C L I F F O R D
C H A N C E

Briefing note April 2015

Thailand: Amendments to Life and Non-life Insurance Acts

The third amendments to the Thai Life Insurance Act and the Non-life Insurance Act B.E.2535 (1992) (the "Amendment Acts") took effect on 6 March 2015. The key amendments concern, amongst other things, shareholding structure, source and management of insurance funds, and the liquidation process for insurance companies.

Key changes to the shareholding structure of insurance companies

The Amendment Acts have significantly removed the requirement that Thai individuals must hold the majority of the issued voting shares in the parent or holding entity of an insurance company. The foreign shareholding limit has also increased slightly from 24.99% to 25% of the total issued voting shares, although this remains insufficient for foreign shareholders to block any shareholders' resolutions. Even 'special' resolutions, requiring a super-majority, can be passed by exactly 75% of shareholders votes.

Although the Insurance Commission's ability to increase the foreign shareholding limit from 25% up to 49% remains unchanged, the Amendment Acts provide wider grounds upon which the Minister of Finance (with the recommendation of the Insurance Commission) can exercise discretion to approve foreign shareholdings in excess of 49%, based on the following grounds:

- Standing or operations of an insurance company may cause damage to the insured or the public;
- Strengthening an insurance company's situation; or
- Strengthening the insurance industry in Thailand.

Both approvals by the Insurance Commission and the discretion that may be exercised by the Minister of Finance shall be in accordance with future notifications and regulations to be issued by the Insurance Commission or the Minister of Finance (as the case may be).

The Amendment Acts also require that such approvals, together with the reasons and conditions (if any), be published in the Royal Gazette, so as to enhance the transparency of the approval or relaxation process.

Any insurance companies previously allowed by the Insurance Commission or the Minister of Finance to have a higher foreign shareholding limit, before the Amendment Acts came into effect, may maintain such foreign shareholding for a period of time and subject to the conditions of the former approval granted by the Insurance Commission or the Minister of Finance (as the case may be).

Key issues

- The Amendment Acts remove the requirement for Thai individuals to hold the majority of the issued voting shares in the parent or holding entity of an insurance company.
- Minister of Finance has wider grounds upon which to exercise discretion to approve foreign shareholdings above 49% of total issued voting shares.
- New sources of insurance funds and an extension of permitted activities.

Source and management of insurance funds

The Amendment Acts also permit new sources of insurance funds (for both life and non-life); namely funds received:

- from loans or issuance of other financial instruments; and
- proceeds from being appointed as liquidator by the Insurance

Commission in the liquidation of an insurance company.

The Amendment Acts further extend the scope of permitted activities of insurance funds, to cover (i) borrowing and issuance of financial instruments for the purpose of repaying claimants (e.g. the insured) of an insurance company if its insurance license is revoked; and (ii) becoming a liquidator of an insurance company. The Amendment Acts also broaden the scope of the insurance funds' use to cover repayment of principal and interest to correspond with the permitted activities of insurance funds above.

Liquidation Process

The Amendment Acts add several provisions concerning the liquidation process for an insurance company, including (amongst others) by (i) applying the liquidation process under the Civil and Commercial Code or Public Companies Act (as the case may be) to an insurance company whose license is revoked, (ii) delivery of security and insurance reserves to the liquidator by the Office of the Insurance Commission, (iii) notification of the liquidation to all claimants against the insurance company and publication of the liquidation in a newspaper in order to allow claimants to submit claims to the liquidator, etc. This is to allow the insurance funds to step in and compensate the claimants of the insurance company during the liquidation process, before the relevant court declares the insurance company bankrupt.

If you would like further information on any of the issues raised in this briefing or related issues please contact the authors below.

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