

Notification of the Ministry of Finance

Re: Rules, Procedures, and Conditions or Time Limits for the Application for, and the Granting of, Relaxation for a Non-Thai Person to Hold Shares in Excess of 49 Percent of the Total Voting Shares Sold, or for Directors who are Non-Thai Persons to Comprise More than One-half of the Total Number of Directors in the Case that a Non-life Insurance Company's Status or Operations are in a Condition that might Cause Damage to the Insureds or the Public, B.E. 2559 (2016)

By virtue of the fourth paragraph of section 9 of the Non-life Insurance Act, B.E. 2535 (1992), as amended by the Non-life Insurance Act (No. 3), B.E. 2558 (2015), the Minister of Finance hereby issues the following notification.

Clause 1 This notification is called the "Notification of the Ministry of Finance Re: Rules, Procedures, and Conditions or Time Limits for the Application for, and the Granting of, Relaxation for a Non-Thai Person to Hold Shares in Excess of 49 Percent of the Total Voting Shares Sold, or for Directors who are Non-Thai Persons to Comprise More than One-half of the Total Number of Directors in the Case that a Non-life Insurance Company's Status or Operations are in a Condition that might Cause Damage to the Insureds or the Public, B.E. 2559 (2016)."

Clause 2 This notification shall come into force from the date after the publication in the Government Gazette.

Clause 3 In this notification,

"non-Thai person" means a foreigner under the foreign business law.

"Office" means the Office of Insurance Commission.

Clause 4 A company that will file an application for relaxation of a non-Thai person to hold shares in excess of 49 percent of its total voting shares sold, or for directors who are non-Thai persons to comprise more than one-half of the total number of its directors with the Minister, upon the recommendation of the Commission under this notification, must meet the following criteria:

(1) the company's status or operations are in a condition that might cause damage to the insureds or the public, under any of the following circumstances:

(a) in the event that the Registrar, with the approval of the Commission, has ordered that the company improve its conditions or operations, or increase or reduce its capital, or temporarily suspend the underwriting of non-life insurance, by virtue of section 52 of the Non-life Insurance Act, B.E. 2535 (1992), as amended by the Non-life Insurance Act (No. 2), B.E. 2551 (2008); or

(b) in the event that there is an adverse event extensively affecting insurance business, which causes the company to be obliged to pay substantially increased amount of compensation to the insureds or the public, and has an impact on the capital adequacy ratio that must be maintained by the company;

(2) the existing shareholders are unable to make an additional contribution to the share capital; and

(3) the company is unable to find Thai investors to inject funds to increase its share capital to an amount that enables the company to continue its business with long-term stability and security.

Clause 5 A non-Thai person for whom relaxation will be sought by the company in order to hold its shares according to clause 4 must be an insurance company, or a company in the insurance business group, or a financial business that is related to the insurance business, and must have the following qualifications or ability:

- (1) has at least 10 years of expertise and experience relevant to the undertaking of insurance business;
- (2) has financial and operational stability, with a credit rating of itself or its parent company not below "A" from a recognized credit rating agency, and with an international network of business operations;
- (3) has the explicit business operation plan, plan for rectification of the company's financial status, and plan for the transfer of technology and expertise, in order to improve the company's management and enhance its business operation capability and competitiveness;
- (4) is able to inject funds to increase the capital to an amount that enables the company under clause 4 to continue its business with stability and security, provided that the funds for such capital increase shall not be less than Baht 500 million and shall cause the company under clause 4 to have a capital adequacy ratio of not less than 250 percent.

Clause 6 In applying for relaxation, the company must comply with the following.

- (1) The company must have a business operation plan which includes evidence and sufficient details to ensure that it can fully satisfy the following conditions:
 - (a) there are explicit operating policies and strategies to rectify the company's financial status and operations, improve its management, and enhance its business operation capability and competitiveness;
 - (b) there are management systems that include human resource plan, information technology management system, as well as system for managing various kinds of risks, which can identify, evaluate, control and monitor the company's overall risks;
 - (c) there is a system for internal audit, internal control and compliance with relevant regulations;
 - (d) there are a capital management plan which must specify the capital adequacy ratio at not less than 250 percent, and a plan in the case that the capital adequacy ratio is below the target.

- (2) The company must have a shareholder structure that is clear and consistent with the law.
- (3) In the case that the company wishes to increase the number of non-Thai directors to more than one-half of the total number of directors, these non-Thai directors must have the qualifications and possess no prohibited characteristics as specified by law, and must have the roles, duties, and responsibilities as specified in the Notification of the Office of Insurance Commission Re: Practice Guidelines, Structure, Qualifications, and Code of Best Practice of Directors of Life Insurance Companies and Non-life Insurance Companies.

Clause 7 The company must file an application for relaxation, upon the recommendation of the Commission, to the Minister through the Office, together with at least the following documents and evidence to support consideration:

- (1) evidence of business operations of the shareholder who is a non-Thai person under clause 5, such as a certificate of incorporation of a company, or a letter evidencing the status as a

juristic business operator which is certified by the embassy or consulate of the relevant country in Thailand, or by a notary public or person with the same power and duties as a notary public, etc., and, if the non-Thai person under clause 5 is under the supervision of an overseas regulatory agency, a document evidencing the permission for operating business in that country from the regulatory agency is also required;

(2) a letter of permission for holding shares in the company under clause 4 in order to operate business, or a written certification of the operations that meet the standards consistent with the regulations of the regulatory agency of the relevant country in the case that the non-Thai person under clause 5 is under the supervision of that overseas regulatory agency;

(3) a written certification of the non-Thai person under clause 5, or of its parent company, which certifies that:

(a) it will oversee and ensure that the company applying for relaxation under this notification complies with the existing or future laws, regulations, and policies of the regulatory agency in Thailand;

(b) it will immediately and fully support the liquidity and capital increase in the company applying for relaxation under this notification once its capital adequacy ratio drops, or is likely to drop, below the target specified by the non-Thai person in the plan under clause 6 (1) (d);

(c) it will provide information to the Office upon request;

(4) the details relating to the non-Thai shareholder, such as diagram and structure of its business group and organization, its expertise, past operating results, audited financial statements of the previous three years, etc.;

(5) the company's shareholder structures and lists of directors, as at present and after the relaxation;

(6) the business operation plan under clause 6 (1), which covers a period of at least three years, and must consist of at least the following details:

(a) the company's projected financial statements for at least three years, or until the time the breakeven is reached, stating the details of the assumptions for the preparation of these projected financial statements;

(b) the business strategies, vision, business operation direction and target, competition strategies, and target customers;

(c) a business plan which shows the company's current condition and the direction for resolving its financial status and operations, as well as the transfer of technology and expertise in order to enhance the company's capability and competitiveness;

(d) an analysis of the competition in the insurance business, including the strengths, weaknesses, opportunities, and obstacles in the operation of business;

(e) the capital management plan, projected capital adequacy ratio, funds mobilization direction, and funding sources;

(f) a human resource plan that provides for personnel in sufficient number, and with adequate qualifications and expertise, in various fields, in particular, the actuaries, auditors, and underwriters;

(7) the details of the organization structure after the relaxation;

(8) the documents and evidence showing that the existing shareholders do not want to subscribe capital increase shares.

Clause 8 In considering the relaxation under this notification, the Office may demand that the company or the non-Thai person that will hold shares in the company under clause 5 provide clarification in person, or submit additional documents or evidence to support the Minister's consideration, upon the recommendation of the Commission. If that company or person fails to comply therewith, it shall be deemed that the company does not want to file an application for relaxation under this notification.

Clause 9 In considering the application for relaxation under this notification, the Minister, upon the recommendation of the Commission, must make consideration and notify the company of the result thereof within 90 days from the date the Office receives the application, the clarification under clause 8, and correct and complete documents. In granting the relaxation, the Minister, upon the recommendation of the Commission, may also specify any conditions or time limits.

In regard to the relaxation under paragraph one, the Minister, upon the recommendation of the Commission, may grant relaxation for the non-Thai person to hold no more than 75 percent of the total voting shares sold, or for non-Thai directors to comprise no more than three-fourths of the total number of directors. The relaxation period may not exceed 10 years.

When the period under the preceding paragraph expires, the company must reduce the shareholding ratio of the non-Thai person to no more than 49 percent of the total voting shares sold, and reduce the number of non-Thai directors to less than one-half of the total number of directors, within one year.

Clause 10 When relaxation is granted by the Minister, upon the recommendation of the Commission, under this notification:

(1) the company must register the increase of capital to a minimum of Baht 500 million, and make full payment for its shares;

(2) the non-Thai person under clause 5 may not sell or transfer its shares in the company to another non-Thai person;

(3) to pay dividends to its shareholders, the company must have a net profit for at least two consecutive years, which includes the accounting period in which dividends will be paid. This net profit must be the profit actually arising from its business operations as shown in the preceding calendar year's financial statements which have been audited and certified by a certified public accountant. In the case of a net profit of another accounting period, the financial statements must be reviewed by a certified public accountant. In addition, the certified public accountant must not provide a qualified opinion in reviewing or auditing these financial statements,

Clause 11 In the case that the company fails to comply with clause 6, clause 10, or the condition or time limit specified by the Minister, upon the recommendation of the Commission, or in the case that the person making certification under clause 7 (3) fails to comply with the written certification given by it, the Office shall instruct the company to complete the rectification within a specified period but no more than 90 days. If the company fails to do so, the relaxation shall be deemed to expire, and the company shall reduce the shareholding ratio of the non-Thai person and the number of non-Thai directors to those existing before the relaxation, or to be within the limit prescribed by law.

Clause 12 In the case that it is not possible to comply with the provisions herein, and damage will thereby be caused to the insureds or the public, the Minister, upon the recommendation

of the Commission, may specify the shareholding ratio of the non-Thai shareholder or the number of non-Thai directors differently from that specified in clause 9, paragraph two.

Notified on 4 March 2016.

Apisak Tantivorawong

Minister of Finance