

INSURANCE LAW & REGULATION IN VIETNAM

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GLOSSARY

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|------------------|---|
| AEC | ASEAN Economic Community |
| ASEAN | Association of Southeast Asian Nations |
| BaoViet | Vietnam Insurance Corporation |
| BTA | US - Vietnam Bilateral Trade Agreement |
| Business License | Establishment and Operation License |
| CFA | Chartered Financial Analyst |
| CPTPP | Comprehensive and Progressive Agreement for Trans-Pacific Partnership |
| LLC | Limited Liability Company |
| LOIB | Law on Insurance Business |
| MOF | Ministry of Finance |
| RO | Representative Office |
| TPP | Trans-Pacific Partnership Agreement |
| VIA | Vietnam Insurance Association |
| WTO | World Trade Organization |

I. Introduction¹

A. In general

Vietnam continues to make economic progress. Economic growth has lifted many Vietnamese out of poverty. At the same time, the middle class is expanding. WTO membership, the negotiation of numerous free trade agreements and the establishment of the ASEAN Economic Community (“**AEC**”) have given Vietnam access to foreign markets and capital, while making Vietnamese companies, particularly Vietnamese insurance enterprises, stronger through increased competition.

Many foreign insurance companies (particularly in the life segment) operate in Vietnam and treat Vietnam as a natural extension of their regional or global footprints. New products are being developed. Agency networks are being built. In the non-life segment, local companies have generally shown more pricing discipline than have their counterparts elsewhere in the region.

Companies are also beginning to provide innovative products tailored to Vietnam. 2017 saw a relatively high growth rate in the insurance sector at 21% with total posted premiums at VND 105.6 trillion (US\$ 4.6 billion)². Total value of the insurance sector is around VND 303 trillion (US\$ 13.3 billion), up 23.44% compared to 2016. Insurance companies invested around VND 248 trillion (US\$ 11.0 billion), up 26.74% compared to 2016. This includes investment in government bonds.³

B. History and Relevant Laws

The Vietnamese legal system operates hierarchically. The National Assembly passes law. The particular ministries then issue Decrees, Ordinances and Circulars to interpret and administer those laws. All of these are relevant in the regulation of the Vietnamese insurance industry.

When Vietnam became unified and was a planned economy, insurance was not considered a business activity. It was viewed as a means to share risk among state-owned enterprises and to satisfy Vietnam’s insurance obligations in international business transactions. The Vietnam Insurance Corporation (“**BaoViet**”) monopolized the insurance industry. BaoViet, itself a state-owned enterprise, was formed under the authority of, and is supervised by, the Ministry of Finance (“**MOF**”). The MOF permitted BaoViet to divest specific lines of insurance products. This was a sign of a shift in the way state-owned enterprises were viewed.

In late 1993, Vietnam began to recognize insurance as a business activity, and therefore subject to business regulation, including competition laws. Early attempts to regulate the insurance industry set forth basic rules governing insurance enterprises. Decree No. 100/CP dated December 18, 1993, authorized the formation of insurance enterprises other than state-owned enterprises. The Law on Insurance Business dated December 9, 2000 (“**LOIB**”) replaced early attempts to regulate insurance providers, and developed a comprehensive approach to the insurance business. After 10 years of operation, some parts of the LOIB were

¹ This book has been written by lawyers in the Vietnam offices of Russin & Vecchi and is current as of May 2018.

² In this book, we use a rate of exchange of US\$ 1.00 = VND 22,800.

³ Vietnam Finance Magazine, December 22, 2017

amended and have been amended and supplemented by Law 61/2010/QH12 which was issued by the National Assembly on November 24, 2010 (“**Law 61**”) (In this Chapter, a reference to the LOIB will include a reference to Law 61). In July 2016, the Government’s Decree 73/2016/ND-CP (“**Decree 73/2016**”) which implements the LOIB and Law 61 came into effect and replaced all previous implementing regulations of the LOIB, which included Decree 45/2007/ND-CP,⁴ Decree 46/2007/ND-CP,⁵ Decree 123/2011/ND-CP,⁶ Decree 68/2014/ND-CP⁷ and Circular 124/2012/TT-BTC.⁸ On May 15, 2017, the MOF issued Circular 50/2017/TT-BTC (“**Circular 50/2017**”) to provide guidance for the implementation of Decree 73/2016. Decree 76/2016 and Circular 50/2017 can be seen as an appropriate synchronization of various documents that implement the LOIB.

In addition to the LOIB, the Maritime Law⁹ contains a section that governs marine insurance purchased for marine contracts.¹⁰

Various laws have recognized the importance of maintaining competition in the marketplace and streamlining the role of government in the insurance industry. Moreover, an increased emphasis on promoting competition has resulted in laws that expressly forbid anti-competitive activities. The Commercial Law, passed in June 2005, prohibits inappropriate competitive activity in general.

The Competition Law, established in July 2005, and about to be significantly revised, introduced more comprehensive legislation dealing with anti-competitive products. The Competition Law covers two broad categories of anti-competitive practices: practices that may restrain competition, such as agreements in the restraint of trade, abuse of dominant market position, economic concentration, and unfair competitive practices, including coercion, defamation, and deceptive advertising. The Competition Law also established exemptions from its own regulations. The Law relates to the insurance sector in two ways. First, the general application of the Law’s principles prevents insurers from misrepresenting the coverage terms of policies to potential customers, and demands transparency as a systemic necessity for the industry. Second, practical considerations suggest that while particular aspects of the industry may technically breach competition laws, limited exemptions are provided for activities such as sharing of loss information or pooling arrangements. The Competition Law’s existing provisions on co-operation and competition in the insurance business have been revamped by LOIB, and now include additional detail on both the types of cooperation which are permitted, as well as the specific types of conduct which are prohibited, for example collusion aimed at carving up the insurance market.

Finally, the LOIB specifically prohibits illegal competitive action. These laws forbid providing untruthful information and false advertising related to insurance terms and policies, and intimidating customers or employees of other insurance enterprises.¹¹

⁴ Decree 45/2007/ND-CP dated March 27, 2007 provided guidelines for implementation of a number of articles of law on insurance business

⁵ Decree 46/2007/ND-CP dated March 27, 2007 on financial regime for insurers and insurance brokers

⁶ Decree 123/2011/ND-CP detailed a number of articles of Law 61, and amended and supplemented a number of articles of Decree 45/2007/ND-CP dated March 27, 2007

⁷ Decree 68/2014/ND-CP on amendments to Decree 45/2007/ND-CP dated March 27, 2007

⁸ According to Law on promulgation of legislative documents 80/2015/QH-13 dated June 22, 2015

⁹ The Maritime Law No. 95/2015/QH13 adopted by the National Assembly on November 25, 2015

¹⁰ Maritime Law 2015 arts. 303-336;

¹¹ LOIB art. 10.2.

The Law on Health Insurance, dated November 14, 2008 and the amended law dated June 13, 2014 are applicable to all individuals and organizations, both domestic and foreign, and govern the eligibility and the scope of insurance coverage, health insurance funding, rights and obligations of insurers and insureds, and provide a road map for universal health insurance. The law has had a considerable impact on enterprises, which are obligated to provide health insurance coverage for all employees working under indefinite-term labour contracts or labour contracts with a definite term of three months or more, as well as for managers who receive wages.

C. International Agreements

The U.S.-Vietnam Bilateral Trade Agreement (“**BTA**”) came into effect in December 2001. The BTA bound the Vietnamese Government to permit greater access by American insurance companies to the domestic market. Beginning five years from the effective date, American insurance companies were permitted to establish 100% foreign invested enterprises to provide both compulsory and non-compulsory insurance products.

Implementation of the BTA eliminated the limits on U.S. capital participation in the insurance industry. Vietnam’s accession to the World Trade Organization in January of 2007 opened the market to other foreign investors.

Under its WTO Commitments, beginning January 1, 2008, Vietnam started to give equal treatment to both foreign and domestic insurance enterprises. Foreign insurance enterprises provide insurance services to foreign invested and wholly foreign owned companies in Vietnam. They may also provide reinsurance, international transport insurance, and insurance brokerage services. Foreign invested insurance enterprises may also deal in compulsory insurance products, such as liability insurance for vehicle owners.

The AEC was officially established on December 31, 2015 and Vietnam is part of the community. The AEC aims to create a single free market in ASEAN by 2020. This would mean that an insurance enterprise in ASEAN will be able to provide insurance services to clients in other ASEAN countries on a cross-border basis; a client in an ASEAN country could freely choose to purchase insurance services from another ASEAN country; and an insurance expert could work freely in the ASEAN region.

The Trans-Pacific Partnership Agreement (“**TPP**”) was signed on February 4, 2016, in Auckland, New Zealand. However, after the withdrawal of the US, the TPP was replaced by the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (“**CPTPP**”), which was signed on March 8, 2018 in Santiago, Chile. CPTPP is a comprehensive agreement, with the aim to create a new potential market for goods and services which in turn will create a great opportunity and also a challenge for insurance enterprises. Once CPTPP is ratified, an insurance enterprise in one of the eleven member countries can expand its businesses to another member country, subject to certain conditions.

D. Internal and External Supervision

The Government is responsible for providing guidelines to explain and implement the law, and the MOF is responsible for implementing state regulations and supervising insurance

activities. The MOF grants and withdraws licenses to establish and operate insurance enterprises.¹²

Insurance enterprises must make periodic reports to the MOF. Additional reporting requirements apply if there are unusual developments within the enterprise, or if the enterprise fails either to meet its financial requirements or to fulfill commitments to its customers.¹³ Liquidation of or mergers between insurance enterprises must be carried out under the supervision of the MOF, and changes in management structure or intended investment overseas require MOF approval. The MOF also carries out financial inspections of insurance enterprises once a year.

The MOF acts both as a government regulator of insurance enterprises, and as an owner of several joint stock companies formed from the equitization of state-owned insurance enterprises. This dual role continues to pose a conflict of interest in terms of administrative enforcement.

In addition to the regulatory role of the MOF, insurance enterprises must also adopt a system of internal supervision and control. The MOF's Circular 195/2014/TT-BTC dated December 17, 2014 ("**Circular 195/2014**") provides guidance to evaluate and classify insurance enterprises. Circular 195/2014 replaces the system of supervisory criteria for insurance enterprises that was introduced by Decision 153/2003/QD-BTC dated September 22, 2003. Insurance enterprises are evaluated and classified based on four categories of criteria: (i) Solvency, operation reserves and business efficiency; (ii) Insurance business activities; (iii) Capital, asset and investment quality; and (iv) Business administration and information transparency. Each category of criteria varies among life and non-life insurance enterprises, life or non-life. This evaluation and classification system can be used as a consistent and systematic analytical tool by the MOF, as well as for internal supervision by an insurance enterprise to determine its business status and to detect and prevent insolvency. An insurance enterprise must file an evaluation report and the annual financial report with the MOF within 90 days from the last day of the preceding fiscal year.

Insurance enterprises create internal control systems to ensure that their operations comply with the law. Records and results of internal audits must be in writing and filed at the enterprise's office. Circular 50/2017 provides further guidance on the financial regimes to manage internal control, including decentralizing and maintaining internal control activities independent from the executive and professional activities of the enterprise; preserving the objectivity of the internal auditors; and ensuring that the internal auditors have the necessary professional skills and qualifications to conduct such audits. Internal auditors must also assess the internal audit system itself, and verify the efficacy of existing rules for identifying risks and of methods for measuring and managing those risks. They must also check the flow of information within the firm, and assess compliance with the law, with regulations on the establishment of reserves and with professional ethics.

The Vietnam Insurance Association ("**VIA**") was established in 1999 as a professional association. The VIA has a role in oversight, since an enterprise must inform the VIA of any agents with whom the enterprise has terminated its relationship due to legal or professional malfeasance. As the market expands, the VIA may play a greater part in establishing

¹² Decree 73/2016 art. 3

¹³ LOIB art.103.

professional and ethical rules, and providing a forum in which market participants can communicate with each other and with the Government.

The procedures and documents necessary to establish an insurance enterprise are provided in Decree 73/2016. Potential shareholders of an insurance enterprise must prepare three sets of application documents, one original set and two copied sets, which must include all the documents required by Decree 73/2016. Within twenty one (21) days of receipt of the application, the MOF is required to notify the applicant in writing if it needs to supplement the application documents. Within six (6) months of notice, if the applicants fail to satisfy the MOF, the MOF will dismiss the application and notify the applicants in writing. If the application is successful, the MOF will issue an Establishment and Operation License (“**Business License**”) within 60 days from the date of receiving the application. If the MOF determines not to issue a Business License, it will provide a written response with explanation to the applicant.¹⁴

E. Sanctions

Decree 98/2013/ND-CP, dated August 28, 2013 (“**Decree 98/2013**”), lists sanctions for administrative violations by insurance enterprises. They include violation of rules that relate to the establishment and operation of insurance companies. Decree 98/2013 includes sanctions on unlawful management and operation of insurance companies; unlawful competition, including providing false information or advertising which damages policy holders; competing for customers by interfering with other enterprises or intimidating their employees; and agreeing to restrict competition. The fine for violating these rules, with respect to individuals is up to VND100 million (US\$4,400), and is up to VND200 million (US\$8,800) with respect to an enterprise. The Decree also provides a set of penalties for failing to adhere to financial requirements, such as compulsory reserve requirements. A decision to sanction an insurance enterprise for administrative violations will expire one year after the date it is issued. Some sanctions depend on the specific administrative violation, such as: (i) revocation of the certificate of one or more insurance agents; (ii) suspension of an insurance enterprise’s operation; and (iii) confiscation of means used to commit an administrative violation.¹⁵

II. Principles of Insurance Law in Vietnam

A. Meaning of Insurance

The LOIB defines insurance as a profit-oriented activity carried out by an insurance enterprise, in which the enterprise assumes certain defined risks of the insured in return for an insurance premium paid by the insurance buyer to secure the enterprise’s indemnity to the insured.¹⁶ It contemplates payment to a beneficiary of a benefit according to terms of a policy concluded between the enterprise and the buyer upon the occurrence of an agreed-upon insured event.

Insurance-related regulations, including the LOIB, do not specifically define the terms “insurance” or “assumption of risk”. Under the LOIB, however, an “insured event” is an objective event defined by the parties or stipulated by law. Upon the occurrence of the

¹⁴ Decree 73/2016 art. 15

¹⁵ Decree 98/2013 art 3

¹⁶ LOIB art. 3.1.

insured event, the enterprise must pay to the beneficiary or indemnify the insured the contractual sum that represents the value of the insurance policy.

B. The Insurance policy

1. General

An insurance policy is an agreement reached between the insurance buyer and an insurance enterprise under which the enterprise must pay insured amounts to the beneficiary or in which it agrees to indemnify the insured upon the occurrence of an insured event, provided that the insurance buyer maintains the premium payment obligations.¹⁷

There are two basic forms of an insurance policy: compulsory and non-compulsory. The MOF has legislated form policy terms that enterprises must use for each kind of compulsory insurance, including life insurance and accident insurance. Insurance enterprises that provide non-compulsory products enjoy more flexibility in the structure and content of their contracts. They must nevertheless register their terms and premium tables with the MOF.

An insurance policy must be made in writing and must include certain information: the name and address of the insurance enterprise, the insurance buyer, and the insured or the beneficiary; the subject matter of the insurance policy; the value of the insured property or the sum insured; the scope of coverage, and applicable terms and conditions; exclusions; duration of coverage; premium rates and acceptable payment methods; time limit for payment of the insurance benefits or indemnity and acceptable payment methods; rules for dispute settlement; and the date on which the contract is executed.¹⁸ From October 15, 2015, an insurance enterprise must register the sample of its life insurance policy and general transaction conditions with the local Competition Authority.¹⁹

Insurance legislation, particularly recent regulations, has emphasized the responsibility of the insurance enterprise to create clear policies that buyers can understand, as well as the duty of agents who market these policies to ensure that the consumer understands the terms.²⁰ Currently, insurance policies are mainly regulated by the LOIB. Additionally, civil contracts, including insurance policies are regulated by the Civil Code²¹.

2. The Parties

The LOIB mentions three parties to an insurance policy: the insurance enterprise, the insurance buyer and the insured.²² However, it attaches contractual obligations to only two of these parties: the insurance buyer and the insurance enterprise.²³ The insurance enterprise receives premium payments and assumes the obligation to pay to the beneficiary or to indemnify the insured the insured amount upon the occurrence of the insured event. The insurance buyer pays premiums and provides information related to the insured object.

¹⁷ LOIB art. 12.1.

¹⁸ LOIB arts. 13, 14.

¹⁹ Decision 35/2015/QD-CP dated August 25, 2015

²⁰ LOIB art. 17.2(a), art. 19.1

²¹ The Civil Code No. 91/2015/QH13 adopted by the National Assembly on November 24, 2015

²² LOIB art. 12.1

²³ LOIB art. 17, 18

The definition of an “insured” in the various laws is slightly inconsistent. In general, the term “insured” refers to an insurance buyer when he is also the insured party. In that case, he is the party obligated to pay the premiums, disclose information, and prevent damages, and is entitled to be indemnified or to receive the insurance proceeds.

3. Insurable Interests

A valid insurance policy requires an “insurable interest”.²⁴ Different insurance policies have different insurable interests. According to the LOIB, there are six types of insurance policy: life insurance policy, property insurance policy, civil liabilities insurance policy, health insurance policy, retirement insurance policy and marine insurance policy.

4. Formation

In order to comply with the LOIB, the policy must be in writing.²⁵ The policy is not effective until it is executed. The LOIB, however, provides that liability will arise if there is evidence the parties have accepted the policy, for example, the insurance enterprise issues a written acceptance of the application for insurance, and the insurance buyers have started to pay premiums.²⁶ The parties may agree otherwise in the policy. Similarly, an application by the insured for an extension, renewal, or amendment of the policy must be in writing.

An insurance buyer is permitted to assign the policy, subject to the terms of the policy. Assignment of an insurance policy by the buyer becomes valid only when a written notice of assignment is given to the insurance enterprise, and the enterprise provides written notice of acceptance of the assignment. The LOIB permits an exception when the assignment is undertaken in accordance with international trade practices.²⁷ This general provision on the assignability of the insurance policy may create ambiguity around the assignment of life insurance policies. There is no guidance on when a life insurance policy can be assigned, conditions of assignment, involvement of the insured in the assignment, or obligation of the insurance buyer post-assignment.

5. Void and Voidable

The LOIB states that an insurance policy is deemed to be void if:

- The insurance buyer has no insurable interest upon entering into the contract;
- The subject matter of the insurance policy no longer exists;
- The insurance buyer knows an insured event has occurred at the time the parties enter into the contract; or
- The insurance buyer or the insurance enterprise was deceived at the time the parties entered into the contract.²⁸

A civil contract such as an insurance policy may be declared to be only partially void, in which case the remaining provisions remain valid. When a civil contract is declared void, the parties must be restored to their original positions. They must return to each other the assets

²⁴ LOIB art. 13.

²⁵ LOIB art. 14.

²⁶ LOIB arts. 14, 15.

²⁷ LOIB art. 26.

²⁸ LOIB art. 22.1.

they have received as a result of the agreement. If they cannot return the assets, they must pay the equivalent cash value instead.²⁹

In addition to the circumstances outlined in the LOIB, while the Civil Code does not explicitly distinguish between a contract that is void and one that is voidable, a civil contract can be declared void by a court or competent government authority if any of the following conditions apply:³⁰

- i. The parties to the contract lack the capacity to take part in civil acts.
- ii. The parties have not acted voluntarily.
- iii. There is a deception or mistake relating to one or more of the essential elements of the contract. In a civil transaction, a deception or mistake relates to an intentional act of a party with the purpose of misleading the other party with regard to the identity of the parties, the nature of the subject matter, or the contents of the transaction.
- iv. The purpose and contents of the contract are contrary to law and social morality.
- v. The form of the contract does not adhere to the requirement that certain types of contracts, including insurance policies, be made in writing. Either party may file a request to the court not to declare such contract void if one or both parties have completed at least two-thirds of their contractual obligations, and if non-adherence of the contract is limited to the required form, notarization or certification of the contract.

The statute of limitations restricting the time during which parties may request that the court declare a civil contract void is two years. The starting date of this two-year period varies depending on why a civil contract is to be declared void. If the parties fail to request a court to declare a civil contract void within the appropriate two-year period, the civil contract will continue to be binding. However, if any contract is illegal or cruelly immoral, the court can declare it void at any time. No statute of limitation applies under those circumstances.

C. Disclosure Obligations and Misrepresentation

The insured must disclose all information related to the insured object or person, as requested by the insurance enterprise.³¹ If the beneficiary intentionally provides false information to the insurance enterprise, the insurer may unilaterally terminate the contract and withhold all payments on it.

An insurance enterprise has the right unilaterally to terminate an insurance contract while still retaining the premiums paid through the date of termination n in case the buyer: (i) fails to notify the insurance enterprise of a change in circumstances which may increase the enterprise's risk exposure, or (ii) fails to disclose all information related to the insured object or person to the insurance enterprise. Similarly, where an insurance enterprise intentionally provides untruthful information to a buyer to persuade it to enter into an insurance policy, the buyer may unilaterally suspend performance of the contract. The insurance enterprise must compensate the buyer for any damage caused by its misrepresentations.³²

²⁹ Civil Code art. 131

³⁰ Civil Code art. 117-118-119

³¹ LOIB arts. 18.2, 19.1.

³² LOIB art. 19.

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If the buyer does not fulfill his obligation to disclose the any new circumstances that may increase the risk or create additional liabilities for the insurance enterprise, the enterprise may unilaterally cancel the contract and refund the prorated balance of the premium due to the buyer upon termination. The enterprise may deduct an amount as compensation for reasonable expenses.³³

The buyer has a similar right of unilateral termination if the insurance enterprise has intentionally provided untruthful information in the context of his purchase of the policy. The buyer may claim from the enterprise compensation for damages resulting from the misrepresentation.³⁴

The LOIB does not require that the misrepresentation concern a material fact. In the case of misrepresentation on the part of the enterprise, although the law does not require the buyer to have relied upon the misrepresentation in his decision to purchase the policy in order for him to terminate the contract, he must show that the misrepresentation caused him damages in order for him to receive compensation for his claim.

Finally, changes in the risk factors related to the insured object may lead to an increase in the premiums the buyer must pay. If the buyer refuses to accept and pay the increased premium, the insurance enterprise may unilaterally terminate the performance of the insurance policy after providing written notice to the buyer. Similarly, if the buyer notifies the enterprise of a change leading to a reduced risk to the enterprise, but the enterprise refuses to reduce the premiums accordingly, the buyer may terminate his insurance policy. He must provide written notice to the enterprise of his decision to terminate.³⁵

D. Prevention of Loss

The insurance enterprise has the right to request, and the insurance buyer has the obligation to take, appropriate measures to prevent and mitigate loss.³⁶ Furthermore, the insurance enterprise can implement measures to ensure the safety of the insured. Decree 73/2016 provides the followings measures to prevent and mitigate loss:³⁷

- Educate the insured about the prevention and mitigation of loss;
- Provide facilities and equipment to prevent and mitigate loss;
- Construct works or infrastructure to prevent and mitigate loss; and
- Engage other organizations or individuals to supervise the prevention and mitigation of loss.

Article 46.3 of Decree 73/2016 provides that “The cost of prevention and mitigation of loss shall be calculated based on the premiums paid as per instruction from the MOF”. However, it is unclear who pays such costs.

³³ LOIB arts. 29.2, 20.2.

³⁴ LOIB art. 19.3.

³⁵ LOIB art. 20.

³⁶ LOIB art. 17.1(e).

³⁷ Decree 73/2016 art. 46

E. Termination

An insurance policy may terminate for the following reasons, and with the following legal consequences:³⁸

1. The Civil Code provides for termination under its general rules on civil contracts. If the contract terminates under the rules of the Civil Code, the legal consequences of termination occur as provided by the Civil Code.³⁹
2. If the insurance buyer no longer has an insurable interest at stake, the contract will terminate. The enterprise must refund the buyer's insurance premium prorated to the amount of time remaining in the insurance policy, after deducting the reasonable costs and expenses it has incurred.
3. If the insurance buyer fails to make full or timely payment of insurance premiums, the contract will terminate. The buyer must still make full payment of any premium due as of the date on which the contract terminates, unless the policy is one for personal insurance.
4. If the insurance buyer fails to pay the full amount of the premium within the grace period set in the contract, the contract will terminate. The insurance enterprise must still indemnify the insured if the insured event occurs within the grace period. The buyer must still pay premiums on personal insurance to the end of the grace period. This grace period does not exist for non-personal insurance.

F. Subrogation

The LOIB permits subrogation except in the case of personal insurance, such as life insurance, labor accident insurance, and medical insurance.⁴⁰ After paying the insurance proceeds to the insured, the enterprise has the right to claim compensation from responsible third parties for the amount it has paid out to the insured. The insured must provide the enterprise with all of the necessary information and evidence so that the enterprise can exercise its legal right of subrogation.

Recognition of the insurance enterprise's right to collect compensation is authorized by a letter from the insured authorizing the insurance enterprise to collect from third parties. When a responsible third party has paid damages to the insured, but the damages are lower than the value of the insurance policy, the insurance enterprise need only pay the insured the difference between the policy value and the damages already paid by the third party. The LOIB does not address the enterprise's right of refusal, but it does note that if the insured declines to authorize the enterprise, or waives, fails to reserve, or otherwise loses the right to request third party compensation, the insurance enterprise may deduct the indemnity payable to the insured.⁴¹

³⁸ LOIB arts. 23-24.

³⁹ Civil Code art. 422

⁴⁰ LOIB art. 17.1(f).

⁴¹ LOIB art. 49

III. Types of Insurance

The LOIB categorizes insurance as life insurance, non-life insurance, health insurance and some other specific types of insurance.⁴² Life insurance includes whole life, term insurance, last survivor insurance, combined insurance, annuity insurance, endowment insurance, and retirement insurance. Non-life insurance covers property insurance and damage insurance; insurance for cargo transported by road, sea, inland waterway, railway and air; aviation insurance; automobile insurance; fire and explosion insurance; vessel hull and vessel owners' civil liability insurance; liability insurance; credit and financial risk insurance; business loss insurance; and agricultural insurance. Health insurance includes accident insurance, medical insurance; and health care insurance.

The various kinds of insurance in these categories can also be characterized as compulsory or non-compulsory. Compulsory insurance is a kind of insurance for which the law sets the policy terms, premiums and minimum insurance sum. It includes motor vehicle liability insurance, professional liability insurance for legal consultants and insurance brokerages, and fire and explosion insurance, as well as insurance for projects that involve public safety issues, such as construction projects and oil and gas projects.⁴³ Non-compulsory insurance is not required to use identical, legislated contract terms.

A. Personal Accident Insurance

Personal accident insurance includes policies that insure human lives, health, and safety.⁴⁴ This field of insurance includes personal accident insurance, accident and medical insurance for students, passenger accident insurance, travel insurance, and medical insurance.

Specific injuries covered by a policy will be compensated at a percentage of the total insurance sum stated in the policy. The percentage varies according to the type of injury.⁴⁵ The MOF has published a Table of Compensation Rates for Injuries to help set the percentages.⁴⁶

B. Life Insurance

The market for life insurance continues to grow in both number of participants and premium volume and revenue. Both domestic and foreign invested insurance enterprises offer life insurance products.

The LOIB provides for whole life pure endowment, term endowment, and annuity life insurance, among others. Enterprises have also packaged life insurance with other products by providing comprehensive insurance coverage that includes a main insurance product, such as whole life pure endowment, plus a subordinate insurance product, such as accident insurance or dependent support.

⁴² LOIB art. 7.

⁴³ LOIB art. 8.

⁴⁴ LOIB art. 31.1.

⁴⁵ LOIB art. 33.1.

⁴⁶ Annex 2, Circular 151/2012/TT-BTC dated September 12, 2012

C. Vehicle Insurance

Vehicle liability insurance is compulsory, and driving a vehicle without a valid insurance certificate can result in both a fine and temporary revocation of the vehicle title by the police. Vehicle insurance, governed by Decree 103/2008/ND-CP dated September 16, 2008, which was amended by Decree 214/2013/ND-CP dated December 20, 2013, covers loss of and damage to the vehicle, and legal liability to third parties for bodily injury and property damage. Because vehicle insurance is compulsory, the policy must adhere to the terms and premium rates fixed by the MOF.

D. Oil and Gas Insurance

Although there are no separate regulations that apply to oil and gas insurance, the LOIB does refer to insurance coverage for general risks in the oil and gas industry. Risks in this industry, such as the risk of oil spills, are of particular concern in Vietnam, since the nation's coastline is more than 3,000km long and supports a thriving tourism industry.

E. Marine Insurance

The LOIB applies to all types of insurance; however, with regard to marine insurance policies, the section of the Maritime Law governing marine insurance policies also applies.⁴⁷ The Maritime Law covers contracts of insurance for maritime perils, which mean perils incidental to navigation at sea.⁴⁸ Marine insurance covers losses where the insured object is a material interest measurable in money, including but not limited to hull, cargo, freight, ship chartering or purchasing costs, anticipated cargo benefits, builder's risk, commission, general average sacrifice, liability to third parties, and liens secured by cargo. If the peril covered by the policy has already occurred, or if the possibility of its occurrence does not actually exist, the marine insurance policy is automatically invalidated.⁴⁹ The insurance enterprise then retains the right to the premiums, and need not indemnify unless it has been made known to the insurance enterprise that the peril has already occurred or the possibility of its occurrence does not exist before the insurance policy has not been signed.

The Maritime Law recognizes two parties to an insurance policy: the insurance enterprise and the insurance buyer, who pays the premiums and must provide information relating to the insured object or person. The insurance policy may be entered into between the insurance enterprise and the insurance buyer for the benefit of a third party, who is entitled to request that the insurance policy be issued in its name. On receiving the policy, the third party has all the rights provided for in the policy. In addition, from that time, all the obligations of the insured pass to the third party, except for the obligation to pay the premiums. If the third party is not aware of the policy, no obligations will arise. The Maritime Law does not state which party has the right to terminate the insurance policy. However, under the Civil Code provisions on general civil contracts, the parties cannot amend or cancel a contract for the benefit of a third party unless the third party gives consent.⁵⁰ Regulations on marine insurance do not specify the circumstances under which a contract is void or voidable. Therefore, the Civil Code's default rules on civil contract apply as discussed in B.5.

⁴⁷ LOIB art. 12.3. Maritime Law arts. 303-336-55.

⁴⁸ Maritime Law art. 303.

⁴⁹ Maritime Law art. 309.

⁵⁰ Civil Code art. 415

F. Fire and Explosion Insurance

Investors prioritize ways to safeguard their investments. On April 15, 2018, Decree No. 23/2018/ND-CP (“**Decree 23/2018**”), which was first introduced on February 23, 2018, came into effect and replaces all previous regulations on compulsory fire and explosion insurance, namely Decree No. 130/2006/ND-CP dated November 8, 2006, (“**Decree 130/2006**”), Joint Circular No. 214/2013/TTLT – BTC – BCA, dated December 31, 2013 (“**Joint Circular 214/2013**”), and Decree 46/2012, dated May 22, 2012, amending some provisions of Decree 130/2006 (“**Decree 46/2012**”). Certain businesses must purchase fire and explosion insurance from an insurance enterprise permitted to conduct business in Vietnam.⁵¹ Decree 23/2018 describes categories of assets that must be covered by the policy, including housing and buildings, equipment and machinery, and all other goods and assets that can be given a monetary value.⁵² The minimum insured sum protected by the policy must be the total market value of the assets.⁵³ An insurance enterprise has the right to refuse to sell a policy to a buyer in certain circumstances.⁵⁴

Decree 23/2018 also lists circumstances in which the insurer is not obligated to indemnify the insured.⁵⁵ For example, if the loss or damage originates from a deliberate breach of the regulations on fire prevention or from fire or explosion caused by criminal conduct, the insurance enterprise need not pay. Certain kinds of assets are also excluded from coverage, including loss or damage caused to computer databases and programs, precious metals, manuscripts, drawings and design data. Unlike Decree 130/2006, Decree 23/2018 does not have any provision for the possibility of avoiding statutory exclusion by specifically including these items in the insurance policy, or by negotiating an additional insurance policy to cover excluded items.

G. Professional Liability Insurance

Professional liability insurance is mandatory for certain professions, such as for firms and individuals that provide legal, medical, and architectural services. Insurance brokerage enterprises must also purchase professional liability insurance.⁵⁶

The Law on Notarization, which took effect on January 1, 2015, provides that notary offices must buy professional liability insurance for their notaries.⁵⁷ Similarly, Article 40 of the Law on Lawyers 2007 requires that law firms have professional liability insurance for their lawyers.

H. Investment Linked Insurance

Circular 52/2016/TT-BTC dated March 21, 2016 (“**Circular 52/2016**”), which came into effect on June 1, 2016, replaces Decision 96/2007/QD-BTC, dated November 23, 2007, permits insurance enterprises to provide universal life insurance products.⁵⁸ These products

⁵¹ Decree 23/2018 art. 3.1.

⁵² Decree 23/2018 art. 4.

⁵³ Decree 23/2018 art. 5.

⁵⁴ Decree 23/2018 art. 3.3.

⁵⁵ Decree 23/2018 art. 6.2.

⁵⁶ LOIB art. 92.

⁵⁷ Law on Notarization 2015 art. 37.

⁵⁸ Circular 52/2016 art. 1

include an insurance component and an investment component.⁵⁹ Buyers enjoy some flexibility in selecting a premium. A universal life fund is raised from premiums paid from these policies. The policy must include an option allowing the buyer to change the percentage of premiums to be distributed into the fund.⁶⁰

The Circular sets further conditions for an insurance enterprise that wishes to provide universal life insurance.⁶¹ These conditions are additional to the basic conditions that an insurance enterprise must meet. That is, it must have a solvency margin of at least VND100 billion (US\$ 4.4 million) more than the minimum solvency margin. It must have an information technology system in place to manage the investment fund. It must also obtain the MOF's approval for its universal life insurance products. The Circular has very specific requirements regarding the documentation that an insurance enterprise must provide their prospective customers.⁶² This includes a requirement that certain documents must be posted on the firm's website. The firm must also provide information regarding its investment policy and objectives, and must explain the benefits, risks, and charges.

Finally, the insurance enterprise must provide an annual report to the buyer that summarizes the status of the insurance policy as well as the results of the universal life fund, including details of investment benefits that have accrued to the buyers.⁶³

Circular 135/2012/TT-BTC dated August 15, 2012, permits unit-linked insurance products (“**Circular 135/2012**”). By “unit-linked insurance” we mean a life insurance product that requires the establishment of unit-linked funds.⁶⁴ A unit-linked fund is formed from insurance fees paid by buyers for such insurance policies. Insurance enterprises enter into unit-linked insurance to cover their risks in relation to the insurance premiums and to invest their capital. There are caps on the amount a fund may invest in certain varieties of investments. A unit-linked fund may invest in no more than 10% of the total value of outstanding securities of a corporation. It may invest no more than 20% of its total asset value in outstanding corporate securities, no more than 10% of its total asset value in real estate, and no more than 30% of its total asset value in a group of companies with mutual ownership.

A unit-linked fund is not permitted to invest in the securities of securities investment companies established and operating in Vietnam. The assets of unit-linked funds are not permitted to invest directly in real estate, gold, silver, other precious metals, or precious stones.⁶⁵

An insurance enterprise must set up at least two unit-linked funds with different investment goals for each unit-linked investment product it offers.⁶⁶ The enterprise must ensure that the aggregate value of its unit-linked funds is not less than VND100 billion.⁶⁷

Supplying a unit-linked insurance product must be approved by the MOF.

⁵⁹ Circular 52/2016 art. 2

⁶⁰ Circular 52/2016 art. 13.5

⁶¹ Circular 52/2016 art. 4

⁶² Circular 52/2016 art. 10-13

⁶³ Circular 52/2016 art. 14

⁶⁴ Circular 135/2012 art. 2

⁶⁵ Circular 135/2012 art. 18.2.

⁶⁶ Circular 135/2012 art. 16.1.

⁶⁷ Circular 135/2012 art. 16.3.

IV. Operations and Structures

A. Corporate Forms in Vietnam

An insurance enterprise or organization can take the following forms:

- Joint stock insurance company;
- Limited-liability insurance company;
- Mutual insurance organization; and
- Insurance cooperative.⁶⁸

1. Joint stock insurance company

A joint stock company is a limited liability entity privately capitalized by at least three shareholders. The company is established with the approval of the local provincial People's Committee. A joint stock company is entitled to issue securities to raise capital, including common and preferred shares and bonds, and there is no minimum or maximum condition for equity contribution by any shareholder, regardless of nationality.

A joint-stock insurance company can be a joint-stock life insurance company, a joint-stock non-life insurance company, a joint-stock health insurance company, a joint-stock reinsurance company or a joint-stock insurance brokerage company.

2. Limited liability insurance company

There are two types of limited liability companies: (i) one-member limited liability company for a single investor and (ii) two-to-fifty member limited liability company for several investors ("LLC"). The LLC is established and owned by individuals and entities, either foreign or domestic. The LLC is a legal entity separate from the investors; the investors are liable for the debts of the LLC up to the value of the LLC's charter capital.

A limited liability insurance company can be a limited liability life insurance company, a limited liability non-life insurance company, a limited liability health insurance company, a limited liability reinsurance company or a limited liability insurance brokerage company.

3. Mutual support insurance organization and insurance cooperatives

A mutual support insurance organization is established in order to underwrite risks for its members on a non-profit and mutual assistance basis.⁶⁹ The members of the organization are both the owners and the insurance buyers, and they enter into separate insurance policies with the organization. Mutual insurance lacks a developed policy and regulatory framework. Mutual insurance organizations, however, have a role in high risk sectors, such as agriculture.

B. Conditions for establishment and licensing

In order to operate in Vietnam, all insurance businesses must first meet certain conditions and requirements.⁷⁰ There are specific requirements for each type of insurance business, whether

⁶⁸ Law 61 art.7

⁶⁹ Decree 18/2005/ND-CP dated February 24, 2005

⁷⁰ Decree 73/2016 art. 6

it is an insurance company, a branch of a foreign insurance company or an insurance brokerage company.⁷¹ The prospective shareholders must submit an application dossier to the MOF. The prospective insurance business must meet certain capital contribution requirements and set up certain kinds of reserve fund. Nominated managers and executives of the prospective insurance business must meet conditions on managerial capacity and professional qualifications.⁷²

1. Conditions to establish an insurance enterprise in Vietnam – excluding cooperatives and mutual insurance organization

Vietnamese and foreign individuals/organizations that contribute capital to establish an insurance enterprise must meet the following conditions:⁷³

- a. Not be one of the restricted individuals and organizations provided in the Corporate Law.⁷⁴
- b. Not use the money and resources of other individuals and organizations to contribute the capital to establish the prospective insurance enterprise.
- c. Have had a positive business for three consecutive years prior to submitting the application dossier and have not had any accumulated loss before submitting the application dossier.
- d. If it operates in a business with a legal capital requirement, its remaining capital after capital contribution to the prospective insurance business must meet the legal capital requirements.
- e. If it is an insurance enterprise, a commercial bank, a financial company or a securities company, it must maintain the required financial safety ratios and must obtain approvals as required by law.

2. Licensing

If an organization is able to meet these requirements, it may submit an application dossier to obtain an establishment and operation license. The basic dossier must contain, among other things: the application forms; a draft charter; a list of founding shareholders (both entities and individuals) holding 10% or more of the charter capital together with all related required documents; certification by a bank in Vietnam that the charter capital has been placed in an escrow account at the bank; a five-year business plan that describes the proposed scope of business, investment capital, economic benefits of the establishment of the enterprise, operational processes, internal supervision systems, and risk management processes; a list of managerial personnel and descriptions of their professional qualifications; contributed capital amounts and disclosure of those entities or individuals holding 10% or more of the charter capital; rules, policy terms, premium tariffs, and commissions on insurance products; meeting minutes of shareholders agreeing to the draft charter and to establish the insurance business; authorization for a individual or an entity to complete all necessary legal procedures;

⁷¹ Decree 73/2016 art. 7-9

⁷² Decree 73/2016 art. 26-33

⁷³ Decree 73/2016 art.6

⁷⁴ Corporate Law 2014 art.18

approval from the relevant government authority.⁷⁵ Depending on the type of insurance business, there are other documents that may have to be included in the application dossier.

Within twelve (12) months from the date it receives its license, an insurance enterprise must complete certain post-licensing procedures. It must release the capital in the escrow account into charter capital, register its seal, tax code, open a bank account as required by law, file a report with the MOF on its plan to create the required operational reserves, and adopt internal regulations on supervision, compensation, internal control, financial management, investment and reinsurance management, if necessary. If it fails to start operations within 12 months, its license will be revoked.⁷⁶

3. Management

According to Decree 73/2016, managerial positions in an insurance enterprise include, but are not limited to, the Board of Management, the Executives Committee, Head of Internal Audit, General Director, Deputy General Director, Internal Control, Chief Accountant, Head of the Operational team. All managerial personnel must meet the following criteria:⁷⁷

- Not be on a list of people forbidden to assume a managerial position under the Corporate Law 2014.⁷⁸
- For three consecutive years prior to the date of appointment, not be:
 - Subject to any administrative penalties which have resulted in suspension from a managerial position in the insurance enterprise.
 - Subject to any disciplinary action for violation of internal procedures which have resulted in suspension or termination of employment.
 - Directly involved in any investigation or legal proceeding at the moment of appointment.

There are specific requirements for each managerial position. These requirements are in the nature of qualifications. They include a university degree or higher; insurance training, which requires qualifications or a certificate from an accredited insurance training institution; working legally in Vietnam or abroad; experience which requires at least three to five years, depending on the position; and residence, which requires the person to reside in Vietnam while an incumbent. Appointment or change of the positions of Chairman of the Board of Management, General Director and Appointed Actuaries must be approved by the MOF. The appointment or change to the above positions require the insurance enterprise to prepare a dossier, which includes various appointment documents as required by the Charter of the enterprise; relevant personal documents: resume, identification, qualifications; documents from the appointed person which show commitment to work for the enterprise after being approved. Statutorily, within seven days of receipt of the completed dossier, the MOF will issue a written approval, but it may take longer in practice.

4. Capital Contribution

The enterprise must provide information on the capital contribution of each entity or individual with a share of more than 10% in the enterprise.

⁷⁵ Decree 73/2016 art, 11-14

⁷⁶ Decree 73/2016 art.16

⁷⁷ Decree 73/2016 art. 26

⁷⁸ Corporate Law 2014 art. 18.2

The charter capital of an insurance enterprise is the capital amount contributed or committed to be contributed by its members or shareholders.⁷⁹ The paid-up charter capital of an insurance enterprise must be sufficient for the breadth of its operations, business plans, and location.

An insurance enterprise must maintain its contributed charter capital at a level equal to or greater than its legal capital.⁸⁰ Article 10 of Decree 73/2016 sets the minimum legal capital for each type of insurance enterprises, as follows:

| Insurance products | Minimum legal capital |
|---|------------------------------|
| Insurance Company: | |
| Non-life insurance (1) | VND 300,000,000,000 |
| (1) with either airline insurance or satellite insurance | VND 350,000,000,000 |
| (1) with both airline insurance and satellite insurance | VND 400,000,000,000 |
| Life insurance (2) | VND 600,000,000,000 |
| (2) with either unit-linked insurance or retirement insurance | VND 800,000,000,000 |
| (2) with both unit-linked insurance and retirement insurance | VND 1,000,000,000,000 |
| Health insurance (3) | VND 300,000,000,000 |
| Branch of foreign insurance enterprise: | |
| Non-life insurance (1) | VND 200,000,000,000 |
| (1) with either airline insurance or satellite insurance | VND 250,000,000,000 |
| (1) with both airline insurance and satellite insurance | VND 300,000,000,000 |
| Reinsurance company: reinsurance products of | |
| Either (1) or (1) and (3) | VND 400,000,000,000 |
| Either (2) or (2) and (3) | VND 700,000,000,000 |
| (1), (2) and (3) | VND 1,100,000,000,000 |
| Insurance Brokerage company: | |
| Insurance Brokerage or reinsurance brokerage | VND 4,000,000,000 |
| Insurance Brokerage and reinsurance brokerage | VND 8,000,000,000 |
| Branch of Foreign Insurance Enterprise: | |
| Non-life insurance (1) | VND 200,000,000,000 |
| (1) with either airline insurance or satellite insurance | VND 250,000,000,000 |
| (1) with both airline insurance and satellite insurance | VND 300,000,000,000 |

Table 1: Minimum legal capital requirements for insurance business in Vietnam

5. Escrow Account and Reserves

The LOIB, as well as Decree 73/2016, require an insurance enterprise to open an escrow account at a local commercial bank within 60 days after receiving its License. The insurance enterprise must deposit 2% of the statutory legal capital in the escrow account.⁸¹ The insurance enterprise may draw upon the deposit to fulfill its commitments to insurance buyers if their solvency fails. Such use, however, must be approved by the MOF. Within 90 days of drawing down the deposit, the insurance enterprise must replenish the escrow account.⁸²

⁷⁹ Decree 73/2016 art.49

⁸⁰ Decree 73/2016 art.6

⁸¹ LOIB art. 95; Decree 73/2016 art.16

⁸² Decree 73/2016 art. 51

Insurance operational reserves represent an amount of money which an enterprise must set aside to cover predetermined insurance liabilities arising from its insurance policies.⁸³ The reserve is charged against profits to cover projected claims and obligations. A reserve creates a reduction in the current profit. When the obligations have actually been incurred and satisfied, the reserve can be reduced, thus removing a charge on the current profit. On the balance sheet, the reserve appears as a liability. The amounts represented by each reserve can be invested. The required operational reserves are different for non-life insurance and life insurance.

A non-life insurance enterprise must set up the following operational reserves:⁸⁴

- a) Unearned Premium Reserve: to be used to indemnify liabilities likely to arise during the term an insurance policy is in force;
- b) Indemnity Reserve: to be used to cover losses incurred by reason of an insurance liability but for which claims have not yet been settled; and
- c) Large Loss Fluctuation Reserve: To be used to pay indemnities in case large fluctuations in losses occur, but the total premium retained in a fiscal year, after deductions for setting up the Unearned Premium Reserve and the Indemnity Reserve, is insufficient to pay indemnity for the retained liability. Contributions must be made annually until the balance in the reserve is equal to 100% of premiums actually received in the insurer's fiscal year.

A life insurance enterprise must set up the following operational reserves:⁸⁵

- a) Actuarial Reserve or Mathematical Reserve: The difference between the present value of the insured sum and the present value of future premiums, to be used to pay the insured sum for committed liabilities upon the occurrence of an insured event.
- b) Unearned Premium Reserve: to be used to pay such insured sum as is likely to arise during the duration of an insurance policy in the subsequent year.
- c) Indemnity Reserve: to be used to pay the insured sum upon the occurrence of an insured event, which payment remains unsettled by the end of a fiscal year.
- d) Interest Sharing Reserve: to be used to pay the interest agreed by the insurance enterprise and the insurance buyer.
- e) Balance Reserve: to be used to pay the insured sum upon the occurrence of an insured event due to significant changes in mortality rates or in interest rates.

A health insurance enterprise must set up the following operational reserves:⁸⁶

- a) Actuarial Reserve or Mathematical Reserve: The difference between the present value of the insured sum and the present value of future premiums, to be used to pay the insured sum for committed liabilities upon the occurrence of an insured event.
- b) Unearned Premium Reserve: Used to pay the insured sum likely to arise during the effective duration of an insurance policy in the subsequent year.
- c) Indemnity Reserve: Used to pay the insured sum upon the occurrence of an insured event, which remains unsettled by the end of a fiscal year.

⁸³ Circular 50/2017 Arts. 17-19

⁸⁴ Decree 73/2016 art 53

⁸⁵ Decree 73/2016 art.54

⁸⁶ Decree 73/2016 art. 55

- d) Balance Reserve: Used to pay the insured sum upon the occurrence of an insured event due to significant changes in mortality rates or in interest rates.

A reinsurance enterprise must set up all operational reserves that are required for the respective insurance enterprise. For example, a non-life reinsurance enterprise must set up all operational reserves that are required for a non-life insurance enterprise. Circular 50/2017 sets out detailed instructions on how to calculate and structure these reserves.

C. Sale of Insurance Products

For compulsory insurance products, the MOF publishes terms, premium scales, and minimum insurance amounts that an insurance enterprise must incorporate into its policies.⁸⁷ An insurance enterprise may develop its own terms for non-compulsory insurance products. These independently developed terms do not require MOF's approval. Nevertheless, they must adhere to certain standards. The policy terms must comply with law and ethical standards. The language used must be accurate, clear, and easy to understand. Technical terms should be clearly defined. The policy must include a description of the insurable interest, the risks, the rights and obligations of both the buyer and the insured, the responsibilities of the insurer, conditions leading to exemption of liability, method of payment, and provisions on dispute resolution. Finally, premium scales must be set based on statistical data, and must protect the solvency of the insurance enterprise.⁸⁸

Once the insurance enterprise has finalized the terms and details of the policies it intends to sell, it may sell them by direct sale, by sale through agents and brokers, by auction, or by electronic transactions.⁸⁹ Sales of insurance through any channel must comply with the regulations relevant to that channel.

D. Capital Investment

Sources of investment capital of an insurance enterprise include its own equity and idle capital from operational reserves. Investment with either type of capital must ensure the safety and liquidity of the investment and must follow legal guidelines.⁹⁰ Investment of the enterprise's equity capital is limited to the amount that exceeds either the legal capital or the minimum solvency margin, whichever is larger.⁹¹ Idle capital that can be invested from operational reserves is the balance of the total operational reserves after payment of regular insurance sums or regular insurance indemnities.⁹²

Decree 73/2016 permits only certain forms of capital investment. A non-life insurance enterprise can invest its capital by:

- a) Purchasing government bonds or corporate bonds issued by credit institutions in unrestricted amounts;

⁸⁷ Decree 73/2016 art. 39.

⁸⁸ Decree 73/2016 art. 39

⁸⁹ Decree 73/2016 art. 38

⁹⁰ Decree 73/2016 art. 59

⁹¹ Decree 73/2016 art. 60

⁹² Decree 73/2016 art. 61

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- b) Purchasing corporate shares or bonds without underwriting, or capital contribution to other enterprises, with 50% or less of idle capital from operational reserves;
- c) Developing real estate or lending with 20% or less of idle capital from operational reserves; or
- d) Making deposits with financial organizations in unrestricted amounts.

A life insurance enterprise or a health insurance enterprise can invest its capital by:

- a) Purchasing government bonds or corporate bonds issued by credit institutions in an unlimited amount;
- b) Purchasing corporate shares or bonds or capital contribution to another enterprise, with no more than 50% of idle capital from operational reserves; or
- c) Developing real estate or lending with no more than 40% of idle capital from operational reserves.
- d) Making deposits with financial organizations in unrestricted amounts; or
- e) Contributing capital to other enterprises with 20% or less of idle capital from operational reserves.

Offshore investments by an insurance enterprise must be made in accordance with the Law on Investment 2014⁹³, Decree 83/2015⁹⁴, Decree 135/2015⁹⁵ and Circular 105/2016⁹⁶ and must be approved in writing by the MOF.⁹⁷

An insurance enterprise must meet the following requirements to be eligible to apply for an offshore indirect investment license from the MOF⁹⁸:

- have been profitable for five (5) consecutive years preceding the year of the application for an offshore investment license;
- have fulfilled all financial obligations to the Government and does not have any unpaid taxes;
- have internal regulations, internal control, internal audit and analysis and administration of risks in relation to offshore indirect investment;
- follow relevant regulations on capital, investment level and indicators of financial solvency; and
- have the infrastructure, facilities and human resources to support offshore indirect investment.

An application for an offshore indirect investment must include the following documents:

- request for an offshore investment license (made using a standard form);
- internal approval following requirements in the enterprise's Charter;
- a detailed offshore indirect investment plan, which specifies the country to which investment will be made, the projected amount of investment capital, sources of the investment capital, estimated outcomes and other relevant information;

⁹³ Law on Investment 67/2014/QH13 dated November 26, 2014

⁹⁴ Decree 83/2015/ND-CP dated September 25, 2015 on offshore investment

⁹⁵ Decree 135/2015/ND-CP dated December 31, 2015 on offshore indirect investment

⁹⁶ Circular 105/2016/TT-BTC dated June 29, 2016 providing guidelines for offshore indirect investment of securities trading organizations, securities investment funds, investment companies and insurance enterprises

⁹⁷ Decree 73/2016 art. 60

⁹⁸ Decree 135/2015 art. 14

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- confirmation from the tax authorities of the fulfillment of all financial obligations to the Vietnamese Government;
- internal procedures on offshore indirect investment, including internal control, internal audit, analysis and administration of risks in relation to offshore indirect investment;
- presentation of infrastructure supporting offshore indirect investment; and
- a copy of the Chartered Financial Analyst (“CFA”) certificate and employment contract of at least one employee who will be directly involved in the offshore indirect investment.

Within 30 days of receipt of the dossier, the MOF will issue an offshore indirect investment license to the insurance enterprise and notify the State Bank of Vietnam. The MOF must provide a written explanation if the offshore indirect investment license is refused. Within 24 hours from receipt of the offshore investment license, the insurance enterprise must publish the license on its own website. The license does not have a duration attached to it, but both the insurance enterprise and the MOF can terminate the license by following procedures provided in Circular 105/2016.

E. Solvency

An insurance enterprise is considered solvent when it has established adequate mandated reserves, and when it maintains its solvency margin at a level no less than that required by Article 64 of Decree 73/2016.

The solvency margin of an insurance enterprise is the difference between total assets and outstanding liabilities at the time the solvency margin is calculated.⁹⁹ Assets used for calculation of the solvency margin of an insurance enterprise must be liquid. Circular 50/2017 provides a method for calculating assets for purposes of determining the solvency margin.¹⁰⁰

Decree 73/2016 sets the minimum solvency margin level differently according to the insurance products the enterprise offers. If the enterprise provides non-life insurance, the minimum solvency margin is the greater of either: (a) 25% of the total insurance premium actually retained at the time the solvency margin is calculated; or (b) 12.5% of the total principal insurance premiums plus reinsurance premiums at the time the solvency margin is calculated.¹⁰¹

For unit-linked insurance policies, the minimum solvency margin is 1.5% of the operational reserve plus 0.3% of the sums insured. For universal life insurance and retirement insurance policies, the minimum solvency margin is 4% of the operational reserve plus 0.3% of the sums insured. For life insurance, the minimum solvency margin depends on the length of the contract. If the term is five years or less, the minimum solvency margin is 4%. If the term is greater than five years, that margin is 4% of the operational reserves plus 0.3% of the sums insured.

If an insurance enterprise does not maintain appropriate solvency margins, it will be considered insolvent. An insurance enterprise is considered in danger of insolvency when its

⁹⁹.Decree 73/2016 art. 65

¹⁰⁰ Circular 50/2017 art. 20

¹⁰¹.Decree 73/2016 art.64.1

solvency margin is less than the minimum solvency margin.¹⁰² In such case, the insurance enterprise must take immediate measures to restore its solvency. It must report to the MOF on its actual financial status, causes of the risk, and its plans to restore its financial security.¹⁰³

If an insurance enterprise cannot restore its security by itself, the MOF may request it to take one of the following steps: supplement its own capital; seek reinsurance with other insurance enterprises, narrow its scope of services and business activities, or suspend some or all of its activities; consolidate the enterprise's organizational apparatus or replace management personnel; and transfer insurance policies to other enterprises.¹⁰⁴ If all of these measures fail, the enterprise may be put under special control and the MOF will set up a solvency control board to take steps to restore solvency.¹⁰⁵ The solvency control board is permitted to take action to restore solvency, and the enterprise must implement its decisions.¹⁰⁶

The LOIB requires an internal fund to be established in order to protect the insureds in the event of an insurer's bankruptcy or insolvency. Such fund is sourced from a percentage of the premiums received. Details on the establishment (including the relevant percentage of premiums), management, and use of the reserve fund are provided in Decree 73/2016.¹⁰⁷

F. Reporting Requirements

Insurance enterprises must comply with various reporting requirements. They must prepare and submit audited financial statements, statistical reports, and operations reports to the MOF.¹⁰⁸ The financial statements must include balance sheet, profit and loss statement and explanations of the financial statements. The statements must be submitted on a quarterly and annual basis.¹⁰⁹

The contents of the statistical and operations reports depend on whether the enterprise provides life insurance or non-life insurance. For a non-life enterprise and a foreign branch, the report must include: monthly operations report; quarterly and annual revenue report; quarterly and annual target report; quarterly and annual insurance compensation; quarterly and annual provision - setting report; quarterly and annual investment operations report; quarterly and annual solvency report; and an annual Association of Southeast Asian Nations ("ASEAN") report.

For a life insurance enterprise, the report must include: a monthly operations report; both quarterly and annual reports on the number of contracts and life insurance amount; both quarterly and annual reports on life insurance premium revenue; quarterly and annual reports on premium payment; quarterly and annual reports on life insurance policy cancellation; quarterly and annual provision setting reports; quarterly and annual investment operations reports; quarterly and annual solvency reports; an annual ASEAN report; a report on fund splitting and interest division; and both quarterly and annual reports on cross border insurance services activities.

¹⁰² Decree 73/2016 art.66

¹⁰³ Decree 73/2016 art. 67.1

¹⁰⁴ Decree 73/2016 art.67.2

¹⁰⁵ Decree 73/2016 art. 67.3

¹⁰⁶ LOIB art. 80.

¹⁰⁷ Decree 73/2016 art. 103-109

¹⁰⁸ Decree 73/2016 art. 80, Circular 50/2017 arts. 31-33.

¹⁰⁹ Circular 50/2017 Art. 32

For a reinsurance enterprise the report must include: quarterly and annual reports on reinsurance revenue; quarterly and annual reports on compensation and premium payment of the reinsurance enterprise; quarterly and annual reports on professional provision, using the standard forms of non-life insurance enterprises (for the operation of non-life insurance and health reinsurance), or using the standard forms of life insurance enterprises (for the operations of life insurance); quarterly and annual investment operations reports; quarterly and annual solvency reports.¹¹⁰

G. Representative Office and Branch of Foreign Insurance Enterprises

Representative office of a foreign insurance enterprise

A foreign insurance enterprise may open a representative office (“**RO**”) in Vietnam. The RO is a unit set up by a foreign business enterprise under Vietnamese law to research the market.¹¹¹ The RO cannot transact business and is not regarded as a Vietnamese insurance enterprise. It may not receive payment in Vietnam for services or goods provided either in Vietnam or offshore. It may not generate revenue by providing goods or services.

In addition to performing market research, an RO may act as a liaison, prepare investment projects for the foreign parent insurance enterprise, and promote and monitor implementation of those projects.¹¹² Moreover, the chief representative of the RO may sign contracts acting through a power of attorney from the offshore parent. The power of attorney, however, must clearly state that the chief representative acts on behalf of the parent and not the RO.

A foreign insurance enterprise that wishes to establish an RO must satisfy the following conditions: it must have been in operation in its home country for at least five years, and it must have a cooperative relationship with Vietnamese organizations and agencies.¹¹³ It must file an application dossier with the MOF to obtain a license to establish an RO in Vietnam (“**RO License**”). An RO of a foreign insurance enterprise can have a duration of five years, which is renewable. An RO of a foreign insurance enterprise can be terminated in certain circumstances as set out in Decree 73/2016.¹¹⁴

Branch of foreign insurance enterprise

A foreign non-life insurance enterprise is permitted to open a foreign non-life insurance branch (“**Insurance Branch**”). The Insurance Branch is a dependent unit of the foreign non-life insurance enterprise, and is not a legal entity in Vietnam. The foreign non-life insurance enterprise will be responsible for all obligations and commitments of its Insurance Branch in Vietnam.¹¹⁵ A foreign life insurance enterprise is not allowed to open a branch in Vietnam.

To establish an Insurance Branch, the foreign non-life insurance enterprise must satisfy the following criteria:

- its head office is located in a country with which Vietnam has a relevant agreement;

¹¹⁰ Circular 125/2012 Art. 33

¹¹¹ Commercial Law, art. 3.

¹¹² Decree 07/2016/ND-CP dated January 25, 2016

¹¹³ LOIB art. 107

¹¹⁴ Decree 73/2016 art. 101

¹¹⁵ Decree 73/2016 art.8

- it has been operating in its country for at least 10 years;
- it has minimum total assets of VND 2 billion (equivalent to US\$ 90,000) during the latest financial year;
- it has been profitable for the three consecutive years preceding the year of its application;
- it has had no serious legal infraction for three consecutive years preceding the year of its application; and
- other conditions as set out in article 8 of Decree 73/2016.

The MOF licenses the Insurance Branch,¹¹⁶ which is not permitted to establish a dependent sub-branch in Vietnam.¹¹⁷ Details on establishment, business operations, amendments required to be registered, the financial regime, and reporting obligations of the Insurance Branch are provided in Decree 73/2016. Other than a different minimum legal capital requirement, which is mentioned in Table 1, and a different application dossier when applying for a License,¹¹⁸ an Insurance Branch is treated as a non-life insurance enterprise and must comply with the requirements applicable to a non-life insurance enterprise.

V. Reinsurance

An enterprise may cede part of the liability it has agreed to insure to one or more insurance enterprises, but may not cede the entire liability. When an enterprise assumes the reinsurance liability of another enterprise, it must examine the risk to ensure that the new liability does not exceed its financial capacity.¹¹⁹ An enterprise assuming the reinsurance liabilities of another enterprise must meet certain criteria, such as it must be rated “BBB” by Standard & Poor or Fitch, “B++” by A.M.Best or “Baal” by Moody’s or any equivalent ratings from a reputable credit rating agency.¹²⁰ A reinsurance program must identify the ability of the enterprise to accept risk, identify types of reinsurance most appropriate to manage those risks, and establish criteria to select appropriate reinsurance policies. The enterprise must develop internal regulations for the underwriting process, set rules and aggregate liability for each product, and identify the limit of liability to be insured. The laws also provide guidance to compute the retention level for each type of insurance and each type of risk. The level of liability per single risk or loss is capped by law at 10% of the enterprise’s own capital. Liability in excess of the maximum 10% must be ceded through reinsurance.¹²¹

An insurance enterprise may reinsure with either Vietnamese or with foreign reinsurance companies. Many policies involving high risk industries, such as in the marine, aviation, oil and gas, and construction business, are reinsured offshore, even if they are underwritten by Vietnamese enterprises.

¹¹⁶ Decree 73/2016 art.15

¹¹⁷ Decree 73/2016 art. 24

¹¹⁸ Decree 73/2016 art. 13

¹¹⁹ Decree 73/2016 art. 42

¹²⁰ Decree 73/2016 art. 43

¹²¹ Decree 73/2016 art. 42

VI. Agents and Brokers

A. Agents

An insurance agent offers and sells insurance, arranges or concludes insurance policies, and undertakes other activities related to the performance of an insurance policy. The agent must be authorized by insurance enterprises to carry out these activities on behalf of the enterprise.¹²² The agent must be a Vietnamese national, must have full civil capacity, and must have received training from an institution accredited to train and certify insurance agents.¹²³ The agent must enter into an insurance agency agreement and act exclusively for only one insurance enterprise.¹²⁴

Insurance agents may not pressure customers to cancel valid insurance policies. They must provide clear and accurate disclosure and explanations of policy terms and obligations. They may not mislead customers or exert undue influence in their choice of insurance products. They must not conduct any wrongful activities such as threatening, bribing or enticing the employees or customers of other insurance enterprises.¹²⁵

An insurance enterprise must provide its agents with all information necessary to enable them to provide appropriate services to buyers. They are also entitled to receive commissions.¹²⁶ By “commissions” we mean amounts paid by insurance enterprises directly to insurance agents in return for services they provide to the insurance enterprises. Circular 124/2012 has schedules that provide the maximum rates of insurance commission, but they should be used as a reference only as the Circular has expired and not yet been replaced.

Insurance enterprises may select agents with whom they wish to enter into agency contracts, and set their commission rates in those contracts. They may receive and manage deposits or assets that agents have mortgaged as security under the agency contract.

It is required that an agent have a practicing certificate issued by a training establishment approved by the MOF. The MOF regulates the program, content and form of training required to obtain this certificate.

B. Brokers

A broker is an insurance brokerage enterprise that provides information on types of insurance, policy terms and premiums, and general information on insurance enterprises to its customers who wish to purchase insurance.¹²⁷ The broker usually helps the insurance buyer assess risk management, select suitable insurance products, and negotiate and conclude insurance policies.¹²⁸ A broker works for and is paid by the insurance buyer, rather than an insurance enterprise.

In order to be licensed, an insurance brokerage enterprise must meet capital requirements established by the Government, submit documents such as a draft charter and five year

¹²² LOIB art. 84.

¹²³ LOIB art. 86.

¹²⁴ Decree 73/2016 art. 83

¹²⁵ Decree 73/2016 art. 83

¹²⁶ Decree 73/2016 art.85

¹²⁷ LOIB arts. 89-90.

¹²⁸ Decree 73/2016 art. 44

business plan, and provide evidence that its executives and managers have appropriate qualifications. The law allows foreign invested enterprises to engage in the brokerage business in the form of joint ventures or 100% foreign owned companies. An insurance brokerage enterprise is entitled to receive brokerage fees. The fees may be included in the insurance premium.¹²⁹ The law requires the broker to provide honest services, and not to disclose or provide information that damages the insurance buyer's rights.¹³⁰

VII. Conclusion

The formation of the AEC and the execution of the CPTPP agreement, together with the already challenging WTO commitments are pushing for a more open market for goods and services and as a result, a more competitive insurance market. Competition will continue to encourage development of new insurance products. Firms may explore creative packaging of existing products. The industry has already seen the advent of new products that integrate insurance and investments, that appeal to consumers with rising personal incomes. An increased variety of insurance products will create new regulatory challenges.

Similarly, to meet the expectations of consumers who increasingly rely on the internet to obtain information and to manage their personal business, insurance enterprises may begin to offer more services online. This will present new challenges for regulation of disclosure requirements and transparency.

With increased competition comes a heightened responsibility for insurance enterprises and the Government to develop rules of professional ethics. Government regulations consistently demand disclosure and transparency, and prohibit anti-competitive practices. 2016 and 2017 marked an important period for law makers and the insurance industry as many core laws were approved, with a material effect on the industry. The system of supplementing documents has been reduced substantially. With the legal system becoming more and more transparent and the market becoming more and more competitive, it is essential that insurance enterprises, both domestic and foreign, monitor their internal operations and their industry in order to maintain a certain set of standards and to survive and thrive in the near term.

¹²⁹ Decree 73/2016 art. 71

¹³⁰ Decree 73/2016 art. 45