

Legal Updates

KIM & CHANG

Insurance | July 2, 2010

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RECENT AMENDMENTS TO THE INSURANCE BUSINESS ACT

Developments in Amendments to the Insurance Business Act

The proposed amendments to the Insurance Business Act, which were initially submitted by the Financial Services Commission (the "FSC") on December 18, 2008 and subsequently amended by the National Assembly's National Policy Committee and reviewed by the Legislation-Judiciary Committee, were passed at a plenary session of the National Assembly on June 29, 2010. The amendments shall become effective six (6) months after the date of promulgation.

Certain controversial matters which had been included in the FSC's original proposal, such as the proposal to allow insurance companies to provide funds transfer services and to permit the establishment of insurance marketing companies, have been excluded from the approved amendments. However, other amendments suggested by members of the National Assembly have been added, such as prohibiting the appointment of persons who are affiliated in certain ways with an insurance company from serving as an outside director of the insurance company, prohibiting certain acts when advertising insurance products, prohibiting certain unfair lending practices, and implementing a system to evaluate consumers' level of comprehension of insurance policies.

Key Points of Recent Amendments to the Insurance Business Act

- 1. Expansion of scope of concurrent/ancillary business which can be conducted by insurance companies**
 - The scope of financial services that insurance companies may provide (concurrent with or ancillary to their main line of services) will be expanded. Financial services designated by Presidential Decree that do not threaten the sound management of insurance companies, protection of consumers or transaction norms will now be permitted. Please note that services relating to the transfer of funds were excluded from the final proposal during the Legislation-Judiciary Committee's review.
- 2. New reporting requirement for foreign insurance companies' Korean offices**
 - Foreign insurance companies and insurance agents or brokers who work overseas must file a report with the FSC within thirty (30) days of opening an office in Korea. (In the case of local offices already existing at the time this new requirement becomes effective, a report must be filed within three (3) months of the effective date.) Prior to this amendment, foreign insurance companies were required under the Insurance Business Supervisory Regulations to report the opening of new offices in Korea to the Financial Supervisory Service instead of the FSC.

3. Regulations governing asset management by insurance companies

- Restrictions on owning precious metals, antiques or artwork have been discarded. Regulatory ceilings on the ownership of unlisted stock have been discarded as well.
- With respect to the limits on ownership of foreign currency assets, those foreign currency assets that are in the same currency as the policy reserve for foreign currency denominated insurance contracts shall not be subject to such limits.

4. Modification of processes for the development of insurance products

- The following products will be classified as “file and use products”: insurance products that (i) have been newly introduced or became mandatory as a result of newly-enacted or amended laws, (ii) are sold through bancassurance channels, or (iii) have been designated by Presidential Decree in order to protect consumers. Other insurance products shall be classified as flexible “self-regulated products” that can be developed and sold pursuant to insurance companies’ internal procedures.

5. Development of standards for managing basic documents; mandatory compliance

- Standards governing insurance companies’ management of basic documents have been developed, such as procedures and standards for amending basic documents, processes for inspecting the suitability of such documents, methods for regulating and correcting mistakes, and determination of the roles and responsibilities of the relevant officers/employees and actuaries. Insurance companies are required to comply with these standards.
- In the event an insurance company establishes or amends its standards for managing basic documents, it must report this fact to the FSC. In response, the FSC may order revisions to the standards or improvements to actual business practices.

6. Change in the outside director regime

- The following persons cannot be appointed as outside directors of an insurance company: (i) any party specially related to an insurance company’s largest shareholder, (ii) the spouse or any lineal descendants of a major shareholder of an insurance company, or (iii) any person who is deemed to be affiliated with an insurance company as provided by Presidential Decree.

7. Reinforcement of consumer protection system

- Expanded duty to explain: Insurance companies shall divide insurance customers into professional insurance customers and general insurance customers. When soliciting general insurance customers, insurance companies are required to explain the key provisions of the relevant insurance policies to the prospective customer and to obtain the customer’s confirmation that he/she has understood the explanation. In addition, insurance companies must explain the entire contract procedure to customers, starting from the execution of the insurance contract and leading to the payment of insurance benefits. In the event a customer applies for payment of benefits, insurance companies must explain the insurance benefit payment procedure, the breakdown of benefits, and reasons for reduced payments or rejected payments (if applicable).
- Implementation of suitability standard: Insurance companies and employees who solicit new subscriptions for insurance policies must be informed of each consumer’s age, financial situation, and purpose for subscription, and shall not recommend any insurance policies that would not be suitable for that consumer. The scope of insurance products to which this standard applies shall be determined by Presidential Decree.
- Establishment of grounds for regulating false or exaggerated advertising: When advertising insurance products, insurance companies and employees who solicit new subscriptions for insurance policies may not mislead consumers by omitting or failing to clearly explain caps on

- payments of insurance benefits, conditions that limit the payment of benefits, or other details.
- Duty to check for redundant contracts: Prior to soliciting subscriptions for certain insurance contracts designated by Presidential Decree, insurance companies must check for redundant contracts.
- Withdrawal of applications and termination of contracts via telecommunications devices: Insurance companies shall allow consumers to check or correct details of their subscriptions, withdraw their applications, view the specifics of their insurance contracts and terminate those contracts using telecommunications devices.

8. New grounds for prohibiting unfair practices relating to insurance solicitors

- In the event insurance companies delegate insurance solicitation to insurance solicitors, insurance agents or insurance brokers, insurance companies are required to provide a services agreement to those insurance solicitors and must comply with the terms of the agreement. Insurance companies must also comply with other prohibitions of unfair practices designated by Presidential Decree.
- The Korean Life Insurance Association and the General Insurance Association of Korea may establish regulations under which insurance companies are prohibited from engaging in unfair acts that affect insurance solicitors.

9. Corporate insurance agents and corporate insurance brokers prohibited from engaging in other business

- Insurance agents or brokers that are corporations are technically prohibited from engaging in any business other than insurance solicitation. The only exceptions to this rule shall be designated by Presidential Decree, and shall be limited to acts that do not hinder the protection of insurance customers.

10. New additions to list of acts prohibited when entering into insurance contracts or soliciting consumers

- Certain acts are prohibited, such as refusing to enroll a disabled person in an insurance policy for no justifiable reason, replacing an insurance contract party's personal signature or having a third party sign in his/her place, or demanding that a consumer subscribe to an insurance contract by leveraging an existing debtor/creditor relationship.

11. Prohibition of unfair lending practices

- Certain acts are prohibited, such as demanding enrollment in insurance policies in exchange for lending funds or requesting unfair guarantees or joint and several liability in connection with the provision of loans.

12. Implementation of a system to evaluate comprehension of insurance policies

- The FSC can designate an institution to evaluate the degree of insurance consumers' comprehension of the content of insurance policies. Pursuant to processes determined by Presidential Decree, the FSC may also publicly disclose the results of these evaluations.

13. Duty to report amendments to articles of incorporation now an "after-the-fact" reporting duty

- Under the current law, all amendments to the articles of incorporation of an insurance company must be reported to the FSC unless the changes are very minor. This requirement will be relaxed under the new amendments, however, to allow amendments to be reported to the FSC within seven (7) days of the change.

14. New standards for imposing administrative fines for violations

- New standards have been established for imposing administrative fines for violations of regulations governing insurance solicitation, such as the violation of regulations on insurance advertisements, delegation of insurance solicitation to a non-qualified person, violation of rules on basic documents, or violation of the duty to explain.
- An Enforcement Decree to the Insurance Business Act that will govern the details of the amendments described above is expected to be complete by the end of this year. Therefore, if your company has any proposals relating to how the amendments will be reflected in the upcoming Enforcement Decree, or if there are any other items your company believes should be incorporated, we would be pleased to discuss those matters with you and provide our advice.

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