

## INSURANCE

### STRUCTURE

Thailand has had insurance companies for over half a century, and the industry is regarded as competent and well regulated. The insurance industry was supervised and regulated by the Ministry of Commerce through the Casualty Insurance Act B.E. 2535 (A.D. 1992) and Life Insurance Act B.E. 2535 (A.D. 1992) until the recent amendments imposed by the Casualty Insurance Act (No. 2) B.E. 2551 (A.D. 2008) and Life Insurance Act (No. 2) B.E. 2551 (A.D. 2008), which transferred the supervisory and regulatory role of the Ministry of Commerce to the Ministry of Finance. These Acts permit foreign life and loss insurance companies to operate branch offices in Thailand subject to certain conditions. Compulsory insurance in Thailand is minimal. However, compulsory third-party motor insurance was introduced through the Motor Accident Victims Protection Act B.E. 2535 (A.D. 1992). The Office of Insurance Commission, an independent government organization, was established in 2007 by the enactment of the Insurance Commission Act B.E. 2550 (A.D. 2007) to take over the responsibility of day-to-day administration from the Department of Insurance, Ministry of Commerce.

There are two classes of intermediaries used for obtaining coverage from an insurance company: the agent and the broker. An agent is appointed by an insurance company to sell its products and is committed to work for and support the interests of the insurer, not the client. The recent amendments to the Casualty Insurance Act B.E. 2535 (A.D. 1992) and Life Insurance Act B.E. 2535 (A.D. 1992) impose greater responsibility on insurance companies for the acts of their agents by explicitly providing that a life and non-life insurance company shall be vicariously liable for the act of its agents. In contrast, the broker is appointed by the client, not the insurer. The broker is thus committed to work only in support of the interests of the client and on the client's behalf and can seek coverage with any suitable insurance company. An insurance agent or an insurance broker must obtain a license from the Secretary General of the Office of Insurance Commission.

Both agents and brokers receive commissions from the insurance company. The broker's commission is built into the premium and charged to the client, whether or not one is used. The broker, therefore, has no cause to regard his/her commission as a reward for selecting a particular insurer. It is considered compensation that would be paid by any insurer selected.

Insurance packages for commercial and industrial ventures are generally similar to those in Western countries.

### NEEDS

Insurance needs can be identified by a broker whose role is to identify particular risks to which a person could be exposed. The broker will quantify the effect of such risks on the person's business, recommend action or procedures to avoid or diminish the risk, and propose a program by which the resultant risks that may be too substantial to be carried are placed with an insurer. Premium costs will depend on the base underwriting factors and the skill and experience of the broker.

## LIABILITY

Liability law in Thailand is in its infancy with few precedent-setting cases. Awards on damages granted by Thai courts are microscopic in comparison to those in North America. Therefore, the levels of insurance required and the costs of insurance are comparatively lower in Thailand.

## VEHICLE INSURANCE

The Motor Accident Victims Protection Act B.E. 2535 (A.D. 1992) and the amendments thereto made third-party motor insurance compulsory for all vehicle owners except those owning motorbikes, modified farm trucks, and modified *samlors*.

Under this Act, all owners are required to obtain insurance for injuries or death caused by their vehicles, and drivers are required to renew their vehicle registrations once a year.

Those injured are able to claim an initial payment of THB 50,000 for medical coverage and THB 100,000 for any instance of the following:

- Blindness, deafness, dumbness, or the loss of ability to speak or loss of the tongue.
- Loss of a reproductive organ.
- Loss of an arm or any other organ.
- Physical or psychological deformity.
- Permanent incapacitation.

The initial payment must come from either the insurance company or the Third Party Insurance Compensation Fund within seven days of filing the application for obtaining the initial payment. In addition, such application must be filed with the insurance company or the Third Party Insurance Compensation Fund, as the case may be, within 180 days from the day when the damage has occurred. The Compensation Fund, supported by the government and the insurance industry, will provide protection for injury/death caused by those otherwise uninsured (e.g., stolen vehicles, drivers without third party insurance, and accidents in which insurance firms refuse payment).

In addition to vehicle insurance, Thailand offers life, medical, auto, fire, and other kinds of insurance.

## OPTIONS

There are numerous life and non-life insurance companies active in Thailand. Shopping around can often produce some interesting options, depending upon one's criteria for selection. Most investors prefer to appoint a broker, rather than an agent, who can play a supportive role almost as if a brokerage company were in fact the insurance department of their company.

Pursuant to the recent amendments to the Casualty Insurance Act B.E. 2535 (A.D. 1992) and Life Insurance Act B.E. 2535 (A.D. 1992), a life and non-life insurance company must be a public limited company. At least three-fourths of its board members must be of Thai nationality, and the number of shares held by Thai natural and juristic persons when combined shall not be less than three-fourths of the total voting shares which have been sold. Existing insurance companies have a certain period to comply with these additional requirements. A foreign life insurance company can apply for an operating license by establishing a branch office.

However, it is more common when a global group invests in Thailand for a broker to arrange for their global insurance to be fronted by a domestic insurer (i.e., a domestic insurer who will issue a policy similar to the group's global insurance policy and reinsure the risk completely back to the overseas insurer). In this way, the standards of global coverage are maintained. The foreign investor can also take advantage of the brokerage support services that he/she requires.

As in any country, the prudent foreign investor should investigate the requirements and skills of a good broker and secure the services of a competent professional to meet his/her needs.

## CLAIMS

An insurance contract is defined as an agreement between the insurer and insured, whereby the insurer agrees to make compensation or pay a sum of money in case of contingent loss or any other future event specified in the contract, and the insured agrees to pay the premium.

An insurance contract is voidable if, at the time of its making, the insured, or in case of life insurance, the party upon whose death payment depends, knowingly omits facts that would have induced the insurer to raise premiums or refuse to enter into the contract, or knowingly makes false statements in regard to such facts. In addition, an insurance contract is not enforceable by action unless written evidence exists signed by the liable party. However, pursuant to the amendments to the Casualty Insurance Act B.E. 2535 (A.D. 1992) and Life Insurance Act B.E. 2535 (A.D. 1992), all advertising images or solicitation documents shall be regarded as parts of the insurance policy; if the meaning of any advertised wording or image is contrary to that written in the policy, such meaning shall be interpreted in favor of the insured or the beneficiary.

Any right to claim compensation for loss is time-barred if judicial proceedings are not instituted within a two-year period from the date of loss. However, the prescription for compensation claim under life insurance is ten years.