

REGULATORY INTELLIGENCE

COUNTRY UPDATE-Thailand: Insurance

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The Office of Insurance Commission (OIC) was established in 2007 under the Thailand Government Insurance Commission Act, B.E. 2550. The OIC has now been a regulator of the insurance industry for over a decade, supervising all aspects of both life and non-life insurance, including their brokers and agents, under the supervision of the Ministry of Finance and is administered by a board of directors consisting of 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.

In 2016, the OIC amended the Life and Non-Life Insurance Acts which repealed the current version of the Acts and all subsequent amendments. This is a significant impact on the insurance industry. The changes include the introduction of a requirement on change in control, requirements for fit and proper directors and officers, requirements on actuaries (non-life insurance), and stricter broker licensing rules.

During 2020-2022, some domestic insurance companies were heavily affected by COVID-19 — particularly the insurers who insured against COVID-19 infection without any reinsurance overseas. After the considerable number of COVID-19 infections in 2021, the unexpected claims under the COVID-19 policies caused a few non-life insurance companies to become insolvent, and they were not able to cover all non-life claims.

In addition, the OIC issued various relief measures for the insurance business in response to COVID-19. These included measures relating to the application for and the renewal of a broker license during the COVID-19 pandemic, as well as measures relating to the filing of reports regarding the results of the business operations. In particular, the corporate brokers which are affected by COVID-19 pandemic can submit a request to the OIC for the extension of the deadline for the submission of certain reports (e.g., audited financial statement and reports on the results of business operations).

The OIC also issued a Notification re: Conditions, Issuing and Offering of Insurance Policies of Life-Insurance Companies B.E. 2563, which also provides an exemption for face-to-face sales of insurance products to be carried out digitally (e.g., by voice, video, or images), provided that there is a justifiable necessity for doing so and that the customer in question consents to the digital face-to-face meeting. Insurance companies and intermediaries must arrange for appropriate systems and sales processes to accommodate this, such as maintaining communication records and quality control and ensuring the proper protection of personal data.

Permission to operate

Since 2008, amendments to the Life Insurance Act 1992 and the Non-Life Insurance Act 1992 have stipulated that life and non-life insurance businesses can only be undertaken by a public limited company under the relevant public company legislation, or a branch office of a foreign insurer (in both cases, subject to a license being granted to operate from the Ministry of Finance, with approval of the



cabinet). Transitional arrangements were granted to private companies already registered and licensed until February 2013, from which date any non-compliant insurer can continue to operate for a further three years, but cannot issue new policies. Failure to convert to a public company by February 2016 will lead to a revocation of license.

Insurers and reinsurers can only carry out the business specified in their business licenses. The Life and Non-Life Insurance Acts set out a number of activities and investments which insurers are prohibited from pursuing. The OIC also issues regulations restricting the ways in which insurers may invest their funds. Life insurers cannot engage in non-life business and vice versa.

Domestic insurers

Insurance/reinsurance providers

The Insurance Acts prohibit any person from entering into an insurance contract or acting as an insurer unless he has obtained a license to engage in life/non-life insurance business. An application for a license to engage in the insurance business must be lodged the company promoters with the Ministry of Finance. On approval being granted by the Minister, the promoters must:

- Be formed as a public company limited;
- lodge a security deposit; and
- maintain an adequate capital fund within six months of incorporation.

On satisfying the aforementioned criteria, a license 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 revoked.

At present, the insurance market is crowded, and the Thai government's long-standing policy is that no new insurance business license will be issued. Accordingly, in practice, new players can only enter the Thai insurance market by way of an M&A.

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 a company, is required to obtain a license from the OIC. Broker licenses may be awarded to individuals or corporate entities.

An agent, defined as a person assigned by a company to induce persons to enter into a non-life/life insurance contract with the company, must obtain a license from the OIC, which is specific to a single insurer. Agent licenses are only granted to individuals, who must fulfil a number of criteria relating to qualifications and suitability. No person may hold both a broker's and agent's license.

International insurers

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; or
- Entities registered in Thailand which have more than 50% of their voting shares held by persons falling within the first point above, or by a parent company fulfilling the same conditions.

The OIC has the power to permit up to 49% foreign ownership subject to the requirements set out in OIC Notification re: criteria for non-Thais to hold up to 49% in (life and non-life) insurance companies.

Beyond that, under 2016 Ministry of Finance Notifications, the Minister has discretion to allow foreign ownership of greater than 49% in insurance companies (both life and non-life) under certain circumstances. The minister also has the authority to allow more than one-half of the board of directors to be comprised of non-Thai directors.

In 2023, the OIC introduced updated regulations, procedures and conditions governing reinsurance for both life and non-life insurance sectors. These changes were outlined in the Notifications re: Rules, Procedures and Conditions on Reinsurance for Life and Non-Life Insurance Companies B.E. 2566. These notifications aim to establish comprehensive guidelines and prerequisites for a ceding company to adhere to, including the following requirements:

- (i) Procuring a Reinsurance Management Framework (RMF).
- (ii) Procuring risk management controls for reinsurance activities.
- (iii) Considering the credit rating as suggested by the OIC notification for treaty reinsurance and facultative reinsurance.
- (iv) Entry into financial reinsurance contracts or finite reinsurance contracts is subject to the following conditions:
 - obtaining advice on appropriateness from an actuary and with the approval of the Board of Directors;
 - undergoing an assessment for significant transfer of risks certified by an auditor approved by SEC; and
 - maintaining pertinent supporting documentation as required for further review/examination by the OIC (if so required).
- (v) Submitting a reinsurance efficiency analysis report to the OIC within the required time period.

The 2023 notifications were issued as legal measures for the supervision of reinsurance business by foreign reinsurers in Thailand.



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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 would require a foreign business license.

Other providers of insurance/reinsurance-related activities

Other service providers would be subject to the provisions of the Foreign Business Act described above.

Capital reserve requirements

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 THB 500 million (life) and THB 300 million (non-life). The RBC regime relates capital requirements and solvency margins to: (1) Insurance risk; (2) Marketing risk; (3) Credit risk; and (4) Clustered portfolio risk; (5) Reinsurance risk; (6) Concentration risk; (7) Property investment risk; (8) Operational risk; and (9) Insurance risk diversification and asset risk.

The RBC regime has now been fully implemented by the OIC. The OIC has issued various RBC notifications to supervise the capital reserves of life and non-life insurance companies and is now seeking public comment on the draft RBC Notification No. 6 in order to replace the previous notification. The draft RBC Notification No. 6 aims (i) to ensure the uncertainty of business recession in Thailand and fluctuation of interest rate and (ii) to promote life insurance business in risk management by reinsurance in relation to surrender risk capital.

Non-life insurers must maintain reserve funds primarily for reserve funds for net written premiums and reserve funds for claims.

Reserve funds for net written premiums:

A non-life insurer must maintain reserve funds for net written premiums up to an amount of no less than 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 an amount of no less than 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; and
- comply with statutory requirements regarding investment activities.

Investment management and markets

The investment activities of insurers are also governed by the OIC's Notifications re Investments and Other Business Operations of Insurers and their amendments. Life and non-life insurers must prepare their investment policy and investment plan in writing and submit them to the OIC annually. Insurers are also allowed to retain a professional investment advisory firm as their advisor with prior consent from the OIC registrar.

The notifications prescribe investment proportions depending on the issuer/owner of assets as follows:

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



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(6) A property fund, real estate investment trust, infrastructure fund, or an infrastructure trust up to 10% of the company's investment assets;

(7) Other entities: for each entity up to 5% of the insurer's investment assets.

On June 2, 2022, the OIC issued new Notifications Re: Investments and Other Business Operations of Insurers No. 6 for both life and non-life insurance companies (Notification No.6). Notifications No.6 support investment by life and non-life insurance companies in basic infrastructure in Thailand and additional credit rating activities. Notifications No. 6 have the following key changes:

- (i) The insurance company must arrange a Credit Committee (or equivalent) if they provide a loan (not including personal loan to its employee and a loan under a guarantee by its insurance policy), a car leasing, avals to bill of exchange, or issuance of letter of guarantee as a guarantee of performance of contract for any project;
- (ii) New specific credit policy to deal with loan, car leasing, aval to bill of exchange or issuance of letter of guarantee to any project;
- (iii) New syndicated loans for infrastructure business by government as a new permissible investment for the insurance companies;
- (iv) The duty of the insurance companies to report the investment to the registrar within 30 days as of the date of investment; and
- (v) Any transaction in ways of loans, car leasing, the avals to bill of exchange or letter of guarantee for performance of projects that were carried out before the effective of the Notifications No. 6 must comply with the Notifications within 180 days as of the effective date of the Notifications No.6.

Complaints and OIC's arbitration system

To mitigate issues in insurance disputes, the OIC has provided an alternative to arbitration through the newly formed Insurance Mediation Centre (IMC) since March 2016, which will provide mediation in order to encourage settlements between insureds and insurance providers. Individuals with the right to the performance of an insurance policy (i.e., the insured person, beneficiary, or any other party suffering loss as a result of the insurance policy) will be able to apply for this mediation.

Apart from the IMC's mediation, traditionally, insureds have largely had two options to initiate claims against insurers, which are either by: (i) filing a civil complaint against the insurer; or (ii) going through the OIC's arbitration system.

Civil complaint against the insurer

Under Thai law, cases between the insured and the insurer are deemed to be consumer-related cases, and the cases are therefore governed not only by the relevant insurance laws in statute and the Thai Civil and Commercial Code, but also consumer protection-related laws.

As a consumer, the insured is exempted from all fees and costs, excluding liability for fees in a final court verdict. 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.

Under Thai law, the prescription (limitation) period for enforcing a claim under an insurance policy is two years from the date of loss, which is considered very short compared to other jurisdictions. However, such time prescription would be interrupted if there is a negotiation in relation to damages between the consumer and business operator until either party has terminated the negotiation.

OIC's arbitration system

Thai insurance policies are required to include a standard arbitration clause that is pre-approved by the OIC, provided that the insured may, at its discretion, decide whether to refer any claim to the OIC's arbitration system, and the insurer agrees that the OIC's arbitrator shall have the authority to decide the case. This clause gives the insured another option rather than going straight to court. (Commercial insurance policies commonly use other arbitration clauses, and disputes are settled via local or international arbitral institutions such as the TAI, THAC, ICC, SIAC, or ad-hoc arbitration.)

The most common claims referred to the OIC's arbitration process arise from alleged unfair adjustment of claims or unfair delay in paying claims to the insured. Most cases settle through mediation, but those that do not may result in the insurer being fined by the OIC in addition to being ordered to pay damages.

Creditor hierarchy

Non-life insurers must deposit cash with the OIC's registrar according to Ministerial Regulation No. 5 B.E. 2539. The insurer is required to submit a fixed amount of THB 3.5 million to the registrar for each type of insurance they intend to provide, e.g., fire insurance, motor insurance, transportation insurance, and other types of insurance.

Non-life insurers must also submit a deposit of no less than 25% of the total capital reserve for net written premiums to the OIC's registrar. The assets must be submitted together with the report of the total reserve for the second quarter of each year, the fourth quarter report re financial situation of the insurer of each year, and the annual report re 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.



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These assets, submitted to the OIC's registrar, shall not be enforceable against any other debts as long as the insurer is still operating. When an insurance company dissolves or is declared bankrupt, insureds who have an existing right to claim under their policy shall have the highest hierarchy as creditors over these assets and can enforce their debts over other debts.

During 2021-2022, insurance companies that insured against the COVID-19 infection claims were heavily affected by the pandemic. Four insurance companies (The One Insurance PCL, Asia Insurance 1950 PCL, South East Insurance PCL and Thai Insurance PCL) have decided to discontinue their business due to insufficient funds and failure to meet the OIC regulatory requirements. The Ministry of Finance has now revoked their business licenses, and these insurance companies have entered into the liquidation process. The insured parties who are affected by this revocation are entitled to preferential rights over the General Insurance Fund.

Rehabilitation of non-life insurance company

In April 2022, the OIC issued the Notification re: Rules, Procedures, and Conditions to obtain Approval for Rehabilitation of Non-Life Insurance B.E. 2565 ("Notification for Rehabilitation of Non-Life Insurance"). The Notification for Rehabilitation of Non-Life Insurance sets out certain criteria and requirements for either the non-life insurance company or the creditor to seek approval from the OIC prior to commencement of rehabilitation through the court proceeding. The applicant, either a non-life insurance company or a creditor, must satisfy such criteria and requirements for rehabilitation.

In case of a non-life insurance company being an applicant, they are required to submit: (i) the rehabilitation plan; (ii) the minutes of a board of directors meeting with a resolution to approve the rehabilitation having at least consideration about the guidelines for debt resolved, possibility of repayment and time period for rehabilitation; and (iii) the list of assets and liabilities. In case of a creditor being an applicant, they are required to submit the rehabilitation plan and the list of other creditors and their addresses. Subject to completion and satisfaction of documents and information required, the OIC must render their decision (i.e., approval or disapproval of the rehabilitation) in writing within 15 days of receipt.

If the OIC approves the rehabilitation, the applicant must submit a petition for rehabilitation with the Bankruptcy Court within 5 business days from the date of receipt of OIC's approval. If the OIC disapproves the rehabilitation, the applicant is entitled to file an appeal with the Minister of Finance within 7 days of receipt of OIC's notification of disapproval. With regards to COVID-19 infection claims, Syn Mun Kong Insurance (SMK) obtained approval from the OIC for rehabilitation proceedings with the Central Bankruptcy Court in May 2022. However, in December 2023, the Central Bankruptcy Court released SMK from the rehabilitation plan, and SMK announced that it will indefinitely cease accepting any new insurance policies or underwriting.

Personal Data Protection Act, B.E. 2562 (PDPA)

In 2019, Thailand enacted its first unified law governing personal data protection, the Personal Data Protection Act B.E. 2562 (2019) (PDPA), to establish standards for collection, use, and disclosure of personal data in Thailand. Certain parts of the PDPA (i.e., the parts related to the establishment of the Office of the Personal Data Protection Committee and the Personal Data Protection Committee) have been effective following date of the publication of the law, whereas the requirements in relation to the collection, use, and disclosure of the personal data, as well as data subject rights, took effect on June 1, 2022.

Since the enactment of the PDPA in 2019, business operators and regulators in Thailand have focused more on how to collect, use, disclose, and conduct other activities related to personal data in compliance with the PDPA. In this regard, the OIC has issued the guidelines for both life and non-life insurance businesses for compliance with the PDPA in order to assist insurance business operators to comply with the law properly. The OIC guidelines provide clarification on how to process the personal data of insureds, beneficiaries, agents, brokers, and other relevant persons. For example, before the issuance of the OIC guidelines, there were issues regarding the requirement for the collection of health data, which is considered as sensitive personal data under the PDPA. Under the PDPA, the collection of such health data may require explicit consent from insured parties. The OIC guidelines provide some relaxation regarding the collection of such sensitive personal data by prescribing that the collection of sensitive personal data for insurance purposes can rely on the "public interest" legal obligation, which is one of the available lawful bases under the PDPA, and therefore, the consent requirement is exempted.

The Personal Data Protection Committee (PDPC) has become active in enforcing the PDPA, and a few precedent cases on personal data protection — including those relating to the insurance business — have been published by the PDPC. Moreover, the PDPC has started approaching business operators, including insurance companies, to discuss issues when there is a complaint or news about a violation of the PDPA.

*This country profile was kindly provided by **Noppramart Thammateeradaycho**, partner, **Witchupong Chittchang**, senior associate and **Thammapas Chanpanich**, associate at **Tilleke & Gibbins***

[Complaints Procedure](#)

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