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| Title : | Insurance Act Ch |
| Date : | 2021.05.26 |
| Legislative : | Amendment to Article 137、137-1、143-4~143-6、146-1~146-3、146-5、149、168 promulgated per Presidential Order No. Hua-Zong-Yi-Jing-Zi-11000047761 dated May 26, 2021 |
| Content : | <p>Article 137 An insurance enterprise may not commence operations unless it has received permission from the competent authority, completed establishment registration, posted bond, and secured a business license in accordance with the law.</p> <p>With respect to applications by insurance enterprises for establishment permits, the competent authority shall prescribe regulations governing the following matters eligibility conditions and procedures for application; required documentation, qualification requirements for promoters, directors, supervisors, and managerial officers; revocation of permits, establishment, transfer, or withdraw of branch units, assignment of insurance contracts, and dissolution; and other compliance matters.</p> <p>A foreign insurance enterprise may not commence operations unless it has received permission from the competent authority, completed establishment registration, posted bond, and secured a business license in accordance with the law.</p> <p>Unless otherwise provided by this Act, the provisions of this Act regarding insurance enterprises shall apply mutatis mutandis to foreign insurance enterprises.</p> <p>With respect to applications by foreign insurance enterprises for establishment permits, the competent authority shall prescribe regulations governing the following matters: eligibility conditions and procedures for application; required documentation, revocation of permits, issuance of business licenses, conditions for the establishment of branch offices, any change in line(s) of business, replacement of responsible person, funds allocations; and other compliance matters.</p> <p>With respect to an insurance enterprise established in accordance with another act, the provisions of this Act pertaining to insurance enterprises shall apply mutatis mutandis except as otherwise provided by the other act.</p> <p>Article 137- 1 The guidelines for qualifications and requirements for the responsible person of an insurance enterprise, restrictions on concurrent posts thereof, prohibition on conflicts of interest and other matters to be complied with shall be prescribed by the Competent Authority.</p> <p>Where a responsible person of an insurance enterprise does not meet the qualifications and requirements set forth in the guidelines referred to in the preceding paragraph, the Competent Authority shall discharge the person; where a responsible person of an insurance enterprise violates the restrictions on concurrent posts and prohibition on conflicts of interest, the Competent Authority may order the insurance enterprise to make adjustment within a prescribed period of time; the responsible person shall be discharged when the insurance enterprise fails to adjust within the time period and without justifiable reason.</p> <p>Article 143-4 An insurance enterprise's ratio of total adjusted net capital to risk-based capital and the net worth ratio shall not be less than a certain ratio.</p> <p>An insurance enterprise shall be graded by capital as follows based on the ratio of total adjusted net capital to risk-based capital and the net worth ratio:</p> <p>1. Adequate capital;</p> |

2. Inadequate capital;
3. Significantly inadequate capital;
4. Seriously inadequate capital.

The seriously inadequate capital referred to in the preceding sub-paragraph 4 means that the ratio of total adjusted net capital to risk-based capital is less than 25% of a certain ratio defined in Paragraph 1 or the insurance enterprise' s net worth is less than zero.

With regard to a certain ratio, the calculation of the net worth ratio, and total adjusted net capital and risk-based capital as referred to in Paragraph 1, the competent authority shall prescribe regulations governing the following matters: their scope; the method for calculating their amounts; administration thereof; categorization of the capital adequacy ratio referred to in the sub-paragraphs 2 and 3 of Paragraph 2; and other compliance matters.

Article 143-5 An insurance enterprise which meets any of the following circumstances shall not distribute earnings, repurchase shares or refund capital stock in any form other than stock dividend or deposit as capital stocks subscribed by the members:

1. The insurance enterprise is graded as having inadequate capital, significantly inadequate capital or seriously inadequate capital;
2. The insurance enterprise is graded as having adequate capital, is likely to be degraded as that categorized in the preceding sub-paragraph if the enterprise distributes earnings, repurchases shares or refunds capital stock in any form other than stock dividend or deposit as capital stocks subscribed by the member.

The insurance enterprise referred to in the sub-paragraph 1 of the preceding paragraph shall not pay the responsible person any benefits other than remuneration, unless with approval from the competent authority.

Article 143-6 The competent authority shall adopt any or all of the following measures, subject to the grading of an insurance enterprise' s capital:

1. In the case of inadequate capital:
 - (1) To order the insurance enterprise and its responsible person to put forward a plan for capital increase or another corrective action plan for finance or business within the specified period; where the insurance enterprise fails to submit the same within the specific period or fails to implement the plan, the competent authority may take supervision measures against the capital adequacy ratio;
 - (2) To order the insurance enterprise to cease selling insurance products or restrict it to launch new insurance products;
 - (3) To restrict the scope of fund utilization;
 - (4) To restrict the remuneration, bonus, stock options, or other payments of similar properties to the responsible person of the insurance enterprise;
 - (5) To take other necessary measures.
2. In the case of significantly inadequate capital:
 - (1) To take the measures set forth in the preceding sub-paragraph;
 - (2) To dismiss the responsible person of the insurance enterprise, and inform the authority in charge of company registration to cancel the registration of the insurance enterprise;
 - (3) To suspend the responsible person from exercising his/her duties within a certain period;
 - (4) To require the insurance enterprise to obtain prior approval by the competent authority itself for acquisition or disposal of any specific assets;
 - (5) To order the insurance enterprise to dispose of the assets specified;
 - (6) To restrict or forbid the insurance enterprise to extend loans to or conduct other transactions with the interested parties thereof;
 - (7) To order the insurance enterprise to lower the remuneration of its responsible person, which, afterwards, shall not exceed 70% of the average remuneration paid to said responsible person within the 12 months before the insurance enterprise's capital is graded as being significantly inadequate;
 - (8) To restrict establishment of or order dissolution, within the specified

period, of a branch or department; and
(9) To take other necessary measures.

3. In the case of seriously inadequate capital: In addition to the measures referred to in the preceding sub-paragraph, the measures referred to in the sub-paragraph 1 of Paragraph 3 of Article 149 herein shall also apply.

Article 146-1 The funds of an insurance enterprise may be used to purchase the following marketable securities:

1. Government bonds and treasury bills.

2. Financial bonds, negotiable certificates of deposit, banker's acceptances, and commercial promissory notes guaranteed by a financial institution, the aggregate amount of which may not exceed 35 percent of the funds of the insurance enterprise.

3. Company stock whose public issuance is approved by law: The aggregate amount and total shares of stock purchased from each company plus stock option-based securities approved by the competent authority to be purchased may not total over 5% of a specific insurance enterprise's capital and 10% of the total outstanding voting shares of the issuing company respectively.

4. Publicly issued guaranteed corporate bonds or corporate bonds and non-guarantee commercial paper issued by a company rated by a rating agency at no lower than a specified rating and approved in accordance with the law, provided that the aggregate amount made by an insurance enterprise in such corporate bonds and non-guarantee commercial paper may not exceed 5 percent of the funds of the insurance enterprise, and the aggregate amount of bonds from any one company may not exceed 10 percent of the owner's equity of the company issuing the corporate bonds.

5. Beneficial interest certificates for securities investment trust funds and mutual trust funds for which public issue has been duly approved. The aggregate amount of such investment made by an insurance enterprise may not exceed 10 percent of the funds of the insurance enterprise, and an insurance enterprise may not invest in more than 10 percent of the aggregate amount of the beneficial interest certificates issued by any fund.

6. Securitization products and other marketable securities that the competent authority has granted approval for insurance enterprises to purchase, the aggregate amount of which may not exceed 10 percent of the funds of the insurance enterprise.

The aggregate amount of the investments contemplated under subparagraphs 3 and 4 of the preceding paragraph may not exceed 35 percent of the funds of the insurance enterprise.

Investments made by insurance enterprises in accordance with Paragraph 1, Subparagraphs 3 and 6 may not be found with any of the following conditions:

I. For the insurance enterprise or a representative thereof to be a director or supervisor of the investee company.

II. The insurance enterprise can cast a vote in the election of directors or supervisors at the company being invested.

III. The insurance enterprise's designee is hired as manager at the company being invested.

IV. The insurance enterprise serves as trust supervisor for securitization products being invested.

V. The insurance enterprise participates in the operation of the company being invested and the operation and management of real-estate investment trust funds being invested by means of entrustment, delegation, or a contract or agreement entered into with a third party, authorization, or other, excluding liquidation of the fund.

When an insurance enterprise is found with any of the foregoing conditions, the position held by the insurance enterprise or its representative as director or supervisor, the vote it casts, the hiring of its designee as manager, and the contract, agreement, or authorization with a third party will be invalid.

With respect to investments by an insurance enterprise pursuant to paragraph 1, subparagraphs 3 to 6 in publicly issued securities not listed on an exchange or OTC market, or in privately placed securities, the competent authority shall prescribe regulations governing eligibility conditions, scope and type of investments, investment rules, and other

compliance matters.

Article 146-2 Investments in real estate by an insurance enterprise shall be limited to real estate that can be used immediately and from which benefit may be derived. The total amount of such investments, apart from real estate held for an insurance enterprise's own use, may not exceed 30 percent of an insurance enterprise's funds. In the case of real estate purchased for self-use, the total amount invested in by an insurance enterprise may not exceed the total amount of its owner's equity. The acquisition and disposal of real estate by an insurance enterprise shall be evaluated by a legally established real estate appraisal organization.

When an insurance enterprise initiates social housing for rental only in accordance with the Housing Act, it will not be subjected to the restrictions of instantaneous utilization with yield as indicated in Paragraph 1

With respect to the investments in real estate of paragraph 1, the competent authority shall prescribe regulations governing internal handling procedures, restrictions and qualifications for real estates, benchmarks for immediate use and derived benefit, handling principles, and other compliance matters.

Article 146-3 Loans made by an insurance enterprise shall be limited to the following items:

1. Loans guaranteed by a bank, or by a credit guarantee institution recognized by the competent authority.
2. Loans secured by personal property or real property.
3. Loans secured by qualified securities as defined in Article 146-1.
4. For life insurance enterprises, loans secured by life insurance policies issued by said life insurance business.

For loans made pursuant to subparagraphs 1 to 3 of the preceding paragraph, the amount loaned to each borrower may not exceed 5 percent of an insurance enterprise's funds, and the total amount of all loans shall not exceed 35 percent of an insurance enterprise's funds.

Where an insurance enterprise provides a secured loan pursuant to paragraph 1, subparagraphs 1, 2, or 3 to one of its responsible persons, employees, major shareholders, or to a person having an interested party relationship with one of its responsible persons or with an employee in charge of administering the loan, the loan shall be fully secured, and the conditions may not be better than those extended to other loanees of the same class. A loan that is equal to or more than the dollar amount specified by the competent authority shall also be approved by three-fourths of the directors present at a board of directors meeting attended by at least two-thirds of the directors. The competent authority shall prescribe regulations governing the definition of interested parties, loan limits and aggregate loan balances, and other compliance matters.

The combined total amount of (i) an insurance enterprise's investment in marketable securities of a given company in accordance with Article 146-1, paragraph 1, subparagraphs 3 and 4, and (ii) loans made in accordance with paragraph 1, subparagraph 3 that are secured by the marketable securities issued by that same company, shall exceed neither 10 percent of the insurance enterprise's funds nor 10 percent of owner's equity of the company issuing the marketable securities.

Article 146-5 Insurance enterprise allocates funds to special projects and investments in public utilities and social welfare enterprises, it shall be approved by the competent authority or submitted documents for subsequent reviews. With respect to circumstances of applications for approval or subsequent reviews, the competent authority shall prescribe regulations governing required documentation, procedures, scope of and limits upon allocations and investments, and other compliance matters.

Where the funds referred to in the preceding paragraph are allocated to investment in corporate stocks, the conditions and percentages related thereto shall not be subject to the restrictions set forth in Article 146-1, paragraph 1, subparagraph 3.

Allocations of insurance enterprise funds to investments in special

projects referred to in paragraph 1, the provisions of Article 146-1, paragraph 3 and 4 shall apply mutatis mutandis.

Allocations of insurance enterprise funds to investment in public utilities and social welfare enterprises referred to in paragraph 1 shall apply the following requirements:

1. Where the insurance enterprise or its representative serves as director or supervisor of the invested enterprises, the number of directors or supervisors appointed by the insurance enterprise shall not exceed two thirds of the total number of directors or supervisors of the invested enterprises.
2. The invested enterprises shall create at least one independent director as the number of directors appointed by the insurance enterprise over the half of the total number of directors of the invested enterprises.
3. The insurance enterprise shall not assign concurrently person to act as manager of the invested enterprises.

Article 149 If an insurance enterprise violates laws, regulations, or its articles of incorporation, or is suspected of improper management, the competent authority may issue an official reprimand or order it to take corrective action within a specified period of time, and may, depending on the circumstances, take the following disciplinary actions:

1. Restrict the scope of its business or funds allocations.
2. Order the insurance enterprise to suspend sales of an insurance product or products or restrict its launch of new insurance products.
3. Order the insurance enterprise to increase its capital.
4. Order removal of its managers or employees from their positions.
5. Revoke the resolutions of statutory meetings.
6. Dismiss its directors or supervisor(s), or suspend them from their duties for a certain period of time.
7. Any other necessary disposition.

If directors or supervisors are dismissed pursuant to the provisions of preceding paragraph, subparagraph 6, the competent authority shall notify the competent authority for company (cooperative) registration to revoke the registration of the directors and supervisors.

The competent authority shall assume conservatorship or receivership over the insurance enterprise, order the enterprise to suspend and wind up business, or liquidate the enterprise in the following manners:

1. When an insurance enterprise's capital is graded as being seriously inadequate, and the enterprise or its responsible person fails to complete the plan for capital increase or the corrective action plan for finance or business within the specific period required by the competent authority, the competent shall assume conservatorship or receivership over the insurance enterprise, order the enterprise to suspend and wind up business, or liquidate the enterprise within 90 days following expiration of said-noted period.
2. Where the enterprise's finance or business gets worse seriously under the circumstances other than those referred to in the preceding subparagraph, the enterprise is incapable of paying its debts or fulfilling its contract obligations or is likely to undermine the rights of insured parties due to significantly deteriorating business or financial standing, the competent authority shall first mandate that the insurance enterprise submit a financial or business improvement plan. The plan must be approved by the competent authority. The competent authority may assume conservatorship or receivership over the insurance enterprise, order the enterprise to suspend and wind up business, or liquidate the enterprise in light of the varied severities of the conditions if the gains and losses or net value of the insurance enterprise show speedy deterioration or fail to show improvements despite assistance and accordingly result in the likelihood of said circumstances.

Where the insurance enterprise or its responsible person fails to complete said plan for capital increase or the corrective action plan for finance or business, or the consolidation plan within the specific period required by the competent authority, due to major domestic or international events that have a significant influence on the financial market system, the competent authority may order the insurance enterprise to set another specific time limit to complete the same or re-submit the plan for capital increase, or

corrective action plan for finance or business, or consolidation plan. In case of conservatorship, receivership, suspended business, rehabilitation, or dissolution as indicated in Paragraph 3, the competent authority may authorize another insurance enterprise, insurance-related institution, or professional to serve as conservator, receiver, rehabilitator, or liquidator. When the matters fall within the scope of the stabilization fund's jurisdiction as indicated in Article 143-3, the stabilization fund shall cooperate in related management.

A related institution or individual mandated by the competent authority as provided for under the preceding paragraph shall not be subject to the provisions of the Government Procurement Act when handling the matters for which it was mandated.

When an insurance enterprise is placed under receivership or ordered to suspend business and undergo rehabilitation, the provisions of the Company Act pertaining to temporary managers and inspectors do not apply, and with the exception of a reorganization filed for in accordance with the provisions of this Act, any other petition for reorganization, bankruptcy, or composition shall be automatically stayed, as shall any compulsory execution proceeding.

A receiver filing for reorganization in accordance with the provisions of this Act may petition the court to hear or rule upon its petition together with any petition for reorganization filed by the insurance enterprise under receivership before it was placed under receivership. The court may as necessary question interested parties before issuing a ruling.

If an insurance enterprise has been placed under conservatorship by the competent authority pursuant to the provisions of paragraph 4, subparagraph 1, the insurance enterprise may not perform any of the following acts without the consent of the conservator:

1. Make payments or dispose of property in excess of a limit prescribed by the competent authority.
2. Enter into any contract or undertake material obligations.
3. Any other matter that would significantly affect its finances.

The relevant provisions of Article 148 shall apply mutatis mutandis to the conservator's performance of his/her duties as conservator.

The competent authority shall prescribe regulations governing the procedures for conservatorship or receivership of insurance enterprises, the duties of conservators and receivers, fee burdens, and other compliance matters.

Article 168 If an insurance enterprise violates the provisions of Article 138, paragraph 1, 3, or 5, or the provisions relating to business scope in regulations prescribed by the competent authority pursuant to Article 138, paragraph 2, an administrative fine of not less than New Taiwan Dollars nine hundred thousand but not more than nine million shall be imposed.

If an insurance enterprise violates the provisions of Article 138-2, paragraph 2, 4, 5, or 7, or Article 138-3, paragraph 1 or 2, or the provisions relating to the amount to be provisioned for the compensation reserve fund and the manner of such provisioning as set out in regulations prescribed by the competent authority pursuant to paragraph 2 of that same article, an administrative fine of not less than New Taiwan Dollars nine hundred thousand but not more than nine million shall be imposed; where the circumstances are severe, the enterprise's permit to engage in insurance trust business may also be revoked.

Where an insurance enterprise violates the provisions of Article 143, an administrative fine of not less than New Taiwan Dollars nine hundred thousand but not more than New Taiwan Dollars nine million shall be imposed.

Where an insurance enterprise violates Article 143-5 herein, or the competent authority takes measures in accordance with Article 143-6 herein, an administrative fine of not less than New Taiwan Dollars two million but not more than New Taiwan Dollars twenty million shall be imposed.

Where any one of the following circumstances obtains with respect to the funds allocation of an insurance enterprise, an administrative fine of not less than New Taiwan Dollars ten hundred thousand but not more than New Taiwan Dollars ten million shall be imposed, or the enterprise shall be ordered to dismiss its responsible person; where the circumstances are

severe, its business permit may also be revoked:

1.A violation of Article 146, paragraph 1, 3, 5, or 7, or the provisions relating to administration and custody of special ledgers or the allocation of investment assets as set out in regulations prescribed by the competent authority pursuant to paragraph 6 of that same article, or a violation of provisions relating to the terms and conditions of derivatives trading by insurance enterprises, the scope thereof, transaction limits, or internal handling procedures as set out in regulations prescribed by the competent authority pursuant to paragraph 8 of that same article.

2.A violation of Article 146-1, paragraph 1, 2, or 3, or the provisions relating to eligibility conditions, scope and type of investments, and investment rules as set out in regulations prescribed by the competent authority pursuant to paragraph 5 of that same article; or a violation of Paragraph 3 or 4 of Article 146-5.

3.A violation of the provisions of Article 146-2 paragraph 1, 2, or the provisions relating to restrictions and qualifications for investments in real estate as set out in regulations prescribed by the competent authority pursuant to paragraph 4 of that same article.

4.A violation of the provisions of Article 146-3, paragraph 1, 2, or 4.

5.A violation of Article 146-4, paragraph 1 or 2, or the provisions relating to investment rules or investment limits as set out in regulations prescribed by the competent authority pursuant to paragraph 3 of that same article.

6.A violation of the forepart of paragraph 1 of Article 146-5 by making investments without approval of the competent authority or required documentation or procedures for subsequent reviews, or of the provisions relating to scope of or limits upon allocations and investments as set out in regulations prescribed by the competent authority pursuant to the latter part of that same paragraph.

7.A violation of Article 146-6, paragraph 1 or 2, or the provisions relating to the method of reporting investments as set out in regulations prescribed by the competent authority pursuant to paragraph 3 of that same article.

8.A violation of the provisions of Article 146-9, paragraph 1, 2, or 3. Where a secured loan made by an insurance enterprise under Article 146-3, paragraph 3 or Article 146-8, paragraph 1 is not fully secured or the conditions are better than those extended to other loanees of the same class, the person responsible for the act shall be sentenced to imprisonment for not more than three years or detention, and in addition may be assessed a criminal fine of not more than New Taiwan Dollars twenty million.

Where a secured loan made by an insurance enterprise under Article 146-3, paragraph 3 or Article 146-8, paragraph 1 reaches or exceeds the monetary amount prescribed by the competent authority without approval by three-quarters of the directors present at a board of directors meeting attended by at least two-thirds of the directors, or where an insurance enterprise violates the provisions relating to loan limits and aggregate loan balances as set out in regulations prescribed by the competent authority pursuant to Article 146-3, paragraph 3, the person responsible for the act shall be assessed an administrative fine of not less than New Taiwan Dollars two million but not more than New Taiwan Dollars twenty million.

If an insurance enterprise violates the provisions relating to limits on loans or other transactions as set out in regulations prescribed by the competent authority pursuant to Article 146-7, paragraph 1, or of the provisions relating to procedures for the adoption of resolutions or limits on transaction size as set out in regulations prescribed by the competent authority pursuant to Article 146-7, paragraph 3, an administrative fine of not less than New Taiwan Dollars two million but not more than twenty million shall be imposed.