

**Baker  
McKenzie.**

# INSURANCE OUTLOOK 2019 - 2020

13TH EDITION





# Insurance Outlook

2019 - 2020

13th Edition





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## Editorial Note

The COVID-19 pandemic has forced insurers to rethink about their businesses, and proactively change how their businesses are run. On the one hand, the pandemic has exposed new and greater risks, resulting in a more challenging risk assessment process for the insurance business. On the other hand, it has reinforced the need to expand into online distribution, but at the same time maintain traditional channels for long-standing clients.

Competition in the Thai insurance industry has intensified, particularly given the challenge posed by the economic slowdown and low interest rates, which has pushed insurers into adopting more aggressive investment strategies in the search for better yields. On this front, regulations have allowed insurers to pursue more investment alternatives, e.g. offshore investment, fund management, investment in healthcare.

Nonetheless, we anticipate that change to the RBC rule may mean that some insurers, especially small operators, may find it difficult to maintain the required capital. The new RBC rule may pose challenges for some insurers, as they will be required to abide by more stringent requirements while expanding their businesses. On personal data protection, insurers are relieved that the enforceability of the PDPA has been postponed until May 2021, allowing them time to comply with the many obligations introduced by the legislation.

Draft of the fourth five-year insurance development plan (2021-2025) has been announced. Its central theme is promoting digital insurance, and strengthening the Thai insurance industry, which is to be achieved through enhancing the insurance ecosystem and relaxing certain regulatory matters to facilitate business competition and expansion. This development plan marks Thailand's first step in moving towards a full digitization of the insurance business.

We hope you find our publication resourceful. If you have any comments on this edition of our Insurance Outlook, or would like to discuss any matter in more detail, we are here to help.

# Introduction to AP Insurance Blog

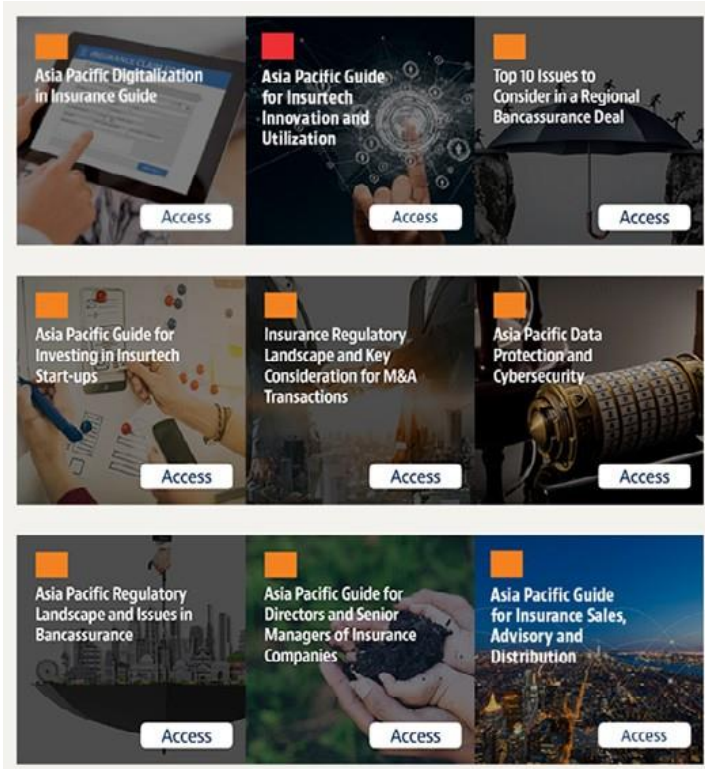
## Our tailored multi-jurisdiction products

At Baker McKenzie, we understand that businesses are increasingly international. Our fully integrated global Firm has been working across borders for more than 60 years, benefiting clients with our truly global approach. Our experience enables us to take a broad view of your legal and commercial needs. We identify and address potential issues early to increase certainty in your transactions and to ensure the best quality work is delivered in a timely manner.

However, we also realize that the insurance industry is undergoing changes at an accelerated pace, given Asia's fast-growing economies and regulatory developments, and so we have invested our resources into putting together a range of online tools and kits, across an extensive range of topics, to help you navigate the evolving insurance industry. Our AP Insurance Toolkit can be found here:

<https://apinsurance.bakermckenzie.com/ap-insurance>. In the toolkit, you can do a simple comparison search between jurisdictions or find out more detailed answers to your specific questions. Here are some of the featured products from our Baker McKenzie AP Insurance Toolkit, under the "Asia Pacific Insurance" tab.

(Baker McKenzie's Asia Pacific Insurance Blog)



In the “Insight” tab, you will find publications on insurance news for all the jurisdictions, which are produced and publicized by our local Baker McKenzie offices throughout the region. Our Asia Pacific Insurance Newsletter is published regularly to keep you up-to-date with the latest changes. If you wish to contact any of our local offices, please refer to the “People” tab where you will find key contacts for each jurisdiction or simply contact our Bangkok office so that we can refer you to the appropriate Baker McKenzie team.

## Industry Overview

### Overview of the life insurance industry in 2019

In 2019, Thailand's life insurance industry shrunk by 2.62 percent from 2018, with total collected premiums of Baht 610,914.11 million. This was mainly caused by external factors such as low interest rates; changes in consumer behavior; an economic slowdown; political uncertainty; and the new market conduct requirements recently issued by the Office of the Insurance Commission (OIC). The Thai Life Assurance Association expects that the industry will not grow in 2020 as the insurance companies will continue to face those challenges.

An increasing number of life insurance companies have rolled out customized and innovative insurance products to meet customer demands and boost sales. Health insurance products and investment insurance products have played an important role, while the insurance companies reduced sale of saving insurance products with guarantee returns due to low interest rate.

There were a number of M&A deals between life insurers, which has led to a more concentrated market. In addition, several life insurers are seeking local partners to expand their businesses in other Southeast Asian countries such as Myanmar; Indonesia; and the Philippines.

Although the main sales channels are still offering life insurance products by agents and bancassurance, technology and online channels have grown in significance since 2018. Some life insurers have launched mobile applications or partnered with corporate brokers to sell products online. Some major players have invested in developing InsurTech and digital technologies.

## Overview of the non-life insurance industry in 2019 - 2020 (Q2)

In 2019, Thailand's non-life insurance industry grew by 5.2 percent from 2018. Motor insurance remains the largest non-life insurance sector, with premiums collected in this sector representing 59 percent of the total direct non-life insurance premiums in 2019.

Despite the consolidations of non-life insurers through M&As and license revocation of insurers without adequate capital in the past year, the market remains highly competitive, but concentrated; the top 15 of nearly 60 non-life insurers in Thailand have an aggregate market share (based on direct premiums) of approximately 74 percent.

It remains to be seen whether any small non-life insurers would succumb to economic downturn pressures and the new accounting and capital standards regulations (e.g. RBC2). If so, more M&As and fund raising could be expected in the coming year.

After the COVID-19 outbreak, the need for digital transformation has become immediate. To do so, insurers, brokers, and agents should ensure compliance (e.g. having the necessary systems and internal checks).



## Insurance

### Performance of life insurance companies in 2019 - 2020 (Q2)

#### Market share of direct premiums: Life insurance sector

- AIA remains the market leader for life insurance.
- Thai Life Insurance and FWD Life Assurance have moved up to second and seventh place, with growth rates of 6.71 percent and 15.35 percent, respectively.

|      |                           | (Unit: Baht 1,000) |                  |                 |                  |                 |                  |                 |
|------|---------------------------|--------------------|------------------|-----------------|------------------|-----------------|------------------|-----------------|
|      |                           | 2020 (first half)  |                  | 2019            |                  | 2018            |                  | Growth rate (%) |
| Rank | Company                   | Direct premiums    | Market share (%) | Direct premiums | Market share (%) | Direct premiums | Market share (%) |                 |
| 1    | AIA                       | 61,170,916         | 21.43            | 140,952,114     | 23.07            | 134,141,567     | 21.38            | 5.08            |
| 2    | Thai Life Insurance       | 41,267,953         | 14.46            | 92,054,451      | 15.07            | 86,267,990      | 13.75            | 6.71            |
| 3    | Muang Thai Life Assurance | 35,943,023         | 12.59            | 83,840,221      | 13.72            | 94,466,911      | 15.06            | (11.25)         |
| 4    | Krungthai AXA Life        | 27,182,724         | 9.52             | 58,943,083      | 9.65             | 67,035,956      | 10.68            | (12.07)         |
| 5    | SCB Life Assurance        | 28,845,600         | 10.11            | 44,925,315      | 7.35             | 50,910,606      | 8.11             | (11.76)         |
| 6    | Bangkok Life Assurance    | 16,895,435         | 5.92             | 35,692,429      | 5.84             | 40,892,094      | 6.52             | (12.72)         |

|      |                           | (Unit: Baht 1,000) |                  |                 |                  |                 |                  |                 |
|------|---------------------------|--------------------|------------------|-----------------|------------------|-----------------|------------------|-----------------|
| Rank | Company                   | 2020 (first half)  |                  | 2019            |                  | 2018            |                  | Growth rate (%) |
|      |                           | Direct premiums    | Market share (%) | Direct premiums | Market share (%) | Direct premiums | Market share (%) |                 |
| 7    | FWD Life Assurance        | 11,439,855         | 4.01             | 32,356,003      | 5.30             | 28,049,461      | 4.47             | 15.35           |
| 8    | Allianz Ayudhya Assurance | 15,118,610         | 5.30             | 32,310,504      | 5.29             | 32,981,713      | 5.26             | (2.04)          |
| 9    | Prudential Life Assurance | 10,683,534         | 3.74             | 24,587,813      | 4.02             | 25,875,618      | 4.12             | (4.98)          |
| 10   | Ocean Life Insurance      | 7,106,506          | 2.49             | 14,468,922      | 2.37             | 15,020,078      | 2.39             | (3.67)          |

**Source:** The Thai Life Assurance Association's website (2020).

\* Nonetheless, given the recent amalgamation between FWD and SCB Life in October 2020, performance of the amalgamated company which will operate under the name FWD Thailand, will likely increase further.

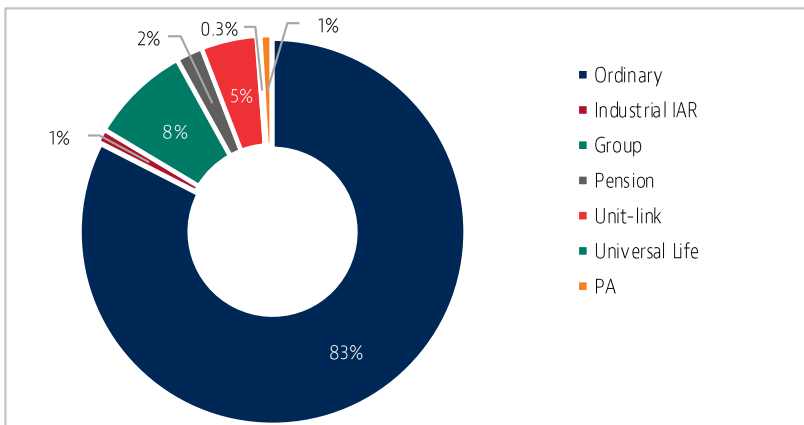
## Direct premiums based on type of insurance and rider

- A significant portion of premiums were from ordinary life insurance.
- The total direct premiums for life insurance policies have slightly decreased (3.61 percent) from last year.
- Direct premiums from ordinary insurance, industrial insurance, and universal life insurance continue to decrease.

| Type of insurance      | Direct premium for main life insurance policy<br>(Unit: Baht million) |         |         |   |   |
|------------------------|---|---------|---------|---|---|
|                        | 2020<br>(first half)  | 2019    | 2018    | Increase/<br>(decrease) (%)<br>(2018- 2019) | Increase/<br>(decrease) (%)<br>(2017- 2018) |
| 1 Ordinary             | 188,540   | 411,704 | 426,993 | (3.58)                                      | (0.80)                                      |
| 2 Industrial           | 2,746   | 5,805   | 6,122   | (5.17)                                      | (5.34)                                      |
| 3 Group                | 20,437  | 44,762  | 45,380  | (1.36)                                      | 2.51  |
| 4 Pension              | 4,140   | 11,717  | 10,602  | 10.52                                       | 6.78  |
| 5 Unit-link            | 10,502  | 24,822  | 36,071  | (31.18)                                     | 134.83                                      |
| 6 Universal Life       | 642   | 1,617   | 1,764   | (8.29)                                      | (9.83)                                      |
| 7 Personal<br>Accident | 2,261   | 4,919   | 5,120   | (3.93)                                      | 0.27  |
| Grand Total            | 229,268   | 505,346 | 532,052 | (5.02)                                      | 3.61  |

**Source:** The OIC's website (2020). Table 12 - Direct Premiums of Main Policy and Riders of Life Insurance Business – Summary of Life Insurance Business Q4/2019

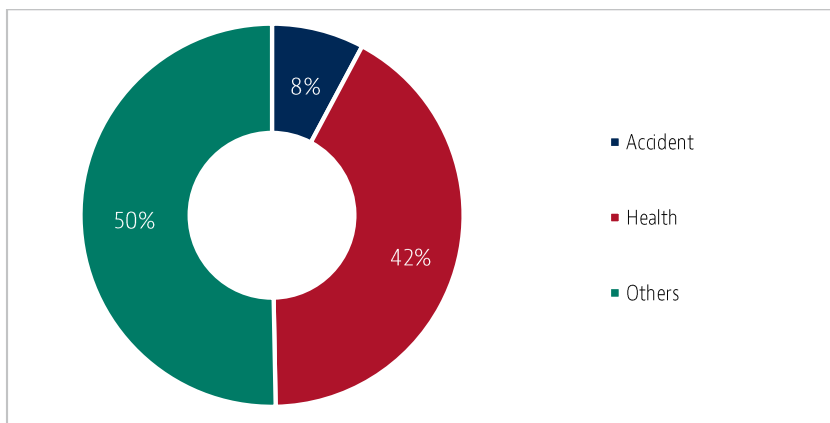
Direct life insurance premiums collected in 2019 by type



| Type of rider | Direct premium for life insurance policy rider<br>(Unit: Baht million) |         |        |   |   |
|---------------|--|---------|--------|---|---|
|               | 2020<br>(first half)   | 2019    | 2018   | Increase/<br>(decrease) (%)<br>(2018- 2019) | Increase/<br>(decrease) (%)<br>(2017- 2018) |
| 1 Accident    | 8,427  | 14,989  | 13,918 | 7.70  | 10.08                                       |
| 2 Health      | 42,395   | 80,475  | 73,336 | 9.73  | 10.67                                       |
| 3 Others      | 5,312  | 9,663   | 8,253  | 17.08                                       | 5.57  |
| Grand Total   | 56,134   | 105,128 | 95,507 | 10.07                                       | 10.12                                       |

**Source:** The OIC's website (2020). Table 12 – Direct Premiums of Main Policy and Riders of Life Insurance Business – Summary of Life Insurance Business Q4/2019

### Direct premiums from life insurance riders in 2019 by type



## Performance of non-life insurance companies in 2019 – 2020 (Q2)

### Market share by direct premiums

- Viriyah Insurance, Dhipaya Insurance, Bangkok Insurance, and Muang Thai Insurance remain the top four market leaders, with an aggregate market share by premium of 38.1 percent.
- The top 10 non-life insurers in 2018 remain the top 10 insurers in 2019, albeit with some shuffling of order.

|      |                        | (Unit: Baht 1,000) |                  |                 |                  |                 |                  | Growth rate (%) |
|------|------------------------|--------------------|------------------|-----------------|------------------|-----------------|------------------|-----------------|
|      |                        | 2020 (first half)  |                  | 2019            |                  | 2018            |                  |                 |
| Rank | Company                | Direct premiums    | Market share (%) | Direct premiums | Market share (%) | Direct premiums | Market share (%) |                 |
| 1    | Viriyah Insurance      | 18,458,371         | 15.20            | 38,896,475      | 15.8             | 37,920,661      | 16.3             | 2.6             |
| 2    | Dhipaya Insurance      | 11,615,545         | 9.56             | 21,651,058      | 8.8              | 19,785,263      | 8.5              | 9.4             |
| 3    | Bangkok Insurance      | 11,133,830         | 9.17             | 20,059,076      | 8.1              | 16,728,523      | 7.2              | 19.9            |
| 4    | Muang Thai Insurance   | 7,127,461          | 5.87             | 13,221,069      | 5.4              | 12,331,611      | 5.3              | 7.2             |
| 5    | Syn Mun Kong Insurance | 4,980,623          | 4.10             | 11,211,278      | 4.5              | 10,471,534      | 4.5              | 7.1             |

|      |                         | (Unit: Baht 1,000)   |                  |                 |                  |                 |                  | Growth rate (%) |
|------|-------------------------|--|------------------|-----------------|------------------|-----------------|------------------|-----------------|
|      |                         | 2020 (first half)  |                  | 2019            |                  | 2018            |                  |                 |
| Rank | Company                 | Direct premiums  | Market share (%) | Direct premiums | Market share (%) | Direct premiums | Market share (%) |                 |
| 6    | Chubb Samaggi Insurance | 5,432,914  | 4.47             | 10,213,712      | 4.1              | 9,778,594       | 4.2              | 4.4             |
| 7    | Southeast Insurance     | 4,941,142  | 4.07             | 10,193,607      | 4.1              | 10,773,939      | 4.6              | -5.4            |
| 8    | Tokio Marine Insurance  | 8,953,585  | 7.37             | 9,350,202       | 3.8              | 8,728,858       | 3.8              | 7.1             |
| 9    | Safety Insurance        | *amalgamated on 3 Feb 2020 and operated under "Tokio Marine Safety") |                  | 9,179,835       | 3.7              | 9,245,254       | 4.0              | -0.7            |
| 10   | Thanachart Insurance    | 4,103,434  | 3.38             | 8,504,470       | 3.4              | 8,238,684       | 3.5              | 3.2             |

Source: The Insurance Premium Rating Bureau: Insurance Industry Flash Report as at Yearly 2019.

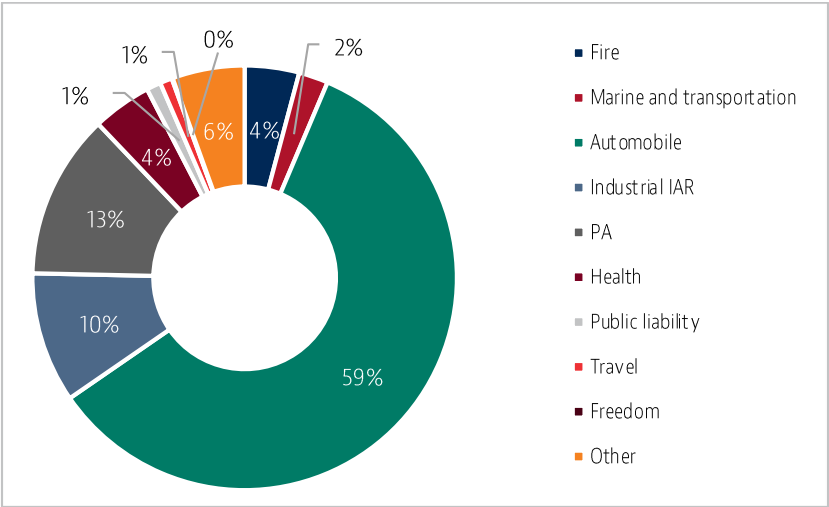
## Direct premiums: All non-life insurance sectors by type of insurance

- The automobile insurance sector shows steady growth, with the highest direct premiums collected from auto insurance among all sectors of non-life insurance.
- Almost all non-life insurance sectors (except for industrial all-risks and property insurance) grew in 2019, especially health insurance which have had two-digit growth rates in 2019-2018 and in 2018-2017.

| Type of insurance                     | Direct premiums (Unit: Baht million) |         |         |  |  |
|---------------------------------------|--------------------------------------|---------|---------|--|--|
|                                       | 2020<br>(first half)                 | 2019    | 2018    | Increase/<br>(decrease)<br>(%) (2018-<br>2019) | Increase/<br>(decrease)<br>(%) (2017-<br>2018) |
| 1 Fire                                | 5,447                                | 10,124  | 10,139  | (0.15)   | 2.93   |
| 2 Marine and transportation           | 2,652                                | 5,468   | 5,515   | (0.85)   | 2.98   |
| 3 Automobile                          | 69,239                               | 144,031 | 136,188 | 5.76   | 7.98   |
| 4 Miscellaneous                       | 44,129                               | 84,439  | 80,148  | 5.35   | 3.94   |
| 4.1 Industrial all-risks and property | 11,908                               | 24,250  | 24,068  | 0.76   | (0.93)   |
| 4.2 Personal accident                 | 15,066                               | 30,631  | 29,278  | 4.62   | 3.81   |
| 4.3 Health                            | 10,070                               | 11,003  | 9,400   | 17.06  | 12.51  |
| 4.4 Public liability                  | 1,402                                | 2,673   | 2,581   | 3.55   | 6.18   |
| 4.5 Travel                            | 446                                  | 2,257   | 2,095   | 7.77   | 11.19  |
| 4.6 Freedom                           | 87                                   | 173     | 162     | 6.54   | 1.37   |
| 4.7 Other                             | 5,159                                | 13,452  | 12,565  | 7.06   | 6.62   |
| Grand total                           | 121,467                              | 244,062 | 231,990 | 5.20   | 6.21   |

Source: The OIC's website (2020)

Direct insurance premiums collected in 2019 by type





## Distribution Channels Outlook

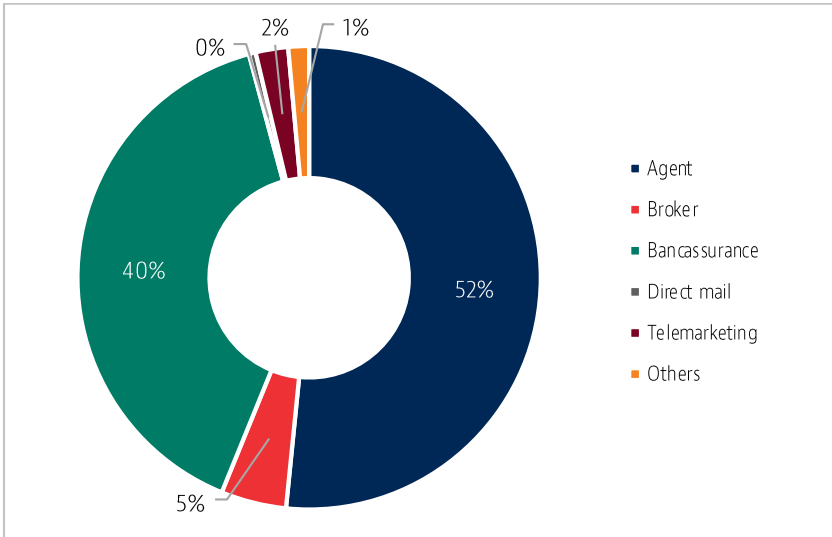
### Distribution channels – life insurance

- Life insurance continues to be mainly distributed through agents and bancassurance, at 51.60 percent and 39.65 percent of total collected premiums, respectively.

| Distribution channel | Direct premiums received from different distribution channels<br>(Unit: Baht 1,000) |             |             |             |   |   |
|----------------------|---|-------------|-------------|-------------|---|---|
|                      | 2020<br>(first half)  | 2019        | 2018        | 2017        | Increase/<br>(decrease)<br>(%) (from<br>2018- 2019) | Increase/<br>(decrease)<br>(%) (from<br>2017- 2018) |
| 1 Agent              | 141,127,357   | 316,468,905 | 306,178,531 | 302,401,241 | 3.36  | 1.25  |
| 2 Broker             | 14,811,668  | 27,986,565  | 18,859,278  | 16,627,146  | 48.40   | 13.42   |
| 3 Bancassurance      | 112,660,303   | 243,172,986 | 278,432,469 | 268,537,948 | (12.66)   | 3.68  |
| 4 Direct mail        | 23,305  | 2,934,079   | 56,990      | 59,745      | 5048.41   | (4.61)  |
| 5 Telemarketing      | 7,009,163   | 13,898,471  | 13,213,742  | 13,887,066  | 5.18  | (4.85)  |
| 6 Others             | 6,039,444   | 8,886,318   | 11,887,248  | 7,152,796   | (25.24)   | 66.19   |
| Grand total          | 281,671,239   | 613,347,324 | 628,628,258 | 608,665,942 | (2.43)  | 3.28  |

Source: The OIC's website (2020).

## Life insurance distribution channels in 2019 by direct premiums



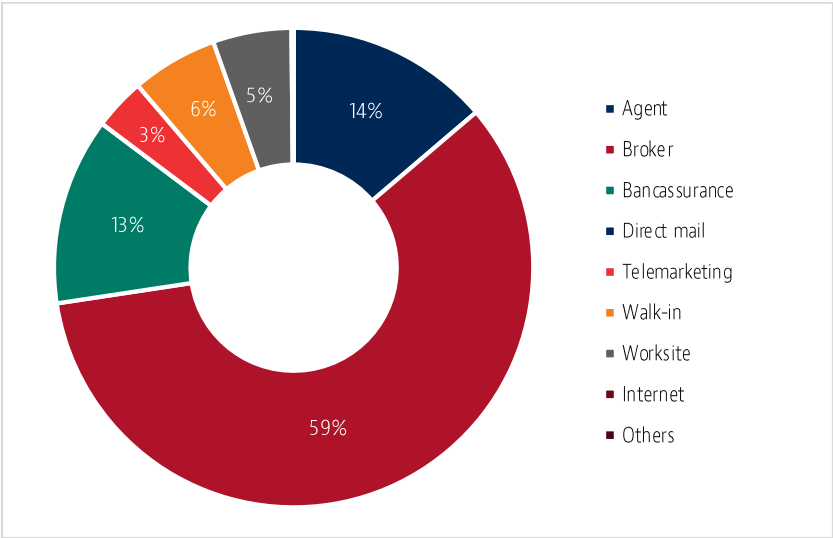
### Distribution channels – non-life insurance

- Online distribution sharply grew in the last year with 38.10 percent growth rate.
- Non-life insurance sales through brokerage, agencies, and bancassurance remain the top three distribution channels, at 59 percent; 14 percent; and 13 percent of the total collected direct premiums, respectively.

| Distribution channel | Direct premiums by distribution channels<br>(Unit: THB 1,000) |             |             |             |  |  |
|----------------------|---|-------------|-------------|-------------|--|--|
|                      | 2020<br>(first half)  | 2019        | 2018        | 2017        | Increase/<br>(decrease)<br>(%) (from<br>2018-<br>2019) | Increase/<br>(decrease)<br>(%) (from<br>2017-<br>2018) |
| 1 Agent              | 17,299,393  | 33,825,044  | 30,887,774  | 31,657,187  | 9.51   | (2.43)   |
| 2 Broker             | 72,402,504  | 144,440,170 | 136,059,274 | 126,800,497 | 6.16   | 7.30   |
| 3 Bancassurance      | 15,266,465  | 31,031,406  | 31,546,132  | 28,763,268  | (1.63)   | 9.68   |
| 4 Direct mail        | 0   | 0           | 0           | 0           | -  | -  |
| 5 Telemarketing      | 4,507,739   | 8,540,184   | 8,003,450   | 7,460,457   | 6.71   | 7.28   |
| 6 Walk-in            | 7,247,431   | 14,301,108  | 14,199,656  | 10,939,901  | 0.71   | 29.80  |
| 7 Worksite           | 6,770,737   | 13,019,613  | 12,144,461  | 13,040,688  | 7.21   | (6.87)   |
| 8 Internet           | 596,964   | 342,921     | 248,310     | 211,499     | 38.10  | 17.40  |
| 9 Others             | 0   | 812         | 1,026       | 206         | (20.86)  | 398.06   |
| Grand total          | 124,091,232   | 245,499,634 | 233,090,084 | 218,873,702 | 5.32   | 6.50   |

**Source:** The OIC's website (2020). Report on Non-Life Insurance Underwriting for Each Type of Distribution Channel.

Non-life insurance distribution channels by direct premiums in 2019



## Key Market Update

### Potential Insurance Digital Licenses

The OIC is contemplating issuing fresh insurance licenses; it is 20 years since the last insurance license was issued. There is a possibility that these new licenses will be digital licenses. This move is in line with the OIC's goal, enshrined in the Third Insurance Development Plan, of elevating the standard of the Thai insurance industry. Recent reports suggest that the OIC may issue both visual licenses (for new entrants wishing to sell insurance digitally without commission), and digital licenses (to existing insurers wishing to switch to purely digital sales).

This initiative is in its early stage. We are closely monitoring for further developments.

### Future Health Insurance Act

Currently, Thailand already has specific statutes addressing life insurance, non-life insurance and motor vehicle accident victim protection. However, the country still lacks a statute on health insurance.

The OIC aims to increase consumer protection and its supervisory authority in the health insurance industry. Given the aging society, the OIC also aims to encourage quality improvement in public health.

In doing so, the OIC will have to propose a draft act on health insurance for the parliament's approval. The act is expected address a number of issues from consumer protection to national health services.

Currently, research and studies on this matter are being conducted.

## Insurance Development Plan No. 4

The OIC has announced the draft Insurance Development Plan (No.4) (2021-2025) (the “**Fourth Development Plan**”) for public hearing. This will be the fourth development plan the OIC has issued since 2006.

Under the Fourth Development Plan, the OIC aims to support the Thai insurance industry in utilizing technological resources to efficiently manage risks. The plan will also be aligned with the Thai financial institution system and capital market development plans so that the Thai financial sector can be a driver of government policies.

In addition, the Fourth Development Plan will focus on the protection of customers’ rights and benefits, and the promotion of the Thai insurance industry to compete on a global scale. Particularly, the plan aims to facilitate insurance players in expanding their investment base worldwide, while ensuring that Thai residents have access to insurance. The OIC believes that the attainment of these objectives will lead to sustainable growth of the insurance industry.

# M&A Movements and Opportunity to Increase Foreign Shareholding

## M&A updates

FWD Group acquired the insurance unit of Siam Commercial Bank, SCB Life Assurance Public Company Limited, and entered into a 15-year bancassurance arrangement with SCB Life in September 2019. The bancassurance arrangement secures FWD's right to distributing their life insurance through SCB. The transaction, worth USD 3 billion, is Southeast Asia's largest insurance M&A to date. The two companies completed their amalgamation on 1 October 2020, marking Thailand's first business amalgamation in the life insurance sector.

Following its acquisition of SCB Life, FWD Group also acquired Siam City Insurance Public Company Limited which marked its very first general insurance proposition in Thailand.

In non-life insurance sector, Tokio Marine Insurance (Thailand) PCL fully integrated its business with Safety Insurance Public Company Limited to form Tokio Marine Safety Insurance (Thailand) Public Company Limited in February 2020. The integration follows on from Tokio Marine's acquisition of Safety in 2018.

## Opportunity to Increase of Foreign Shareholding

One of the schemes addressed in the draft Fourth Insurance Development Plan is the encouragement of foreign investment to make available alternative sources of funding for insurance companies and facilitate knowledge transfer.

Given that companies will need to demonstrate technology and know-how transfer or increase in financial stability and security, new technology and

the Covid-19 situation may provide an opportunity for insurance companies to request an increase of their foreign shareholding.

Under the current Non-Life Insurance Act and the Life Insurance Act, insurance companies in Thailand can request approval to increase their foreign shareholding ratio to more than 25 percent and to increase the foreign directorship proportion on the following basis.

|  | Foreign shareholding of more than 25 percent but not exceeding 49 percent and the number of foreign directors to equal one-quarter but less than half of the total directors   | Foreign shareholding of more than 49 percent and up to 100 percent and the number of foreign directors to be more than half of the total directors  |
|--|--|---|
| <b>Key concept</b>                       | If an insurer wishes to have more than 25 percent of shares, but not exceeding 49 percent of the total voting shares sold held by foreigners, approval from the OIC would be required.                               | If an insurer wishes to have more than 49 percent of the total voting shares sold held by foreigners, approval from the Ministry of Finance (MOF) would be required.  |
| <b>Competent authority</b>               | OIC  | MOF   |
| <b>Basis to request for the approval</b> | The basis for requesting this approval must be one of the following:<br><br>1. a capital adequacy ratio that is lower than, or that is likely to be lower than, the ratio required under the OIC Notification on the | The basis to request this approval must be one of the following:<br><br>1. doing so would improve the company's standing or operations, where the company exists in a state that may cause damage to the policyholders or the public; |



|                | Foreign shareholding of more than 25 percent but not exceeding 49 percent and the number of foreign directors to equal one-quarter but less than half of the total directors | Foreign shareholding of more than 49 percent and up to 100 percent and the number of foreign directors to be more than half of the total directors  |
|----------------|--|---|
|                | <p>calculation of the fund of non-life insurance; or</p> <p>2. a plan to improve the management to enhance potential in the operation and competition.</p>                   | <p>2. doing so would strengthen the stability of the company; or</p> <p>3. doing so would enhance the stability of the non-life insurance industry in Thailand as a whole.</p>  |
| <b>Process</b> | <p>The insurance company must submit the application to the OIC.</p> <p>The OIC may request that the company further clarify or submit additional documents.</p>             | <p>The insurance company must submit the application for MOF approval, together with supporting documents, through the OIC.</p> <p>The OIC board will consider the application. and pass it to the MOF within 90 days from the date it receives the completed documents.</p> <p>Then, the MOF, on the recommendation of the OIC, will consider and notify the insurance company of its decision within 90 days from the date it has received the completed application with all required documents.</p> |

# Competition Law and Insurance

## Merger Control

It is a misconception that approval from the OIC for a merger between insurance companies (whether by share acquisition or business transfer) exempts the merger parties from having to seek approval from the Thai competition regulator, the Trade Competition Commission, if the market share and sales turnover thresholds are met.

The Thai merger control regime became effective in late 2018. While mergers in a few sectors with specific regulation on merger control, such as the telecommunications sector, are not within the jurisdiction of the Competition Commission, mergers in other sectors are. The Thai merger control regime requires the merger parties (or the acquirer) to either seek approval before closing or to notify the Competition Commission after closing. Whether the merger requires pre-closing approval or a post-closing notification is determined by a two-prong test.

The first prong of the test is the “merger threshold” test. A transaction is considered a “merger” for the purpose of merger control if it is: (i) a transfer of over 50 percent of the assets of the target that are used in its ordinary course of operations; (ii) an acquisition of shares that resulted in the acquirer holding over 50 percent shares in the target (or at least 25 percent shares if the target is a company that is regulated under securities and stock exchange law); or (iii) an amalgamation between two companies.

The second prong of the test determines whether the merger will have to be approved before closing or notified within seven days of closing. The merger requires an approval from the Competition Commission if it would result in the acquirer, the transferee, or the amalgamated company having dominance in a relevant market. Under a separate subordinated legislation on dominance, a company has dominance in a market if: (i) it has a market

share of at least 50 percent and sales turnover of at least Baht 1 billion in the previous year; or (ii) it is one of the top three operators in the market that has over 10 percent market share and at least Baht 1 billion sales turnover in the previous year. If the dominance threshold is not met, then merger parties may still have to notify the Competition Commission of the merger within seven days of closing if one or both the merger parties (or any of the group entities) have at least Baht 1 billion of sales turnover in the previous year. Group entities are identified through common shareholding (over 50 percent shares); common managerial control (at least half the directors); or common control (more than half the total voting rights).

For the insurance sector, because the Competition Commission is a new regulator, it is unclear how the product and geographical markets for insurance will be defined.

## Corporate Governance

In the past year, the OIC has gradually promoted and encouraged corporate governance through a number of regulations and guidelines. With the enactment of the new Corporate Governance Notification, insurers now have a guide to the corporate governance structure requirements.

The notifications of the OIC on good corporate governance of life and non-life insurance companies were published in the Government Gazette in February 2019, and became effective from 26 August 2019, except for certain provisions which came into effect from 1 January 2020.

The corporate governance notifications prescribe the structure; composition; qualifications; duties; and responsibilities of the directors of insurance companies. They spell out how directors should supervise, monitor, and direct the work of each of the functions in an insurance company, as well as particular rules or in-house regulations that directors would need to enforce at their companies.

Insurers are now required to have independent directors as members of their boards, not just members of their audit committees. The law also requires insurers to have a number of internal departments and positions. The table below illustrates an overview of key requirements in relation to the internal corporate governance structure, which is also subject to other detailed requirements on the reporting and preparation of relevant documentations.



## Board of directors

### Composition

The board of directors must have at least five directors, at least half of whom must have domicile in Thailand.

### Foreign limit

No more than **25 percent** of them may be foreign (unless permitted by the authority).

### Chairman

Chairman of the board of directors must be an independent director or a non-executive director (unless permitted by the authority).

### Executive directors

No more than **one-third** of the total directors can be executive directors.

### Independent directors

At least **one-quarter** of the total directors must be independent directors.



## Committees

### Audit committee

- The committee must have at least **three** members.
- At least **two-thirds** of the members must be independent members.
- Chairman of the committee must be an independent director of the board of directors.
- At least **one** member must have sufficient knowledge and experience on accounting or finance.

### Risk management committee

- The committee must have at least **five** members.
- At least **one** member must be a member of the board of directors. Others must be the company's managers or experts on operational risk.

### Investment committee

- The committee must have at least **three** members.
- The members must consist of directors, managers, or experts (either directors, managers or other individuals) with at least three years' experience in investment, risk management, or security analysis.

### Nomination committee, Remuneration committee, Information technology committee

- These committees are not compulsory by the law, but are recommended.



## Departments

### Legal compliance department

This department will supervise the legal compliance of the company. It must directly report to the board of directors or the audit committee.

### Risk management department

This department will monitor the risk management of the company

### Internal audit department

This department will monitor and assess the internal functions of the company to ensure their compliance with the company's risk management framework and policy.

### Investment department

This department will be responsible for the company's investments.



## Staffs

Head of the legal department; Head of the risk management department; Head of the investment department

- The heads of these departments must be appointed.
- The OIC must be notified about all persons' appointment to or resignation from these posts.

# InsurTech

## Regulatory update

### **The new insurance regulatory sandbox: new eligible applicants and transactions**

The sandbox regime was first introduced in May 2017. Having gathered feedback over the past three years, the OIC made changes to the criteria for the sandbox to better suit Thailand's insurtech ecosystem. Some key changes are outlined below.

#### **Insurance Sandbox**

##### **(a) Eligible Applicants**

FinTech firms and Technology firms are no longer required to partner with insurance companies to participate in the sandbox.

##### **(b) Eligible Transactions**

The term eligible transactions has been more broadly defined under the new regime, allowing more flexibility for applicants to enter into the sandbox scheme.

##### **(c) Implementation Period**

The 2017 regime only allowed a one-year implementation period (although this was extendable). Under the new regime, the OIC has discretion to determine the implementation period based on the needs of each project, and may extend the period if it deems it appropriate.

#### **Own Sandbox**

In addition to the conventional regulatory sandbox, which is regulated by the OIC, successful applicants are now allowed to create their own

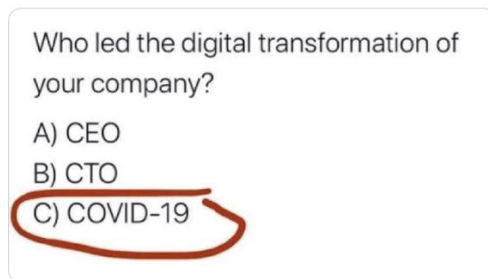


sandbox. In the applicant's own sandbox, the applicant can implement their initiatives without close supervision of the OIC. Nonetheless, these transactions will still have to meet certain criteria: (i) being transactions which have been tested in the insurance sandbox scheme; or (ii) must not negatively affect the customers or stability of or confidence in insurance companies or insurance industry. Further, for the own sandbox scheme, the applicant may request from the OIC the relaxation or exemption of non-material requirements that it considers to be an obstacle to the test.

The OIC expects that the new sandbox regime will attract talented firms to equip the insurance industry with new innovations that will accelerate the Thai insurance sector's digital environment.

## Digital Transformation - A Means to an End

Digital transformation caused by Covid-19 is a topic much discussed on social media:



Across the world, 2020 has been a year of crisis and change. For many businesses including insurance companies, COVID-19 has led to technological changes that would have taken them years to implement in just a few weeks.

## **Why digital transformation in the insurance business?**

Due to social distancing, city lockdowns, and business closures, insurers are forced to implement work-from-home measures and re-evaluate business operations. Changes in consumer behavior and an increase in digital fluency have caused insurers to rethink their business models and to introduce innovation to their operations to provide a hyper-personalized experience to customers.

However, digital transformation relies heavily on investment in technologies such as AI or IoT, which executives or shareholders might think is risky especially in the era of COVID-19 and the recession.

## **Strategy for digital transformation and innovation**

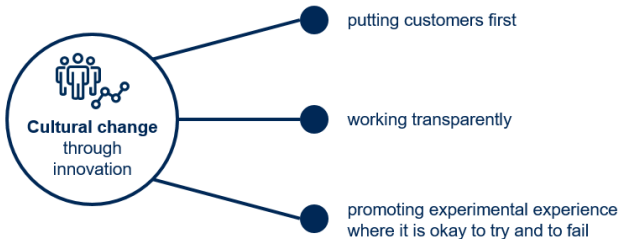
Digital transformation is not just about digitization, but it is also about thinking about and doing business better. It is a new approach to business.

Innovation must be tightly connected to the core business, and that change must have sustainable value. One determinant is that the innovation or change has any value for the company is that it is feasible and worthwhile, and meets customer needs.<sup>1</sup>

To engage in digital transformation or develop innovation, insurers may partner with startups to accelerate the process. For insurance companies wishing to innovate organically, they must first disseminate innovative ideas and drive cultural change in all business units. In addition, employees must understand the value of the digital transformation and buy into the idea that it is a way of maximizing business opportunities.

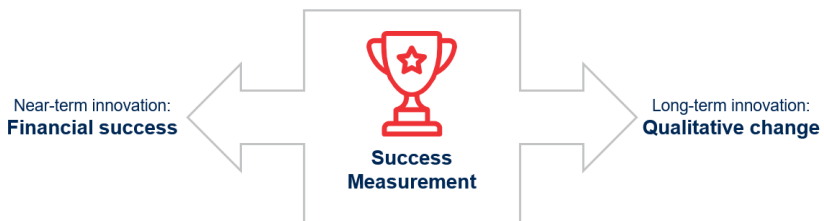
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<sup>1</sup> Tallt, 2019. Evolving The Art Of The Possible: Organic Innovation In Insurance. [online] Available at: <[https://tallt.ventures/wp-content/uploads/2019/07/Tallt-Ventures\\_Evolving-the-art-of-the-possible\\_Organic-innovation-in-insurance.pdf](https://tallt.ventures/wp-content/uploads/2019/07/Tallt-Ventures_Evolving-the-art-of-the-possible_Organic-innovation-in-insurance.pdf)> [Accessed 28 May 2020].



There are three fundamental principles to promoting cultural change through innovation: (i) putting customers first; (ii) working transparently; and (iii) promoting experiment and innovation in environments where it is okay to try and to fail.

Insurance companies should also consider whether the changes will be near-term or long-term, to assess the impact and the investment required for those changes. Near-term innovations include, for example, process optimization and incremental improvements that can deliver value quickly, whereas longer-term changes may involve new business opportunities, which would require a greater investment of time and money.



How success is measured will also vary. This may be financial success for near-term innovation and significant industry shifts or influence on the future direction of the company for long-term innovation.

## Get into the right mindset

When talking about digitalization, some would think of radical change to the business model or replacing the current model with a comprehensive digital operating system.

Nathan Furr and Andrew Shipilov debunk several common myths about digital transformation in their article *Digital Doesn't Have to Be Disruptive*.<sup>2</sup> Their research suggests that digitalization does not have to be disruptive at all, but could be done incrementally, meeting customers' needs by taking advantage of new technologies as they become available. A few notable points are summarized below.

- Digital transformation is not all about technology or being digital, but it is about putting customers first. Insurers must continually ask themselves whether the current mode of operations meet the customers' needs and how new technologies could be used to enhance customers' experience and manage customers' expectations and risks. Insurers should also ensure that their employees have a clear understanding of this approach, how it will have affect the future, and how the technology can be used for the good of the customers.
- Digital transformation does not mean sudden transformation. While back-end systems are being developed, insurers may come up with new front-end solutions that can meet customer needs and shift towards these back-end systems incrementally. The insurers can begin by using front-end interfaces to connect to existing systems through middleware. Alternatively, insurers may run the front-end solution and back-end transformation independently until the legacy systems are overhauled.

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<sup>2</sup> Furr, Nathan, and Andrew Shipilov. "Digital Doesn't Have To Be Disruptive". 2020, <https://hbr.org/2019/07/digital-doesnt-have-to-be-disruptive>. Accessed 28 May 2020.

- Digital transformation does not mean that physical channels can be gotten rid of entirely, but physical and digital channels can coexist. Insurers can employ both so as to be able to serve customers 24/7. This way, insurers can obtain customer data or insights which can help insurers further improve or streamline processes or operations, boost efficiency, and cut costs over the long run.

## Technologies being developed

Among the new technologies being developed, two of the most discussed automated technologies are robotic process automation (RPA) and intelligent process automation (IPA).

RPA involves automating repetitive tasks to make a process less labour-intensive for humans. It is the ideal solution for high volumes of simple well-structured data, and repetitive tasks that do not require human judgment. Using RPA, employees can move on from mundane tasks to more sophisticated assignments. However, human touch may still be required the RPA system cannot learn from or make judgments about data.

IPA is a system that combines RPA with AI capabilities. As a result, IPA can work beyond basic automation and handle unstructured data such as text and images. IPA can also be trained by its human supervisor, and can improve the process using machine learning.



RPA is commonly used in repeated or recurring tasks, such as data entry and machine-readable queries. For example, it can also be used in sales functions where technology could be used to extract customer data from relevant documents such as purchase orders or invoices or aggregate data for financial reports. It can also be used to help solve simple issues in a tech support scenario, in the processes related to appraisals, underwriting, policy analysis, and claim processes. In addition, it can be used to complement IPA; i.e. IPA deals with unstructured data, while the RPA system handles the structured data.

In sum, now could be a good time for insurers to go digital. This is also in line with the Draft of the fourth insurance development plan which is promoting digital insurance for the next five years (2021-2025). With the right strategy, those that begin the process of going digital early will be positioned to thrive in these uncertainties.

## Laws and Regulations Update

### The New Risk Based Capital (RBC Phase 2)

This notification which came into effect in 2019 is aimed to enhance the criteria for maintaining capital according to risk profile (Risk Based Capital: RBC) of each insurer in Thailand. The principles under this notification is in line with international standard for capital maintenance which is necessary for enhancing the quality of total capital available of each insurer to accommodate the current business environment.

This OIC Notification re: Designation of the Categories and Types of Capital and the Conditions for the Calculation of Capital of Life and Non-Life Insurance Companies, B.E. 2562 (2019) (dated 27 December 2019) (the “**RBC 2 Notifications**”) came into effect on 31 December 2019.

The following table outlines key issues of RBC 2 Notifications.

| Subject                       | RBC 1   | RBC 2   |
|-------------------------------|---|---|
| CAR level                     | <ul style="list-style-type: none"> <li>• Not less than 100 percent.</li> <li>• If CAR is lower than 140 percent, the OIC may impose necessary measures to regulate the company's financial standing.</li> </ul> | <ul style="list-style-type: none"> <li>• Not less than 100 percent.</li> <li>• If CAR is lower than the following level, the OIC may impose necessary measures to regulate the company's financial standing:               <ul style="list-style-type: none"> <li>◦ from 31 December 2019 to 31 December 2021: 120 percent; and</li> <li>◦ from 1 January 2022 onwards: 140 percent.</li> </ul> </li> </ul> |
| Total Capital Available (TCA) | Life insurance company: Minimum of Baht 50,000,000.<br><br>Non-Life insurance company: Minimum of Baht 30,000,000.  | Same as RBC 1   |



| Subject                               | RBC 1  | RBC 2  |
|---------------------------------------|--|--|
| Risk categories                       | <ul style="list-style-type: none"> <li>• Insurance risk</li> <li>• Market risk</li> <li>• Credit risk</li> <li>• Concentration risk</li> <li>• Surrender risk (for life insurance companies only)</li> </ul> | Same as RBC 1, but with more refined conditions, and an addition of operational risk.  |
| Components of total capital available | <ul style="list-style-type: none"> <li>• Available capital is divided into Tier 1 capital and Tier 2 capital.</li> </ul>   | <ul style="list-style-type: none"> <li>• Available capital is divided into Tier 1 capital and Tier 2 capital.</li> <li>• Tier 1 capital comprises Common Equity Tier 1 (CET 1) and Additional Tier 1 (AT 1).</li> <li>• Similarly, Tier 2 capital comprises Common Equity Tier 2 (CET 2) and Additional Tier 2 (AT 2).</li> <li>• recognized as Tier 1 capital.</li> <li>• CET 1 must be at least 65 percent of the Total Capital Required (TCR) and Tier 1</li> </ul> |

| Subject                                | RBC 1  | RBC 2  |
|--|--|--|
|  |  | capital must be at least 80 percent of the TCR.  |
| Deduction from total capital available | Deductions applied at the Total Capital Available level. | <ul style="list-style-type: none"> <li>• Deductions specified for each category of capital, i.e. CET1, AT1, CET2 and AT2.</li> <li>• Deduction items from CET 1 now also includes: <ul style="list-style-type: none"> <li>○ equity holding in other insurance companies in Thailand, both life and non-life (except for the purpose of resolving the financial position or debt restructuring of those insurance companies, or other exceptions which could be prescribed by the OIC); and</li> <li>○ equity cross-holdings between insurance companies in Thailand (both life and non-life), and other</li> </ul> </li> </ul> |

| Subject | RBC1 | RBC2   |
|---------|------|--|
|         |      | <p>entities for a purpose of a company's capital increase.</p> <p>For deductions of the equity holding in other insurance companies from CET1, the regulation allows the following grace periods:</p> <ul style="list-style-type: none"> <li>○ from 31 December 2019 to 30 June 2020: 25 percent deduction;</li> <li>○ from 1 July 2020 to 31 December 2020: 50 percent deduction;</li> <li>○ from 1 January 2021 to 30 June 2021: 75 percent deduction; and</li> <li>○ from 1 July 2021 onward: 100 percent deduction.</li> </ul> |

## The New Corporate Broker Notifications

The OIC has published new notifications on applying for corporate brokerage licenses, the Notifications re: Criteria and Conditions on the Issuance and Renewal of Licenses for Corporate Brokers. These notifications came into effect on 1 January 2020.

Most of the key requirements under the previous corporate brokerage license notifications are enforced under the new notifications; however, some key changes are introduced:

1. directors (excluding directors of financial institutions, e.g. banks, holding an insurance brokerage license) must not be a director, manager, officer, or an employee of any life or non-life insurance company;
2. authorized persons of a corporate broker must be licensed individual brokers;
3. the corporate broker must appoint at least two managers; the managers must have at least two years' experience in the insurance business (or a related business) and have held an individual broker license for at least two years before being appointed manager;
4. the director or individual broker with at least two years license can attend the interview. The corporate broker must arrange for individuals who have passed the OIC corporate broker examination to operate the business for at least three years from the issuance date of the license;
5. there is now a higher minimum paid-up capital requirement of Baht 3 million (from Baht 2 million);

6. the asset maintenance requirement has been revised (Baht 1 million for direct insurance, Baht 1 million for indirect, or Baht 1.5 million both direct and indirect insurance);
7. the Global Positioning System (GPS) location of the offices must be specified in the application; and
8. audited financial statements of the corporate broker must be disclosed on their website, at their offices, or on other channels as prescribed by the OIC.

Corporate brokers whose licenses were issued before 1 January 2020 are deemed compliant with these notifications. However, they should still familiarize themselves with the new requirements to ensure compliance when renewing their licenses which will be subject to the new notifications.

## **Fourth amendment to the investment regulations: Wider investment opportunities, including healthcare, technology, and offshore investment**

Following revisions to the life and non-life insurance investment regulations in November 2019, the OIC published a fourth amendment to the investment regulations, which came into effect on 29 January 2020.

The fourth amendment allows insurers to invest in private equity; real estate; mutual funds; and infrastructure trusts. More importantly, insurers are now allowed to hold shares of an entity offering:

- medical services;
- care services for the elderly / long-term care services; or
- technology that is beneficial to the insurance business.

This amendment expands the investment options for insurers, providing more flexibility and facilitating insurers' risk allocation.

## **Amendment to the Internal Control Regulation**

The OIC has promulgated the amendment to the OIC's Notification Re: Criteria, Procedures and Conditions on the Receipt, Payment, Audit and Internal Control of Insurance Companies, B.E. 2557 (2014) (the "Internal Control Regulation"). The amendment will take full effect on 1 January 2021, which includes four minor issues.

### **1. Power to approve internal protocol on the receipt and payment of money**

Under the current regime, internal protocol must be approved by the insurance company's board of directors. The amendment allows the board of directors to delegate this power to a sub-committee appointed at the discretion of the board of directors.

### **2. Duties of the internal control department**

Insurance companies are obligated to establish an internal control department. The current Internal Control Regulation imposes certain obligations on the said department, including obligations to inspect frauds, errors, omissions and other suspect activities. These obligations remain on under the amendment. Obligations to evaluate and determine a plan to mitigate risks leading to frauds, errors, omissions and other suspect activities will be introduced.

### **3. Supervision over the legal compliance department**

The current Internal Control Regulation prescribes that the legal compliance department must report to either the board of directors or the audit committee. Under the amendment, the legal compliance department can report to either the board of directors or an independent sub-

committee that has the objective of monitoring operations of the company's business units.

#### 4. Obligation to issue an operational handbook

The amendment makes clear that it is possible for the company's operation handbook to only address core operations of the insurance company.

## New Sale Notification

The OIC has issued the new Notification Re: Criteria and Procedures on the Issuance, Offering for Sale of Insurance Policies of Insurance Companies and the Performance of Duties of Insurance Agent, Brokers and Banks (the "**New Sale Notification**"), replacing the previous sale notification issued in 2018. The New Sale Notification has take effect from 29 September 2020.

The New Sale Notification does not differ in substance from the previous sale notification, but provides a more elaborate explanation of the requirements.

### Payment of Premium

#### Method of payment

The New Sale Notification simply says that the premium of insurance policies sold by any non-face-to-face method (e.g. telesales; direct mail; or electronic means) must be directly paid into the insurance company's bank account.

#### Information to be provided in the receipt

The receipt of premium, which must be immediately issued to the customer upon purchase, must contain the following information:

- name and the insured;

- the amount of premium;
- name of the insurer; and
- name of the salesperson.

## **Other Issues**

### **Data Privacy**

The New Sale Notification introduces a new chapter on data privacy. This is to ensure the seller's compliance with personal data protection law.

### **OIC's power to suspend license of agent or broker**

The New Sale Notification provides the OIC with an option to suspend or revoke an agent or broker's license in addition to the revocation of license.

## **New Requirement on Disclosure of Policy Information on the OIC's Website**

The Office of the Insurance Commission (OIC) has published a new notifications that require both life and non-life insurance companies to disclose basic information about insurance policies they offer electronically on the OIC website. To promote Insurtech and to help consumers access insurance products, insurers will have to submit a form describing the key features of their insurance products to the through the OIC website. The notifications were announced and took effect on 15 June 2020. Key requirements are as follows.

### **Obligation to disclose basic information**

From now on, before selling any insurance policy through electronic means, insurers must disclose basic information about the policy through the OIC's website (<https://guruprakanphai.oic.or.th>). If the insurance policy is amended or discontinued, the insurer must disclose the change or remove



the policy's information from the OIC website. The OIC has the power to order the insurer to revise or delete the published information if information is inaccurate or incomplete.

### **Information to be disclosed**

At least the following key information of an insurance policy electronically offered must be disclosed:

- name of the insurance policy;
- coverage and payment conditions;
- underwriting conditions;
- standard premium rate as approved by the OIC;
- key conditions/exclusions;
- the insurer's phone number and URL or name of the insurer's application offering the policies for sales.

Customers will now be able to browse through policies that are being electronically offered on the OIC website. This is another step of the insurance industry to digital insurance.

## Statement of Capability

For many years, our Insurance Practice Group has been a key participant in the Thai insurance industry, and has acted as legal advisor to organizations in various parts of the insurance industry network, including domestic insurance companies; international investors; and insurance brokers. Our experience in this field enables us to play an active role in assisting international investors from more mature insurance and reinsurance markets, who are eager to participate in an existing domestic operation or enter a joint venture with an existing local insurance entity.

Our insurance law specialists advise insurance clients of all types, at all stages, from establishing their operations in Thailand (often through mergers, acquisitions, or joint venture agreements) to regulatory compliance; insurance policy drafting; and the settlement of claims. We have also given advice to a number of clients on the procedures for corporate and financial restructuring, to enable companies to legally achieve their business objectives, in light of the strict regulatory regime. We are trusted by insurance regulators and key players alike to conduct various trainings for them, having handled a majority of the significant transactions in the insurance sector.

The broad range of insurance-related matters we handle includes:

- Thailand regulatory issues;
- policy issues (life and casualty insurance);
- mergers, acquisitions, and joint ventures;
- development of new insurance and investment-linked products;
- insurance-related claims and subrogation matters;
- investments by insurance funds and asset management;

- bancassurance;
- trade competition;
- digitalization, InsurTech, and data privacy;
- tax aspects of insurance, investment, and corporate restructuring; and
- litigation claims.

As part of Baker McKenzie's Global Insurance Practice Group, we are also able to draw on the experience of our offices in leading international insurance markets, such as those in New York, Chicago, London, and throughout Europe. We are able to provide timely and cost-efficient multi-jurisdictional reviews of relevant insurance, tax, corporate and regulatory issues facing international underwriters in the various markets in which they operate.

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