) entities registered in Thailand that have more than 50% of their voting shares held by persons falling within item (i) above or by a parent company fulfilling the same conditions.

Under the amendments, the total issued voting shares permitted to be held by foreigners has been increased to "up to 25%" rather than less than 25%.

The Office of the Insurance Commission (OIC) retains its existing power to permit up to 49% foreign ownership with reasonable grounds. In addition, the power of the finance minister to grant foreign ownership of more than 49% has been expanded to include situations where:

- (i) the status or operation of the insurance companies may cause damage to the insured or the public; or
- (ii) there is a need to strengthen the status or business of a particular insurance company or the industry in general.

Such powers must be exercised in compliance with the criteria, methods and conditions or times to be prescribed. Any such approval, including reasons and conditions, must be published in the Royal Gazette. This is to ensure such approvals are carefully and transparently scrutinised.

Management of insurance funds: The amendments permit new sources of insurance funds including new management and scope of permitted activities. New sources of funds are extended to the following, among others:

- (i) loans or issuance of other financial instruments;
- (ii) compensation received from being appointed as a liquidator by the OIC in relation to liquidation of an insurance company; and
- (iii) money not claimed by any insured/policyholder within 10 years.

The scope of permitted activities includes the following, among others:

- (i) borrowing or issuing financial instruments for the purpose of debt payments to an eligible insured to receive unpaid debts incurred on behalf of an insurance company whose insurance licence is revoked; and
- (ii) becoming a liquidator of an insurance company appointed by the OIC. Insurance funds are also allowed to pay for any principal and interest of the new activities as prescribed above.

Liquidation and bankruptcy: The amendments have several provisions including:

- (i) liquidation provisions as prescribed under the Thai Civil and Commercial Code or the Public Limited Company Act shall be applied to an insurance company whose licence is revoked;
- (ii) the registrar must deliver the statutory security deposit and statutory insurance reserves to the appointed liquidator;
- (iii) an insurance company's directors, managing directors and consultants must deliver all accounting documents and other relevant documents to the appointed liquidator;
- (iv) the liquidator must notify all insured parties by registered mail and publication of the liquidation in a newspaper to allow them to submit any claims within the specified time frame. Other than seeking compensation above, the insured may seek compensation from insurance funds in respect of unpaid claims during the liquidation process but prior to an insurance company becoming bankrupt under the bankruptcy process.

Commentary: Although the previous insurance acts were designed for Thai nationals to hold majority control and ownership, some applications for foreign ownership of 49% or more still succeeded in certain circumstances.

The changes to the foreign shareholding requirements themselves may therefore appear to be minimal, but the new provisions indicate the authorities are likely to take an increasingly liberal approach. The amendments also provide increased protection of policyholders in the event of insurer insolvency, although the new arrangements may be challenging for the OIC to enforce.

In any case, the amendments reflect the increasing recognition that Thailand's insurance industry must be further liberalised and modernised to flourish and keep up with the growing economy. In the meantime, new draft Insurance Acts that will repeal the existing Insurance Acts and their amendments are currently undergoing public hearings and expected to be published in the near future.

This article was prepared by Kittit Thaisomboon, an attorney-at-law in Tilleke & Gibbins' corporate and commercial department. Please send comments to Andrew Stoutley at andrew.s@tilleke.com

About the author



Writer: [Tilleke & Gibbins International Ltd](#)
Position: Consultant company

Share or reprint this article:

[Delicious](#) [Digg](#) [Reddit](#) [Stumbleupon](#)
[Technorati](#) [Twitter](#) [Republishing permission](#)
[Print this](#) [E-mail this](#)