

Notification of the Office of Insurance Commission

Re: Cases Under Which It Is Deemed that a Director, Manager, Person Authorized to Act on Behalf of a Non-Life Insurance Company, or a Consultant to a Non-Life Insurance Company Has a Bad Record or Carries Out Any Activity Showing a Lack of Responsibility or Due Care that A Person of Such Profession Is Supposed to Have in His Conduct, B.E. 2556 (2013)

To establish the framework for the consideration of cases under which it is deemed that a director, manager, person authorized to act on behalf of a company or a consultant to a company has a bad record or carries out any activity showing a lack of responsibility or due care that a person of such profession is supposed to have in his conduct pursuant to section 34 (8) of the Non-Life Insurance Act, B.E. 2535 (1992), amended by the Non-Life Insurance Act (No. 2), B.E. 2551 (2008), taken in conjunction with the resolution of Insurance Commission Meeting No. 9/2012 on 23 November 2012, the Office of the Insurance Commission hereby issues the following notification.

Clause 1 This notification shall be called the "Notification of the Office of the Insurance Commission Re: Cases Under Which It Is Deemed that a Director, Manager, Person Authorized to Act on Behalf of a Non-Life Insurance Company, or a Consultant to a Non-Life Insurance Company Has a Bad Record or Carries Out Any Activity Showing a Lack of Responsibility or Due Care that A Person of Such Profession Is Supposed to Have in His Conduct, B.E. 2556 (2013)."

Clause 2 This notification shall come into force on the day following the date of its publication in the Government Gazette.

Clause 3 In this notification,

"authorized person" means:

(1) a deputy manager, assistant manager or any person holding a position which is equivalent but is called otherwise;

(2) a person, under an agreement executed with the company, authorized to manage all or certain functions; or

(3) a person, by behavior, who has the power to control or influence managers or directors or management of a company to comply with the person's orders in the establishment of policies or operations of the company;

"consultant" means a person performing duties like a director, manager, deputy manager or assistant manager, including any person having the aforementioned characteristics but called otherwise; however, it does not include a person who, under a contract, performs work for a company, with the nature of the work requiring special technical knowledge and competency or specialized skills such as accounting consultant, legal consultant, information technology consultant, tax consultant, linguistic consultant, and corporate communication consultant;

"Office" means the Office of the Insurance Commission; and

"company" means a company under the law governing non-life insurance and shall include the branch office of a foreign non-life insurance company that is licensed to undertake the non-life insurance business in the Kingdom under the law governing non-life insurance.

Clause 4        It shall be deemed that a director, manager, person authorized to act on behalf of a company or consultant to a company has a bad record or carries out any act that shows a lack of responsibility or due care that a person of such profession is supposed to have in his conduct, in cases including but not limited to the cases below:

(1)        has been imprisoned by a final court judgment, whether or not the sentence is suspended, for an offense only in relation to property;

(2)        having been named in any complaint or subject to any legal proceedings initiated by the Office, regulatory agency or agency authorized by laws, whether in Thailand or overseas, for an offense only in relation to property;

(3)        being a person subject to a court's order that his or her property shall become state property under the anti-corruption law, the anti-money laundering law, or any other similar laws;

(4)        being a designated person under the counter-terrorism financing law;

(5)        being considered by a regulatory agency or agency authorized by law, whether in Thailand or overseas, as a person possessing prohibited characteristics for being director, manager, or a person with power of management, or an executive of an organization under the supervision or power of such agency, for an offense only in relation to property;

(6)        there is probable cause to believe that he or she exhibits or has exhibited any behavior that indicates malpractice or provision of services in a dishonest or unfair manner or is involved in or supports or was involved in or supported the aforementioned behavior of other persons;

(7)        there is probable cause to believe that he or she exhibits or has exhibited any behavior that indicates unfair practices or taking advantage of the insured persons, beneficiaries, shareholders or the general public, or is involved in or supports or was involved in or supported the aforementioned behavior of other persons;

(8)        there is probable cause to believe that he or she exhibits or has exhibited any behavior that indicates disclosure or dissemination of false or misleading information or documents, or concealment of material facts which should have been expressly disclosed that may affect the decision making of insured persons, beneficiaries, shareholders or the general public, or is involved in or supports or was involved in or supported the aforementioned behavior of other persons;

(9) there is probable cause to believe that he or she exhibits or has exhibited any behavior that indicates failure to reasonably supervise to prevent a juristic person or business under his or her power of management or personnel under his or her supervision (if any) from performing any act or omitting any act in violation of the law on insurance or notifications issued by virtue thereof, which may lead to lack of confidence in the insurance business or damage to reputation, position, business operation, insured persons, beneficiaries, shareholders or the general public; or

(10) there is probable cause to believe that he or she exhibits or has exhibited any behavior that indicates lack of ethics or standards of conduct in connection with the insurance business, or is involved in or supports or was involved in or supported the aforementioned behavior of other persons.

Clause 5 There shall be a committee appointed by the Office, consisting of representatives from the government and private sectors, to consider whether any person who is or will be a director, manager, person authorized to act on behalf of a company, or consultant to a company, is a person with the characteristics indicating a lack of responsibility or due care that a person of such profession is supposed to have in his conduct, under clause 4 (6), (7), (8), (9) and (10), and shall then present its opinion to the Office.

Any committee member having any interest in the matter under consideration in the manner that may affect impartial expression of opinions shall report that interest and shall be prohibited from considering the matter.

Notified on 26 July B.E. 2556 (2013).

Pravej Ongartsittigul

Secretary-General

Insurance Commission