

## Insurance and reinsurance in Thailand: overview

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### MARKET TRENDS AND REGULATORY FRAMEWORK

#### 1. What were the main trends in the insurance and reinsurance markets over the last 12 months?

##### Insurance

**Relaxation of foreign shareholding restrictions.** Under the Life and Non-Life Insurance Acts No. 3 of 2015, foreign shareholding in insurance companies is generally limited to not more than 25%. Over the past few years, the Ministry of Finance has issued notifications allowing foreign nationals to hold up to 49% of insurance companies, provided that specific conditions are met. In 2017, the Ministry of Finance has issued additional notifications that further relax the foreign shareholding restrictions to more than 49% (and up to 100%) for life and non-life insurance companies, for the purpose of promoting stability of insurance companies and the insurance industry.

An insurance company can apply to the Finance Minister for permission to have more than 49% (and up to 100%) foreign shareholding, and for foreign directors to comprise more than half of the directors on its board (permission), provided that the company has both:

- A sufficient capital adequacy ratio, as prescribed by the Office of Insurance Commission (OIC).
- A business operation plan for promoting stability for insurance companies or the overall insurance industry.

The proposed foreign shareholder must meet the following requirements:

- Be an insurance company or a company engaged in a business that supports, or is related to, the insurance industry.
- Have not less than ten years of expertise and experience related to, and supporting, the insurance business.
- Have financial stability and possess a credit rating, or have a parent company with a credit rating, of not less than "A" which has been issued by a reputable credit rating agency, with an international network of business operations.
- Have a clear direction in respect of its business operation policy and technology transfer plan for the purpose of developing the company's business operation system, to promote the company's efficiency and ability to compete in the market.
- Have sufficient financial capability to support and promote the stability of the company, or the overall insurance industry.

Once the permission is issued, among other prescribed requirements, the company must maintain a total capital available of not less than THB1 billion (about US\$30 million) for a non-life company, or THB4 billion (about US\$120 million) for a life company, at all times, and throughout its business operation period.

**E-insurance regulations.** In April 2017, the OIC has issued its first set of notifications concerning e-insurance transactions. The key features of the notifications are as follows:

- **Offering policies via an electronic channel (online sale).** An online sale is defined under the notifications as soliciting, inducing, or arranging for customers to enter into an insurance policy by providing descriptions of insurance products through electronic channels, without the personal involvement of an insurance agent, individual broker or the insurer's employees. The customers' acceptance of the offer is also made through electronic channels. The definition of online sale excludes the offering of insurance policies through telemarketing. Insurers, brokers and certain banks (with a broker licence) can conduct online sales. Online sale activities are also subject to the requirements of the OIC regulations on advertisement and market conduct of insurance intermediaries.
- **Insurer's authorisation and reporting requirements.** Insurers must withdraw in cases of non-compliance with the notifications by their intermediaries, and must report any such incident to the OIC within seven days.
- **Specific product filing requirements.** The wording of insurance products offered through online sales must receive prior approval from the OIC.
- **Premium remittance.** Electronic payment of premiums must be made to the insurance company's accounts only. Brokers cannot collect premiums, and their commission is therefore paid directly by the insurer.
- **Confirmation calls.** Once an online sale is made, insurers must seek confirmation from the customer through telephone calls or electronic channels, such as e-mail, within seven days from the sale of the policy.
- **Free-look period.** When confirmation calls or online confirmations are made, customers must be notified of their right to a free-look period, which is a period of 15 days after they receive their insurance policy during which they can change their mind and cancel the policy. However, this is not applicable to all categories of insurance. For example, compulsory motor insurance and travel insurance are excluded.
- **Issuing e-policies.** When issuing policies through electronic channels, the insurer must affix an e-signature on the policy. The e-signature must comply with reliability requirements under the Electronic Transactions Act B.E. 2544 (2001). For group insurance policies, the insurer must issue an insurance certificate, along with other required information, to each of the insured group members, unless agreed otherwise between the insurer and the group policyholder(s).
- **E-claim payments.** Insured persons/beneficiaries must be identified through a process arranged by the insurer before making any electronic compensation claim. Claims payments must only be made to the account of the insured person or the beneficiary, whichever is agreed in advance.

- **Security measures.** Online sales, the use of electronic means as part of the sale of policies, the issuing of policies electronically, and the payment of compensation for claims, must comply with the levels of security measures prescribed under the Electronic Transactions Act B.E. 2544 (2001) as well as the requirements on IT security systems set out in the notifications (for example, IT systems for providing these online services must be certified by an independent certification body such as Certified Information Systems Auditor (CISA), Certified Information Security Manager (CISM), Certified Information Systems Security Professional (CISSP), or ISO 27001 Information Security Management). In addition, the IT systems must be registered with the OIC to conduct any of the activities referred to above.
- **Outsourcing.** Third-party outsourcing arrangements are subject to specific requirements set out in the notifications.

The non-life sector is crowded, with 61 insurers holding local licences. Both the life sector and non-life insurance sector continue to grow, although at a slower rate since the installation of the current military-led government. In terms of distribution, online distribution and bancassurance have gained greater prominence, with new regulations being issued by the OIC, and several significant new partnerships between insurers and banks having been announced. Retail distribution of consumer insurance products has also been established, and is likely to contribute significantly to the growth of the sector.

## Reinsurance

Thailand's local capacity is limited, and a significant proportion of the 2011 flooding losses were reinsured to the international markets, leading to additional layers of complication and disputes. Thailand has very little law or regulation applying specifically to reinsurance, and the legal framework for international reinsurance businesses is therefore perceived to be inadequate to deal with the complexity of issues arising. However, local licensing requirements and restrictions on foreign ownership mean that reinsurance continues to be the principal means by which international insurers participate in the underwriting of Thai risks.

## 2. What is the regulatory framework for insurance/reinsurance activities?

### Regulatory framework

Insurance is governed by various sections of the Thai Civil and Commercial Code, and the Life and Non-Life Insurance Acts B.E. 2535 (1992), both of which were amended significantly in 2008 and 2015, respectively. New draft Life and Non-Life Insurance Acts were proposed to the Cabinet and the Parliament for consideration in 2012. Subsequently, the Life and Non-Life Insurance Acts No. 3 of 2015, as relevant, were enacted and became effective on 6 March 2015 (after publication in the Thai Government Gazette on 5 March 2015) and certain provisions of the Life and Non-Life Insurance Acts B.E. 2535 (1992), as amended, have been repealed and replaced with new provisions to cater to current insurance situations in Thailand, while further notifications and regulations will be issued in the future to implement the 2015 amendments.

The Acts lay out the following basic regulatory principles:

- Formation and licensing: insurers must be public limited companies, and must hold a licence issued by the Minister of Finance.
- Restrictions on shareholders and directors.
- Deposit, reserve, and capital requirements.
- Restrictions on investment of funds.
- Approval of policy wordings by the regulator, the Office of the Insurance Commission (OIC).

- Licensing requirements for brokers, agents, adjusters, and actuaries.
- Reporting requirements.
- Establishment of funds to protect policyholders in the event of insurer insolvency.
- Penalties for compliance breaches.

Under the two Acts, the regulator and Minister of Finance issue various notifications, declarations, and regulations to implement and update the above provisions.

### Regulatory bodies

Insurance business in Thailand is regulated by the OIC, which was established in 2007 by the Insurance Commission Act B.E. 2550, replacing the Department of Insurance. At the same time, ultimate responsibility for supervision of the insurance business was transferred from the Ministry of Commerce to the Ministry of Finance. The OIC regulates all aspects of both life and non-life insurance and is administered by a board of directors, which includes the permanent secretaries of the ministries of finance and commerce, the secretary-general of the Consumer Protection Board, the governor of the Bank of Thailand, the secretary-general of the Securities and Exchange Commission, and the secretary general of the OIC.

## REGULATION OF INSURANCE AND REINSURANCE CONTRACTS

### 3. What is a contract of insurance for the purposes of the law and regulation? How does it differ from a contract of reinsurance?

A contract of insurance is defined by the Thai Commercial and Civil Code as one under which a person agrees to make compensation or pay a sum of money in the case of a contingent loss or any other future event specified in the contract, and another person agrees to pay a sum of money for this, called a premium.

Insurance contracts are not binding unless the insured person has an interest in the event insured against.

Thai law does not distinguish between insurance contracts and reinsurance contracts, and in theory, all laws applying to insurance apply almost similarly to reinsurance.

### 4. Are all contracts of insurance/reinsurance regulated?

All insurance contracts in Thailand are regulated by the Office of the Insurance Commission, including life and non-life. The non-life sector is heavily dominated by motor insurance and property insurance.

## CORPORATE STRUCTURE

### 5. What form of corporate organisation can insurers take?

The Life and Non-Life Insurance Acts provide that life and non-life insurance businesses can only be undertaken by a public limited company under relevant public company legislation, or by a branch office of a foreign insurer. In both cases, both types of business structures require licences granted by the Ministry of Finance, with the approval of the cabinet, to permit them to operate.

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## REGULATION OF INSURERS AND REINSURERS

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### 6. Are all insurers and reinsurers regulated? Are they all regulated in the same way?

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All insurers are subject to regulations in the same way under the Life and Non-Life Insurance Acts.

### 7. Can insurers and reinsurers carry on non-insurance business? Are there any restrictions on their business activities?

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Generally, insurers and reinsurers are only permitted to conduct business specified in their business licences. The Life and Non-Life Insurance Acts list the activities that are prohibited to insurers. One major restriction is that an insurer can only engage in one type of insurance business, either life or non-life, but not both.

Additionally, regulations issued by the Office of Insurance Commission impose certain conditions, such as investment ratio, on how insurers can invest their funds. As such, insurance companies are permitted to conduct investments, retain assets, or enter into contractual agreements related to:

- Bank deposits.
- Debt.
- Equity.
- Hybrids.
- Investment units.
- Futures agreements.
- Structured products.
- Loan extensions, car hire-purchase leases, and loan guarantees and letters of guarantee.
- Securities transactions, including under repurchase agreements.
- Certain land and property leases.
- Certain back office services, as well as conducting securities and commercial banking services of other institutions.
- Retaining 20% or more of the total shares in a private company with the aim of conducting other business activities.
- Certain securities activities.

### 8. Are there any statutory limits or other restrictions on, or requirements relating to, the transfer of risk by insurance or reinsurance companies?

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Reinsurance treaties must be filed with the Office of the Insurance Commission on an annual basis. Insurers were previously required to cede 5% of risk to the main local reinsurer, the Thai Reinsurance Public Company Limited. However, this restriction has been lifted, and it is now followed only on a voluntary basis.

## OPERATING RESTRICTIONS

### *Authorisation or licensing*

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### 9. Does the entity or person have to be authorised or licensed?

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#### **Insurance/reinsurance providers**

The Life and Non-Life Insurance Acts prohibit any person from entering into a contract as an insurer unless he or she has obtained a licence to engage in life/non-life insurance business.

An application for a licence to engage in the insurance business must be lodged by the company promoters with the Minister of Finance. On approval being granted by the Minister, the promoters must:

- Incorporate a public limited company.
- Lodge a security deposit.
- Maintain an adequate capital fund within six months of incorporation.

On satisfying the necessary conditions, a licence will be issued. If the company is unable to satisfy the capital and deposit requirements within six months of incorporation, the approval is deemed to be withdrawn. Fees are payable for the application and annual renewal of licences. The Thai insurance market is crowded, and in 2012, the government announced that no new licences would be issued to foreign investors for at least five years. At present, the government has no policy to issue new licences for both life and non-life insurance business in Thailand.

#### **Insurance/reinsurance intermediaries**

A broker, defined as a person who, expecting a commission, indicates the opportunity or arranges for a person to enter into a non-life/life insurance contract with an insurer, is required to obtain a licence from the Office of the Insurance Commission (OIC).

An agent, defined as a person assigned by an insurer to induce persons to enter into a non-life/life insurance contract with the insurer, must obtain a licence from the OIC, which is specific to a single insurer. Agent licences are only granted to individuals who must:

- Be legally competent.
- Be domiciled in Thailand.
- Not be adjudged incompetent or quasi incompetent.
- Never have been sentenced to imprisonment, on final judgment, for dishonest offences relating to property, unless the sentence was completed at least five years prior to the date of application.
- Not be bankrupt.
- Not be a broker (life or non-life, as relevant).
- Not have had an agent's or broker's licence revoked within the five years prior to the date of application for a licence.
- Have studied the non-life/life insurance business at an institute prescribed by the Registrar of the OIC (Registrar), or have passed an examination concerning non-life insurance knowledge, in accordance with the subjects and procedures having been prescribed by the Registrar.

#### **Other providers of insurance/reinsurance-related activities**

Adjusters and actuaries are also required under the Life and Non-Life Insurance Acts to hold licences issued by the Registrar.

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**10. What are the main exemptions or exclusions from authorisation or licensing?**

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There are no particular exemptions or exclusions from the licensing regime.

**Restrictions on ownership or control**

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**11. Are there any restrictions on the ownership or control of insurance-related entities?**

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**Insurance/reinsurance providers**

At least 75% of the voting shares of an insurance company must be held by either:

- Thai individuals or Thai non-registered partnerships, in which all partners are Thai nationals.
- Entities registered in Thailand which have more than 50% of their voting shares held by persons falling within the first criterion above, or by a parent company fulfilling the same conditions.

In addition, at least three out of four of the total number of directors must be Thai nationals.

The Office of the Insurance Commission has the power to permit, subject to certain conditions and criteria, up to 49% foreign ownership. It also has the power to permit foreign directors to comprise more than one out of four directors, but less than half of the total number of directors.<sup>1</sup> The Finance Minister has the power to permit, subject to certain conditions and criteria, more than 49% and up to 100% of foreign ownership, and to permit more than half of an insurance company's board to be comprised of foreign directors.

**Insurance/reinsurance intermediaries**

An insurance broker must have its head office in Thailand, and must have among its business objectives "life insurance brokerage business" and/or "non-life insurance brokerage business," as the case may be. Insurance brokerage business is reserved for Thais under the Foreign Business Act B.E. 2542, and as such, a company with 50% or more foreign shareholding will require a foreign business licence or a foreign business certificate, as the case may be.

**Other providers of insurance/reinsurance-related activities**

Other service providers will also likely be subject to the provisions of the Foreign Business Act described (see above, *Insurance/reinsurance intermediaries*).

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**12. Must owners or controllers be approved by or notified to the relevant authorities before taking, increasing or reducing their control or ownership of the entity?**

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Insurers must notify the Office of the Insurance Commission (OIC) of any change in shareholding that gives rise to a breach of the restrictions on foreign investment. Any transfer of business or amalgamation of insurance companies is subject to the prior approval of the OIC.

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**Ongoing requirements for the authorised or licensed entity**

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**13. What are the key ongoing requirements with which the authorised or licensed entity must comply?**

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**Insurance/reinsurance providers**

Solvency and capital requirements have been a major focus of the regulator in recent years. The Non-Life Insurance Act No. 2 2008 and its life equivalent introduced a risk-based capital (RBC) regime for the first time, replacing the previous fixed minimum paid-up capital requirements of THB500 million (life) and THB300 million (non-life). The RBC regime relates capital requirements and solvency margins to the following types of risk:

- Insurance risk.
- Marketing risk.
- Credit risk.
- Clustered portfolio risk.

The RBC regime has now been fully implemented by the Office of the Insurance Commission (OIC). Under the RBC regime, the evaluation of assets and debts is also going through changes; for example, the calculation of the fair value of assets is being switched from using book value or amortised value to using market value. The calculation of debt switches from fixed formula calculation using net premium value to using gross premium valuation for life insurance, and using international standards such as the chain ladder method in non-life insurance.

Non-life insurers must maintain reserve funds mainly for:

- A net written premium.
- Claims.

**Reserve funds for a net written premium.** A non-life insurer must maintain reserve funds for a net written premium up to the amount of at least the value of the premium reserve value after reinsurance.

**Reserve funds for claims.** A non-life insurer must maintain reserve funds for claims up to the amount of at least the value of the total claim reserve after reinsurance.

Only cash, Thai government-issued bonds, current account deposits, outstanding income from investments, outstanding income from trading in the stock exchange within five days of trading, or any investment assets are allowed to be calculated as reserve funds. All of these assets must be free from any debt or liens, except for limited exceptions such as any trade or derivatives that are authorised by the OIC's Registrar.

Other than maintaining the prescribed capital adequacy ratio, insurers are required to:

- Maintain a deposit with the OIC.
- Report annually in the form prescribed by the OIC.
- Comply with statutory requirements regarding approval of policy wordings and premium rate.
- Comply with statutory requirements regarding investment activities.

The investment activities of non-life insurers are governed by the OIC's Notification re Investments and Other Business Operations of Non-Life Insurers B.E. 2013. The insurer must prepare its investment policy and its investment plan in writing and submit them to the OIC annually. Insurers are also allowed to retain a professional investment advisory firm as their adviser with prior consent from the OIC's Registrar. The Notification prescribes investment proportions depending on the issuer/owner of assets, as follows:



- Thai government, Bank of Thailand, Ministry of Finance, financial institution rehabilitation and development funds: unlimited proportion.
- Financial institution: for each institution not exceeding 30% of the insurer's investment assets.
- State owned enterprise, limited company under the government securitisation campaign, limited company that is registered in the stock exchange market (both Thai and foreign), limited company that is in a process of minor stocks distribution according to the Stock Exchange of Thailand, or limited company that has a credibility rating above the minimum requirement: for each entity not exceeding 15% of the insurer's investment assets.
- Limited company that issues debt securities which received a credit rating above the minimum requirement: for each company not exceeding 15% of the insurer's investment assets, and for investments other than debt securities: for each company not exceeding 5% of the investment asset.
- International organisations such as the World Bank, Asian Development bank, International Finance Corporation, or other allowed organisations: for each organisation not exceeding 15% of the insurer's investment assets.
- Other entities: for each entity not exceeding 5% of the insurer's investment assets.

The Notification provides proportions of investment assets and further requirements for each permitted investment entity in great detail.

The same Notification also allows non-life insurers to conduct or to operate other business as follows:

- Leasing of immovable property only to prevent wasteful economic loss or to prevent deterioration of the assets.
- Operation of supporting business, which must be an operation that the insurer must perform in its normal course of business, such as claims management, accounting, HR, compliance, and so on, for other persons.
- Holding equity instruments for the purpose of operating other businesses.

Non-life insurers can hold 10% of the equity instruments issued by a legal entity according to foreign law, provided that such an entity is an authorised insurer in the foreign country or has its main business as the holding securities of an ASEAN insurance company.

Non-life insurers can hold more than 20% of the equity instruments issued by a legal entity provided that such an entity is:

- A limited company established for the benefit of the Thai insurance market and is approved by the OIC's Registrar.
- A limited company that is authorised to operate as a life insurance broker.
- A non-life reinsurer that may purchase equity instruments of life reinsurers with authorisation from the OIC's Registrar.
- A life or non-life insurer for the purpose of financial rehabilitation.

Non-life insurers can operate business related to the stock exchange as follows:

- As an agent that provides support for the buying or selling of stock units.
- As marketing agents of private funds.
- In the provision of marketing services for stock exchange companies or commercial banks according to the laws regarding financial institution business.

### Insurance/reinsurance intermediaries

Brokers and agents are required to maintain and renew their licences on an annual basis, which includes the payment of fees. Brokers are required to submit registers and accounts in the prescribed form to the OIC.

### Other providers of insurance/reinsurance-related activities

Loss adjusters and actuaries are required to maintain and renew their licences on an annual basis, for which fees are payable.

### Penalties for non-compliance with legal and regulatory requirements

#### 14. What are the possible consequences of an entity failing to comply with applicable legal and regulatory requirements? What recourse do policyholders have if they have done business with a non-approved entity?

The Life and Non-Life Insurance Acts set out a wide raft of penalties for compliance failure, some of which are as follows.

### Insurance/reinsurance providers

The Life and Non-Life Insurance Acts impose a range of penalties, including:

- Fines of up to THB500,000 or THB20,000 per day in the case of continuing offences.
- Revocation of licences.
- Imprisonment of up to one year in the case of individuals.

Policyholders that have done business with an unlicensed entity would not necessarily find that their contracts of insurance is unenforceable, but they would not have the benefit of the various statutory protections afforded to policyholders of insurance contracts issued by licensed entities.

### Insurance/reinsurance intermediaries

Any agent that enters into a contract on behalf of an insurer without the appropriate authority is liable to imprisonment of up to two years and/or a fine of THB200,000.

Any broker who collects a premium without the written authorisation of the insurer is also liable to imprisonment of up to two years and/or a fine of up to THB200,000.

### Other providers of insurance/reinsurance-related activities

Any person acting as an adjuster without a licence issued by the Office of the Insurance Commission is liable to up to three years' imprisonment or a fine of up to THB300,000, or both. Any adjuster that makes a false report of inspection or assessment is liable to up to two years' imprisonment and/or a fine of up to THB200,000.

Any actuary who makes a false statement certifying a report on the calculation of insurance policy liability, a false report, or furnishes false documents in connection with such a report, is liable to imprisonment of up to two years and/or a fine of up to THB200,000.

### Restrictions on persons to whom services can be marketed or sold

#### 15. Are there any restrictions on the persons to whom insurance/reinsurance services and contracts can be marketed or sold?

There are no restrictions on the persons to whom insurance/reinsurance services and contracts can be marketed or sold.

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## REINSURANCE MONITORING AND DISCLOSURE REQUIREMENTS

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### 16. To what extent can/must a reinsurance company monitor the claims, settlements and underwriting of the cedant company?

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The entitlement of a reinsurer to monitor the claims, settlements, and underwriting of its cedant company depends entirely on the agreed terms of the applicable reinsurance contract, as there are no statutory or regulatory rights or obligations implied.

In facultative reinsurance contracts between Thai cedants and foreign insurers, claims co-operation or claims control clauses are common, particularly where the cedant retains an insignificant proportion of the risk, or is being used for fronting purposes.

Conversely, in treaty arrangements, "follow the settlements" and similar clauses are common, meaning that the rights of the reinsurer to participate in or challenge claims decisions made by its cedant are significantly restricted.

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### 17. What disclosure/notification obligations does the cedant company have to the reinsurance company?

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There are no specific laws or regulations in Thailand imposing any particular disclosure or notification obligations on a cedant (see *Question 16*).

The general provisions of the Thai Commercial and Civil Code applying to insurance contracts apply equally to reinsurance, meaning that the reinsurance contract would become voidable if the cedant knowingly omits to disclose facts that would have induced the reinsurer to raise the premium or to refuse to enter in the contract, or knowingly makes false statements in regard to such facts. The right to void the contract must be exercised within one month, and the reinsurer will not be entitled to void the contract if it knew, or should have known, of such facts.

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## INSURANCE AND REINSURANCE POLICIES

### Content requirements and commonly found clauses

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### 18. What are the main general form and content requirements for insurance policies? What are the most commonly found clauses?

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#### Form and content requirements

The Thai Civil and Commercial Code provides that a contract of insurance is not enforceable unless it is evidenced in writing and signed by the authorised officer of the insurer, and that the policy must contain:

- The subject of the insurance.
- The risk assumed by the insurer.
- The value of the insurable interest, if it has been fixed.
- The insured sum.
- The amount of premium and the method of payment.
- If the duration of the insurance is fixed, its commencement and ending.
- The name or trade name of the insurer.
- The name or trade name of the insured.
- The name of the beneficiary, if any.
- The date of the contract of insurance.

- The place where, and the date when, the policy was made.

In addition, all policy wordings must be approved by the Office of the Insurance Commission before being issued.

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### 19. Is facultative or treaty reinsurance more common? What are the most commonly found clauses in reinsurance policies?

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#### Facultative/treaty reinsurance

Both facultative and treaty reinsurance are common and used extensively in Thailand, whose limited local capacity means that high-value complex risks tend to be heavily reinsured to the international markets, particularly London and Singapore.

#### Commonly found clauses

Although generally (but not exclusively) subject to Thai law, reinsurance contracts tend to use international or London market slips and wordings.

Arbitration clauses are commonly included in international reinsurance agreements to enable the local cedant to enforce the reinsurance contract against the reinsurer in its home jurisdiction.

"Follow the fortunes" or similar clauses are common in treaty wordings, while facultative reinsurance often grants reinsurers a degree of claims control or co-operation.

#### Implied terms

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### 20. Are there any terms that are implied by law or regulation (even if not included in the insurance or reinsurance contract)?

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The Office of the Insurance Commission requires a standard form arbitration clause to be included in all insurance contracts issued by licensed insurers in Thailand. The clause is implied into any policy issued in which it is absent.

The Civil and Commercial Code also requires insurers to pay insureds for:

- The actual amount of loss.
- Any damage caused to insured property by reasonable measures taken for preventing the loss.
- All reasonable expenses incurred for preserving the property from the loss.

The insurer is also required to bear the expenses for valuation of the loss. These terms are therefore implied into any insurance policy issued that does not specify them.

Under Thai law, a general duty of good faith applies to all contracts, and no higher standard is specified in relation to contracts of insurance.

#### Customer protections

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### 21. How do customer protections in the general law affect insurance contracts? What customer protections are generally included in insurance policies to supplement this?

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#### General law

General consumer protection in Thailand is governed largely by the Consumer Case Procedure Act 2008, which was the first major consumer protection legislation to be enacted.

The aim of the act was to increase access to justice for consumers, for example, by removing the requirement to pay court fees when

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issuing proceedings and by granting the courts the power to award punitive damages against business operators for the first time.

### **Insurance policies**

Claims under insurance contracts are generally judged to be consumer claims within the meaning of the Consumer Case Procedure Act 2008, even where the policyholder is a corporate entity rather than an individual. Reinsurance disputes would not, however, be judged to fall under the scope of the Act.

The Office of the Insurance Commission's mandatory arbitration clause (see *Question 20*) is also intended to give the consumer an option of resolving any dispute with its insurer in a more cost-effective and less time-consuming manner than issuing court proceedings.

### **Standard policies or terms**

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## **22. What are the main standard policies or terms produced by trade associations or relevant authorities?**

There are no standard policies or terms produced by trade associations or the authorities, but all policy wordings must be registered and approved by the Office of the Insurance Commission.

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## **INSURANCE AND REINSURANCE POLICY CLAIMS**

### **Establishing an insurance claim**

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## **23. What must be established to trigger coverage under an insurance policy?**

Regardless of any notice requirements contained within the policy wording, the Thai Civil and Commercial Code requires the insured or beneficiary under the policy to give notice to the insurer of any loss occurring "without delay" after having knowledge of such loss.

Failure to give notice without delay does not entitle the insurer to deny coverage, but the insurer can claim compensation for any damage suffered as a result of the delayed notification, unless the insured can prove that it was impracticable to have complied with the notice requirement.

### **Third party insurance claims**

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## **24. What are the circumstances in which third parties can claim under an insurance policy?**

Generally, only a person named as the insured or a beneficiary in the insurance policy can make a claim against the insurer.

Under the Thai Commercial and Civil Code, an injured third party can receive compensation directly from an insurer providing liability insurance to the party causing the injury. The third party can issue proceedings directly against the insurer, as long as the insured is included as a co-defendant in the action. The insurer is not discharged from its liability to the injured person by paying the compensation to the insured, unless it can prove that the insured has already paid the compensation to the injured third party.

### **Time limits**

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## **25. Is there a time limit outside of which the insured/reinsured is barred from making a claim?**

The Thai Civil and Commercial Code imposes a two-year prescription period on insurance claims, which starts to run from the date of loss. The prescription period may be interrupted under

certain circumstances, including where the insurer has acknowledged (admitted) the claim, made partial payments, or in the case of consumer contracts, where negotiation is ongoing. Otherwise, the claim is time-barred after expiry of the two-year period, unless court proceedings or arbitration proceedings are initiated.

Problematically, Supreme Court decisions in Thailand have also applied the same two-year limitation period to reinsurance claims, meaning that an insurer's right to claim from its reinsurer under facultative or treaty reinsurance contracts could be extinguished before claims have been finalised and settled under the underlying contract.

Thai law prohibits any agreement to extend or waive the two-year prescription period, meaning that insureds and insurers looking to preserve their rights of recovery must seek to rely on one of the methods of interruption described above.

### **Enforcement**

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## **26. Can the original policyholder or other third party enforce the reinsurance contract against a reinsurer?**

There is no statutory right for a third party to bring an action directly against a reinsurer for coverage, but cut-through clauses are sometimes used in reinsurance agreements and are reflected in the underlying direct policy. The enforceability of the clause depends on compliance with a number of conditions required under the Thai Civil and Commercial Code for third-party contract rights.

Even in the absence of such a cut-through clause, the Thai courts have, on occasion, been willing to allow reinsurers to be joined to existing proceedings between the insured and insurer, and to grant an award payable directly by the reinsurer to the underlying insured.

### **Remedies**

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## **27. What remedies are available for breach of an insurance policy?**

### **Insurer**

Insurers are under a statutory obligation not to delay, without sufficient reason, payment of any sum or return of premium to an insured or beneficiary under an insurance policy, or make a payment or return in bad faith. A breach of this obligation exposes the insurer to a fine of up to THB500,000, plus a daily fine of THB20,000 for continuing delays.

### **Insured**

In the event that an insurer refuses to pay amounts due to an insured or beneficiary under an insurance policy, the insured can either refer the matter to Office of the Insurance Commission arbitration or issue proceedings in the Thai civil courts. Any such proceedings would seek recovery of the amounts that should have been paid under the policy, any additional losses arising from the insurers' failure to pay, and interest on the amounts claimed at 7.5%. Interest may be awarded from the date of loss or from the date the proceedings were issued.

In addition, under the Consumer Case Procedure Act 2008, if the insured can demonstrate the insurer's "wilful act to unfairly take advantage of the consumer or intent to cause damage to the consumer or act in breach of the responsibility as a professional or businessman who is usually trusted by the public", the court is empowered to award punitive damages against the insurer of up to double the amount of actual damages, or up to five times the amount of actual damages in claims valued at under THB50,000.

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As a consumer, the insured is also exempt from paying court fees, which are calculated as a proportion of the value of the claim, and can therefore be significant (subject to the discretion of the court). The court also provides legal assistance for consumers who wish to file a claim against an insurer, who will be deemed a business operator according to consumer protection laws.

### **Punitive damage claims**

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#### **28. Are punitive damages insurable? Can punitive damages be reinsured if they are covered by an underlying policy?**

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Punitive damages awards are rare in Thailand, and can only be awarded under the Consumer Case Procedure Act 2008. There is no prohibition against the insurance of punitive damages per se in Thailand, but insurers are relieved from liability in respect of losses caused by bad faith or gross negligence on the part of the insured or beneficiary, or in respect of losses resulting directly from the "inherent vice" of the subject of insurance.

The conditions that must be met under the Consumer Case Procedure Act 2008 to justify an award of punitive damages, in most cases, amount to bad faith or gross negligence, and any insurance policy purporting to provide coverage for such awards is therefore unlikely to be enforceable.

## **INSOLVENCY OF INSURANCE AND REINSURANCE PROVIDERS**

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#### **29. What is the regulatory framework for dealing with distressed or insolvent insurance or reinsurance companies, or other persons or entities providing insurance or reinsurance related services? What regulatory and/or other protections exist for policyholders if the insurance company is insolvent?**

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In the event an insurer goes bankrupt, policyholders with outstanding claims against the insurer are ranked as preferential creditors in any bankruptcy proceedings. Policyholders are also ranked as secured creditors in respect of the security deposit held by the Office of the Insurance Commission (OIC).

Non-life insurers must deposit cash with the OIC's Registrar under Ministerial Regulation No. 5 B.E. 2539. The insurer is required to submit a fixed amount of THB3.5 million to the Registrar for each type of insurance they intend to provide, for example, fire insurance, motor insurance, transportation insurance, and other insurance.

Non-life insurers must also submit a deposit of no less than 25% of the total capital reserve for the net written premium to the OIC's Registrar. The deposit must be submitted together with:

- The report of the total reserve for the second quarter of each year.
- The fourth quarter report regarding the financial situation of the insurer of each year.
- The annual report regarding the total reserve.

The deposit must be submitted to the OIC no later than one month from the date that the reports mentioned above are due.

The assets submitted to the OIC's Registrar must not be enforceable against any other debts as long as the insurer is still operable. When an insurance company dissolves or is declared bankrupt, insureds who have an existing right to claim under their policy have the highest priority as creditors over these assets and can enforce their debts in preference to other debts.

In addition, the Life and Non-Life Insurance Acts established funds for the purpose of protecting policyholders of insolvent insurers.

The amended Acts also provide that the funds can be nominated by a liquidator of the insurer company going through liquidation. The funds are funded by levies payable by life and non-life insurers calculated as a percentage of premium received, capped at 0.5% of premiums received, and currently ranging from 0.2% to 0.3% of premiums in the case of non-life insurers, and 0.1% to 0.3% of premiums in the case of life insurers.

Policyholders can seek compensation from the fund in respect of unpaid claims, provided that they have also brought a claim against the insurer; this is subject to a maximum payment of THB1 million per policyholder. The fund then becomes a preferential creditor of the bankrupt insurer in respect of amounts paid to policyholders.

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#### **30. Can excess insurance policies "drop down" to provide coverage if the primary insurer goes into insolvency?**

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There are no statutory or other provisions requiring an excess policy to drop down in the event of insolvency, and the right to claim will be determined by reference to the policy terms.

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#### **31. Is a right to set-off mutual debts and credits recognised in an insolvency proceeding involving an insurer or reinsurer?**

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Before an insurer's dissolution, the statutory security deposit and statutory reserve are not subject to execution. In the event an insurer dissolves, creditors with the right to receive payment from insurance have the highest preferential rights with respect to the statutory security deposit and statutory reserve, and have the right to receive payment from such assets, before any other creditors having other preferential rights.

The insured also has preferential rights in the same hierarchy as tax creditors to enforce against all other assets of the insurer. The same rules apply when the insurer's licence is terminated by the Office of the Insurance Commission (OIC).

According to the amended Life Insurance Act and Non-Life Insurance Acts, the termination of the insurer's licence is now treated in the same way as the company being dissolved. The OIC must submit the deposit and the reserve to the liquidator, and the directors and the employees of the company must provide the liquidator with all documents related to the finance of the company. Within 30 days of nomination, the liquidator must send letters notifying all insureds and declaring that the company's insurer licence has been terminated. The insured must then file a debt collection notice to the liquidator within the 60 days given in the notice. The liquidator must pay the insured from the OIC submitted reserve and deposit prior to placing the company through the bankruptcy process.

When an insurer becomes bankrupt, creditors with the right to receive payment from insurance have preferential rights with respect to the statutory security deposit and statutory reserve, and have the same right to receive payment from these assets as a secured creditor under bankruptcy law. A creditor having the right to receive payment from insurance has the right to receive payment from the insurer's assets other than the statutory security deposit and statutory reserve, like a holder of preferential rights, with the same priority as tax obligations, as specified in the Thai Civil and Commercial Code. Otherwise, the bankruptcy of an insurer would largely proceed according to the statute of general application. This is applicable to insurers and reinsurers under Thai law.



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## TAXATION OF INSURANCE AND REINSURANCE PROVIDERS

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### 32. What is the tax treatment for insurers, reinsurers, and other persons or entities providing insurance and reinsurance-related services?

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Under the Revenue Code of Thailand, any insurance company is subject to corporate income tax (currently 20%) on its net profit. The life insurance business is subject to Special Business Tax (currently 2.75% on interest, service fees, and other fees), in contrast to non-life insurance business, which is subject to VAT (currently 7% on premium and stamp duty).

Both life insurance policies and non-life insurance policies are subject to stamp duty, the amount of which differs depending on the specifics of the insurance and the circumstances. Life insurance premiums are not subject to withholding tax, while non-life insurance premiums are subject to a 1% withholding tax.

## INSURANCE AND REINSURANCE DISPUTE RESOLUTION

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### 33. Are there special procedures or venues for dealing with insurance or reinsurance complaints or disputes?

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The Office of the Insurance Commission (OIC) provides its own arbitration service, to which any dispute under a contract of insurance can be referred. The OIC mandates that all policies issued must include a dispute resolution clause in a specified form, which provides that the insured (only) has the option to refer any dispute under the policy for arbitration under the OIC's rules. In addition, the clause is to be implied into any insurance policy issued in which it is absent.

However, policies covering commercial risks are commonly issued with dispute resolution clauses that do not refer to the OIC's arbitration procedure, electing instead to submit to the exclusive jurisdiction of the Thai courts, or providing for arbitration under the rules of the Thai Arbitration Institute, or for ad hoc arbitration. Complex commercial disputes are commonly pursued through the Thai civil courts or arbitration.

### 34. Are arbitration clauses in insurance and reinsurance agreements enforceable?

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Arbitration clauses are enforceable, provided that they comply with the requirements of Thailand's Arbitration Act, and subject to the mandatory option for the insured to choose Office of the Insurance Commission arbitration (see *Question 33*).

International reinsurance agreements commonly contain standard arbitration clauses, either ad hoc or under the auspices of the Thai Arbitration Institute or another institution.

### 35. Are choice of forum, venue and applicable law clauses in an insurance or reinsurance contract recognised and enforced?

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Thailand is not a signatory to any treaty on mutual enforcement of judgments, other than the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958. For a contract to be enforceable against a Thai insurer, it is therefore advisable that the parties submit to the jurisdiction of the Thai courts or arbitration.

The Office of the Insurance Commission is unlikely to approve a policy wording applying any law other than Thai law.

Reinsurance contracts also generally choose Thai law, but arbitration is more commonly preferred than submitting to the jurisdiction of the Thai courts, largely because a judgment obtained in Thailand is unlikely to be enforceable in the home jurisdiction of an international insurer.

## REFORM

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### 36. What proposals are there for reform of the law, regulation or rules relating to the provision of insurance or reinsurance services?

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The focus continues to be on the liberalisation of the market, strengthening capital requirements to protect policyholders, and movement towards harmonisation with regional and international governance standards.

In 2015, the Life and Non-Life Insurance Acts No. 3 of 2015 were enacted and became effective on 6 March 2015 (effectiveness after the date of publication on Thai Government Gazettes dated 5 March 2015) to be suitable and in line with the current insurance situation in Thailand and to adopt various concepts from the 2008 Financial Institution Act, with the intention of bringing the regulation of the insurance industry in line with other financial services providers, both on a national and regional scale.

Further legislative and regulatory developments are likely to relate to the evolution of new distribution channels, including bancassurance and online/retail sale, and to the outsourcing of certain core functions to third-party providers. The long-awaited enactment of Thailand's data privacy regime is also likely to have a significant impact on insurers' and brokers' collection and use of customer data.

See also *Question 1, Insurance* for information on recent developments.

## MAIN INSURANCE/REINSURANCE TRADE ORGANISATIONS

### Thai General Insurance Association

**Main activities.** The representative body of non-life insurers in Thailand.

**W** [www.thaigia.com](http://www.thaigia.com)

### Thai Life Assurance Association

**Main activities.** The central body of life insurance business operators and related professional groups.

**W** [www.tlaa.org](http://www.tlaa.org)

### Thailand Insurance Institute

**Main activities.** Providing insurance education to personnel in the field as well as providing insurance knowledge to the public, and maintaining standards of insurance professionalism.

**W** [www.tiins.com](http://www.tiins.com)

### Thai Insurance Brokers Association

**Main activities.** The central body for insurance brokers and related professional groups.

**W** [www.ibathai.com](http://www.ibathai.com)

## ONLINE RESOURCES

### Office of the Insurance Commission (OIC)

**W** [www.oic.or.th](http://www.oic.or.th)

**Description.** Website of the OIC, Thailand's insurance regulator. Contains details of laws, news, statistics, violations and enforcement information. English language sections of this site are not up to date, and translations of laws are provided for guidance only.

## Practical Law Contributor profiles



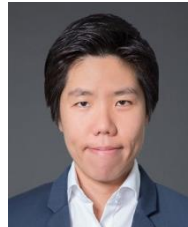
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