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THAILAND Newsletter

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Consequences of revocation of a Non-life Insurance Business License

Introduction

The current poor economic conditions resulting from the continuing spread of COVID-19 have undoubtedly affected the financial status of insurance companies. This is especially the case for those insurance companies who provided insurance for COVID-19 infection without putting in place appropriate arrangements such as ceding such risks to reinsurers. If an insurance company has an unstable financial status, this would eventually lead to revocation of its business license.

The Ministry of Finance ordered the revocation of the business license of two non-life insurance companies, i.e., Asia Insurance 1950 Public Company Limited and The One Insurance Public Company Limited (previously, Assets Insurance Public Company Limited), on 15 October 2021 and 13 December 2021, respectively. As a result, these insurance companies will be dissolved and enter the liquidation process. Such revocation and liquidation do not only impact on the customers of the insurance company, i.e., the insured, but also directly impact on other creditors of the insurance companies, such as reinsurers, debenture holders, surveyors, loss adjusters, hospitals, garages, etc. Nevertheless, the creditors under a primary insurance contract are better protected by having preferential rights and aid from the General Insurance Fund ("**Fund**") under the law, which is not available to other creditors. Therefore, other creditors, who are not the insured, beneficiary or a person who is entitled to be indemnified under the primary insurance policy should consider utilizing tools available under general laws and their particular contract in order to be in the best position to recover the amounts owed to them.

How will the insurance company be managed after the revocation of license?

Upon revocation of the license, the management of the insurance company is required to hand over the business operation to the liquidator pursuant to the Non-life Insurance Act B.E. 2535 (1992) (the "**Non-life Insurance Act**"). Normally, the Fund will be appointed as the liquidator for a non-life insurance company. This was the case for Asia Insurance 1950 Public Company Limited and The One Insurance Public Company Limited. The Fund will settle the

affairs of the companies, pay debts (to the extent that funds are available) and to distribute assets.

The Fund will demand or commence legal proceedings against the debtors of the insurance company to gather the assets. The Fund will also send a letter to the creditors, as indicated in the accounts, informing them that they should submit a claim for repayment to the Fund within 60 days from the date which the Fund stipulates in the announcement.

In the case of Asia Insurance 1950 Public Company Limited, any claim for repayment is required to be submitted from 15 December 2021 until 14 February 2022. In the case of The One Insurance Public Company Limited, the submission is required to be made from 21 February 2022 until 21 April 2022. It is noteworthy that some creditors are not on the list of accounts and may not receive such letter from the Fund. However, such creditors are still entitled to file a claim for repayment to the Fund. The claim must be made within the same period.

How will the Fund distribute the assets to and remedy the creditors?

a. Creditors under insurance contract

The creditors under insurance contracts will have "special" preferential rights over the insurance company's assets placed as security deposit and reserved with the Registrar under the Non-life Insurance Act. They will have the right to receive payment of their debts from such assets before any other creditors with general preferential rights and those who have no preferential rights. In respect to other assets of the company, the creditors under insurance contracts will have "general" preferential rights at the same level of the tax creditors. If the debt of each creditor under an insurance contract is not fully paid by assets of the insurance company, the Fund will further compensate that creditor by using cash from the Fund itself. However, it should be noted that the amount of debt that each such creditor under an insurance contract is entitled to receive from the Fund as a subsidy, when combined with the amount obtained from the Fund acting as the liquidator shall not exceed one million Thai Baht.

b. Other creditors

Unlike the creditors under an insurance contract, most other creditors do not have either special or general preferential rights over the assets of the insurance company. In addition, they are not qualified to receive any subsidy from the Fund. Hence, they will be ranked last or nearly last for repayment.

Where the assets are insufficient to settle the debts, the Fund will commence bankruptcy proceedings. In this regard, all creditors who are not fully compensated at the stage of liquidation will have to submit another application for repayment of debt to the official receiver after an absolute receivership order is issued by the court.

Will the contract between the insurance company and counterparties be terminated?

The contract will not be automatically terminated due to the revocation of the license, liquidation or bankruptcy proceedings, unless the contract provides otherwise, which would be very rare. The Fund, as the liquidator, may exercise its rights under the contract to terminate it. For example, the Fund has already exercised its right to terminate the insurance contracts in the case of Asia Insurance 1950 Public Company Limited and The One Insurance Public Company Limited. However, the creditors should bear in mind that the fund may not decide to terminate some contracts which still benefit the insurance company during the liquidation, such as reinsurance contracts. In such case, the creditors may need to consider on a case-by-case basis to exercise their right to terminate the contract on grounds available under the contract.

In addition to the termination of the contract, set-off is also available in certain conditions which, again, must be considered on a case-by-case basis.

What should the creditors do to preserve their rights against the insurance company?

Apart from making a timely submission of an application for a claim for repayment to the Fund and/or the official receiver, the creditors who are not creditors under insurance contracts, e.g. reinsurers, debenture holders, surveyors, loss adjusters, hospitals, garages, etc., are recommended to consider exercising their rights to terminate the contract, set-off, and may need to consult with a tax consultant for the requirements to write-off as a last resort.

If you have any question in relation to the issues raised in this briefing, please contact the authors in the left-hand column.

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