

# **INSURANCE LAW & REGULATION IN VIETNAM**

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## I. Introduction<sup>1</sup>

### A. In general

Vietnam continues to make economic progress. Economic growth has already lifted many Vietnamese out of poverty. At the same time, the middle class is expanding. WTO membership has given Vietnam access to both foreign markets and capital, while making Vietnamese enterprises, particularly Vietnamese insurance enterprises, stronger through increased competition.

Many foreign insurance companies (particularly in the life segment) are present 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, the 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 in Vietnam.

Companies are also beginning to provide innovative products tailored to Vietnam. 2014 was seen as a successful year for the insurance sector even though the domestic economy faced many difficulties. Insurance continued to grow at a double-digit rate. The non-life insurance sector posted premiums growth of around 10% while life insurance premiums grew by almost 22%. Premiums collected through brokerages rose by 13%. Insurance companies invested around VND 130 trillion (equivalent to US\$ 6 billion, at the current exchange rate of US\$ 1 = VND 21,600), up 17%. This includes investment in government bonds<sup>2</sup>.

### B. History and Relevant Laws

Different kinds of regulations apply to the insurance industry. The National Assembly passes Laws, the highest form of legal instrument. Decrees usually implement Laws and Ordinances. Circulars are issued by particular Ministries, and provide guidance on how that Ministry will administer or interpret a Decree. A Ministry may also issue a Decision or an Official Letter to regulate a particular issue under its jurisdiction.

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

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

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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 June 2015.

<sup>2</sup> Vietnam News, December 25, 2014

December 18, 1993 authorized the formation of insurance enterprises other than state-owned enterprises. The Law on Insurance Business dated December 9, 2000 (“**LOIB**”) replaced early attempts to regulate insurance providers, and developed a comprehensive approach to the insurance business. After 10 years of operation, some parts of the LOIB were amended and have been amended and supplemented by Law 61/2010/QH12 which was issued by the National Assembly on November 24, 2010 (“**Law 61**”). In some cases, the changes reflect the position arrived at through government regulation in the intervening years, including changes in the investment laws generally and also changes driven by Vietnam’s WTO accession.

In addition to the LOIB, the Maritime Law dated June 27, 2005 contains a section that governs marine insurance purchased for marine contracts.<sup>3</sup>

Various laws have recognized the importance of maintaining competition in the marketplace and streamlining the role of government in the insurance industry. Some insurance enterprises are subsidiaries of the MOF, or of a People’s Committee. In the past, it was not unusual for Ministries, governmental departments, or state-owned enterprises to require entities or individuals under their administrative jurisdiction to purchase insurance from insurance enterprises under their purview. Although government participation and influence in the insurance market remains common, there have been significant changes. In 1996, Official Letter 3780/TC-TCNH (October 1996) requested that government agencies cease to influence the insurance market. Also in 1996, the MOF eliminated an earlier legal requirement that, when purchasing insurance for a state-financed construction project, project managers give priority to state-owned insurance enterprises.

Moreover, an increased emphasis on promoting competition has resulted in laws that expressly forbid anti-competitive activities. The Commercial Law, passed in June 2005, prohibits inappropriate competitive activity in general.

The Competition Law, established in July 2005, introduced more comprehensive legislation. The Competition Law covers two broad categories of competitive practices: practices that may restrain competition, such as agreements in the restraint of trade, abuse of dominant market position, economic concentration, and unfair competitive practices, including coercion, defamation, and deceptive advertising. The Competition Law also established exemptions from its own regulations. The Law relates to the insurance sector in two ways. First, the general application of the Law’s principles prevents insurers from misrepresenting the coverage terms of policies to potential customers, and demands transparency as a systemic necessity for the industry. Second, practical considerations suggest that while particular aspects of the industry may technically breach competition laws, limited exemptions are provided for activities such as sharing of loss information or pooling arrangements. The Competition Law’s existing provisions on co-operation and competition in the insurance business have been revamped by Law 61, and now include additional detail on both the types of cooperation which are permitted, as well as the specific types of conduct which are prohibited, for example collusion aimed at carving up the insurance market.

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<sup>3</sup> Maritime Law arts. 224-257;

Finally, the LOIB itself and Law 61 specifically prohibit illegal competitive action. These laws forbid providing untruthful information and false advertising related to insurance terms and policies, and intimidating customers or employees of other insurance enterprises.<sup>4</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. The law has had a considerable impact on enterprises, which are obligated to provide health insurance coverage for all employees working under indefinite-term labour contracts or labour contracts with a definite term of three months or more, as well as for managers who receive wages.

### **C. International Agreements**

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

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

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

Thus, foreign insurance enterprises operating in Vietnam may choose among several forms: joint stock companies, joint ventures with Vietnamese enterprises, and 100% foreign invested enterprises.

### **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.<sup>5</sup> The MOF grants and withdraws licenses to establish and operate insurance enterprises.<sup>6</sup>

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<sup>4</sup> LOIB art. 10.2.

<sup>5</sup> Article 38 of Circular 124/2012/TT-BTC of the MOF on guiding the implementation of a number of articles of Decree 45/2007/ND-CP detailing a number of articles of the LOIB and Decree 123/2011/ND-CP detailing a number of articles of Law 61 (“**Circular 124/2012**”).

<sup>6</sup> LOIB arts. 62.1, 68.

Insurance enterprises must make periodic reports to the MOF. Additional reporting requirements apply if there are unusual developments within the enterprise, or if the enterprise fails either to meet its financial requirements or to fulfill commitments to its customers.<sup>7</sup> Liquidation of or mergers between insurance enterprises must be carried out under the supervision of the MOF, and changes in management structure or intended investment overseas require MOF approval. The MOF also carries out financial inspections of insurance enterprises once a year.

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

In addition to the regulatory role of the MOF, insurance enterprises must also adopt a system of internal supervision and control. Decision 153/2003/QD-BTC dated September 22, 2003 introduced a system of supervisory criteria for insurance enterprises. These criteria measure changes in capital sources and funds, indemnity ratios, insurance commission ratios, insurance reserves in relation to projected payment obligations, and asset investment profit ratios. This system is designed as an early warning system to detect and prevent insolvency. The criteria can also be used as a consistent and systematic external analytical tool by the MOF, as well as for internal supervision by the insurance enterprises. Supervisory Criteria Reports which are based on these benchmarks must be submitted along with an enterprise's annual financial reports.

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 125/2011/TT-BTC dated July 30, 2012 ("**Circular 125/2011**") provides further guidance on the financial regimes to manage internal control, including decentralizing and maintaining internal control activities independent from the executive and professional activities of the enterprise; preserving the objectivity of the internal auditors; and ensuring that the internal auditors have the necessary professional skills and qualifications to conduct such audits. Internal auditors must also assess the internal audit system itself, and verify the efficacy of existing rules for identifying risks and of methods for measuring and managing those risks. They must also check the flow of information within the firm, and assess compliance with the law, with regulations on the establishment of reserves and with professional ethics.

The Vietnam Insurance Association ("**VIA**") was established in 1999 as a professional association. The VIA has a role in oversight, since an enterprise must inform the VIA of any agents with whom the enterprise has terminated its relationship due to legal or professional malfeasance. As the market expands, the VIA may play a greater part in establishing 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 Circular 124/2012. It is now necessary for the MOF to issue preliminary, in principle approval for establishment of an insurance company before the investors receive their final license (called "the In Principle Approval"). Within six months from the date of In Principle Approval,

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<sup>7</sup> LOIB art.103.

shareholders of the insurance company must deposit their entire charter capital contribution into an escrow account and submit a certification of the deposit from the bank. Insurance companies must also prove that they satisfy the requirements on information technology, infrastructure and human resources. The MOF issues the final Establishment and Operation License (“**Business License**”) to the insurance company within six months from the date of In Principle Approval. If the six month period expires and the insurance company does not satisfy all requirements on finance, infrastructure, and human resources, the In Principle Approval will be revoked.

## **E. Sanctions**

Decree 98/2013/ND-CP dated August 28, 2013 (“**Decree 98/2013**”) lists sanctions for administrative violations by insurance enterprises. They include violation of rules that relate to the establishment and operation of insurance companies. Decree 98/2013 includes sanctions on unlawful management and operation of insurance companies; unlawful competition, including providing false information or advertising which damages policy holders; competing for customers by interfering with other enterprises or intimidating their employees; and agreeing to restrict competition. The fine for violating these rules, with respect to individuals is up to VND100 million (equivalent to US\$4,600, at the current exchange rate), and is up to VND200 million (equivalent to about US\$9,200) 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>8</sup>.

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

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

The LOIB defines insurance as a profit oriented activity carried out by an insurance enterprise, whereby the enterprise assumes certain defined risks of the insured in return for an insurance premium paid by the insurance buyer to secure the enterprise’s indemnity to the insured.<sup>9</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 enterprise must pay to the insured the contractual sum that represents the value of the insurance contract.<sup>10</sup> A literal reading of the definition suggests that the insured event need not result in loss or injury.

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<sup>8</sup> Decree 98/2013 art 3

<sup>9</sup> LOIB art. 3.1.

<sup>10</sup> LOIB art. 3.10.



## **B. The Insurance Contract**

### **1. General**

An insurance contract is an agreement reached between the insurance buyer and an insurance enterprise under which the enterprise must pay insured amounts to the beneficiary or in which it agrees to indemnify the insured upon the occurrence of an insured event.<sup>11</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. Insurance enterprises that provide non-compulsory products enjoy more flexibility in the structure and content of their contracts. They must nevertheless register their terms and premium tables with the MOF.

An insurance contract must be made in writing and must include certain information: the name and address of the insurance enterprise, the insurance buyer, and the insured or the beneficiary; the subject matter of the insurance policy; the value of the insured property or the sum insured; the scope of coverage, and applicable terms and conditions; exclusions; duration of coverage; premium rates and acceptable payment methods; time limit for payment of the insurance benefits or indemnity and acceptable payment methods; rules for dispute settlement; and the date on which the contract is executed.<sup>12</sup>

Insurance legislation, particularly recent regulations, has emphasized the responsibility of the insurance enterprise to create clear policies that buyers can understand, as well as the duty of agents who market these policies to ensure that the consumer understands the terms.<sup>13</sup>

### **2. The Parties**

The Civil Code 2005 refers to three different parties to an insurance contract. The *insurance enterprise* receives premium payments and assumes the obligation to pay the insured amount or to indemnify the insured upon the occurrence of the insured event. The *insurance buyer* must pay premiums and provide information related to the insured object. The buyer may also be the insured or the beneficiary. The *insured* receives the insurance proceeds, and is obligated to prevent or mitigate damages. The insured may also be the beneficiary. The *beneficiary* is the designated recipient of the insurance proceeds.<sup>14</sup>

The definition of an insurance contract in the LOIB, by comparison, attaches contractual obligations to only two of these parties: the buyer and the enterprise.<sup>15</sup>

The definition of the “insured” in the various laws is slightly inconsistent. In general, the term “insured” refers to an insurance buyer when he is also the insured party. In that case, he is the

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<sup>11</sup> LOIB art. 12.1.

<sup>12</sup> LOIB arts. 13, 14.

<sup>13</sup> LOIB art. 17.2(a), art. 19.1

<sup>14</sup> Civil Code 2005 arts. 567, 573-76.

<sup>15</sup> LOIB art. 3.1.

party obligated to pay the premiums, disclose information, and prevent damages, and is entitled to receive indemnity or to receive the insurance proceeds.

### **3. Insurable Interests**

A valid insurance contract requires an “insurable interest.”<sup>16</sup> Such an insurable interest is defined as the right to own, possess, or use the property, or the obligation to care for or cultivate the subject matter of the insurance contract.<sup>17</sup> The Civil Code provides that permissible objects of an insurance contract include persons, property, and civil liabilities.<sup>18</sup>

### **4. Formation**

In order to comply with the LOIB, the contract must be in writing.<sup>19</sup> The contract is not effective until it is executed. The LOIB, however, provides that the liability will arise if there is evidence the parties have accepted the contract, for example, the insurance enterprise issues a written acceptance of the application for insurance, and the insurance buyers have started to pay premiums.<sup>20</sup> The parties may agree otherwise in the contract. Similarly, an application by the insured for an extension, renewal, or amendment of the contract must be in writing.

An insurance buyer is permitted to assign the contract, subject to the terms of the contract. Assignment of an insurance contract by the buyer becomes valid only when a written notice of assignment is given to the insurance enterprise, and the enterprise provides written notice of acceptance of the assignment. The LOIB permits an exception when the assignment is undertaken in accordance with international trade practices.<sup>21</sup>

The insurance contract need not be registered with or receive approval from the MOF in order to become effective.

### **5. Void and Voidable**

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

- The insurance buyer has no insurable interest upon entering into the contract;
- The subject matter of the insurance contract no longer exists;
- The insurance buyer knows an insured event has occurred at the time the parties enter into the contract; or
- The insurance buyer or the insurance enterprise was deceived at the time the parties entered into the contract.<sup>22</sup>

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<sup>16</sup> LOIB art. 13.

<sup>17</sup> LOIB art. 3.10.

<sup>18</sup> Civil Code 2005 art. 569.

<sup>19</sup> LOIB art. 14.

<sup>20</sup> LOIB arts. 14, 15.

<sup>21</sup> LOIB art. 26.

<sup>22</sup> LOIB art. 22.1.

A civil contract such as an insurance contract may be declared only partially void, in which case the remaining provisions remain valid. When a civil contract is declared void, the parties must be restored to their original positions. They must return to each other the assets they have received as a result of the agreement. If they cannot return the assets, they must pay the equivalent cash value instead.

In addition to the circumstances outlined in the LOIB, the Civil Code 2005 states that a civil contract can be declared void if any of the following conditions apply:

1. The parties to the contract lack the capacity to take part in civil acts.
2. The parties have not acted voluntarily.
3. There is a deception or mistake relating to one or more of the essential elements of the contract. In a civil transaction, 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.
4. The purpose and contents of the contract are contrary to law and social morality.
5. The form of the contract does not adhere to the requirement that certain types of contracts, including insurance contracts, be made in writing.

The statute of limitations restricting the time during which parties may request that the court declare a civil contract void for the reasons stated in the first three circumstances is one year from the date of the contract. No statute of limitations applies to an action to declare a civil contract void based on the last two circumstances.

The buyer's intentional concealment and misrepresentation, or failure to notify the insurance enterprise of a change in circumstances which may increase the enterprise's risk exposure, give an insurance enterprise the option unilaterally to terminate the performance of the contract, while still claiming premiums due through the date of termination or cancellation. Similarly, where an insurance enterprise intentionally provides untruthful information to a buyer to persuade it to enter into an insurance contract, the buyer may unilaterally suspend performance of the contract. The enterprise must compensate the buyer for any damage caused by its misrepresentations.<sup>23</sup>

Finally, changes in the risk factors related to the insured object may lead to an increase in the premiums the buyer must pay. If the buyer refuses to accept and pay the increased premium, the insurance enterprise may unilaterally terminate the performance of the insurance contract after providing written notice to the buyer. Similarly, if the buyer notifies the enterprise of a change leading to a reduced risk to the enterprise, but the enterprise refuses to reduce the premiums accordingly, the buyer may terminate his insurance contract. He must provide written notice to the enterprise of his decision to terminate.<sup>24</sup>

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<sup>23</sup> LOIB art. 19.

<sup>24</sup> LOIB art. 20.

### **C. Disclosure Obligations and Misrepresentation**

The insured must disclose all information related to the insured object or person, as requested by the insurance enterprise.<sup>25</sup> Intentionally providing false information in order to receive insurance benefits or indemnification or in order to gain a benefit which would not otherwise be given, or failing to disclose special circumstances which may increase the risk of the transaction, will provide a basis on which the insurance enterprise may unilaterally terminate the contract and claim premiums due up to the termination date.<sup>26</sup>

If the buyer does not fulfill his obligation to disclose the existence of circumstances that may increase risk or cause additional liabilities to accrue to the insurance enterprise, the enterprise may unilaterally cancel the contract and refund the prorated balance of premium due to the buyer upon termination. The enterprise may deduct an amount as compensation for reasonable expenses.<sup>27</sup>

The buyer has a similar right of unilateral termination if the insurance enterprise has intentionally provided untruthful information in the context of his purchase of the policy. The buyer may claim from the enterprise compensation for damages resulting from the misrepresentation.<sup>28</sup>

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

### **D. Prevention of Loss**

The insurance enterprise has the right to request, and the insurance buyer has the obligation to take appropriate measures to prevent and mitigate loss.<sup>29</sup> The Civil Code 2005 requires that the insured take measures to prevent damage or injury as provided in a contract. Should the insured fail to do so, the insurance enterprise may give the insured a reasonable time to comply and take preventive measures. If the insured does not take appropriate action in the given period, the enterprise may terminate the contract or refuse to pay the insurance proceeds upon the occurrence of the insured event. It is uncertain whether, once a loss has occurred, the failure of the insurance enterprise to have given the insured notice of its obligation to take preventive measures will hamper the enterprise's ability to refuse to pay.

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<sup>25</sup> LOIB arts. 18.2, 19.1.

<sup>26</sup> LOIB art. 19.2.

<sup>27</sup> LOIB arts. 29.2, 20.2.

<sup>28</sup> LOIB art. 19.3.

<sup>29</sup> LOIB art. 17.1(e).

## **E. Termination**

An insurance contract may terminate for the following reasons, and with the following legal consequences:<sup>30</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.
2. If the insurance buyer no longer has an insurable interest at stake, the contract will terminate. The enterprise must refund the buyer's insurance premium prorated to the amount of time remaining in the insurance contract, after deducting the reasonable costs and expenses it has incurred.
3. If the insurance buyer fails to make full or timely payments of insurance premiums, the contract will terminate. The buyer must still make full payment of any premium due as of the date on which the contract terminates, unless the policy is one for personal insurance.
4. If the insurance buyer fails to pay the full amount of the premium within the grace period set in the contract, the contract will terminate. The insurance enterprise must still indemnify the insured if the insured event occurs within the grace period. The buyer must still pay premiums on personal insurance to the end of the grace period. This grace period does not exist for non-personal insurance.

## **F. Subrogation**

The LOIB permits subrogation except in the case of personal insurance, such as life insurance, labor accident insurance, and medical insurance.<sup>31</sup> After paying the insurance proceeds to the insured, the enterprise has the right to claim compensation from responsible third parties for the amount it has paid out to the insured. The insured must provide the enterprise with all of the necessary information and evidence so that the enterprise can exercise its legal right of subrogation.

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

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<sup>30</sup> LOIB arts. 23-24.

<sup>31</sup> LOIB art. 17.1(f).

### III. Types of Insurance

Law 61 categorizes insurance as life insurance, non-life insurance, health insurance and some other specific types of insurance.<sup>32</sup> Life insurance includes whole life, term insurance, last survivor insurance, combined insurance, annuity insurance, endowment insurance, and retirement insurance. Non-life insurance covers property insurance and damage insurance; insurance for cargo transported by road, sea, inland waterway, railway and air; aviation insurance; automobile insurance; fire and explosion insurance; vessel hull and vessel owners' civil liability insurance; liability insurance; credit and financial risk insurance; business loss insurance; and agricultural insurance. Health insurance includes accident insurance, medical insurance; and health care insurance.

The various kinds of insurance in these categories can also be characterized as compulsory or non-compulsory. Compulsory insurance is a kind of insurance for which the law sets the policy terms, premiums and minimum insurance sum, and includes motor vehicle liability insurance, professional liability insurance for legal consultants and insurance brokerages, and fire and explosion insurance, as well as insurance for projects that involve public safety issues, such as construction projects and oil and gas projects.<sup>33</sup> Non-compulsory insurance is not required to use the same legislated contract terms.

#### A. Personal Accident Insurance

Personal accident insurance includes policies that insure human lives, health, and safety.<sup>34</sup> This field of insurance includes personal accident insurance, accident and medical insurance for students, passenger accident insurance, tourist insurance, and medical insurance.

Specific injuries covered by a policy will be compensated at a percentage of the total insurance sum stated in the policy. The percentage varies according to the type of injury.<sup>35</sup> The MOF has published a Table of Compensation Rates for Injuries to help set the percentages.

#### B. Life Insurance

The market for life insurance continues to grow in both number of participants and premium volume and revenue. Both domestic and foreign invested insurance enterprises offer life insurance products, and there is interest in the availability and desirability of these products.

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

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<sup>32</sup> Law 61 art. 1.3.

<sup>33</sup> LOIB art. 8.

<sup>34</sup> LOIB art. 31.1.

<sup>35</sup> LOIB art. 33.1.

### **C. Vehicle Insurance**

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

### **D. Oil and Gas Insurance**

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

### **E. Marine Insurance**

The LOIB applies to all types of insurance; however, with regard to marine insurance contracts, the section of the Marine Law governing marine insurance contracts applies.<sup>36</sup> The Marine Law covers contracts of insurance for maritime perils, which mean perils incidental to navigation at sea.<sup>37</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 contract is automatically invalidated.<sup>38</sup> The insurer then retains the right to the premiums, and need not indemnify.

Marine Law recognizes two parties to the contract: the insurance enterprise and the insured, who pays the premiums and must provide information relating to the insured object or person. The contract may be entered into between the insurance enterprise and the insured 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 contract. In addition, from that time, all the obligations of the insured pass to the third party, except the obligation to pay the premiums. If the third party is not aware of the contract, no obligations will arise. The Marine Law does not state which party has the right of termination. 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.

Regulations on marine insurance do not specify the circumstances under which a contract is void or voidable. Therefore, the Civil Code 2005's default rules on civil contract apply. While the Civil Code 2005 does not explicitly distinguish between a contract that is void and one that is

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<sup>36</sup> LOIB art. 12.3. Marine Law arts. 224-55.

<sup>37</sup> Marine Law art. 224.

<sup>38</sup> Marine Law art. 230.

voidable, a civil contract can be declared void by a court or competent government authority if any of the following conditions apply:

1. The parties to the contract lack the capacity to take part in civil acts.
2. The parties have not acted voluntarily.
3. There is a deception or mistake relating to one or more of the essential elements of the contract. In a civil transaction, 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.
4. The purpose and contents of the contract are contrary to law and social morality.
5. The form of the contract does not adhere to the requirement mandating that certain types of contracts, including insurance contracts, be made in writing.

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

Investors prioritize ways to safeguard their investments. Decree No. 130/2006/ND-CP dated November 8, 2006 (“**Decree 130/2006**”), Joint Circular No. 41/2007/TTLT – BTC – BCA dated April 24, 2007 and Decree 46/2012 dated May 22, 2012 amending some provisions of Decree 130/2006 (“**Decree 46/2012**”) provide regulations on compulsory fire and explosion insurance. Certain businesses must purchase compulsory fire and explosion insurance from an insurance enterprise permitted to conduct business in Vietnam.<sup>39</sup> Decree 130/2006 and Decree 46/2012 describe categories of assets that must be covered by the policy, including housing and buildings, equipment and machinery, and all other goods and assets that can be given a monetary value.<sup>40</sup> The minimum insured sum protected by the policy must be the total market value of the assets for which Decree 130/2006 and Decree 46/2012 require coverage.<sup>41</sup> The insured must comply with the fire prevention codes, and an insurance enterprise has the right to refuse to sell a policy to a buyer who has not complied with the codes.<sup>42</sup>

Decree 130/2006 also lists circumstances in which the insurer is not obligated to indemnify the insured.<sup>43</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. It is possible to avoid the statutory exclusion by specifically including these items in the insurance policy, or by negotiating an additional insurance contract to cover the excluded items.

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<sup>39</sup> Decree 130/2006 art. 3.1.

<sup>40</sup> Decree 130/2006 art. 6.

<sup>41</sup> Decree 130/2006 art. 7.

<sup>42</sup> Decree 130/2006 arts. 13.2, 14.2.

<sup>43</sup> Decree 130/2006 art. 10.



### 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>44</sup>

The Law on Notarization, with effect from January 1, 2015, provides that notarial offices must buy professional liability insurance for their notaries.<sup>45</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

Decision 96/2007/QD-BTC dated November 23, 2007 (“**Decision 96/2007**”), permits insurance enterprises to provide universal life insurance products.<sup>46</sup> These products include an insurance component and an investment component. 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>47</sup>

The Decision sets certain further conditions on enterprises that wish to provide universal life insurance. These conditions are additional to the normal requirements. The enterprise must have a solvency margin of at least VND100 billion *more* than the minimum solvency margin. It must have an information technology system in place to manage the investment fund. Insurance agents who sell universal life insurance products must have special training and qualifications.<sup>48</sup> The enterprise must also obtain MOF approval for its universal life insurance product.<sup>49</sup> The Decision has very specific requirements regarding the documentation that enterprises must provide to prospective buyers.<sup>50</sup> This includes a requirement that certain documents be posted on the firm’s website. The firm must provide information regarding its investment policy and objectives, and must explain the benefits, risks, and charges.

Finally, the firm must provide an annual report to a 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 been or will be distributed to buyers.<sup>51</sup>

Decision 135/2012/QD-BTC dated August 15, 2012, permits unit-linked insurance products (“**Decision 135/2012**”). By “unit -linked insurance” we mean a life insurance product that is formed from several life insurance enterprises.<sup>52</sup> A unit-linked fund is formed from insurance fees paid by buyers for unit-linked insurance contracts. Insurance enterprises enter into unit-linked

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<sup>44</sup> LOIB art. 92.

<sup>45</sup> Law on Notarization 2015 art. 37.

<sup>46</sup> Decision 96/2007 art. 2 .

<sup>47</sup> Decision 96/2007 art. 14.5.

<sup>48</sup> Decision 96/2007 art. 4.

<sup>49</sup> Decision 96/2007 art. 21.1.

<sup>50</sup> Decision 96/2007 arts. 11-14.

<sup>51</sup> Decision 96/2007 art. 15.

<sup>52</sup> Decision 135/2012 art. 2

insurance to cover their risks in relation to the insurance premiums and to invest their capital. There are caps on the amount a fund may invest in certain varieties of investments. A unit-linked fund may invest in no more than 10% of the total value of outstanding securities of a corporation. It may invest no more than 20% of its total asset value in outstanding corporate securities, no more than 10% of its total asset value in real estate, and no more than 30% of its total asset value in a group of companies with mutual ownership.

A unit-linked fund is not permitted to invest in securities, shares of securities investment companies established and operating in Vietnam. The assets of unit-linked funds are not permitted to invest directly in real estate, gold, silver, precious metals, or precious stones.<sup>53</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>54</sup> The enterprise must ensure that the aggregate value of its unit-linked funds is not less than VND100 billion.<sup>55</sup>

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

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

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

An insurance enterprise or organization can take the following forms:

- Joint stock insurance company;
- Limited-liability insurance company;
- Mutual insurance organization; and
- Insurance cooperative.<sup>56</sup>

##### **1. Joint stock insurance company**

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

A joint-stock insurance company means a joint-stock life insurance company, joint-stock non-life insurance company, joint-stock health insurance company, joint-stock reinsurance company or joint-stock insurance brokerage company.<sup>57</sup>

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<sup>53</sup> Decision 135/2012 art. 18.2.

<sup>54</sup> Decision 135/2012 art. 16.1.

<sup>55</sup> Decision 135/2012 art. 16.3.

<sup>56</sup> Law 61 art.7

<sup>57</sup> Circular 124/2012 art. 3.3.

## **2. Limited liability insurance company**

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

A limited liability insurance company is a limited liability life insurance company, limited liability non-life insurance company, limited liability health insurance company, limited liability reinsurance company or limited liability insurance brokerage company.<sup>58</sup>

## **3. Mutual support insurance organization and insurance cooperatives**

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

## **B. Conditions for establishment and licensing**

In order to operate in Vietnam, all insurance enterprises must first meet certain conditions and requirements. Foreign firms must meet additional criteria. The investors must submit an application dossier to the MOF. The enterprise must meet certain capital contribution requirements, and set up certain kinds of reserve fund. Nominated managers and executives of the insurance enterprise must meet conditions on managerial capacity and professional qualifications.<sup>59</sup>

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

Vietnamese and foreign individuals/organizations that contribute capital to establish an insurance enterprise must meet the following conditions:<sup>60</sup>

- 1) There are at least two institutional founding shareholders of a joint stock insurance company. For a joint stock reinsurance company, all institutional shareholders must operate in the finance, banking or insurance domain.
- 2) The charter capital should meet the minimum requirements for establishment of a joint stock insurance company and/or limited liability insurance company.

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<sup>58</sup> Circular 124/2012 art. 3.4.

<sup>59</sup> Circular 124/2012 art. 4

<sup>60</sup> Circular 124/2012 art. 5.

- 3) The institutional/individual capital contributors should meet the conditions specified in Circular 124/2012, such as: financial capacity, have equity capital equal to at least 50% of the legal capital required for the insurance business, maintain and satisfy capital adequacy ratios and other financial conditions.

## **2. Licensing**

If the foreign enterprise is able to meet these requirements, it may submit an application dossier to obtain an establishment and operation license. The basic dossier must contain: the application forms; a draft charter; a list of founding shareholders; certification by a bank in Vietnam that the charter capital has been placed in an account at the bank; a five year business plan that describes the proposed scope of business, investment capital, economic benefits of the establishment of the enterprise, operational processes, internal supervision systems, and risk management process; a list of management and a description of their professional qualifications; contributed capital amounts and disclosure of those entities or individuals holding 10% or more of charter capital; and rules, policy terms, premium tariffs, and commissions on insurance products.<sup>61</sup>

Within twelve (12) months from the date it receives its license, an insurance enterprise must complete certain post-licensing procedures. It must pay a deposit into an escrow account, obtain a seal, register for a tax identification number, provide a report to the MOF on its plan to create the required operational reserves, and convene a meeting to elect management. If it fails to start operations within 12 months, its license may be revoked.<sup>62</sup>

## **3. Management**

The management of an insurance enterprise must have professional qualifications. Enterprises must submit resumes and professional credentials showing that the management staff, such as the chairman of the Board of Management and general director of the enterprise, are competent and trained in the insurance industry.<sup>63</sup> Managers must not have been convicted of a criminal offense or have had had their professional practice rights suspended. Managers must have certain educational credentials and professional experience. For example, a board member must have a higher education degree, and must have either three years or more direct managerial experience or two years of experience in insurance, banking or finance.<sup>64</sup>

## **4. Capital Contribution**

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

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<sup>61</sup> Circular 124/2012 art. 7..

<sup>62</sup> Circular 124/2012 art. 12

<sup>63</sup> Decree 45/2007 art. 7

<sup>64</sup> Circular 123/2011 Art. 25

Charter capital of an insurance enterprise is the capital amount contributed or committed to be contributed by its members or shareholders.<sup>65</sup> The paid up charter capital of an insurance enterprise must be sufficient to match its range of operation, business plans, and location. An insurance enterprise must maintain its contributed charter capital at a level equal to or greater than its legal capital.<sup>66</sup> Decree 46/2007/ND-CP dated March 27, 2007 (“**Decree 46/2007**”) sets the legal capital of a non-life insurance enterprise at VND300 billion (about US\$14,000,000), for a life insurance enterprise at VND600 billion (about US\$ 28,000,000), and for an insurance brokerage at VND 4 billion (about US\$ 185,000).<sup>67</sup>

## 5. Escrow Account and Reserves

The LOIB, as well as Decree 46/2007, require an insurance enterprise to open an escrow account at an onshore commercial bank within 12 months after receiving its license. The enterprise must deposit 2% of the statutory legal capital. The insurance enterprise may use the deposit to fulfill its commitments to insurance buyers if their solvency fails. Such use must be approved in writing by the MOF. Within 90 days of drawing down on the deposit, the enterprise must replenish the account.<sup>68</sup>

Insurance operational reserves represent an amount of money which an enterprise must set aside to cover pre-determined insurance liabilities arising from signed insurance policies.<sup>69</sup> The reserve is charged against profits to cover projected claims and obligations. A reserve creates a reduction in current profit. When the obligations have actually been incurred and satisfied, the reserve can be reduced, thus removing a charge on current profit. On the balance sheet, the reserve appears as a liability. The amounts represented by each reserve can be invested. There are two kinds of operational reserves: operational reserves for non-life insurance and operational reserves for life insurance.

A non-life insurance enterprise must set up the following kinds of operational reserves:<sup>70</sup>

- a) Unearned Premium Reserve: used to indemnify liabilities likely to arise during the term an insurance contract is in force;
- b) Indemnity Reserve: used to cover losses incurred by reason of an insurance liability but for which claims have not yet been settled; and
- c) Large Loss Fluctuation Reserve: a reserve 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 should be made annually until the balance in the reserve is equal to 100% of premiums actually received in the insurer’s fiscal year.

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<sup>65</sup> Decree 46/2007 art. 5 .

<sup>66</sup> Decree 46 art. 2.

<sup>67</sup> Decree 46 art 4.1.

<sup>68</sup> Decree 46/2007 art. 6.

<sup>69</sup> Circular 125/2012 Arts. 7-8.

<sup>70</sup> Decree 46/2007 art. 8.

A life insurance enterprise must set up the following kinds of operational reserves:<sup>71</sup>

- a) Actuarial Reserve or Mathematical Reserve: the difference between the present value of the insured sum and the present value of future premiums, and is 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 contract 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) Interest Sharing Reserve: used to pay the interest agreed by the insurance enterprise and the insurance buyer in the contract.
- e) Balance Reserve: used to pay the insured sum upon the occurrence of an insured event due to significant changes in mortality rates or in technical interest rates.

Circular 125/2012 sets out detailed instructions on how to calculate and structure these reserves.

### **C. Sale of Insurance Products**

For compulsory insurance products, the MOF issues terms, premium scales, and minimum insurance amounts that enterprises must incorporate into their policies.<sup>72</sup> Enterprises may develop their own terms for non-compulsory insurance products. These independently developed terms do not require MOF 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>73</sup>

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, and by auction.<sup>74</sup> Decree 45 and Circular 124 offer detailed guidance on conducting sales through agents and brokers. Sale of insurance by auction must be conducted in accordance with the laws on bidding.<sup>75</sup>

### **D. Capital Investment**

Sources of investment capital sources of an insurance enterprise include its own capital and idle capital from operational reserves.<sup>76</sup> Investments made with the enterprise's own capital must ensure the safety and liquidity of the capital.<sup>77</sup> Investments made with idle capital may come

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<sup>71</sup> Decree 46/2007 art. 9.

<sup>72</sup> Decree 45/2007 art. 20.

<sup>73</sup> Circular 124/2012 Art 17; Decree 45/2007 art. 12

<sup>74</sup> Decree 45/2007 art. 17.

<sup>75</sup> Decree 45/2007 art. 19.

<sup>76</sup> Decree 46/2007 art. 11.

<sup>77</sup> Decree 46/2007 art. 12.

from operational reserves. For non-life companies, idle capital from operational reserves is the total operational reserve less the sums used by the enterprise to pay regular insurance indemnities during a particular period. For life companies, idle capital is the balance that remains after the payment of regular insurance sums is deducted from the total operational reserves.<sup>78</sup>

Decree 46/2007 permits only certain forms of investment of idle capital.<sup>79</sup> The permitted forms of investment for non-life insurance enterprises are:

- a) Purchase of government bonds or corporate bonds at credit institutions in unrestricted amounts;
- b) Purchase of corporate shares or bonds without underwriting, or capital contribution to other enterprises, with 35% or less of idle capital from operational reserves; or
- c) Real estate development or lending with 20% or less of idle capital from operational reserves.

The permitted forms of investment for life insurance enterprises are:

- a) Purchase of government bonds or corporate bonds with underwriting or deposits at credit institutions in an unlimited amount;
- b) Purchase of corporate shares or bonds or capital contribution to another enterprise, with no more than 50% of idle capital from operational reserves; or
- c) Real estate development or lending with no more than 40% of idle capital from operational reserves.

Offshore investments by insurers and insurance brokers must be made in accordance with rules on offshore investment, must be made in the name of the enterprise, and must obtain prior written approval from the MOF. Offshore investments of an enterprise's own capital are limited to amounts that exceed either the legal capital level or the minimum solvency margin, whichever is larger.<sup>80</sup>

Investment carries with it certain risks of its own. When interest rates are below the inflation rate, the value of funds will actually diminish rather than grow. Vietnam's own difficulties in curtailing inflation may challenge insurance enterprises seeking to utilize their capital effectively.

The real estate market and property development attract much attention from investors, but can be complicated investments because of the legal technicalities involved in obtaining and transferring land use rights. Foreign invested enterprises may use land only under a lease from the government or in the form of a capital contribution from a qualified Vietnamese investor. Foreign invested enterprises may participate in development of real property, such as office or apartment buildings, hotels, and resorts.

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<sup>78</sup> Decree 46/2007 art. 13.

<sup>79</sup> Decree 46/2007 art. 14.

<sup>80</sup> Decree 46/2007 art. 12.

There is a fully operational securities market, with stock exchanges in Ho Chi Minh City and Hanoi. Foreign individuals and entities, as well as foreign invested enterprises, may participate in the market. Lending is also a possibility, but presents its own set of complications in terms of taking security. Registration procedures for secured transactions are more transparent, but still cumbersome for investors accustomed to a more efficient process.

## **E. Solvency**

An insurance enterprise is considered solvent when it has established adequate reserves as required by law, and when it maintains its solvency margin at a level no less than the minimum solvency margin level set by Article 16 in Decree 46/2007.

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>81</sup> Assets used for calculation of the solvency margin of an insurance enterprise must be liquid. Circular 125/2012 provides a method for calculating assets for purposes of determining the solvency margin.<sup>82</sup>

Decree 46/2007 sets the minimum solvency margin level differently depending on the insurance products the enterprise offers. If the enterprise provides non-life insurance, the minimum solvency margin is the greater of either (a) 25% of the total insurance premium actually retained at the time the solvency margin is calculated; or (b) 12.5% of the total principal insurance premiums plus reinsurance premiums at the time the solvency margin is calculated.<sup>83</sup> For insurance contracts of reinsurance assignment not meeting the conditions for reinsurance assignment as prescribed by the MOF, the solvency margin is calculated using a minimum of 100% of the original cost of those insurance contracts.<sup>84</sup>

If the enterprise provides life insurance, the minimum solvency margin depends on the term of the contract. For life insurance contracts with a term of 5 years or less, the minimum solvency margin is 4% of the operational reserve plus 0.1% of the sums insured which carry risk. For life insurance contracts with a term of more than five years, the minimum solvency margin is 4% of the operational reserve plus 0.3% of the sums insured which carry risk.<sup>85</sup> Sums insured which carry risk means the difference between the insured sums of effective policies and total reserves.

If the enterprise provides reinsurance for non-life and health reinsurance enterprises, the minimum solvency margin must comply with the minimum solvency margin for non-life insurance. For life insurance enterprises, the minimum solvency margin must comply with the minimum solvency margin for life insurance. For enterprises of all three types of life reinsurance, non-life reinsurance and health reinsurance, the minimum solvency margin must be equal to the total minimum solvency margin for each type of business operation.<sup>86</sup>

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<sup>81</sup> Decree 46/2007 art. 17.

<sup>82</sup> Circular 125/2012 art. 4

<sup>83</sup> Decree 46/2007 art. 16.1.

<sup>84</sup> Circular 125/2012 Art. 15.1.b

<sup>85</sup> Decree 46/2007 art. 16.2.

<sup>86</sup> Circular 125/2012 Art. 15.3



If the enterprise does not maintain appropriate solvency margins, it will be considered insolvent. An insurance enterprise is considered in danger of insolvency when its solvency margin is less than the minimum solvency margin. In such case, the enterprise must take immediate measures to restore its solvency. It must report to the MOF on its actual financial status, causes of the risk, and its plans to restore its financial security.<sup>87</sup>

If an insurance enterprise cannot restore its security by itself, the MOF may request the enterprise to take one of the following measures: supplement its own capital; seek reinsurance with other insurance enterprises, narrow its scope of services and business activities, or suspend some or all of its activities; consolidate the enterprise's organizational apparatus or replace management personnel; and transfer insurance contracts to other enterprises.<sup>88</sup> If these measures fail, the enterprise may be put under special control and the MOF will set up a solvency control board to take solvency restoration measures.<sup>89</sup> The solvency control board is permitted to take action to restore solvency, and the enterprise must implement its decisions.<sup>90</sup>

An element introduced in Law 61 is a fund for the protection of insureds in the event of an insurer's bankruptcy or insolvency. While the LOIB and its regulations had previously required that certain reserve funds and security deposits be maintained, the amendments now require a fund sourced from a percentage of premiums received. Details on the establishment (including the relevant percentage of premiums), management, and use of the reserve fund are provided in Decree 123/2011/ND-CP dated December 28, 2011. It details a number of articles of Law 61 ("Decree 123/2011").<sup>91</sup>

## F. Reporting Requirements

Insurance enterprises must comply with various reporting requirements. They must prepare and submit audited financial statements, statistical reports, and operations reports to the MOF<sup>92</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>93</sup>

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

For a life insurance enterprise, the report must include: monthly operations report; quarterly and annual report on number of contracts and life insurance amount; quarterly and annual report on life insurance premium revenue; quarterly and annual report on premium payment; quarterly and

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<sup>87</sup> Decree 46/2007 art. 19.1.

<sup>88</sup> Decree 46/2007 art. 19.2.

<sup>89</sup> Decree 46/2007 art. 19.3.

<sup>90</sup> LOIB art. 80.

<sup>91</sup> Decree 123/2011 arts. 28-34

<sup>92</sup> Decree 46/2007 art. 34, Circular 125/2012 arts. 32-34.

<sup>93</sup> Circular 125/2012 Art. 33

annual report on life insurance contract cancellation; quarterly and annual provision setting report; quarterly and annual investment operations report; quarterly and annual solvency report; annual ASEAN report; report on fund splitting and interest division; quarterly and annual report on cross border insurance services activities.

For a reinsurance enterprise the report must include: quarterly and annual report on reinsurance revenue; quarterly and annual report on compensation and premium payment of the reinsurance enterprise; quarterly and annual report on professional provision, using the standard forms of non-life insurance enterprises (for the operation of non-life insurance and health reinsurance), using the standard forms of life insurance enterprises (for the operations of life insurance); quarterly and annual investment operations report; quarterly and annual solvency report.<sup>94</sup>

## **G. Representative Office and Branch of Foreign Insurance Enterprises**

### **Representative office of foreign parent insurance enterprise**

A foreign insurance company and foreign insurance brokerage company may open a representative office (“**RO**”) in Vietnam. The RO is a unit of a foreign business entity established under Vietnamese law to research the market.<sup>95</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>96</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.

A foreign insurance enterprise that wishes to establish an RO must satisfy the following criteria: its charter capital must comply with the requirements of the MOF; its management structure and internal supervision and control systems must operate effectively; it must have committed no serious legal infractions for the three consecutive years prior to the year in which it submits its application dossier, particularly violations of solvency regulations; and its management team must have professional experience in and knowledge of the insurance industry.

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

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

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<sup>94</sup> Circular 125/2012 Art. 33

<sup>95</sup> Commercial Law, art. 3.

<sup>96</sup> Decree 72/2006/ND-CP dated July 25, 2006 art. 16.

enterprise will be responsible for all obligations and commitments of its Insurance Branch in Vietnam.<sup>97</sup>

To establish an Insurance Branch, the foreign non-life insurance enterprise must satisfy the following criteria: its head office must be located in a country with which Vietnam has a relevant agreement; it has been operating in its country for at least 10 years; it has minimum total assets of VND 2 billion (equivalent to US\$ 93,000) during the latest financial year; it has profits for the three consecutive years prior to the year in which it submits its application; it has no serious legal infraction for the three years prior to the year in which it submits its application; and other criteria as detailed in Article 9 of Decree 123/2011.

The MOF licenses the Insurance Branch<sup>98</sup> which is not permitted to establish a dependent sub-branch in Vietnam.<sup>99</sup> Details on establishment, business operations, amendments required to be registered, the financial regime, and reporting obligations of the Insurance Branch are provided in Decree 123/2011.<sup>100</sup>

## V. Reinsurance

An enterprise may transfer part of the liability it has agreed to insure to one or more insurance enterprises, but may not transfer the entire liability.<sup>101</sup> 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>102</sup> The Board of Management must approve reinsurance programs to ensure that they comply with the enterprise's capacity and business scope. 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 contracts. 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>103</sup>

An insurance enterprise may reinsure with either Vietnamese or with foreign insurance companies. Many policies involving high risk industries, such as in the marine, aviation, oil and gas, and construction business, are reinsured offshore, even if they are written by Vietnamese enterprises. It is required that reinsurance with offshore enterprises may not be undertaken on terms more favorable than reinsurance with domestic enterprises.<sup>104</sup>

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<sup>97</sup> Decree 123/2011 art. 8

<sup>98</sup> Decree 123/2011 art. 11

<sup>99</sup> Decree 123/2011 art. 12

<sup>100</sup> Decree 123/2011 arts. 11-20

<sup>101</sup> Decree 45/2007 art. 23.

<sup>102</sup> Decree 45/2007 art. 24.

<sup>103</sup> Circular 124/2012 art. 44

<sup>104</sup> Circular 124/2012 art. 43

## **VI. Agents and Brokers**

### **A. Agents**

An insurance agent offers and sells insurance, arranges or concludes insurance contracts, and undertakes other activities related to the performance of an insurance contract. The agent must be authorized by insurance enterprises to carry out these activities on behalf of the enterprise.<sup>105</sup> The agent must be a Vietnamese citizen, must have full civil capacity, and must have received training from an institution accredited to train and certify insurance agents.<sup>106</sup> An insurance enterprise must register a list of its agents and their responsibilities with the MOF.<sup>107</sup> Employees of an insurance enterprise may not also act as agents for that enterprise.<sup>108</sup>

Insurance agents may not pressure customers to cancel valid insurance contracts. 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.<sup>109</sup>

Insurance agents have the right to enter into agency contracts with an insurance enterprise. The enterprise must provide the agents with all information necessary to enable them to provide appropriate services to buyers. They are also entitled to receive commissions.<sup>110</sup> By “commissions” we mean the amounts paid by insurance enterprises directly to insurance agents in return for services they provide to the insurance enterprises. The maximum rates of insurance commission that enterprises may pay to insurance agents for each contract must comply with the schedules included in the Circular 124/2012.<sup>111</sup>

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

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

### **B. Brokers**

A broker is an insurance brokerage enterprise that provides information on types of insurance, policy terms and premiums, and general information on insurance enterprises to its customers who wish to purchase insurance.<sup>112</sup> The broker usually helps the insurance buyer assess risk management, select suitable insurance products, and negotiate and conclude insurance

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<sup>105</sup> LOIB art. 84.

<sup>106</sup> LOIB art. 86; Decree 45/2007 arts. 31-33.

<sup>107</sup> Decree 45/2007 art. 29.2(h).

<sup>108</sup> Decree 45/2007 art. 28.2.

<sup>109</sup> Circular 124/2012 art. 47

<sup>110</sup> Decree 45/2007 art. 30.1.

<sup>111</sup> Circular 124/2012 art

<sup>112</sup> LOIB arts. 89-90.

contracts.<sup>113</sup> A broker works for and is paid by the insurance buyer, rather than an insurance enterprise.

In order to be licensed, an insurance brokerage enterprise must meet capital requirements established by the Government, submit documents such as a draft charter and five year business plan, and provide evidence that its executives and managers have appropriate qualifications. The law allows foreign invested enterprises to engage in the brokerage business in the form of joint ventures or 100% foreign owned companies. An insurance brokerage enterprise is entitled to receive brokerage fees. The fees may be included in the insurance premium. The law requires the broker to provide honest services, and not to disclose or provide information that damages the insurance buyer's rights.<sup>114</sup>

## **VII. Conclusion**

Implementation of the WTO commitments has increased competition. Competition will continue to encourage development of new insurance products. Firms may explore creative packaging of existing products. The industry has already seen the advent of new products that integrate insurance and investments, that appeal to consumers with rising personal incomes. An increased variety of insurance products will create new regulatory challenges.

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

With increased competition comes a heightened responsibility for insurance enterprises and the Government to develop rules of professional ethics. Government regulations consistently demand disclosure and transparency, and prohibit anti-competitive practices. Insurance enterprises, both domestic and foreign, must monitor their internal operations, as well as their industry, to maintain these standards.

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<sup>113</sup> Decree 45/2007 art. 18.2.

<sup>114</sup> Circular 124/2012 arts. 51-54.