

# **INSURANCE LAW & REGULATION IN VIETNAM**

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**TABLE OF CONTENTS**

<b>GLOSSARY</b> .....	iii
<b>I. Introduction</b> .....	1
A. In general .....	1
B. History and Relevant Laws .....	1
C. International Agreements .....	3
D. Internal and External Supervision .....	5
E. Sanctions .....	6
<b>II. Principles of Insurance Law in Vietnam</b> .....	6
A. Meaning of Insurance.....	6
B. The Insurance policy .....	7
C. Disclosure Obligations .....	10
D. Changes in insured risks.....	11
E. Prevention of Loss.....	11
F. Termination .....	12
F. Subrogation .....	12
<b>III. Types of Insurance</b> .....	13
A. Life Insurance and Health Insurance.....	13
B. Property Insurance and Damage Insurance .....	14
C. Liability Insurance.....	14
D. Vehicle Insurance.....	15
E. Marine Insurance .....	15
F. Fire and Explosion Insurance .....	15
G. Professional Liability Insurance .....	16
H. Investment Linked Insurance .....	16
<b>IV. Operations and Structures</b> .....	17
A. Corporate Forms in Vietnam.....	17
B. Conditions for establishment and licensing.....	18
C. Sale of Insurance Products .....	23

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D. Capital Investment.....	24
E. Solvency .....	25
F. Disclosure Requirements.....	27
G. Representative Office and Branch of Foreign Insurance Enterprises .....	29
<b>VI. Services auxiliary to insurance.....</b>	<b>31</b>
<b>VII. Microinsurance .....</b>	<b>31</b>
<b>VIII. Agents and Brokers.....</b>	<b>32</b>
A. Agents.....	32
B. Brokers .....	32
<b>VIII. Conclusion .....</b>	<b>33</b>

## **GLOSSARY**

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
EU	European Union
EVFTA	European Union-Vietnam Free Trade Agreement
EVIPA	European Union-Vietnam Investment Protection Agreement
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. Introduction<sup>1</sup>**

**A. In general**

Vietnam continues to make economic progress. It is now a solid middle income country. At the same time, the middle class is expanding. World Trade Organization (“WTO”) membership, the ratification of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (“CPTPP”), The European Union (“EU”)-Vietnam Free Trade Agreement (“EVFTA”), Investment Protection Agreement (“EVIPA”) and several other significant free trade agreements, and membership in 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 enterprises (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. Motor insurance--so often a thankless and profitless line in emerging markets--accounts for about one third of the premiums written in the non-life segment.

Companies are also beginning to provide innovative products tailored to Vietnam. The Ministry of Finance estimates the total posted premiums for 2022 to have been VND 241.3 trillion (US\$ 10.3billion)<sup>2</sup>, which is 15.09% higher than that of 2021. Total value of the insurance sector in 2022 is around VND 811 trillion (US\$ 34.5 billion), up by 14,51% compared to 2021. Insurance enterprises invested around VND 656 trillion (US\$ 27.9 billion), up by 12,56% from 2021. This includes investment in government bonds.<sup>3</sup>

Even though COVID-19 had a crippling effect on Vietnam’s economy and particularly the insurance sector, companies have shown great resilience by finding alternative distribution channels (for example, online or through bancassurance) and the digitalization of many aspects of the sales and purchase of insurance, including consultancy, payment, etc. In addition, the Ministry of Finance has put several policies in place to assist the insurance sector, including but not limited to the simplification of many administrative procedures.

**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 operated 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

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<sup>1</sup> This book has been written by lawyers in the Vietnam offices of Russin & Vecchi and is current as of May 2023.

<sup>2</sup> US\$ 1 = VND 23,500 (May 2023)

<sup>3</sup> Vietnam Finance Magazine, January 22, 2023

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 (“**Old LOIB**”) replaced early attempts to regulate insurance providers, and developed a comprehensive approach to the insurance business. After 20 years of operation, some parts of the old LOIB were amended and have been amended and supplemented by Law 61/2010/QH12 which was adopted by the National Assembly on November 24, 2010 (“**Law 61**”) and subsequently by Law 42/2019/QH14 which was adopted by the National Assembly on June 14, 2019 (“**Law 42**”). On June 16, 2022, the National Assembly adopted a new Law on Insurance Business No. 08/2022/QH15, which became effective on January 1, 2023 (“**LOIB**”). The LOIB supersedes the Old LOIB, Law 61 and Law 42. 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. On May 15, 2017, the MOF issued Circular 50/2017/TT-BTC (“**Circular 50/2017**”) which implements Decree 73/2016. Decree 72/2016 and Circular 50/2017 underwent changes when Decree 151/2018/ND-CP<sup>4</sup>, Decree 80/2019/ND-CP<sup>5</sup>, Circular 01/2019/TT-BTC<sup>6</sup>, Circular 89/2020/TT-BTC<sup>7</sup> and Circular 14/2022/TT-BTC<sup>8</sup> were promulgated.

In addition to the LOIB, the Maritime Law<sup>9</sup>, contains a section that governs marine insurance purchased for marine contracts.<sup>10</sup>

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 practice in general.

The Competition Law<sup>11</sup>, which became effective on July 1, 2019 (“**Competition Law**”), introduced comprehensive legislation which deals with anti-competitive products. It covers anti-competitive practices and practices that may restrain competition, such as agreements in the restraint of trade, abuse of dominant market position, and unfair competitive practices,

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<sup>4</sup> Government’s Decree 151/2018/ND-CP dated November 7, 2018 on supplements and amendments of the investments and business conditions under the regulatory power of the Ministry of Finance

<sup>5</sup> Government’s Decree 80/2019/ND-CP dated November 1, 2019 on supplements and amendments of certain articles of Decree 73/2016 and Decree 98/2013;

<sup>6</sup> Circular 01/2019/TT-BTC of the MOF dated January 2, 2019 on amendments of certain articles of Circular 50/2017

<sup>7</sup> Circular 89/2020/TT-BTC of the MOF dated November 11, 2020 on amendments of several circulars on insurance

<sup>8</sup> Circular 14/2022/TT-BTC of the MOF dated February 28, 2022 on amendments of certain articles of Circular 50/2017 and another circular on mandatory civil liability insurance of vehicle owner.

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

<sup>10</sup> Maritime Law 2015 arts. 303-336;

<sup>11</sup> The Competition Law No. 23/2018/QH14 adopted by the National Assembly on June 12, 2018

including coercion, defamation, and deceptive advertising. The Competition Law takes the view that competitive practices may have both positive and negative effects on the market. Therefore, a competitive activity should only be prohibited if it “has or potentially has a significant competition-restraining impact on Vietnam’s market”. The Competition Law also established exemptions from its own regulations. This translates into the insurance sector in two ways. First, the general application of its principles prevents insurers from misrepresenting the coverage terms of policies to potential customers, and requires 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 that provide an advantage to customers. Those activities should satisfy one of the following conditions: (i) promote technical or technological progress, improving the quality of goods and services; (ii) increase the competitiveness of Vietnamese enterprises in the international market; (iii) promote applicability of uniform quality standards and technical norms of certain types of products; (iv) unify conditions on trading, delivery of goods and payment but does not relate to price or pricing factors; and (v) other cooperative arrangements as provided for in industry-specific legislation. As such the Competition Law’s rules on cooperation and competition may be modified by the LOIB which addresses 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.

Under the LOIB, an insurance agent is not allowed to (i) provide untruthful information nor make false advertising related to insurance terms and policies, (ii) prevent a buyer from providing required information regarding insurance policies, (iii) preclude, entice, bribe or threaten customers or employees of other insurance businesses or (iv) encourage customers to terminate their current insurance policies<sup>12</sup>. The LOIB prohibits an insurance broker from (i) requesting buyers to withhold information or to prevent buyers from providing information for insurance policies, (ii) providing illegal services to entice buyers to buy its insurance policies, (iii) enticing buyers to terminate their existing insurance policies for new insurance policies, (iv) to recommend insurance policies from one insurer under less competitive terms and conditions than those of another insurer in order to gain higher commission, and (v) to provide buyers with false or inappropriate information in relation to the terms and conditions of the insurance policies.<sup>13</sup>

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. These laws have had a considerable impact on enterprises, which are obligated to provide health insurance coverage for all employees working under indefinite-term labor contracts or labor contacts 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. Five years later, American insurance enterprises were permitted to establish 100% foreign invested enterprises to provide both compulsory and non-compulsory insurance products. In

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<sup>12</sup> LOIB art. 129.3

<sup>13</sup> LOIB art. 137.3

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May 2022, the U.S. launched the Indo-Pacific Economic Framework for Prosperity (“IPEF”) with 14 partners, including Vietnam. The aim of the IPEF is to offer tangible benefits that fuel economic activity and investment, promote sustainable and inclusive economic growth, and benefit workers and consumers across the region. The details of this framework are subject to negotiation among its members.

Vietnam’s accession to the World Trade Organization in January of 2007 opened the market to all other foreign investors.

Under its WTO Commitments, beginning January 1, 2008, Vietnam began giving equal treatment to both foreign and domestic insurance enterprises. Foreign insurance enterprises may provide insurance services to companies with foreign-invested capital and foreigners working 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. This means that an insurance enterprise in ASEAN would be able to provide insurance services to clients in other ASEAN countries on a cross-border basis; a client in an ASEAN country can freely choose to purchase insurance services from an entity in another ASEAN country; and an insurance expert can work freely in the ASEAN region. Additionally, the Regional Comprehensive Economic Partnership (“**RCEP**”), which came into force on January 1, 2022, expands the basis of the free trade agreements within ASEAN to other countries including Australia, China, Japan, South Korea and New Zealand.

The Trans-Pacific Partnership Agreement (“**TPP**”) was signed on February 4, 2016, in Auckland, New Zealand. 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 and its predecessor, the TPP, are comprehensive agreements, 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. Vietnam ratified the CPTPP on January 14, 2019. Under the CPTPP, an insurance enterprise in one of the eleven member countries can expand its business to another member country, subject to certain conditions.

The European Union (“**EU**”)-Vietnam Free Trade Agreement (“**EVFTA**”) and Investment Protection Agreement (“**EVIPA**”) were ratified by the National Assembly of Vietnam on June 8, 2020. The EVFTA came into effect on August 1, 2020 and the EVIPA will come into effect when it is approved by the Parliament of each EU member state. The EVFTA looks to foster a transparent and open partnership with a focus on trade liberalization and economic integration. In terms of the insurance market, the EVFTA does not offer any significant advantage in comparison to the WTO. However, insurance enterprises from the EU may take advantage of other aspects of the EVFTA, such as the dispute settlement mechanism and protection of intellectual property rights, which surpass the standards provided by the WTO.



#### **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.<sup>14</sup>

Insurance enterprises must make periodic reports to the MOF. Additional reporting requirements apply if there are unusual developments within the enterprise, which may adversely affect the solvency, reputation of the insurance enterprise, or if the enterprise fails either to meet its financial or other legal requirements.<sup>15</sup> Liquidation of or mergers between insurance enterprises must be carried out under the supervision of the MOF, and changes in the 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, as amended by Circular 89/2020/TT-BTC ("**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 the various forms of life and non-life insurance enterprises. 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 each 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.

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<sup>14</sup> Decree 73/2016 art. 3

<sup>15</sup> LOIB art.106.

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 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 set of originals and two sets of copies, which must include all the documents required by Decree 73/2016. Within 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 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 explanation.<sup>16</sup>

### **E. Sanctions**

Decree 98/2013/ND-CP<sup>17</sup> 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 enterprises. Decree 98/2013 includes sanctions on unlawful management and operation of insurance enterprises; 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\$ 4,250), and is up to VND200 million (US\$ 8,500) 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.<sup>18</sup>

## **II. Principles of Insurance Law in Vietnam**

### **A. Meaning of Insurance**

The LOIB defines insurance as an activity carried out by an insurance enterprise, a branch of a foreign non-life insurance enterprise in Vietnam or a mutual support insurance

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<sup>16</sup> Decree 73/2016 art. 15

<sup>17</sup> Decree 98/2013/ND-CP was amended by Government’s Decree 48/2018/ND-CP dated March 21, 2018 and Government’s Decree 80/2019/ND-CP dated November 1, 2019

<sup>18</sup> Decree 98/2013 art. 3

organization<sup>19</sup>, in which the insurer assumes certain defined risks of the insured in return for an insurance premium paid by the insurance buyer to secure the insurer's indemnity to the insured.<sup>20</sup> 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 insured event, the insurer 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 insurer under which the insurer agrees to pay the 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.<sup>21</sup>

There are two basic forms of insurance policies: 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. Insurers that provide non-compulsory products enjoy more flexibility in the structure and content of their insurance policies. They must nevertheless register their terms and premium tables with the MOF. According to the LOIB, there are six types of insurance policy: life insurance policy, health insurance policy, property insurance policy, damage insurance policy<sup>22</sup>, liability insurance policy and marine insurance policy.

Insurance legislation, particularly recent regulations, has emphasized the responsibility of the insurer to create clear policies that buyers can understand. It has also outlined the duties of agents who market these policies to ensure that the consumer understands the terms.<sup>23</sup> Insurance policies are mainly regulated by the LOIB, with the exception of marine insurance policies, which are regulated by the Maritime Law. Additionally, civil contracts, including insurance policies are regulated by the Civil Code<sup>24</sup>.

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<sup>19</sup> A mutual support insurance organization is defined in Article 4.23 of the LOIB to be an entity that has legal capacity, and an independent accounting regime; is founded by members or institutional representatives of members to render non-profit microinsurance products in order for participating members to offer aid or support to other members on the basis of voluntary contribution, financial autonomy and self-responsibility within the scope of the assets generated from such microinsurance product. The members of the organization are both the owners and the insurance buyers, and they enter separate insurance policies with the organization.

<sup>20</sup> LOIB art. 4.1.

<sup>21</sup> LOIB art. 3.16.

<sup>22</sup> A damage insurance policy is defined to cover the economic benefits or contractual obligations or legal obligations which accrue to the insured upon an insured event--(typically loss or damages).

<sup>23</sup> LOIB art. 20.2(b), art. 22.1

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

## **2. The Parties**

The LOIB identifies four parties to an insurance policy: the insurer, the insurance buyer, the insured and the beneficiaries.<sup>25</sup> However, it attaches contractual obligations to only two of these parties: the insurance buyer and the insurer.<sup>26</sup> The insurer 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.

A mutual support insurance organization is only permitted to provide microinsurance products to its members. As such, the participating members of a mutual support insurance organization are both owners of the mutual support insurance organization and the insurance buyers.

The LOIB defines the “insured” to be an individual or an entity having the assets, civil liabilities, health, life, obligations or economic benefits insured by the insurance policy (“insured subject”). The rights and obligations of the insured are scattered throughout the LOIB. In general, the insured is obligated to prevent damages to the insured subject, disclose information and is entitled to be indemnified or to receive the insurance proceeds or to designate a beneficiary to be indemnified or to receive the insurance proceeds.

## **3. Principles for the execution and performance of an insurance policy**

The execution and performance of an insurance policy must follow the basic principles of the Civil Code<sup>27</sup> and the following principles:

- The Principle of Utmost Good Faith: each party to an insurance policy must provide information and perform its rights and obligations in a completely honest manner, with good faith toward the other parties during the course of execution and performance of the insurance policy;
- The Principle of Insurable Interest: the insurance buyer must have an insurable interest which corresponds with the type of insurance policy to be executed;
- The Principle of Indemnity: the indemnity payable must not exceed the value of the actual loss incurred, unless otherwise agreed in the insurance policy;
- The Principle of Subrogation: the insured shall transfer to the insurer the rights to request a third party that caused an insurance loss to the insured to reimburse the insurer within the insurance liability limits. This principle does not apply to life insurance and health insurance.
- The Principle of Unpredictable Risk: The risk covered under an insurance policy must be sudden and cannot be anticipated.

## **4. Formation and Interpretation**

An insurance policy must be made in writing and must include certain information: identifying information of the insurer, 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 or the liability limits; the scope of coverage, and applicable terms and conditions;

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<sup>25</sup> LOIB art. 17.1(a)

<sup>26</sup> LOIB art. 17, 18

<sup>27</sup> Civil Code art. 3.

rights and obligations of the insurer; exclusions; duration and effective date of coverage; premium rates and payment methods; methods for payment of the insurance benefits or indemnity; and rules for dispute settlement.<sup>28</sup>

If a provision of the insurance policy is open to misinterpretation, the misinterpretation should be resolved to the advantage of the insurance buyer.

An insurance buyer is permitted to assign the policy.<sup>29</sup> Assignment of an insurance policy by the buyer becomes valid only when a written notice of assignment is given to the insurer, 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 or with the terms of the policy.<sup>30</sup> Life insurance policies can only be assigned with the written approval of the insured or the legal representative of the insured.

### **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 execution of the insurance policy;
- There is no insured subject matter upon execution of the insurance policy;
- The insurance buyer knows an insured event has occurred before the execution of the insurance policy;
- The purposes and contents of the insurance policy violate the laws or are against social ethics;
- The insurance enterprise or branch of foreign non-life insurance enterprise and the insurance buyer enter into a fraudulent insurance policy;
- The insurance buyer is a minor, a person without full legal capacity, a person with impaired cognitive and behavioral functions, or a person with restricted legal capacity;
- The policy causes one or more parties to fail to achieve the purpose of entering into the policy, the contractual purposes of the contracting parties have been achieved, unless the contracting parties can take immediate action against such confusion to successfully achieve the purposes of entering into the insurance policy;
- The insurance buyer or the insurance enterprise was deceived at the time the parties entered into the contract;
- The insurance policy was executed under threat or pressure;
- The insurance buyer is not aware or cannot control her behavior when entering into the insurance policy;
- The insurance policy does not conform to the form requirements provided in Article 18 of the LOIB.<sup>31</sup>

A civil contract such as an insurance policy may be declared to be only partially void, in which case the other provisions remain valid. When an insurance policy is declared void, the insurance policy shall be void from the execution date and the parties must be restored to their original positions.<sup>32</sup> They must return to each other the assets they have received as a

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<sup>28</sup> LOIB arts. 17, 18.

<sup>29</sup> LOIB art. 28

<sup>30</sup> LOIB art. 26.

<sup>31</sup> LOIB art. 25.1

<sup>32</sup> LOIB art. 25.2

result of the agreement. If they cannot return the assets, they must pay the equivalent cash value.<sup>33</sup> The party at fault is liable to pay compensation.

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:<sup>34</sup>

- 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 with 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 limitations applies under such circumstances.

### **C. Disclosure Obligations**

The insurance buyer must disclose all information related to the insured object or person, as requested by the insurance enterprise.<sup>35</sup> If the beneficiary intentionally withholds information or provides false information to the insurer in order to receive indemnity or insurance payment, the insurer may unilaterally terminate the contract. In such case, the insurer need not pay indemnity nor insurance payment but must reimburse the insurance fees to the insurance buyer minus any reasonable fees in accordance with the insurance policy. The insurance buyer will have to indemnify the insurer for any damages caused by withholding information or by its failure to disclose information.<sup>36</sup>

Similarly, where an insurer intentionally provides untruthful information or fails to provide information to a buyer in order to persuade it to enter into an insurance policy, the buyer may unilaterally suspend performance of the contract. The insurer must reimburse the buyer all of the paid insurance premiums and compensate the buyer for any damage caused.<sup>37</sup>

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<sup>33</sup> Civil Code art. 131.

<sup>34</sup> Civil Code art. 117-118-119

<sup>35</sup> LOIB arts. 18.2, 19.1.

<sup>36</sup> LOIB art. 22.2

<sup>37</sup> LOIB art. 22.3

**D. Changes in insured risks<sup>38</sup>**

If there are changes in the factors used to calculate insurance premiums and the changes result in a lower insured risk, then subject to the terms of the insurance policy, the buyer may request the insurer to:

- Decrease the insurance premiums for the remainder of the insurance policy;
- Increase the value of the insurance for the remainder of the insurance policy;
- Extend the insurance duration; or
- Expand the scope of the insurance for the remainder of the insurance policy.

If the insurer does not accept any of the above alternatives, the insurance buyer may unilaterally terminate the insurance policy but must notify the insurer in writing.

Similarly, if there are changes to the factors used for the calculation of insurance premium resulting in a higher insured risk, subject to the provisions of the insurance policy, the insurer may:

- Increase the insurance premiums for the remainder of the insurance policy;
- Decrease the value of the insurance for the remainder of the insurance policy;
- Shorten the insurance duration; or
- Restrict the scope of the insurance for the remainder of the insurance policy.

If the insurance buyer does not accept any of the above, the insurer may unilaterally terminate the insurance policy but must notify the insurer in writing.

**E. Prevention of Loss**

The insurer has the right to request, and the insurance buyer has the obligation to take appropriate measures to prevent and mitigate loss.<sup>39</sup> Furthermore, the insurance enterprise can implement measures to ensure the safety of the insured, subject to approval of the insurance buyer or a competent authority. Decree 73/2016 provides the followings measures to prevent and mitigate loss:<sup>40</sup>

- 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 instructions from the MOF”. However, it is unclear who pays for such costs.

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<sup>38</sup> LOIB art. 23

<sup>39</sup> LOIB art. 20.1(dd) and art. 21.2(e).

<sup>40</sup> Decree 73/2016 art. 46

**F. Termination**

An insurance policy may terminate for the following reasons, and with the following legal consequences:<sup>41</sup>

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.<sup>42</sup>
2. If an insurance policy is terminated because either the insurer or the insurance buyer refuses the other party's request in the event of changes in the insured risks as discussed in Section D above, the insurer must reimburse the buyer the amount of fees paid for the remainder of the insurance policy. The insurer remains liable to indemnify the insured if an insured event occurs before the termination of the insurance policy.
3. If the insurance buyer fails to make full or timely payment of insurance premiums, the insurer may unilaterally terminate the insurance policy. The buyer must still make full payment of any premiums due as of the date on which the contract terminates. For life insurance policies and health insurance policies, the insurer must indemnify the insured if an insured event occurs before the termination of the insurance policy and may deduct the outstanding insurance premium due by the termination of the insurance policy. For property insurance policies, damage liability insurance policies and liability insurance policies, insurer is still liable to indemnify the insured if an insured event occurs before the termination of the insurance policy but the insurer can only deduct the outstanding insurance premium subject to the terms of the insurance policy.
4. If the insured fails to implement measures to prevent and mitigate loss in accordance with Article 55 of the LOIB, the insurer may unilaterally terminate the insurance policy. The insurer must reimburse the insurance buyer the amount of fees paid for the remainder of the term. The insurer remains liable to indemnify the insured if an insured event occurs before the termination of the insurance policy.
5. If the insurance buyer refuses to transfer the portfolio of insurance policies to another insurer in the events described in Article 92 of the LOIB, the insurer may unilaterally terminate the insurance policies. The insurance buyer is entitled to receive reimbursement or insurance premiums for the remainder of the term of the policies, subject to the terms and conditions of each policy.

**F. Subrogation**

The LOIB permits subrogation except in the case of life insurance and health insurance.<sup>43</sup> After paying the insurance proceeds to the insured, the insurer 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 insurer with all of the necessary information and evidence so that the insurer can exercise its legal right of subrogation.

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<sup>41</sup> LOIB arts. 26-27.

<sup>42</sup> Civil Code art. 422

<sup>43</sup> LOIB art. 16.4.



The LOIB does not address the insurer's right of refusal, but it does note that if the insured refuses to provide the insurer with the right of subrogation, the insurer may reduce the indemnity payable to the insured, depending on the fault of the insured.<sup>44</sup>

### **III. Types of Insurance**

The LOIB categorizes insurance as life insurance, health insurance, and non-life insurance.<sup>45</sup> Non-life insurance includes property insurance, damage liability insurance and liability insurance.<sup>46</sup>

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, fire and explosion insurance, compulsory insurance in the investment and construction sectors, and other compulsory insurance provided by the law, such as professional liability insurance for legal consultants and insurance brokerages.<sup>47</sup>

#### **A. Life Insurance and Health 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.

Life insurance is defined to be the insurance product that covers the life of a person. Health insurance is defined to be the insurance product that covers the health of a person.<sup>48</sup>

The LOIB provides that an insurance buyer may buy life and/or health insurance for the following persons:<sup>49</sup>

- The insurance buyer herself;
  - Wife, husband, mother, father or children of the insurance buyer;
  - Biological siblings or any other persons who are in a care/support relationship with the insurance buyer;
  - Persons having financial interests or employment relationship with the insurance buyer;
- or
- A person who agrees in writing for the insurance buyer to buy health insurance for such person.

Under the LOIB, for any insurance policy with a term of one year or more, the insurance buyer has 21 days after receiving the insurance policy to refuse to participate in such insurance policy.<sup>50</sup> Additionally, an insurer is required to provide an insurance buyer with temporary insurance coverage upon receipt of an insurance request and advance premiums

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<sup>44</sup> LOIB art. 54

<sup>45</sup> LOIB art. 7.

<sup>46</sup> LOIB art. 15

<sup>47</sup> LOIB art. 8.

<sup>48</sup> LOIB art. 33

<sup>49</sup> LOIB art. 34

<sup>50</sup> LOIB art. 35

from the insurance buyer. The temporary insurance will expire after the insurer agrees or refuses to provide insurance to the insurance buyer or as otherwise agreed by the buyer and the insurer.<sup>51</sup>

The LOIB also provides for a group insurance policy, in which an insurance buyer engages an insurer to provide insurance for a group of people under the same insurance policy.<sup>52</sup> The group covered under the insurance policy must be a group not formed for the specific purpose of participating in such insurance (for example, the employees of a company).

## **B. Property Insurance and Damage Insurance**

Property insurance is defined to be an insurance product that covers property as provided in the Civil Code, which includes objects, money, valuable documents and property rights. Property can be movable or immovable property and can be existing or off-plan.<sup>53</sup> An insurance buyer may only buy property insurance when such insurance buyer has ownership or other rights to the property or rights to possess and use, in case of non-owner.<sup>54</sup>

Damage liability insurance is defined to be an insurance product that covers any loss to economic benefits or contractual obligations or legal obligations that the insured has.<sup>55</sup> Insurable interest under damage liability insurance can be financial benefits, financial obligations or responsibilities or economic loss to the insured subject matter.<sup>56</sup>

Generally, the value of insurance will be equal to the market value of the insured property or the insured economic benefits or contractual or legal obligations. However, the LOIB also provides for the circumstances in which the value of insurance is less or more than the market value of the insured subject at the time of execution of the insurance policy.

The insured must not abandon the insured subject and must implement the necessary measures to prevent or mitigate the loss, except as otherwise provided by the law or agreed by the parties. The insurer will have the right to examine such measures or to recommend or request the insured to implement additional measures.

## **C. Liability Insurance**

Liability insurance is defined to be an insurance product that covers the civil liability of the insured towards a third party.

The responsibilities of the insurer only arise when the third party requests the insured to compensate for an act against the third party during the term of the policy.<sup>57</sup> The third party is not entitled to make such request directly to the insurer. However, the insurer is permitted to represent the insured to negotiate with the third party in relation to the payment, unless otherwise provided in the insurance policy.<sup>58</sup>

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<sup>51</sup> LOIB art. 36

<sup>52</sup> LOIB art. 42

<sup>53</sup> Civil Code art. 105

<sup>54</sup> LOIB art. 44

<sup>55</sup> LOIB art. 43

<sup>56</sup> LOIB art. 44

<sup>57</sup> LOIB art. 58

<sup>58</sup> LOIB art. 60

#### **D. 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.

#### **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.<sup>59</sup> The Maritime Law covers insurance policies for maritime perils, which mean perils incidental to navigation at sea.<sup>60</sup> Marine insurance covers losses where the insured object is a material interest measurable in money, including 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.<sup>61</sup> The insurer then retains the right to the premiums, and need not indemnify unless it has been made known to the insurer that the peril has already occurred or the possibility of its occurrence does not exist before the insurance policy is signed.

The Maritime Law recognizes two parties to an insurance policy: the insurer 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 insurer 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 are passed 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 such an 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.<sup>62</sup> 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 contracts apply.

#### **F. Fire and Explosion Insurance**

Investors prioritize ways to safeguard their investments. On April 15, 2018, Decree No. 23/2018/ND-CP<sup>63</sup> came into effect and replaced all previous regulations on compulsory fire and explosion insurance. Accordingly, certain businesses must purchase fire and explosion

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<sup>59</sup> LOIB art. 12.3. Maritime Law arts. 303-336-55.

<sup>60</sup> Maritime Law art. 303.

<sup>61</sup> Maritime Law art. 309.

<sup>62</sup> Civil Code art. 415

<sup>63</sup> Government's Decree 23/2018/ND-CP dated February 23, 2018 on compulsory fire and explosion insurance, as amended by Decree 97/2021/ND-CP dated November 8, 2021

insurance from an insurer permitted to conduct business in Vietnam.<sup>64</sup> Decree 23/2018 describes categories of assets that must be covered by such policy, including housing and buildings, equipment and machinery, and all other goods and assets that can be given a monetary value.<sup>65</sup> The minimum insured sum protected by the policy must be the total market value of the assets.<sup>66</sup> An insurer has the right to refuse to sell a policy to a buyer in certain circumstances.<sup>67</sup>

Decree 23/2018 also lists circumstances in which the insurer is not obligated to indemnify the insured.<sup>68</sup> 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. Decree 23/2018 does not have any provision for the possibility of avoiding the statutory exclusion by specifically including these items in the insurance policy, or by negotiating an additional insurance policy to cover the 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.<sup>69</sup>

The Law on Notarization, which took effect on January 1, 2015, provides that notary offices must buy professional liability insurance for their notaries.<sup>70</sup> 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, permits insurers to provide universal life insurance products.<sup>71</sup> These products include an insurance component and an investment component.<sup>72</sup> 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.<sup>73</sup>

The Circular sets further conditions for an insurer that wishes to provide universal life insurance.<sup>74</sup> That is, it must have a solvency margin of at least VND100 billion (US\$ 4.25

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<sup>64</sup> Decree 23/2018 art. 3.1.

<sup>65</sup> Decree 23/2018 art. 4.

<sup>66</sup> Decree 23/2018 art. 5.

<sup>67</sup> Decree 23/2018 art. 3.3.

<sup>68</sup> Decree 23/2018 art. 6.2.

<sup>69</sup> LOIB art. 92.

<sup>70</sup> Law on Notarization 2015 art. 37.

<sup>71</sup> Circular 52/2016 art. 1

<sup>72</sup> Circular 52/2016 art. 2

<sup>73</sup> Circular 52/2016 art. 13.5

<sup>74</sup> Circular 52/2016 art. 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 insurer must provide to its prospective customers.<sup>75</sup> Certain documents must also be published on the firm's website. The insurer must provide, to the insurance buyers, information regarding its investment policy and objectives, and must explain the benefits, risks, and charges.

Finally, the insurer 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.<sup>76</sup>

Circular 135/2012/TT-BTC dated August 15, 2012 (“**Circular 135/2012**”) permits unit-linked insurance products. By “unit-linked insurance” we mean a life insurance product that requires the establishment of unit-linked funds.<sup>77</sup> A unit-linked fund is formed from insurance premiums paid by buyers for unit-linked insurance policies. Unit-linked insurance is used by insurers to cover their risks in relation to the insurance premiums and to invest their capital. There are limits on the amount of capital a unit-linked fund may use 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 securities investment funds or the securities of securities investment companies established and operating in Vietnam. A unit-linked fund cannot use its assets to invest directly in real estate, gold, silver, other precious metals, or precious stones.<sup>78</sup>

An insurance enterprise must set up at least two unit-linked funds with different investment goals for each unit-linked investment product it offers.<sup>79</sup> The enterprise must ensure that the aggregate value of its unit-linked funds is not less than VND100 billion.<sup>80</sup>

Unit-linked insurance products must be approved by the MOF.

#### **IV. Operations and Structures**

##### **A. Corporate Forms in Vietnam**

An insurance enterprise can be a joint stock insurance enterprise or a limited liability insurance enterprise. A joint stock enterprise and a limited liability enterprise are subject to the Law on Enterprise. However, there are additional requirements applicable to a joint stock insurance enterprise. A joint stock insurance enterprise must have at least 3 shareholders, of which at least 2 shareholders must be entities. Each of the entity shareholders must contribute at least 10% of the charter capital of the joint stock insurance enterprise. An individual

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<sup>75</sup> Circular 52/2016 art. 10-13

<sup>76</sup> Circular 52/2016 art. 14

<sup>77</sup> Circular 135/2012 art. 2

<sup>78</sup> Circular 135/2012 art. 18.2.

<sup>79</sup> Circular 135/2012 art. 16.1.

<sup>80</sup> Circular 135/2012 art. 16.3.

shareholder of the joint stock insurance enterprise is not permitted to own more than 10% of the charter capital of the joint stock company.

**B. Conditions for establishment and licensing**

In order to operate in Vietnam, all insurance businesses must first meet certain conditions and requirements.<sup>81</sup> Moreover, an insurance enterprise is only permitted to provide one of the three insurance products: life insurance, health insurance or non-life insurance, except for the following circumstances:

- A life insurance enterprise is permitted to provide health insurance;
- A non-life insurance enterprise is permitted to provide health insurance with a term of less than 1 year and life insurance with a term of less than 1 year; and
- A health insurance enterprise is permitted to provide life insurance with a term of less than 1 year.

**1. Conditions to establish an insurance enterprise in Vietnam**

Vietnamese and foreign individuals/organizations that contribute capital to establish an insurance enterprise must meet the following general conditions:<sup>82</sup>

- a. Not use loans or money and resources of other individuals and organizations to contribute capital to establish the prospective insurance enterprise.
- b. If an organization wishes to contribute more than 10% of the capital of the insurance enterprise, it must have had a positive business for three consecutive years prior to submitting the application dossier.
- c. If it operates in a business with a legal capital requirement, its remaining capital after capital contribution to the prospective insurance business must meet such legal capital requirement.
- d. 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 approval from relevant authorities as required by law.

There's more. A foreign organization that contributes capital to establish an insurance enterprise must meet the following additional conditions:<sup>83</sup>

- a. It must be an insurance enterprise, a reinsurance enterprise, financial or insurance group established in a foreign country;
- b. It must be certified by a competent foreign authority that it has not materially violated the law on insurance business of its headquartered country for three consecutive years prior to submitting the application dossier;
- c. The proposed business lines to be conducted in Vietnam must include business lines that it has performed for at least 7 years;

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<sup>81</sup> LOIB art. 64

<sup>82</sup> LOIB art. 64

<sup>83</sup> LOIB art. 65.1

- d. Total assets of the foreign organization must be at least USD 2 billion in the year prior to submitting the application dossier;
- e. It must commit to support the prospective insurance enterprise in relation to finance, technology, corporate administration, risk management, management and operations; and ensure that the prospective insurance enterprise complies with requirements regarding financial safety and risk management under the LOIB.
- f. It can authorize a subsidiary, which is specialized in outward investment to contribute capital to establish the prospective insurance enterprise but such subsidiary must have total assets of at least USD 2 billion in the year prior to submitting the application dossier.

A Vietnamese organization that contributes capital to establish an insurance enterprise must have total assets of at least VND 2,000 billion in the year prior to submitting the application.<sup>84</sup>

## **2. Licensing**

If an organization meets 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 supervisory systems, and a risk management process; 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 an individual or an entity to complete all necessary legal procedures; approval from the relevant authorized government authority as required by the law.<sup>85</sup> 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.<sup>86</sup> The insurance enterprise may apply for an extension of twelve (12) months to start operations, subject to written approval of the MOF.

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<sup>84</sup> LOIB art. 65.2

<sup>85</sup> LOIB art. 69

<sup>86</sup> LOIB art. 73

### **3. Management**

Managerial personnel of an insurance enterprise must meet the following requirements:<sup>87</sup>

- Able to fulfill managerial positions in accordance with the Law on Enterprise.<sup>88</sup>
- For three consecutive years prior to the date of appointment:
  - Not be subject to any administrative penalties which have resulted in suspension from the appointed managerial position in the respective insurance enterprise.
  - Not be subject to any disciplinary action for violation of any internal procedures which have resulted in suspension or termination of employment.
- Not be directly involved in any investigations or legal proceedings at the moment of appointment.

Moreover, there are specific requirements for each managerial position. These requirements are qualifications, which include a university degree or higher; insurance training, which require qualifications or a certificate from an accredited insurance training institution working legally in Vietnam or abroad; experience of at least three to five years, depending on the position; and residence, which requires the person to reside in Vietnam while incumbent. Appointment or change to the positions of Chairman of the Board of Management, General Director and Appointed Actuaries must be approved by the MOF.<sup>89</sup>

Additionally, there are requirements under the LOIB that certain managerial positions within the same insurance enterprise are not permitted to be held by the same person. The LOIB also provides a person holding certain managerial positions in an insurance enterprise is not permitted to hold certain managerial positions in another insurance enterprise providing a similar type of insurance. Violations of these requirements may be subject to suspension by the MOF. If a managerial person is suspended, the insurance enterprise must appoint a new person for that position within 75 days from the date of the MOF's suspension.<sup>90</sup>

### **4. Internal Control, Internal Audit and Risk Management**

An insurance enterprise is required to establish internal controls<sup>91</sup>, have an internal audit department<sup>92</sup> and create a risk management system<sup>93</sup>.

It is also required to establish internal processes and procedures, which must be strictly complied with by its management personnel, controllers and employees. Internal controls of an insurance enterprise must be assessed annually by the internal audit department.

An internal audit department is required. The purpose of this department is to:

- Independently and objectively review and assess internal control and risk management activities;

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<sup>87</sup> LOIB art. 81

<sup>88</sup> Law on Enterprise No. 59/2020/QH14 dated June 17, 2020

<sup>89</sup> LOIB art. 74.1

<sup>90</sup> LOIB art. 83

<sup>91</sup> LOIB art. 84

<sup>92</sup> LOIB art. 85

<sup>93</sup> LOIB art. 86



- Independently review the suitability and compliance of the internal rules and regulations, processes and procedures;
- Recommend adjustments to improve or enhance the internal rules and regulations, processes and procedures to ensure safety, effectiveness and compliance with Vietnamese law. The internal audit department must prepare and submit an annual report to the Board of Directors, Board of Members and the General Director.

Article 86 of the LOIB requires an insurance enterprise to establish a risk management system, which must satisfy certain legal requirements. Annually, an insurance enterprise must prepare a report on the solvency and risk management following Circular 70/2022/TT-BTC.<sup>94</sup>

#### **4. Capital**

The enterprise must comply with capital contribution requirements by providing information on the capital contribution of each shareholder, who is an entity or an individual with a share of more than 10% in the enterprise.

The charter capital of an insurance enterprise is the capital amount contributed or committed to be contributed by its members or shareholders.<sup>95</sup> The paid-up charter capital of an insurance enterprise must be sufficient to match its range of operation, business plan, and location.

Article 10 of Decree 73/2016 sets the minimum legal capital for each type of insurance enterprise, as follows:

<b>Insurance products</b>	<b>Minimum legal capital</b>
Non-life insurance (1):	VND 300,000,000,000
• with either airline insurance or satellite insurance	VND 350,000,000,000
• with both airline insurance and satellite insurance	VND 400,000,000,000
Life insurance (2):	VND 600,000,000,000
• with either unit-linked insurance or retirement insurance	VND 800,000,000,000
• with both unit-linked insurance and retirement insurance	VND 1,000,000,000,000
Health insurance (3)	VND 300,000,000,000
Reinsurance products of:	
Either (1) or a combination of (1) and (3)	VND 400,000,000,000
Either (2) or a combination of (2) and (3)	VND 700,000,000,000
A combination of (1), (2) and (3)	VND 1,100,000,000,000

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

The LOIB provides a concept of capital adequacy ratio, which is defined to be the ratio of available capital against risk-weighted assets.<sup>96</sup> An insurance enterprise must always maintain

<sup>94</sup> Circular 70/2022/TT-BTC dated November 16, 2022 on risk management, internal control and internal audit of insurance enterprise, reinsurance enterprise, branch of non-life foreign insurance enterprise and branch of foreign reinsurance enterprise in Vietnam

<sup>95</sup> Decree 73/2016 art.49

<sup>96</sup> LOIB art. 95

the capital adequacy ratio higher than that determined by the MOF. The MOF will provide further details regarding the capital adequacy ratio, risk-weighted assets and available capital.

## **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.<sup>97</sup> The insurance enterprise may draw the deposit to fulfill its commitments to insurance buyers if their solvency fails. Such use, however, must be approved in writing by the MOF. Within 90 days of drawing down the deposit, the insurance enterprise must replenish the escrow account.<sup>98</sup> The escrow account can be drained after the insurance enterprise is terminated.

Insurance operational reserve represents an amount of money which an enterprise must set aside to cover predetermined insurance liabilities arising from signed insurance policies.<sup>99</sup> 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:<sup>100</sup>

- 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 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:<sup>101</sup>

- 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 the insured sum likely to arise during the effective 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 remains unsettled by the end of a fiscal year.

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<sup>97</sup> LOIB art. 96; Decree 73/2016 art.16

<sup>98</sup> LOIB art. 96.3

<sup>99</sup> LOIB art. 97.1

<sup>100</sup> Decree 73/2016 art. 53

<sup>101</sup> Decree 73/2016 art. 54

- d) Interest Sharing Reserve: used to pay the interest agreed by the insurance enterprise and the insurance buyer in the contract.
- 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:<sup>102</sup>

- 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.
- 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.

An insurance enterprise or a reinsurance enterprise must also establish a reserve fund to replenish the charter capital and maintain solvency. The enterprise must annually deposit 5% of its after-tax profit into the reserve fund until the value of the reserve fund reaches the maximum amount required by the Government. An enterprise may establish other reserves as may be required under its charter.<sup>103</sup>

### **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.<sup>104</sup> 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.<sup>105</sup> In addition, an insurance enterprise must submit for the MOF's approval the methods and basis for its calculation of insurance premiums of life insurance, health insurance and vehicle insurance, except for insurance for the civil liability of a vehicle owner.

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<sup>102</sup> Decree 73/2016 art. 55

<sup>103</sup> LOIB art. 98

<sup>104</sup> Decree 73/2016 art. 39.

<sup>105</sup> LOIB art. 87

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 transaction or through other legal channels.<sup>106</sup>

### **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.<sup>107</sup> The insurance enterprise:

- must ensure the safety, liquidity and effectiveness of the investment and must comply with the law and be responsible for its investment;
- is not permitted to take out loans for investment, fiduciary investments in securities investment fund or the securities of securities investment companies established and operating in Vietnam or contributing capital to other enterprises;
- is not permitted to invest more than 30% in companies within the same company group, except for making deposits with financial organizations in unrestricted amounts;
- is not permitted to re-invest in shareholders, members or related persons of shareholders, members;
- is not permitted to buy corporate bonds issued to refinance loans of the issuer;
- Funds from the operational reserves can only be used to invest within Vietnam, except in certain circumstances;
- In case of fiduciary investments, the fiduciary investor must be licensed to perform the appropriate fiduciary investments.

The LOIB prohibits certain types of investment, including but not limited to: real estate business (with exceptions), precious materials, intangible fixed assets and derivatives or derivatives contracts (with exceptions).<sup>108</sup> 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;
- b) Purchasing corporate shares or bonds without underwriting, or making a 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 making a capital contribution to another enterprise, with no more than 50% of idle capital from operational reserves; or

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<sup>106</sup> LOIB art.87.4

<sup>107</sup> LOIB art. 99

<sup>108</sup> LOIB art. 99

- 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 comply with the following principles:<sup>109</sup>

- The insurance enterprise must ensure solvency and the capital adequacy ratio;
- Offshore investments by an insurance enterprise must be made in accordance with the Law on Investment<sup>110</sup>, Decree 31/2021<sup>111</sup>, Decree 135/2015<sup>112</sup>, Circular 105/2016<sup>113</sup> and foreign exchange regulations;
- Offshore investments by an insurance enterprise must be made in the name of such enterprise;
- Outward investment funds, investment assets, revenues and expenses related to outward investments must be managed and monitored separately;
- Using money and/or property of domestic policyholders to compensate for any losses to or deficits in funds for offshore investment is prohibited, unless otherwise provided; and
- Offshore investments must be approved by the MOF.

## **E. Solvency**

An insurance enterprise is considered solvent when it has been established and has fully contributed to the operational reserves required by law, and when it has established its capital adequacy ratio.<sup>114</sup>

Article 64 of Decree 73/2016 requires an insurance enterprise to maintain its solvency margin at a certain level. The solvency margin of an insurance enterprise is the difference between total assets and outstanding liabilities at the time the solvency margin is calculated.<sup>115</sup> Assets used for calculation of the solvency margin of an insurance enterprise must be liquid. Circular 50/2017 provides a method to calculate assets for purposes of determining the solvency margin.<sup>116</sup>

Decree 73/2016 sets the minimum solvency margin level differently and 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

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<sup>109</sup> LOIB art. 100.3

<sup>110</sup> Law on Investment 61/2020/QH14 dated June 17, 2020 on January 1, 2021

<sup>111</sup> Decree 31/2021 dated March 26, 2021 promulgating certain articles of the Law on Investment

<sup>112</sup> Decree 135/2015/ND-CP dated December 31, 2015 on offshore indirect investment

<sup>113</sup> 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, as amended by Circular 91/2019/TT-BTC dated December 31, 2019

<sup>114</sup> LOIB art. 110

<sup>115</sup> Decree 73/2016 art. 65

<sup>116</sup> Circular 50/2017 art. 20, as supplemented by Circular 01/2019, art. 1

## RUSSIN & VECCHI

principal insurance premiums plus reinsurance premiums at the time the solvency margin is calculated.<sup>117</sup>

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.

Article 109.3 of the LOIB requires the MOF to provide lists of circumstances when improvement measures, early intervention measures or control measures are required.

If an insurance enterprise is required to perform an improvement measure, it must take one of the following steps and must notify the MOF of its status, the reason and the steps it will take:<sup>118</sup>

- increase its own capital;
- improve the efficiency of its business, including focusing on effective insurance products; review insurance premiums against the terms and insurance liabilities; re-structure its reinsurance program; lower business expenses, management expenses, sales costs; limit the remuneration and the benefits of managerial positions;
- restructure its investment portfolio;
- increase risk management activities; restructure its managerial system and human resources; limit the purchase of fixed assets; limit its use of reserves; and
- make other improvements required by the MOF;

The LOIB suggests that if an insurance enterprise has adopted such measures for 12-months but continues to fail to maintain its capital adequacy ratio, the MOF, will request the insurance enterprise to adopt one or a combination of the following early intervention measures:<sup>119</sup>

- Continue one or a combination of improvement measures;
- Dismiss managerial personnel;
- Reduce or eliminate ineffective activities; suspend ineffective insurance products or operations.

The MOF will publish a list of insurance enterprises which follow early intervention measures on its website. An insurance enterprise may stop adopting early intervention measures if an independent audit entity confirms that the capital adequacy ratio has been rectified or the insurance enterprise is subject to a control measure.<sup>120</sup>

When an insurance enterprise is subject to a control measure, the MOF will send written notification to (i) shareholders, owners, who hold at least 10% of the insurance enterprise and

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<sup>117</sup> Decree 73/2016 art.64.1.

<sup>118</sup> LOIB art. 111.

<sup>119</sup> LOIB art. 112.

<sup>120</sup> LOIB art. 112.8.

(ii) the relevant foreign insurance authority in respect of a foreign investor holding 100% of an insurance enterprise or a branch of a foreign insurance enterprise in Vietnam. Within 30 days of receiving such notice, the insurance enterprise must engage an independent audit firm to review and assess its financial status and solvency. Within 120 days of receiving such notice, the insurance enterprise must prepare a plan to rectify the capital adequacy ratio and report to the MOF.<sup>121</sup> An insurance enterprise which fails to comply will be subject to additional control measures as determined by the MOF.<sup>122</sup>

If after control measures are applied, the insurance enterprise continues to fail to maintain its capital adequacy ratio, the MOF will issue a document terminating the control measures and requiring the insurance enterprise to file an insolvency request with a competent court under the Law on Bankruptcy.<sup>123</sup> Allocation of the assets of the insurance enterprise must follow Article 116 of the LOIB.

## **F. Disclosure Requirements**

Insurance enterprises must comply with periodic disclosure requirements, regular disclosure requirements and extraordinary disclosure requirements.

Insurance enterprises are required to prepare and publish on its website: (i) audited financial statements, bi-annual financial statements, (ii) reports on assessment of solvency and risk managements and (iii) reports on actual capital and the capital adequacy ratio, within 7 days of submitting this information to the MOF.<sup>124</sup>

They must prepare and submit audited financial statements, statistical reports, and operations reports to the MOF.<sup>125</sup> 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.<sup>126</sup>

The contents of the statistical and operations reports depend on whether the enterprise provides life insurance or non-life insurance. A non-life enterprise and foreign branch must prepare and submit monthly operations reports; quarterly and annual reports on revenue, target, insurance compensation, provision setting, investment operation and solvency; and an annual Association of Southeast Asian Nations (“ASEAN”) report.

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

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<sup>121</sup> LOIB art. 113

<sup>122</sup> LOIB art. 113.8

<sup>123</sup> Law on Bankruptcy No. 51/2014/QH13 dated June 19, 2014

<sup>124</sup> LOIB art. 117

<sup>125</sup> Decree 73/2016 art. 80, Circular 50/2017 arts. 31-33

<sup>126</sup> Circular 50/2017 art. 32

Additionally, corporate information and information of the entity's insurance products, including rules, terms and conditions, price schedule and notes and claims settlement procedures must be published and regularly updated on its websites.<sup>127</sup>

A reinsurance enterprise must prepare and submit quarterly and annual reports on reinsurance revenue, compensation and premium payments, professional provision and must use standard forms for non-life insurance enterprises (non-life insurance and health reinsurance), or it may use the standard forms of life insurance enterprises (for the operations of life insurance); quarterly and annual investment operations reports; and quarterly and annual solvency reports.<sup>128</sup>

Insurance enterprises are also required to disclose information in one of the following extraordinary circumstances:

- The insurance enterprise has been suspended or its license has been revoked;
- Any split-up, split-off, merger, amalgamation, dissolution of or transformation into other business types or types of business ownership; outward investment; establishment or closing of branches or representative offices;
- Termination of operation of foreign branches in Vietnam;
- Any changes in applied accounting policies; retroactive adjustments in financial statements; opinions other than unqualified opinions of an independent audit firm in relation to financial statements; designation or substitution of the independent audit firm;
- Assignment of shares or ownership interests resulting in shareholders or members owning at least 10% of charter capital, or cause shareholders or members to cease to own at least 10% of charter capital;
- Decisions on administrative penalties in the insurance sector;
- Enforceable court judgements or decisions relating to operations and services of the insurance enterprise;
- Court decisions on initiation of bankruptcy proceedings against the insurance enterprise;
- Decisions on initiation of legal proceedings against the insurance enterprise, its managers and controllers who are related to the business of such enterprise;
- Events that critically impact the legal rights and/or interests of participants in insurance policies;
- Information related to an insurance enterprise that materially affects the capital, assets, solvency, risk management and corporate governance capabilities of the insurance enterprise;
- Loss or damage to property whose value makes up at least 10% of equity of an insurance enterprise;
- Transfer of portfolios of insurance contracts; or
- Other information which relates to Vietnamese law.

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<sup>127</sup> LOIB art. 119

<sup>128</sup> Circular 50/2017 arts. 32



## **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 to research the market.<sup>129</sup> 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.<sup>130</sup> 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. This should be done cautiously as there may be tax implications.

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 5 years, and it must have a cooperative relationship with Vietnamese organizations and agencies.<sup>131</sup> 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 5 years, which term is renewable. An RO of a foreign insurance enterprise can be terminated in certain circumstances as set out in Decree 73/2016.<sup>132</sup>

### **Branch of a foreign insurance enterprise**

A foreign non-life insurance enterprise is permitted to open a foreign non-life insurance branch (“**Foreign Insurance Branch**”). The Insurance Branch is a dependent unit of the foreign non-life insurance enterprise, and is not a legal entity in Vietnam. A foreign life insurance enterprise is not allowed to open a branch in Vietnam.

To establish a Foreign Insurance Branch, the foreign non-life insurance enterprise must satisfy the following criteria:<sup>133</sup>

- its head office must be located in a country with which Vietnam has a relevant agreement;
  - it has been operating for at least 7 years in the sector in which the Insurance Branch is proposed to operate;
  - it has minimum total assets of VND 2 billion (equivalent to US\$ 80,500) during the latest financial year;
  - it has been profitable for the three consecutive years preceding the year of its application;
- and
- the foreign non-life insurance enterprise commits to perform all obligations and commitments of its Foreign Insurance Branch.

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<sup>129</sup> Commercial Law, art. 3.

<sup>130</sup> LOIB art. 76.2

<sup>131</sup> LOIB art. 77

<sup>132</sup> Decree 73/2016 art. 101

<sup>133</sup> LOIB art. 67

A Foreign Insurance Branch,<sup>134</sup> license does not permit it to establish a dependent sub-branch in Vietnam.<sup>135</sup> Details on establishment, business operations, amendments required to be registered, the financial regime, and reporting obligations of the Insurance Branch are provided in LOIB and Decree 73/2016. The minimum legal capital requirements of a Foreign Insurance Branch is as follows:

<b>Insurance products</b>	<b>Minimum legal capital</b>
<b>Branch of foreign insurance enterprise:</b>	
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

A Foreign Insurance Branch is generally treated as a non-life insurance enterprise and must comply with requirements applicable to non-life insurance enterprises.

## **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.<sup>136</sup> The original insurer must ultimately be responsible for the insurance buyer, even if part of the liability has been reinsured to a reinsurer. Additionally, a reinsurer is not permitted to request the insurance buyer to pay premiums, unless otherwise agreed in the insurance policies.<sup>137</sup>

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.<sup>138</sup> 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 for selecting 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.<sup>139</sup>

An insurance enterprise may reinsure with either Vietnamese or with foreign reinsurance enterprises. 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.

<sup>134</sup> Decree 73/2016 art. 15

<sup>135</sup> Decree 73/2016 art. 24

<sup>136</sup> Decree 73/2016 art. 42

<sup>137</sup> LOIB art. 29

<sup>138</sup> Decree 73/2016 art. 43

<sup>139</sup> Decree 73/2016 art. 42

## **VI. Services auxiliary to insurance**

Services auxiliary to insurance refer to parts of the insurance business, including the following services:<sup>140</sup>

- Insurance consultancy: provision of consultancy services on insurance programs, insurance products, insurance risk management and prevention and reduction of losses and damages;
- Insurance risk assessment: identification, classification and assessment of the nature and extent of risks and the management of risk to people, property and the civil responsibility of the insured as a basis for insurance coverage;
- Actuarial analysis: the collection and analysis of statistical data; calculation of insurance premiums, professional reserves, capital and solvency margin; evaluation of business performance and determination of value in order to ensure the financial safety of the insurer;
- Insurance loss assessment: determination of the actual state, cause and level of loss and the calculation and allocation of liability for compensation;
- Claim settlement: assisting policyholders, the insured, beneficiaries or insurers in the process of settling an insurance claim.

An insurance enterprise, an insurance brokerage enterprise or a Foreign Insurance Branch is permitted to provide services auxiliary to insurance to other insurance enterprises, insurance brokerage enterprises, mutual support insurance organizations or Foreign Insurance Branches. A legal entity is permitted to provide services auxiliary to insurance, if the legal entity has employees who satisfy certain requirements<sup>141</sup>, including: (a) being a Vietnamese national who has full civil capacity, and either (i) a bachelor's degree in insurance or (ii) training from an institution accredited to train and certify insurance agents<sup>142</sup>. Providing loss assessment and actuarial analysis are subject to additional requirements.<sup>143</sup>

## **VII. Microinsurance**

Microinsurance products are insurance products that are concise, easy to understand, have simplified actuarial procedures or require no actuarial service. Microinsurance only offers basic coverage against life, health and property risks of participants and lasts for less than 5 years. A microinsurance provider must apply and obtain approval from the MOF regarding the methods and basis for calculation of premiums of microinsurance products.

Microinsurance can be provided by insurance enterprises, Foreign Insurance Branches or mutual support insurance organizations. A mutual support insurance organization is only permitted to provide microinsurance for its members.<sup>144</sup>

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<sup>140</sup> LOIB art. 4

<sup>141</sup> LOIB art. 143

<sup>142</sup> LOIB art. 143.1(b)

<sup>143</sup> LOIB art. 143.1(c) and (d)

<sup>144</sup> LOIB art. 149.1

## **VIII. 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.<sup>145</sup> 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.<sup>146</sup> The agent must enter into an insurance agency agreement and act exclusively for only one insurance enterprise.<sup>147</sup>

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.<sup>148</sup>

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.<sup>149</sup> By “commissions” we mean amounts paid by insurance enterprises directly to insurance agents in return for services they provide to the insurance enterprises. The 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 has 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<sup>150</sup>. The MOF regulates the program, content and form of training required to obtain this certificate.

### **B. Brokers**

An insurance broker is an individual who engages directly in insurance brokerage services, including provision of information on types of insurance, policy terms and premiums, and general information on insurance enterprises to its customers who wish to purchase insurance.<sup>151</sup> An insurance broker may work for an insurance brokerage enterprise. An insurance broker helps the insurance buyer assess risk management, select suitable insurance products, and negotiates and concludes insurance policies and provides services auxiliary to insurance.<sup>152</sup> An insurance brokerage enterprise works for and is paid by the insurance buyer,

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<sup>145</sup> LOIB art. 124

<sup>146</sup> LOIB art. 125.1

<sup>147</sup> LOIB art. 126

<sup>148</sup> LOIB art. 129

<sup>149</sup> LOIB art. 128

<sup>150</sup> LOIB art. 130

<sup>151</sup> LOIB arts. 131

<sup>152</sup> Decree 73/2016 art. 44

rather than by an insurance enterprise. An insurance broker must (a) be a Vietnamese national who has full civil capacity, and have either (i) a bachelor's degree in insurance or (ii) training from an institution accredited to train and certify insurance brokers.

In order to be licensed, an insurance brokerage enterprise must meet capital requirements established by the Government, as follows:

<b>Insurance products</b>	<b>Minimum legal capital</b>	
<b>Insurance Brokerage company:</b>		
Insurance Brokerage or reinsurance brokerage	VND	4,000,000,000
Insurance Brokerage and reinsurance brokerage	VND	8,000,000,000

It must submit documents such as a draft charter and five year business plan, and provide evidence that its executives and managers have appropriate qualifications.<sup>153</sup> 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.<sup>154</sup> The law requires the broker to provide honest services, and not to disclose or provide information that damages the insurance buyer's rights.<sup>155</sup>

### **VIII. Conclusion**

The existence of an increasing number of bilateral and multilateral free trade agreements, together with the maturity of the insurance market have resulted in more competition. Competition will continue to encourage development of new insurance products. Firms may explore creative packaging of existing products. There are creative 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 will offer more services online. This will present new challenges for the regulation of disclosure 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 at the same time, prohibit anti-competitive practices.

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<sup>153</sup> LOIB art. 134

<sup>154</sup> Decree 73/2016 art. 71

<sup>155</sup> LOIB art. 137