

Thailand: Easing of Foreign Shareholding Limit for Insurance Companies

The Ministry of Finance recently issued its long-awaited notification on relaxation of the foreign shareholding limit for life and non-life insurance companies. This took effect on 18 January 2017. This briefing provides an outline of the changes under the notification and criteria that must be met to benefit from the notification.

Under the notification, foreigners (including a foreign entity and a 50% or more foreign-owned Thai entity) may be permitted by the Finance Minister, pursuant to a recommendation from the Thai Insurance Commission (IC), to hold more than 49% of the voting shares of a Thai insurance company and foreign directors may comprise more than half of its directors, if the insurance company can show that it will strengthen and stabilize the insurance company and the insurance industry.

The notification requires that after the relaxation is granted, the total capital available (TCA) of the company must not be less than Baht 1 billion for a non-life insurance company or Baht 4 billion for a life insurance company. However importantly, it only allows relaxations for financially strong foreign shareholders with substantial experience and expertise in the insurance business.

Criteria for an insurance company

A Thai insurance company, as applicant, must meet the following

criteria:

- have a capital adequacy ratio not less than the minimum ratio imposed by the IC; and
- have a business plan for at least 3 years to strengthen its business and the insurance sector as a whole. Such business plan must cover, amongst other things, business strategy, risk management, a know-how and technology transfer plan and capital management plan.

If the company would also like to have foreigners comprise of more than half of its total directors, it can request this at the same time, provided the foreign directors meet the qualifications imposed by the Office of the IC.

Total Capital Available requirement

An insurance company will be required to ensure that its TCA reaches the stipulated level. Therefore, a company having a TCA lower than Baht 1 billion (for non-life insurance) or Baht 4 billion (for life insurance) would be required to increase its share capital to meet the stipulated level once the relaxation is

granted.

Qualifications of a Foreign Shareholder

The proposed foreign shareholder, for whom the company seeks relaxation, must meet the following qualifications:

- be an insurance company, or a company which conducts business that supports or is related to insurance;
- have at least 10 years experience and expertise in insurance or a business supporting or relating to insurance business;
- be financially and operationally stable and have (directly or through its parent company) a rating no lower than 'A' from a credible international credit rating agency;
- have a clear business plan and a know-how transfer process in order to develop an operational system and support the operation and competitiveness of the insurance company; and
- have capability to provide financial support to the Thai

insurance company in order to accomplish the plan and operate the business in a stable manner.

Other key issues

Once the relaxation is granted, the company will be subject to the following requirements:

- a reporting requirement if foreign shareholding changes by 5% or more;
- a requirement for the IC's approval if the permitted foreign shareholder transfers shares to another foreign shareholder whose shareholding reaches 20% or more as a result;
- a dividend can only be paid if the company has complied with its business plan and other conditions imposed by the Finance Minister. Additionally, a non-life insurance company must have had a consecutive net profit for at least the 2 accounting years prior to distribution of the dividend; and
- the permitted shareholder and its related persons are not allowed to engage in any other insurance business in Thailand, in the form of a branch office or holding shares in other Thai insurance companies, unless certain

exemptions apply and are approved by the Finance Minister, except for an investment through a mutual fund or similar investment without an intention to avoid the restriction.

Failure to comply with any such requirement may result in the permitted relaxation being amended by the Finance Minister.

If you have any questions in relation to any of the issues raised in this briefing please contact the authors below.

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