

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 Order to Strengthen the Security of a Non-Life Insurance Company, or to Strengthen the Security of Non-Life Insurance Business, B.E. 2559 (2016)

By virtue of section 9, paragraph four 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 Order to Strengthen the Security of a Non-Life Insurance Company, or to Strengthen the Security of Non-Life Insurance Business, B.E. 2559 (2016)."

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

Clause 3 In this notification,

"Commission" means the Insurance Commission.

"Office" means the Office of Insurance Commission.

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

Clause 4 A company that wishes to file an application with the Minister for relaxation of the regulation, upon the recommendation of the Commission under this notification, in order for 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, must meet the following criteria:

(1) have a capital adequacy ratio ("CAR") not lower than the rate specified in the Notification of the Insurance Commission re: Prescribing the Types and Categories of Capital Funds, Including the Rules, Procedures, and Conditions for Calculating Capital Funds of Non-Life Insurance Companies; and

(2) have a business operation plan to strengthen the security of the non-life insurance company and non-life insurance business as a whole.

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 a business sector that is related to and supports the undertaking of an insurance business, and must have the following qualifications:

(1) have no less than 10 years of expertise and experience that are relevant to and support the undertaking of an insurance business;

(2) have financial and operational security, 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) have an explicit business operation policy and a plan for the transfer of technology and expertise, in order to develop the company's management system and enhance its business operation capability and competitiveness; and

(4) be able to provide financial support to enable the company to implement the business operation plan specified in clause 4(2) as well as to continue its business with security and stability.

Clause 6 In applying for relaxation, the company shall file an application with the Minister, upon the recommendation of the Commission, through the Office, together with the following documents and evidence to support consideration:

(1) the details of the calculation of CAR as of the end of the latest quarter or year;

(2) the business operation plan, covering a period of at least three years, which must demonstrate the strengthening of security; development of management systems; corporate governance; efficient operating systems; technology systems and the transfer of technology; knowledgeable and expert personnel, as well as the development of products and distribution channels, in order to elevate the operational standards and capability and promote the development of the non-life insurance business for its growth and stability. This plan must also consist of at least the following details:

(a) the business strategies, consisting of:

- 1) vision, direction, and main target of the business operation;
- 2) main business bases and insurance products;
- 3) target customer bases; and
- 4) competition and customer approach strategies;

(b) a business plan, consisting of:

- 1) target and business expansion;
- 2) insurance underwriting and re-insurance;

- 3) management of assets, liabilities, and investments; and
 - 4) development of insurance products, offering process, and distribution channels;
- (c) corporate governance, risk management, internal control, and compliance with the law;
- (d) the operating systems for accounting, finance, database, insurance underwriting, claim payment, and customer service;
- (e) a plan for development of technology systems and transfer of technology and expertise;
- (f) a human resource plan that provides for personnel in sufficient numbers, and with adequate qualifications and expertise, in various fields; in particular, the actuaries, auditors, and underwriters, including a plan for development of knowledge, expertise, and skill of the company's personnel;
- (g) the capital management plan and financial information, consisting of:
- 1) the capital management plan, capital increase details, and target CAR which corresponds to the outcome of the Own Risk and Solvency Assessment (ORSA), including a plan if the CAR is below the target;
 - 2) the company's projected financial statements and projected CAR for at least three years, stating the details of the assumptions for the preparation of the projection; and
 - 3) the shareholder dividend policy;
- (h) an analysis of the competition, consisting of:
- 1) an analysis of the economic conditions and insurance industry; and
 - 2) an analysis of the strengths, weaknesses, opportunities, and obstacles in the operation of business;
- (3) the documents evidencing that the non-Thai person for whom relaxation will be sought by the company in order to hold its shares has the qualifications and ability as specified in clause 5, which consist of at least the following:
- (a) the details of the non-Thai shareholder, such as structure of its business group and organization; its expertise; past operating results; audited financial statements of the previous three years, etc.;
 - (b) the credit ratings for the previous three years by the credit rating agencies, and the latest credit rating report;
 - (c) 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 its status as a juristic business operator that 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; and if the non-Thai person under clause 5 is under the supervision of an overseas regulatory agency, a document evidencing the permission to operate a business in that country from the regulatory agency;

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

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

1) 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;

2) it will immediately and fully support the liquidity and capital increase in the company applying for relaxation under this notification once its CAR drops, or is likely to drop, below the target specified by the company in its business operation plan; and

3) it will provide information to the Office upon request.

(4) the organization structure complies with the corporate governance framework, and is consistent with and supportive to the implementation of the business operation plan;

(5) the shareholders structure, as of the present and after the relaxation;

(6) if the company wishes to seek relaxation for its non-Thai directors to comprise more than one-half of the total number of directors, the company must submit additional documents, as follows:

(a) a written certification that the non-Thai persons who will be its directors have the qualifications and possess no prohibited characteristics as specified by law, and 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; and

(b) a document showing the details about the ratio of the company's directors, as at present and after the relaxation.

Clause 7 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 no longer wishes to file the application for relaxation under this notification.

Clause 8 In considering the application for relaxation under this notification, the Commission will consider and submit its recommendation to the Minister within 90 days from the date the Office receives the correct and complete application, documents, and clarifications. The Minister will consider and notify the company of the result within 90 days from the date of receiving the Commission's recommendation.

In granting the relaxation, the Minister, upon the recommendation of the Commission, may also specify any conditions or time limits.

Clause 9 When relaxation is granted by the Minister, upon the recommendation of the Commission, under this notification, the company shall comply with the following.

(1) The company must have a total capital available of not less than Baht 1 billion throughout the period of its business operation.

(2) In the case of change in shareholding ratio of the non-Thai person who is granted relaxation under clause 5, the company must comply with the following:

(a) if the change in shareholding ratio of the non-Thai person represents five percent or more of the total voting shares sold, the company must report it to the Commissioner within 30 days of the date of that change; and

(b) if the change in shareholding ratio of the non-Thai person who is granted relaxation under clause 5 causes any non-Thai person, other than the person who is granted relaxation under this notification, to hold 20 percent or more of its total voting shares sold, the company must file an application with the Minister for relaxation, upon the recommendation of the Commission.

(3) The non-Thai person under clause 5, and the juristic person or individual in that non-Thai person's business group, will not be able to operate an insurance business in Thailand in the form of a branch of an overseas non-life insurance company, or to hold shares in another non-life insurance company, unless there is a reasonable cause and relaxation is granted by the Minister, upon the recommendation of the Commission, or the investment is made through a mutual fund, or a business of a similar nature to mutual fund, which is not considered to be the avoidance of the compliance with any requirement relating to shareholding ratio.

(4) The payment of dividends to shareholders can only be done when the company has fully complied with the business operation plan under clause 6(2)(c), (d), (e), (f) and (g), as well as the conditions and time limits prescribed by the Minister, and upon the recommendation of the Commission. The company must have net profits for at least two consecutive years, including the accounting year in which dividends are to be paid. The net profits must arise from the business operation as it appears in the financial statements for the past calendar years and which have been audited by a certified public accountant, and the certified public accountant must make their comments without conditions.

Clause 10 If the company that is granted relaxation has a plan to accept a transfer of business by holding all shares in the transferor company, thereby causing the transferor company to have non-Thai persons hold more than 49 percent of its total voting shares sold, or to have non-Thai directors more than one-half of the total number of its directors, it shall be deemed that the Minister, upon the recommendation of the Commission, grants relaxation for the transferor company to have non-Thai persons hold more than 49 percent of its total voting shares sold, or to have non-Thai directors more than one-half of the total number of its directors, on a temporary basis for the purpose of implementing the entire business transfer or business consolidation plan of the company that is granted relaxation.

Clause 11 If the company fails to comply with clause 9, or the conditions or time limits specified by the Minister, upon the recommendation of the Commission, or the business operation plan under clause 6(2)(c), (d), (e), (f), or (g), or if the person making certification under clause 6(3)(e) 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 Minister, upon the recommendation of the Commission, may review or change the conditions of the relaxation as consider appropriate.

Notified on 8 December 2016.

Apisak Tantivorawong

Minister of Finance